

General Terms and Conditions of Gummiwerk Kraiburg Relastec GmbH

A. General

1. These General Terms and Conditions shall apply to all our business relationships – also in the future – with contractors in the sense of § 310 German Civil Code (hereinafter: “buyer”). Differing General Terms and Conditions of the buyer shall not be effective without our express written consent.
2. Individual arrangements made in a particular case (inclusive collateral agreements, amendments and modifications) shall take priority over these General Terms and Conditions. The contents of such arrangements shall be subject to a written contract or to our confirmation in writing.
3. The statutory provisions shall be effective additionally, unless they are directly modified or expressly excluded by these General Terms and Conditions, even if this is not explicitly agreed.

B. Conclusion of an Agreement

1. Our offers are subject to confirmation. An agreement is not reached until acceptance of the buyer’s order. This shall also apply if we placed technical documentations (e.g. drawings, data sheets, specifications), other product descriptions or documents – also in electronic form – at the buyer’s disposal with a reservation of proprietary rights and copyrights.
2. Deviations of our acceptance (e.g. by confirmation of the order) from the buyer’s order, which are customary in this branch of business, are reserved and shall have no influence on the conclusion of the agreement.

C. Terms of Delivery

1. In case we are not able to keep binding delivery dates due to reasons we are not responsible for (impossibility of performance, e.g. because our suppliers failed to deliver us), we shall inform the buyer without delay and determine a new delivery period which appears reasonable according to the circumstances. If the performance continues to be impossible, also within the newly determined delivery period, we shall be entitled to cancel the agreement completely or partly; we shall immediately reimburse any already provided counter-performance. Our statutory rights (e.g. exclusion of the obligation to perform) and the rights of the buyer under these General Terms and Conditions shall remain unaffected.
2. The accrual of our delay in delivery is regulated under the statutory provisions. In any case, however, a reminder of the buyer is necessary.
3. Delivery shall be effected at our option ex works or branch (place of performance) by the mode of delivery which is most convenient for us. The buyer shall bear all additional charges for a mode of delivery chosen by him. We charge packing at cost price.
4. Delivery of the goods shall be effected at buyer’s risk (destruction, deterioration, delay). In case the delivery is delayed due to reasons we are not responsible for, the risk shall pass upon notification that the goods are ready for delivery. The statutory passing of the risk due to delay in acceptance shall remain unaffected.

D. Prices and Terms of Payment

1. The purchase price is due and payable within 14 days from the date of issue of the invoice. Upon the expiration of the time for payment, the buyer is in delay of payment. During the period of delay – subject to more far-reaching rights -, interest for late payment at the respectively applicable statutory default interest rate has to be paid on the purchase price.
2. The buyer shall only be entitled to execute offsets or retentions in so far as the respective counterclaim has legal effect or is acknowledged by us.
3. In case our pecuniary claim is endangered due to the inefficiency of the buyer (e.g. application for insolvency proceedings), we shall be entitled, according to the statutory provisions, to withhold performance and – if necessary, after having fixed a time-limit - to cancel the agreement (§ 321 German Civil Code). In case of special manufactures we shall be entitled to give notice of cancellation immediately. The statutory regulations concerning the dispensability of the fixing of a time-limit shall remain unaffected.

E. Reservation of Title

1. We reserve title to the goods until all our present and future claims have been paid in full.
2. In case of breaches of duty, especially when the purchase price is not paid, we shall be entitled, under the statutory provisions, to cancel the agreement or / and to claim return of the goods on request. The claim for returning of the goods does not automatically mean cancellation of the agreement; we shall rather be entitled to claim return of the goods and to reserve the right of cancellation. In case the purchase price is not paid, we shall assert these rights not before the unsuccessful expiry or the statutory dispensability of a reasonable final respite.
3. The buyer shall be entitled to work up and / or sell the goods in the ordinary course of business. In this case the following clauses shall apply in addition.
 - 3.1 The reservation of title shall also apply to the products which are created by way of working up, mixing or combination and we shall be considered to be the manufacturer. In case proprietary rights of third parties continue to exist, we shall obtain co-ownership in proportion to the value of the goods. Besides, the products are considered to be conditional goods.
 - 3.2 Already now, the buyer assigns to us completely or to the amount of our co-ownership all the claims arising from a resale as a security. We accept this assignment. The obligations of the buyer, specified in item 2., shall also apply in consideration of the assigned claims. Besides us, the buyer shall remain entitled to collect the claims.

- 3.3 In case the value of the securities exceeds our claims by more than 10 %, we shall release securities at our option upon request of the buyer.

F. Warranty Claims of the Buyer

1. Unless hereinafter provided otherwise, we shall be liable, under the statutory provisions, for defects of quality and legal imperfection in title of the goods (inclusive mistaken and short delivery). The statutory regulations concerning suppliers’ recourse shall remain unaffected in any case.
2. Only such product descriptions shall be considered as an agreement on quality which are subject-matter of the individual contract. Supplementary to the statutory regulation, the goods shall also be considered to be free of defects of quality if they show the characteristics the buyer can expect to get according to the description of products issued by us. We shall not be liable for public statements of third parties (e.g. advertising statements).
3. The warranty claims of the buyer require that he has observed his statutory obligations to examine the goods and to give notice of defects. The buyer has to give us the necessary time and opportunity to examine the noticed defect, especially he has to hand us over the goods for these purposes.
4. In case the goods are defective, it shall be at our option either to subsequently perform by removing the defect (subsequent improvement) or to deliver a faultless item (substitute delivery). Our statutory right of refusal shall remain unaffected.
5. In case the subsequent performance failed or a time-limit for the subsequent performance, which the buyer has to fix, expired unsuccessfully or is not necessary according to the statutory provisions, the buyer shall be entitled to cancel the purchase agreement or to reduce the purchase price. The right of cancellation shall not exist if the defect is irrelevant.
6. The buyer’s claims for damages or compensation of wasted expenses shall only exist in compliance with the following clauses, otherwise they shall be excluded.

G. Other Liability

1. We shall only be liable for damages – no matter which legal basis – due to intent and gross negligence. However, we shall also be liable due to ordinary negligence
 - for damages arising from the injury of life, body or health;
 - for damages arising from the breach of an essential obligation under an agreement; in this case, however, our liability shall be restricted to the compensation of the foreseeable, typically arising damage.The above-mentioned limitations of liability shall not apply if we have maliciously concealed a defect or have given a product warranty. The same shall apply for claims of the buyer according to the Product Liability Act.
2. Apart from our warranty for defects, the buyer has a right to cancel or terminate the agreement, but only if we fail to comply with our duties; in particular, an unrestricted right of termination (e.g. under §§ 651, 649 German Civil Code) shall be excluded. Cancellation or termination must be made in writing. Besides this, the statutory requirements and legal consequences shall apply.

H. Limitation of Actions

1. Deviating from § 438 para. 1 No. 3 German Civil Code, the general statutory period of limitation for claims arising from defects of quality or legal imperfection in title shall be one year from the day of delivery.
2. For buildings and building material the statutory period of limitation shall be two years from the day of delivery. The special limitation rules for the statutory suppliers’ recourse shall remain unaffected and shall apply for the benefit of the buyer, even if the basis for the performance to the consumer is not a purchase contract, but a contract for services with a five-year period of limitation.
3. The statutory provisions for real claims for restitution of property of third parties, the suppliers’ recourse and for the case of fraud shall remain unaffected in any case.
4. In so far as we owe contractual damages to the buyer due to or as a result of a defect, the uncurtailed statutory periods of limitation of the Law on Sales (§ 438 German Civil Code) shall apply. These periods of limitation shall also apply for competing extra-contractual claims for damages, unless the application of the ordinary statutory limitation (§§ 195, 199 German Civil Code) results in a shorter period of limitation in the individual case. The periods of limitation under the Product Liability Act shall remain unaffected.

I. Choice-of-law Clause and Legal Venue

1. The laws of the Federal Republic of Germany shall apply with exclusion of all international and supranational (contractual) legal systems, especially of the Law on Sales of the UN. Prerequisites and effects of the reservation of title shall be subject to the law of the respective location of the subject-matter. For frontier-crossing contracts the international rules for the interpretation of the contractual formulations in accordance with ordinary trade usage (Incoterms) shall apply as amended.
2. As far as businessmen are concerned, the legal venue – also internationally – shall exclusively be the district court in Traunstein. However, we shall also be entitled to take action at the general legal venue of the buyer.

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