

## **Terms of delivery and payment**

### **1. General information**

- 1.1 The German contracting rules for the awarding of public works contracts for building services part B (VOB/B) shall apply to all deliveries and services to buildings or for certain buildings, supplemented by the part determined in Subclause 6 concerning the reservation of title. We shall be very pleased to send the full text of the German contracting rules for the awarding of public works contracts for building services part B (VOB/B) to our customers free of charge upon request.
- 1.2 Our following terms of delivery shall apply exclusively to all other deliveries.
- 1.3 Deviating terms and conditions of the customer, which are not explicitly recognised in writing, are non-binding, even if we have not explicitly objected to these.
- 1.4 Both the German contracting rules for the awarding of public works contracts for building services part B (VOB/B) as well as our other terms of delivery shall only be used towards merchants as well as towards legal entities of public law and special assets under public law.

### **2. Cost estimates and offer documents**

- 2.1 We reserve the rights of exploitation under property and copyright law to cost estimates, drawings and other documents to an unlimited extent, they may not be made accessible to third parties. In case the order is not placed the drawings and documents must be returned to us immediately upon request.

### **3. Prices**

- 3.1 Our prices shall apply ex works Waghäusel excluding packaging.
- 3.2 Packaging shall be charged at cost price.
- 3.3 The applicable rate of value added tax shall be added to the prices.

### **4. Delivery time**

- 4.1 The start of a delivery period which is explicitly agreed as a fixed date presumes the clarification of all technical questions. Delivery deadlines are otherwise non-binding.
- 4.2 The delivery deadlines shall be reasonably extended in particular in case of delivery bottlenecks caused by industrial disputes and by the occurrence of unforeseeable events and by force majeure. This shall also apply if corresponding circumstances occur at sub-suppliers. The customer shall be informed of the occurrence of such impediments immediately.
- 4.3 If a non-binding delivery period is overrun the customer can deem us in default no earlier than after the expiry of two weeks through a written request for delivery and by setting a reasonable deadline of at least two further weeks.
- 4.4 If we are in default then after setting a reasonable final deadline of at least two further weeks with the threat of rejection the customer can cancel the contract or demand damages instead of performance.
- 4.5 The claim for damages owing to default is limited to a maximum total of 5 % of the price for the part of the deliveries which could not be taken into the appropriate operation owing to the default.

- 4.6 Both claims for damages of the customer owing to delay in the delivery as well as claims for damages instead of performance, which exceed the limits stated in 4.5, are excluded in all cases of delayed delivery also after expiry of a deadline which may have been set us for delivery. This shall not apply insofar as liability is mandatory in cases of wilful intent, gross negligence or owing to the injury to life, the body or the health. The customer can only cancel the contract within the framework of the statutory provisions insofar as we are responsible for the delay in the delivery. The afore-mentioned regulations do not involve a change in the burden of proof for the disadvantage of the customer.
- 4.7 The customer undertakes at our request to declare within a reasonable deadline whether he cancels the contract owing to the delay in the delivery or insists upon delivery.

## **5. Payment**

- 5.1 All payments are to be made net free stated payment agency.
- 5.2 Payment with take-over pure net.
- 5.3 The customer can only offset against those receivables which have been recognised by us or have been declared final and binding. This shall also apply – insofar as the buyer is a merchant – to the assertion of rights of retention.
- 5.4 All invoices are due and payable in case of suspension of payment, filing of an application for the opening of insolvency proceedings of the customer. At the same time all discounts shall be deemed as lapsed so that the customer has to pay the invoiced gross prices.

## **6. Reservation of title**

- 6.1 We reserve the property to the delivered objects until the full payment of the purchase price as well as the satisfaction of all claims to which we are entitled against the customer from the business relationship.
- 6.2 Only the encashment shall be deemed as payment in case of cheque, bill of exchange or receivable assignments.
- 6.3 In case of breaches of duty of the customer, in particular with default of payment we are entitled to take the object of delivery back. The customer is obliged to hand the object over. The taking back of the object by us does not represent a cancellation of the contract unless we had explicitly declared this in writing. We are authorised to sell the object of delivery after taking it back. The sales proceeds are to be offset against the customer's liabilities – minus reasonable sales costs.
- 6.4 The customer undertakes to treat the object of delivery carefully, he in particular undertakes to sufficiently insure it at his own costs and at the new value against fire, water and theft damages.
- 6.5 The customer must inform us immediately in writing in case of attachments or other interventions of third parties. Insofar as the third party is not in the position to reimburse us the in court and out of court costs of legal action for the release of our property (intervention action according to § 771 ZPO (Code of Civil Procedure)) the customer shall be liable for the loss suffered by us.
- 6.6 The customer is entitled to resell the object of delivery in ordinary business transactions, however he hereby now already assigns us all receivables in the amount of the final invoice amount (including value added tax), to which he is entitled against his buyers from the resale irrespective of whether the object of delivery has been resold without or after processing. We accept this assignment. The customer shall also remain authorised to collect this receivable after the assignment. Our authorisation to collect the receivable ourselves remains unaffected hereby.

However, we undertake not to collect the receivable as long as the customer satisfies his payment obligations, is not in default of payment and in particular no application has been filed for the opening of insolvency proceedings or payments have been suspended. If this is the case we can request that the owner informs us of the assigned receivables and their debtors, provides all details which are necessary for the collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.

- 6.7 If the delivered good is processed to a new movable object by the customer then the processing is carried out on our behalf. An acquisition of ownership of the customer according to § 950 BGB (Civil Code) is excluded. If the also delivered good is processed or mixed with other goods which do not belong to us then we shall acquire the ownership to the newly created objects according to the ratio of the value of the goods delivered by us and the other goods at the time of the processing.
- 6.8 The reservation of title and the collateral to which we are entitled shall apply until the full release from contingent liabilities, which we may have entered into in the customer's interest (e.g. with payment in the so-called cheque/bill of exchange proceedings).
- 6.9 Insofar as the value of all of our collateral rights exceeds the amount of all secured claims by more than 20 % we shall release a corresponding part of the collateral rights, which is to be determined by us, at the request of our customer.
- 6.10 Of the afore-mentioned Subclause 6 the Subclauses 6.1, 6.4, 6.5, 6.6 and 6.8 shall also apply with VOB contracts according to Subclause 1.1.

## **7. Passing of risk and shipment**

- 7.1 The risk shall pass to the customer by no later than with the despatch of the delivery parts also if partial deliveries are made or we have assumed responsibility still for other services, e.g. shipment costs or delivery.
- 7.2 If the shipment is delayed as a result of circumstances for which the customer is responsible then the risk shall pass on the day of the notification that the goods are ready for shipment.
- 7.3 Partial deliveries are permitted and do not represent a defect of quality.

## **8. Defects of quality**

- 8.1 Rights of the customer owing to defects of quality – insofar as he is a merchant – presume that he has properly satisfied his responsibilities for inspection and report of complaint which are owed according to §§ 377, 378 HGB (Commercial Code) and the reported the defects of quality immediately in writing. With all other customers this applies to obvious defects; in case of other defects the customer, who is not a merchant, with defects to buildings within five years, with defects to works, which consist of another success than that of the production or change to an object, must report these defects of quality in writing within three years and with all other defects within one year.
- 8.2 Claims for defects of quality shall become statute-barred in 12 months. This shall not apply insofar as the law stipulates longer deadlines according to §§ 438 Par. 1 No. 2 (Buildings and objects for buildings), 479 Par. 1 (Claim for recourse) and 634 a Par. 1 No. 2 (Building defects) BGB as well as in cases of the injury to life, the body or the health, with a wilful or grossly negligent breach of duty and with malicious non-disclosure of a defect by us. The statutory regulations concerning inhibition of expiry, inhibition and new start of the deadlines remain unaffected. In case of contracts, in which the German contracting rules for the awarding of public works contracts for building services part B (VOB/B) applies in full and exclusively, these are contracts according to Subclause 1.1 of these business terms, the regulations of § 13 VOB/B shall apply instead of these regulations. Insofar as it concerns a purchase of consumer goods, the statutory regulation for the statute-of-limitations shall continue to apply.

- 8.3 We shall subsequently improve all those parts or services at our choice free of charge, deliver or provide these new, which feature a defect of quality within the statute-of-limitations, insofar as their cause already existed at the time when the risk was passed.  
Insofar as the customer is no merchant he shall continue to have the right to choose.
- 8.4 Our customer can only retain payments to an extent which is reasonably in proportion to the occurred defects of quality and if a defect is asserted, for which there can be no doubts about the justification. If a defect is reported unjustifiably we are entitled to request that the customer reimburses the expenses incurred to us.
- 8.5 We are initially to be given the opportunity for subsequent performance within a reasonable deadline. The customer, who is not a merchant, reserves the right, to reduce the remuneration or cancel the contract after the failed subsequent performance.
- 8.6 Our customer can, insofar as the subsequent performance fails and he is a merchant, at our choice, cancel the contract or reduce the remuneration.
- 8.7 Claims for defects do not exist with an only insignificant deviation from the agreed or customary condition, with an only insignificant impairment to the usability, with natural wear and tear or damages, which are suffered after the passing of risk as a result of faulty or negligent handling, excessive use, unsuitable operating equipment, faulty building work, unsuitable building foundation or which are suffered owing to special external influences, which are not presumed according to the contract. If improper changes or repair work are carried out by the customer or by a third party no claims for defects shall exist either for these and the ensuing consequences.
- 8.8 Insofar as expenses increase, because the object of the delivery has subsequently been taken to another location than the branch (or the place of residence) of the customer, claims of the customer are excluded owing to the expenses which are necessary for the purpose of subsequent performance such as transport, route, labour and material costs.
- 8.9 Claims for recourse of the customer against us according to § 478 BGB (recourse of the entrepreneur) shall only exist to the extent that the customer has not reached any agreements with his buyers beyond the statutory claims for defects. Further 8.8 shall apply accordingly to the scope of the customer's claim for recourse against us according to § 478 Par. 2 BGB.
- 8.10 Subclause 11 (other claims for damages) shall apply to claims for damages.  
Further claims of the customer or other claims than those regulated herein against us or our vicarious agents owing to a defect of quality are excluded.
- 8.11 We generally give no guarantees.

## **9. Infringement of third party property rights**

- 9.1 If a third party prohibits us from producing or delivering a good, with reference to a property right which it possesses, without us being at fault for the infringement of this property right, then we, without being obliged to examine the legal position, are entitled to suspend the production as well as the delivery. If the customer caused and was at fault for the infringement of the property right of the third party we can request the reimbursement of paid costs and damages from the customer.
- 9.2 Claims of the customer are excluded insofar as he is responsible for the infringement of the property right and insofar as the property right infringement is caused by special stipulations of the customer, by an application which we could not have foreseen or is caused by the fact that the delivery is changed by the customer or is used together with products which were not delivered by us.

## **10. Right of cancellation**

In case of a substantial deterioration to the asset circumstances of the customer after conclusion of the contract, through which our claim is in danger, then we are entitled to refuse our service until the consideration has been effected or collateral has been provided. The rights of cancellation granted by law remain unaffected.

## **11. Other claims for damages**

- 11.1 Claims of the customer for damages and reimbursement of expenses (hereinafter: claims for damages), no matter for what legal grounds, in particular owing to the breach of duties from the debt relationship or from tortious act are excluded. We shall in particular not be liable in case of faulty use, installation, etc. and the resulting damages.
- 11.2 This shall not apply insofar as liability is mandatory, e.g. according to the Product Liability Law, in cases of wilful intent, gross negligence, owing to the injury to life, the body or the health, owing to the breach of essential contractual duties. The damages for the breach of essential contractual duties is however limited to the typical contractual and foreseeable damages insofar as there is no wilful intent or gross negligence or liability is assumed owing to the injury to life, the body or the health. The afore-mentioned regulations do not involve a change in the burden of proof for the disadvantage of the customer.
- 11.3 Insofar as the customer is entitled to claims for damages according to these regulations these shall become statute-barred with the expiry of the statute-of-limitations which apply to claims for defects of quality according to Subclause 8. In case of claims for damages according to the Product Liability Law the legal statute-of-limitation regulations shall apply insofar as these cannot be reduced, otherwise the reduced deadlines shall apply.

## **12. Place of performance and place of jurisdiction**

- 12.1 Insofar as the customer is a merchant the following shall apply:  
The place of performance is the registered seat of the company Alois Heiler GmbH. Deemed as place of jurisdiction – even with bill of exchange and cheque actions – is explicitly the County Court or Regional Court of jurisdiction for the company Alois Heiler GmbH. The company Alois Heiler GmbH is also entitled to file legal action at the registered seat or place of residence of the customer.
- 12.2 German substantive law shall apply to the legal relationships in connection with this contract under the exclusion of the Convention of the United Nations concerning Contracts for the International Sales of Goods (CISG).

## **13. Escape clause**

The contract shall also remain binding with the other parts of the contract with the legal invalidity of individual provisions. The invalid clause shall be replaced by a clause which shall as far as possible correspond with the commercial intention of the original clause. This shall also apply insofar as a loophole is determined. This shall not apply if the adherence to the contract would represent an unreasonable hardship for one of the parties.