

Standard Conditions of Sale and Terms of Delivery of TSUBAKI KABELSCHLEPP GmbH

I. General

1. These Standard Conditions of Sale and Terms of Delivery (hereinafter referred to as “Terms of Delivery”) apply exclusively to our goods and deliveries. They constitute an integral part of all contracts we conclude with our clients (hereinafter also referred to as “Purchaser”) with regard to the goods and deliveries offered by us.
2. Our Standard Conditions of Sale and Terms of Delivery apply exclusively. Any deviating, contradictory or amending terms of business of the Purchaser shall constitute a part of the contract only so far as we have expressly confirmed their applicability. This also applies if we perform delivery to the Purchaser without reservation in the knowledge of any terms of the Purchaser contradicting, or deviating from, our Terms of Delivery.
3. Our Terms of Delivery shall also apply to all future business deals with the Purchaser, even if they are not agreed specifically for such future deals.
4. Any relevant statements and notifications to be made to us by the Purchaser after the conclusion of the contract (e. g. deadlines fixed, notices of defects, cancellations, claims for price reductions) require the written form to be valid. The written form shall be deemed to be met if transmission takes place by fax. Incidentally, transmission by means of telecommunication, specifically by e-mail, shall be sufficient only after we have expressly confirmed receipt of the e-mail by letter or e-mail. An automatic read receipt shall not be sufficient for this purpose.
5. Any agreements made with the Purchaser in the individual case (including subsidiary agreements, amendments and modifications) shall take precedence over these Terms of Delivery. The content of such agreements shall be defined by a written contract or our written confirmation.

II. Quotes and conclusion of the contract

1. All our quotes shall be without engagement and non-binding unless expressly marked as binding and containing a specific term of acceptance. This shall apply in particular to the presentation of our products on the Internet and to any catalogues, technical documentation or other product descriptions and documents provided to the Purchaser.
2. Unless specifically agreed otherwise, an order or a job shall be deemed accepted with the written order confirmation or with delivery of the ordered goods.
3. All documents pertaining to our quotes, such as figures, drawings, weight and dimensional details, shall be deemed to be only approximate unless expressly designated as binding or unless they need to be fully accurate so as to be suitable for their contractual purpose.

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Sumitomo Mitsui Banking Corporation (SMBC), BLZ: 301 103 00, Konto-Nr. 310 735, IBAN: DE35 3011 0300 0000 3107 35, BIC: SMBCDE33
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Commerzbank AG, BLZ 460 400 33, Kto.-Nr. 813 865 300, IBAN: DE 62 4604 0033 0813 8653 00, BIC: COBADE33XXX

4. We reserve the property rights and copyrights in cost assessments, drawings and other documents; these may not be disclosed to any third party without our express permission. Furthermore, the Purchaser shall return them to us in full at our request and destroy any copies he may have produced if he no longer requires them in the ordinary course of business or if contract negotiations remain unfruitful.

III. Delivery obligations

1. Our order confirmation shall be exclusively relevant with regard to the scope of our deliveries. Unless specifically agreed otherwise in the individual case, delivery takes shall take place ex works including packaging et al. (EXW – Incoterms® 2010), but including loading in our factory. The goods can be sent to a different destination at the request, cost and risk of the Purchaser (purchase to destination). Unless otherwise agreed, we shall then be entitled to define the type of transport (in particular the carrier, route, packaging).
2. We shall be permitted to carry out partial deliveries if
 - the partial delivery can be used by the Purchaser in the frame of the contractual purpose,
 - the delivery of the remaining goods as ordered is ensured and the Purchaser does not suffer any material extra costs (unless the Seller declares he is willing to bear such costs).

IV. Prices, terms of payment, delivery terms

1. Unless specifically agreed otherwise, our prices shall apply as net prices ex works exclusive of packaging et al. (EXW – Incoterms® 2010), but including loading in the factory.
2. The statutory Value Added Tax is not included in our prices. It is imposed and shown separately in the statutory amount applicable at the invoice date. Any duties, fees, further taxes and other public charges shall also be borne by the Purchaser.
3. The Purchaser shall have the right to withhold payments or offset payments with counterclaims only to the extent to which such counterclaims are undisputed and have been established as final and absolute.
4. Unless otherwise agreed in writing, invoice amounts shall be paid without deductions within 30 days following the invoice date.
5. The Purchaser shall be deemed to be in default when the payment term as defined above has passed in accordance with Sec. 286 par. 2 no. 2 BGB (German Civil Code). Interest to the amount of the applicable legal default interest rate shall accrue on the purchase price as long as default applies. Beyond this, we reserve the right to assert any further damages resulting from default.
6. If the Purchaser's asset situation deteriorates in a way that could jeopardise the settlement of our unpaid accounts receivable from the respective contractual relation (e. g. on account of an application filed for insolvency proceedings), we are entitled, in ac-

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cordance with the statutory provisions, to refuse performance and to rescind the contract after fixing a grace period as required. In the case of contracts on the manufacture of individual objects (single-unit production), we are entitled to rescind immediately. The statutory provisions regarding the dispensability of a grace period remain unaffected.

V. Delivery deadlines

1. The time of delivery results primarily from the individual agreements of the contractual parties and furthermore from the design of the object of delivery and the conditions of the order. To be able to adhere to the delivery deadline, we require first that all commercial and technical questions between the contractual parties have been cleared and that the Purchaser has met all his obligations and duties, such as giving technical clearance, providing all necessary official certifications or approvals or making the down payments as agreed. If this is not the case, the deadline shall be extended accordingly. This provision shall not apply if the delay is our responsibility.
2. The delivery deadline shall be deemed to have been met if – in the case of purchase to destination having been agreed – the object of delivery has been handed over or made available to the forwarder, freight carrier or third party otherwise engaged with the transport before such deadline has passed, or – in the case of no purchase to destination having been agreed – when the Purchaser has been notified that the object is available for collection. If an acceptance is to take place, the time of acceptance shall be decisive, except in the case of justified refusal of acceptance. In the case of unjustified refusal, on the part of the Purchaser, to agree on an acceptance date, the notification of readiness for acceptance to the Purchaser is decisive.
3. If the Purchaser fails to take on the delivery, or if the delivery or acceptance of the object of delivery is delayed due to reasons for which the Purchaser is responsible, we shall be entitled to claim reimbursement for any damage resulting from this including extra cost. In such cases, we shall invoice a flat-rate damage payment to the amount of 0.5 % of the invoice amount for every month or part thereof starting with the delivery deadline or – if no delivery deadline was agreed – with the notification of readiness for shipping of the goods. The right to document a higher damage and our statutory rights, in particular the reimbursement of extra costs, appropriate indemnification and cancellation shall remain unaffected by the above provision. However, the flat rate imposed shall be offset with further monetary claims. The Purchaser shall be entitled to prove that no damage was caused or that the damage caused is significantly lower than the above flat rate.
4. If the non-compliance with the delivery deadline is due to Acts of God, labour disputes or other events outside our sphere of influence, the delivery deadline shall be extended accordingly. The Supplier shall notify the Purchaser without delay of the beginning and end of such circumstances. To the extent that such events impair or prevent our delivery or performance and such impairment is not merely of a temporary nature, we shall be entitled to rescind the contract.
5. In particular, delays in our own provision of goods from our supplier shall be deemed an event of non-availability of performance in the sense of sub-clause 4 above if we have concluded a covering transaction.

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6. In the case of make-and-hold orders, the agreed quantities are to be called in time. If the purchaser is in default regarding the calling of agreed quantities or partial quantities, we shall be entitled to deposit the respective quantity at the Purchaser's risk or to remove it from the agreed quantity.

VI. Passing of risk

1. The risk shall pass to the Purchaser no later – in the case of transport having been agreed – than with the transfer of the goods to the forwarder, freight carrier or other person designated to perform the transport, or – in any other case – once the Purchaser has been notified of the readiness for collection; this shall also apply for the case of partial deliveries being performed or if we are to perform other services, such as shipping or delivery to the Purchaser's site. If an acceptance is to be performed, it shall be decisive for the passing of risk. It must be performed without delay at the acceptance date, or otherwise after notification on the readiness for acceptance. The Purchaser may not refuse acceptance in the event of a non-material defect.
2. At the Purchaser's written request, we shall insure the shipment at the Purchaser's cost against theft, breakage, transport, fire and water damage as well as other insurable risks.
3. If shipment is delayed for reasons for which the Purchaser is responsible, the risk shall pass to the purchaser as early as on the day of readiness for shipping. We undertake to take out the insurance requested by the Purchaser at the Purchaser's own cost.
4. The Purchaser is to receive our deliveries to the Purchaser's site even if they have non-material defects, without prejudice to the rights of Section X.

VII. Retention of title

1. We retain the title to the object of delivery until all payments from the delivery contract and from an active business relationship have been fully received. As long as invoices are outstanding, the retained title to the deliveries shall secure the balance (goods under retention).
2. Any processing and use by the Purchaser shall take place under exclusion of the acquisition of property pursuant to Sec. 950 BGB (German Civil Code). We shall remain the proprietors of the good thus created, which shall serve as a good under retention to secure our claims in accordance with sub-clause 1.
3. If the goods are processed (connected/mixed) with other goods that are not our property, the provisions of Sections 947, 948 BGB shall apply, with the result that our shared property in the new good shall become a good under retention in the sense of these terms.
4. The Purchaser may sell on goods under retention only in the ordinary course of business and under the condition that he, too, shall agree with his clients a retention of title in the sense of sub-clauses 1 to 3. The Purchaser shall not be entitled to dispose otherwise of the goods under retention, in particular by way of pledging or transfer as security.

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5. If the goods under retention are sold on, the Purchaser even now hereby assigns to us with top priority all claims he may have from the selling on as well as all other claims towards his clients including all ancillary rights, until the contract has been performed. If so requested, the Purchaser undertakes to provide us with all the information and documents that may be required or useful to assert our claims toward the clients of the Purchaser.
6. If the goods under retention are sold on by the Purchaser after having been processed in the sense of sub-clauses 2 or 3 or together with goods that are not our property, the assignment of the purchase price claim in the sense of sub-clause 5 shall apply only to the amount of our invoice price of the good under retention.
7. If the value of our securities exceeds our overall accounts receivable by more than 10 %, we undertake to release securities of our own choosing at the Purchaser's request.
8. Pledges or confiscations by third parties with regard to goods under retention must be notified to us without delay. Any costs for interventions incurred by us in this regard shall be borne by the Purchaser.
9. In the event of a breach of contract on the part of the Purchaser, we shall be entitled directly to request that the Purchaser return the goods after having sent a reminder without avail or if default of payment applies. The request to return the goods shall not in itself constitute a statement of rescission; in fact we are entitled to request the return of the goods and merely reserve the right to rescind. The Purchaser shall grant us access to his business and company premises to the extent required for collecting the objects of delivery. If we rescind the contract, the goods under retention shall be taken back in exchange for the profit attained but not for more than the agreed delivery price. We reserve the right to assert further claims for damages, in particular loss of profit.
10. We are entitled to insure the object of delivery at the cost of the Purchaser against theft, breakage, fire, water and other types of damage unless the Purchaser can prove sufficient insurance coverage.

VIII. Warranty

The Supplier grants the following warranty for defects of quality and title under exclusion of any further claims:

1. Claims for defects asserted by the Purchaser require that the Purchaser has met his statutory duties to examine the goods and notify defects in accordance with Sec. 377 HGB (German Commercial Code). We are to be notified immediately in writing of any defects found during the examination or at a later time. A notice shall be deemed immediate if it was sent within 5 working days; the timely sending of the notice shall be deemed sufficient for meeting this requirement. Regardless of this duty to examine and notify, the Purchaser is to notify obvious defects, including erroneous delivery and missing parts, within 5 working days following delivery; the timely sending of the notice shall also be deemed sufficient for meeting this requirement. If the Purchaser fails to examine the delivery and/or to notify defects correctly, we exclude any warranty for the respective defect not notified or not notified correctly.

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2. Insofar as the delivered good is defective, we may first and at our own discretion opt for supplementary performance either by rectifying the defect (remedy) or by delivering a non-defective good (replacement delivery). Our right to refuse the requested type of supplementary performance in accordance with the statutory requirements shall remain unaffected by this provision. The place of supplementary performance shall either be, at our own discretion, the location of the object of delivery as expressly agreed in the contract or the Purchaser's seat of business. In the event of either remedy or replacement delivery, the Purchaser is to return or transfer back to us at our request all parts that were replaced. We are entitled to make the supplementary performance owed by us conditional to the Purchaser paying the purchase price owed by him. However, the Purchaser shall be entitled to retain a part of the purchase price as appropriate in relation to the defect.
3. If supplementary performance at the contractually agreed location of the object of delivery as well as at the Purchaser's seat of business is unacceptable for us, and if we refrain from completely and rightfully refusing supplementary performance for this reason, the Purchaser undertakes, for the purpose of maintaining his rights to supplementary performance, to send the defective object of delivery or the defective parts to our factory in Gerlingen, Germany.
4. The Purchaser is to grant us the necessary time and occasion to perform the required remedy or replacement delivery. Only in urgent cases of operational safety being at risk or to protect himself against disproportionate damage shall the Purchaser have the right to eliminate the defect himself or to have it eliminated by third parties and claim from us the reimbursement of necessary expenses. We shall be notified of such self-remedy immediately and preferably beforehand. The right to self-remedy shall not apply if we were entitled to refuse equivalent supplementary performance in accordance with statutory provisions.
5. The expenses required for inspection and supplementary performance, in particular transport, travel, labour and material costs, shall be borne by us provided a defect actually exists. This shall not apply for any extra costs that may arise from the fact that the object of delivery was moved to a place other than the contractually agreed location or, if such location was not agreed, the Purchaser's seat of business. If the Purchaser's request for the remedy of defects should be found unjustified, we may claim indemnification from the Purchaser for the costs incurred on account of such request.
6. If supplementary performance has failed or if an appropriate grace period fixed by the Purchaser for supplementary performance has passed without results or is dispensable in accordance with statutory provisions, the Purchaser may rescind the contract of purchase or reduce the purchase price. However, there is no right to rescind if the defect is non-material.
7. In particular, warranty is declined in any of the following events:
Improper or incorrect use, incorrect installation or commissioning by the Purchaser or third parties, natural wear and tear, faulty or negligent treatment, improper maintenance, unsuitable operating resources, deficient construction works, unsuitable foundation material, chemical, electrochemical or electrical influences – unless we are responsible for these.
8. Warranty shall not be granted if the Purchaser modifies the object of delivery or has it modified by third parties without our consent and if the remedy of defects is made impossible or becomes unacceptably difficult as a result of such modification. In any case, the

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Purchaser shall bear the extra cost of the remedy of defects incurred on account of such modification.

9. If the use of the object of delivery results in industrial property rights or copyrights being infringed, we shall, at our discretion and at our cost, either modify or replace the object of delivery in such a way that rights of third parties are not longer infringed while the object of delivery continues to meet the contractually agreed functionality, or procure the right to use for the Purchaser by concluding a licence agreement. If we are not able to do so within an appropriate period of time, the Purchaser shall have the right to either rescind the contract or reduce the purchase price by an appropriate amount. However, no warranty according to this provision shall be granted if the Purchaser, upon becoming aware of an infringement of industrial property rights or copyrights, fails to notify this defect of title immediately in writing in accordance with sub-clause 1.
10. Any claims of the Purchaser for damages or reimbursement of futile expenses on account of defects of quality or title are subject to the limitations of the following Section IX of these Terms of Delivery.

IX. Liability

1. Our fault-based liability for damages – irrespective of the legal cause – shall be limited according to this Section IX.
2. We shall be liable without limitation to the extent required by statutory provisions for damages resulting from intent and gross negligence.
3. In the event of simple negligence, we shall be liable only for damages resulting from the breach of a material contractual obligation whose fulfilment is required to enable the correct performance of this contract and which the contractual partner may and regularly does trust us to meet. In such cases, however, our liability shall be limited to indemnification for the damage that could be expected at the time the contract was concluded and typically occurs.
4. The limitations of liability of sub-clause 3 above shall not apply if we maliciously conceal a defect or have guaranteed the quality of the goods. The same applies to claims the Purchaser may have pursuant to the Produkthaftungsgesetz (German Product Liability Act) and for damages resulting from the violation of life, the body or health as well as for other compulsory liability cases in accordance with statutory provisions.

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X. Period of limitation

1. Deviating from the provisions of Sec. 438 par. 1 no. 3 BGB (German Civil Code), the general period of limitation for claims resulting from defects of quality and title shall be one year following the passing of risk of the goods. If an acceptance was agreed, the period of limitations shall start with the acceptance.
2. However, if the good is a building or a good which was used for a building in accordance with its intended use and has caused the building to become defective (building material), the period of limitation shall be 5 years following delivery pursuant to the statutory period of limitation (Sec. 438 par. 1 no. 2 BGB).
3. Statutory special provisions for claims in rem for the restitution of property (Sec. 438 par. 1 no. 1 BGB), for malicious acts on the part of the Seller (Sec. 438 par. 3 BGB) and for claims for supplier recourse in the event of final delivery to a consumer (Sec. 479 BGB) shall remain unaffected by the period of limitation of sub-clause 1 above.
4. The periods of limitation of the law on sales shall also apply to contractual and extra-contractual damage claims of the Purchaser based on defects in the goods, unless the application of the regular statutory limitation (Sections 195, 199 BGB) would result in a shorter period of limitation in the individual case. The periods of limitation pursuant to the Produkthaftungsgesetz (Product Liability Act) shall remain unaffected in any case. Otherwise, all damage claims of the Purchaser pursuant to Section IX hereof that are not based on defects of quality and title shall be subject to the statutory periods of limitation.

XII. Miscellaneous

1. These standard conditions have been translated into non-German languages. These translations are intended for our clients abroad and are for informational purposes only. The German text alone is exclusively binding.
2. Our seat of business shall be the place of jurisdiction for all disputes arising from this contract between us and the Purchaser as a merchant, legal entity under public law or special property under public law. This shall not apply to the extent that the claim in dispute refers to disputes outside property law and assigned to the district courts irrespective of the value of the subject matter in dispute, or for which an exclusive place of jurisdiction exists. We reserve the right to take action at the Purchaser's general place of jurisdiction.
3. Unless stated otherwise in the order confirmation, our warehouse in Gerlingen shall be the place of fulfilment.
4. The laws of the Federal Republic of Germany shall apply in the same way as it would be applied between German nationals. In particular, the application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall therefore be excluded.

This is a translation, which cannot be construed as legally binding.

Status: February 2012

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