

General Terms of Sale and Delivery of Südwestdeutsche Salzwerke AG Status December 2018

I. Scope

- The deliveries of goods and services as well as the submission of offers of the seller are exclusively carried out based on the following General Terms of Sale and Delivery, which shall also apply to all further deliveries without a renewed reference. This shall also in particular apply if orders, which are to be processed at short notice, are carried out without a separate order confirmation.
- Provisions which deviate from the following regulations or the statutory regulations – in particular Terms of Purchase of the buyer – are only binding for us insofar as they were confirmed by us in writing (§ 127 Par. 2 BGB [German Civil Code]). The delivery of goods, provision of services or acceptance of payments without a reservation does not mean any recognition of deviating provisions on our part.
- Subclauses I.1. - I.2. above do not oppose the collection of further General Business Terms used by us, in particular the Special Offer and Contractual Terms and Conditions for Building Services.
- These General Terms of Sale and Delivery shall only apply if the buyer is an entrepreneur (§ 14 BGB), a legal entity under public law or special assets under public law.

II. Conclusion of contract

- All of our offers are made without obligation and are non-binding. This shall also apply if we have handed over catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product specifications or documents – also in an electronic form – to the buyer, to which we reserve property rights and copyrights.
- The order of the goods by the buyer shall be deemed as a binding contractual offer. As a rule an automatic confirmation of receipt is subsequently sent to the buyer by e-mail, in which the order of the buyer is listed once again. The automatic confirmation of receipt merely documents that we have received the order and does not represent any acceptance of the application. A contract shall only be concluded binding if we have declared the acceptance. This acceptance can either be declared in writing or implied by delivery of the goods to the buyer.
- Subsequent amendments, addendums and/or the revocation of a contract or these terms and conditions shall have precedence over these General Terms of Sale and Delivery. Such agreements are to be made in a written contract. Declarations and reports of the buyer after conclusion of the contract shall only be effective insofar as they are made in writing.
- Delivery deadlines or delivery dates set by the buyer are non-binding as long as we have not explicitly confirmed the deadline or the date as binding.
- The observance of our delivery obligation further presupposes the timely and proper fulfilment of the buyer's obligation. We reserve the right to plead non-performance of contract. If an agreed delivery date is exceeded for reasons for which we are responsible then the buyer has to set us a reasonable final deadline for the delivery in writing. This final deadline shall be at least three weeks.
- The buyer undertakes to declare at our request within a reasonable deadline whether it cancels the contract owing to the delay in the delivery and/or requests damages instead of the service or insists on the delivery.
- In case of force majeure our delivery obligations shall be suspended for the duration of the interference. If circumstances occur which render the delivery or service substantially more difficult or impossible for us (e.g. impeding measures of the legislator, interferences of any kind to the operation or the transport of the goods, shortage in energy or raw materials, industrial disputes, official orders, interferences to traffic or operation or the delivery by our sub-suppliers, which is not carried out, not in time or not properly for the aforementioned reasons) and if the impediment is not only of a temporary duration, we are entitled to cancel the contract insofar as we are not responsible for the occurrence of these circumstances.

III. Condition, product details, deviations

- We deliver the goods in a condition which is customary for the trade.
- Our details about our products, about our systems and processes are based on extensive research work and experience with application technology. We convey these details, with which we do not assume any liability which goes beyond the respective individual contract, in the spoken and written language to the best of our knowledge, however reserve the right to slight deviations due to production. However, our product specifications and details only describe the condition of our products and do not represent any statement of condition in accordance with § 434 Para. 1 No. 3 BGB or guarantee within the meaning of § 443 BGB unless we have explicitly confirmed this to the buyer in writing in advance. This shall however not release the buyer from inspecting our products and processes itself for their application for the own use. This shall also apply to applications and *modus operandi*.
- The orders are carried out according to the order.
- Partial deliveries are permitted if
 - the partial delivery is usable for the buyer within the framework of the intended use as per contract,
 - the delivery of the residual ordered goods is ensured and
 - no substantial additional expenses or additional costs are incurred to the buyer hereby.

IV. Prices, pricing

- In the absence of a deviating agreement the prices include the transport up to before the warehouse of the buyer.
- Insofar as the price is calculated based on the weight or any other unit the unit determined before in our shipping documents before departure of the delivery shall be deemed as decisive.
- The statutory value added tax is not included in the prices, it shall be shown separately in the invoice in the statutory amount which is applicable on the day of the invoicing.

V. Terms of payment

- Insofar as not otherwise agreed the purchase price is due and to be paid net within 30 days from the invoice date. A deduction of 2% cash discount requires an explicit written agreement.
- With the expiry of the deadline for payment the buyer shall be deemed in default without this requiring a reminder.
- In deviation of Point V 1 invoices shall be due and payable immediately without deduction if and as long as the buyer is in arrears with any payments for our deliveries.
- The payment shall be deemed as made when the amount is available to the payment services provider of the buyer (§ 675n Para. 1 No. 1 BGB). The payment with bills of exchange and cheques always requires a special agreement and is only deemed as made with a credit after their redemption or encashment. Bill of exchange and discount expenses and other costs shall be for the expense of the buyer and are due and payable immediately.
- The invoices are payable upon maturity irrespective of possible reports of defects and other rights of retention unless the underlying claim of the buyer was recognised by us or has been declared final and binding.
- In the event of a default of payment we are entitled to request the statutory interest on default (§ 288 Para. 2 BGB). We reserve the right to assert further damages due to default. Our claim for commercial maturity interest (§ 353 HGB [German Commercial Code]) remains unaffected.
- The buyer shall only be entitled to set-off rights if its counterclaims have been legally established, are undisputed or have been acknowledged by us. Furthermore, it shall only be entitled to exercise a right of retention to the extent that its counterclaim is based on the same contractual relationship.

VI. Place of service, passing of risk, default with acceptance

- The place of service is the respective delivery warehouse selected by us.
- Insofar as not otherwise agreed we shall ship the goods at the risk of the buyer; we shall determine the type of shipment, dispatch route and freight forwarder.
- If the buyer is in default with acceptance, culpably violates any other obligations to cooperate or if our delivery is delayed for other reasons for which the buyer is responsible we are entitled to request compensation of the thus suffered damages including additional expenses (e.g. storage costs). Further statutory claims (in particular the claim of non-performance and the right to termination) remain unaffected.
- Insofar as the conditions of para. 3 are met, the risk of accidental loss or of accidental degradation of the item purchased shall pass to the buyer at the point at which it defaults on acceptance or payment.
- We shall be liable in accordance with statutory provisions insofar as the underlying purchase contract is a fixed transaction within the meaning of § 286 Para. 2 No. 4 BGB or § 376 HGB (German Commercial Code). We shall also be liable in accordance with statutory provisions if, as a result of a delay in delivery for which we are responsible, the buyer is entitled to assert that its interest in the further performance of the contract has ceased.
- We shall furthermore be liable in accordance with statutory provisions if the delay in delivery is due to an intentional or grossly negligent breach of contract for which we are responsible, whereby we shall also be held liable for any fault on the part of our representatives or agents. Insofar as the delay in delivery is due to a grossly negligent breach of contract for which we are responsible our liability for damages shall be based on the foreseeable loss or damage that might typically be expected to occur.
- We shall also be liable in accordance with statutory provisions if the delay in delivery for which we are responsible is based on the culpable breach of a material contractual obligation; in this case, however, the liability for damages shall be limited to the foreseeable loss or damage that might typically be expected to occur.
- Further legal claims and rights of the buyer remain reserved.

VII. Obligation for examination, warranty

- All complaints, in particular reports of defects, require that the buyer has properly fulfilled its obligations to inspect and give notice of defects in accordance with § 377 HGB (German Commercial Code).
- If the buyer accepts our delivery or service in the knowledge of a defect it shall only be entitled to the rights which can be derived from the faulty condition if it explicitly reserves its rights owing to this defect in writing and we have received the reservation within 10 days after receipt of the goods.
- In the event of the further processing of the goods the buyer has the opportunity to inspect the goods itself.
- Insofar as our delivery is faulty and accordingly a complaint justifiably filed by the buyer we shall, at our choice, make a subsequent delivery or subsequent improvement (subsequent satisfaction). Our right to refuse the subsequent satisfaction under the statutory pre-requisites, remains unaffected. The buyer has to give us the time and the opportunity which are necessary for the subsequent satisfaction, within a reasonable period of time, in particular to hand over the goods for which a complaint was made for the purpose of an examination.
- If the subsequent satisfaction has failed or a reasonable deadline, which is to be set by the buyer for the subsequent satisfaction, has expired unsuccessfully or is dispensable according to the statutory regulations, the buyer can – irrespective of possible claims for damages – cancel the purchase contract or reasonably reduce the purchase price. However, there is no right to cancellation if the defect is insignificant.
- The buyer can further request reimbursement of the expenses which are necessary for the purpose of subsequent satisfaction. These are excluded insofar as the expenses are increased, because the object of the delivery has subsequently been taken to another location than the branch of the buyer unless the transport corresponds with its use as intended.
- Statutory claims for recourse of the buyer against us shall only exist insofar as the buyer has not reached any agreements with its end buyer beyond the statutory claims for defects. The aforementioned regulation shall apply accordingly with regard to the reimbursement of expenses.
- Further claims of the buyer for damages or reimbursement of expenses shall only exist according to Section IX and are incidentally excluded.
- Claims for defects of the buyer shall become statute-barred one (1) year after the delivery or, insofar as an acceptance is necessary, after the acceptance. Excluded from this facilitation of the statute-of-limitations are claims for damages owing to the injury to life, the body or the health as well as owing to a willful or grossly negligent breach of duty, claims owing to defects, which we maliciously failed to disclose and claims from a guarantee, which we assumed for the condition of the object. Also excluded are claims for defects of the buyer with regard to building-related services (§ 438 Par. 1 No.2 BGB) and owing to in rem rights of third parties for the hand-over of the object of purchase (§ 438 Par. 1 BGB) as well as the claim for recourse according to § 478 BGB. The relevant legal statutes-of-limitations shall apply to these excluded claims.

VIII. Missing quantities

- In case of incomplete deliveries or false deliveries, or if we breach any other obligation (secondary obligation) in a manner for which we are responsible, the buyer has to set us a reasonable deadline in writing for the delivery of the missing quantity, for the delivery of the owed goods or to remedy the breach of obligation.
- Surplus or shortfalls in deliveries as well as surplus or shortfalls in weights within the customary limits do not entitle to make complaints or an adjustment to the price.
- We shall subsequently deliver more than only insignificant missing quantities insofar as this is deemed reasonable for us. Otherwise we shall issue a credit note.

IX. Liability

- We shall be liable in accordance with statutory provisions where the buyer asserts compensation claims based on intent or gross negligence, including intent or gross negligence on the part of our representatives or agents. Insofar as we are not accused of intentional breach of contract, the liability for damages shall be limited to the foreseeable loss or damage that might typically be expected to occur.
- We shall be liable in accordance with statutory provisions if we culpably breach a material contractual obligation; in this case too, however, our liability for damages shall be limited to the foreseeable loss or damage that might typically be expected to occur.
- If the buyer is otherwise entitled to compensation instead of performance due to negligent breach of duty, our liability shall be limited to compensation for the foreseeable loss or damage that might typically be expected to occur.
- Insofar as the buyer is entitled to contractual and non-contractual claims for damages according to this Subclause IX., which are a result of a defect to the goods, these shall become statute-barred with the expiry of the statute-of-limitation regulations applicable to claims for defects according to Subclause VII No. 9, unless the application of the regular legal statute-of-limitations (§§ 195, 199 BGB) would lead to a shorter statute-of-limitation in an individual case. The statutes-of-limitations of the Product Liability Act remain unaffected in each case. The limitation period in the case of a claim based on defective delivery according to §§ 478, 479 BGB remains unaffected; the period is five years, calculated from the delivery of the defective item.

- Any further liability for damages other than provided for in Section IX shall be excluded – irrespective of the legal nature of the asserted claim. This applies in particular to claims for damages arising from breaches of duty in conclusion of the contract (*culpa in contrahendo*), other breaches of duty or claims in tort for compensation for material damage pursuant to § 823 BGB. The limitation shall also apply if the buyer demands compensation for useless expenses rather than asserts a claim for damages instead of performance. Insofar as our liability for damages is excluded or limited, this shall also apply with regard to the personal liability for damages of our employees, workers, staff, representatives and agents.
- The exclusion or limitation of liability pursuant to points 1 to 5 shall not apply in respect of liability for injury to life, limb or health, for the fraudulent concealment of a defect, the breach of a guarantee of quality, and for claims under the Product Liability Act.

X. Reservation of title

- We reserve the property to each object of delivery until the satisfaction of all claims from the business relationship together with secondary claims. The buyer is however authorized to use, thus further process and to sell the goods within the framework of a proper business operation, according to the following regulations:
- The authorizations of the buyer to use reserved goods shall end with the occurrence of the default of payment or the suspension of payment of the buyer or with the application for the opening of insolvency proceedings.
 - The processing or modification of the purchased item by the buyer is always performed on our behalf. If the purchased item is processed together with other items not belonging to us, we shall acquire the co-ownership of the new object in the ratio of the value of the purchased item (final invoice amount, including VAT) to the value of the other processed items at the time of the processing. In all other respects, the same shall apply to the item created by processing as to the purchased item delivered subject to reservation of title.
 - If the purchased item is inseparably combined with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the purchased item (final invoice amount, including VAT) to the other combined items at the time of combination. Should the items be combined together in such a way that the item of the buyer is considered to be the main item, it is agreed that the buyer grants us proportional co-ownership rights. The buyer shall hold the sole ownership or co-ownership on our behalf.
 - The buyer is entitled to sell the goods in the normal course of business; but in doing so it already assigns to us all the accounts receivable arising from the resale to its customers or third parties up to the final invoice amount (including Value Added Tax) that it owes us, irrespective of whether the purchased item is resold without or after processing. The purchaser remains entitled to enforce such claims even after the assignment. However, this shall not affect our right to enforce them ourselves. We undertake, however, not to collect the claim as long as the buyer fulfils its payment obligations arising from the monies received, does not default on payment and, in particular, no application for the opening of settlement or insolvency proceedings have been instituted and there is no cessation of payments. If one of these conditions is infringed, we will inform the buyer of the assignment and collect the claim ourselves. The buyer undertakes to hand over a precise list of the claims, to which we are entitled, to us upon request with the names and addresses of the end buyers, amount of the individual claims, invoice date, etc., to provide us with all information which is necessary for the assertion of the assigned claims and to enable us to check this information by granting inspection of the books and informing debtors (third parties) of the assignment.
 - We undertake to release the collateral items to which we are entitled at the request of the buyer to the extent that the realisable value of our collateral exceeds the claims which are to be secured by more than 10%. We are entitled to select the collateral items which are to be released.
 - Pledge or assignment as collateral of the reserved goods or the assigned claims are not permitted. In the event of attachments or other interventions by third parties, the purchaser must notify us immediately in writing so that we can file a suit in accordance with § 771 ZPO (Code of Civil Procedure). If the third party is not in a position to reimburse us for the judicial and extrajudicial costs of an action pursuant to § 771 ZPO, the buyer shall be liable for the loss incurred by us.
 - If we take the delivered goods back owing to our reservation of title then there will only be a cancellation of the contract if this is explicitly declared by us. We are also entitled to sell the goods which were taken back out-of-court, on the free market, for the best bid, however not below the estimated value dutifully determined by us or to take these over ourselves. The estimated value will, if this is useful, be notified to the buyer, in order to give it the opportunity to provide the names of other buyers within 14 days, who are willing to take over the object of purchase not below the estimated value against cash payment. The sales proceeds after deduction of all costs shall be credited to the buyer against its total debt, it remains obliged in the amount of the deficit.
 - The buyer shall store the reserved goods free of charge on our behalf and shall treat them with care. It has to insure these against customary risks such as fire, theft and water to the customary extent. The buyer hereby assigns its claims for compensation, to which it is entitled from damages of the aforementioned kind against insurance companies or other parties obliged to compensation, to us in the amount of our claims, we hereby accept the assignment.

XI. Final provisions

- The law of the Federal Republic of Germany shall apply to all legal relationships between the buyer and us with the exception of the UN Convention on Contracts for the International Sale of Goods (CISG).
- The place of jurisdiction for all disputes from or in connection with this contract is Heilbronn. We are however also entitled to file an action against the buyer at the court of its place of residence.
- The German Federal Data Protection Act (BDSG) and the General Data Protection Regulation apply to the handling of personal data of the buyer and its employees. The use of the data and the rights of the persons concerned are summarised in the data protection declaration, which can be downloaded at <https://tinyurl.com/dse-salzwerke>.
- Insofar as trade clauses have been agreed according to the International Commercial Terms (INCOTERMS) the INCOTERMS shall apply in the respective last version.
- The contractual language is German insofar as not otherwise agreed.
- The original version of these General Terms and Conditions of Sale and Delivery is written in German language. Any translations are provided for convenience purposes only. In the event of any conflict or inconsistency between the German version and a translation, the German version shall prevail.