

# General Terms & Conditions of Sale, Delivery and Payment



## Urban GmbH & Co. KG, 27798 Wüstring General Terms & Conditions of Sale, Delivery and Payment

### I. Area of Application

Our general terms & conditions, to which the client agrees when placing his order, apply at all times. If an order is placed which deviates from our conditions we nevertheless accept that order on our terms & conditions only, even if we have not raised an objection. The client's general terms & conditions are applicable only if we explicitly agree to them in writing when confirming the order, or if a separate agreement exists in writing.

Our general terms & conditions also apply to any future business deals with the client, without explicitly agreeing to them again.

### II. Quotations and Conclusion of Contract

Our quotes are non-binding and subject to change. By ordering goods or a plant, the client declares his intention to definitely purchase the ordered goods or plant. A client's order may only be regarded as having been accepted when we have confirmed the order in writing or start to install the equipment as ordered. We reserve the right to accept orders within up to two weeks after receipt.

The contract is concluded subject to the provision that our suppliers deliver to us correctly and on time. This applies only to cases where we are not liable for non-delivery. The client will be immediately informed about the unavailability of the requested service. Payments already received will be refunded without delay, unless an alternative is agreed upon with the client.

We reserve the right to make technical changes as well as changes in shape, colour and/or weight within reasonable limits.

### III. Prices

Our prices are fixed prices to which the applicable rate of sales tax has to be added. Should it so happen during delivery time, after the fixed price has been agreed on, that our suppliers increase their prices for a service ordered or that we experience rising production, operational and/or processing costs, we have the right to increase our prices accordingly. In the case of substantial price increases the client is entitled to cancel the contract within two weeks after receiving our notification of the price increase.

All prices are calculated ex works and in particular do not include any costs for packaging, freight, transport, postage, insurance, customs duties or other possible forwarding charges.

Specialist work, such as assembly work, which exceeds the services included under the contract and in the purchasing price but has been additionally agreed upon, will be charged separately.

In the case of long-term contractual obligations we reserve the right to change prices. Changes will be announced well in advance.

### IV. Delivery, Delivery Time

The client is responsible for making sure that it is possible to transport the goods to the installation site.

The client undertakes to be on site on the day of delivery or to instruct his authorized representative about acceptance and payment. Upon delivery, start-up or handover, goods have to be checked for possible defects without delay. Likewise plants have to be checked for defects during final inspection. The client's liability is subject to default of acceptance (clause IX).

All mentioned Shipping / completion dates and deadlines are not binding unless otherwise expressly agreed upon writing.

If despite all efforts we are unable to adhere to delivery times or completion periods as agreed upon, the client shall grant reasonable additional delivery time. Rights accruing from the contract can be asserted only after such extension of time has lapsed. Extension time shall be at least six weeks, calculated from the day when written notice of default is received.

Despite committing ourselves to time limits, we are not liable for delays in delivery or services to be rendered if such delays are caused by force majeure and/or by events which considerably complicate delivery, especially strikes, lockouts, instructions by authorities, etc. This exclusion of liability also applies if our suppliers or their suppliers are affected by force majeure and/or any restricting events as above. In such cases we have the right to postpone delivery or rendering the service in question for the duration of the impediment plus a reasonable start-up time. Should the client fail to comply with his contractual obligations, especially if the client fails to provide the necessary documentation in good time, deadlines and time limits will also be extended or adjusted accordingly.

### V. Additional Services not covered by Contract

Our employees are not permitted to render any services which exceed the delivery of ordered goods or the installation or assembly of the plant as agreed by contract.



## **VI. Terms of Payment, late Payment, Set-off**

Unless otherwise agreed in writing, invoices are settled by the client no later than eight days after receipt, in Euro and without deductions. After the 8-day period the client is in default without reminder. Interest on open accounts is charged at 8% above the Prime Lending Rate. We reserve the right to prove that damages caused by late payment amount to more and claim compensation accordingly. The client will also be invoiced for all costs caused by payment reminders.

Should significant facts come to our attention, in the light of which the client's adherence to the contract seems questionable, we are entitled to demand advance payment for goods or services that have been ordered but not yet been delivered or rendered.

If the client has lodged a notice of defects or counterclaims, he is not permitted to offset, withhold or reduce payments due, unless the counterclaims have been confirmed as legally binding or have been accepted by us in writing.

## **VII. Retention of Title**

Goods or plants delivered by us remain our property until all commitments under the current business relationship have been fully settled. The client is obliged to take good care of our property also in cases where the delivered goods or plant is not intended for his own use but for a third party. The client undertakes to explicitly inform such third party about the retention of title.

Because of our retention of title the client shall treat the goods or plant with appropriate care. Until the goods/plant are fully paid for, the client shall notify us without delay of any change of address or any relocation of the delivered goods/plant and allow us access to the goods/plant at any reasonable time.

The client undertakes to inform third parties, who have access to the goods/plant, about our retention of title. Should third parties lay claim to the goods/plant or seize them, or should the goods/plant be damaged or lost, the client shall immediately notify us in writing. In the case of seizure under execution the bailiff's return or attachment order has to be submitted to us. Any costs arising from necessary interventions on our part shall be refunded to us by the client.

While goods or the plant are under retention of title they may only be sold in the regular course of business if it has been assured that receivables due from the resale are transferred to us. Of the receivables due from a resale the client already now cedes to us an amount equal to the value of the retained goods or plant together with all subsidiary rights and priority before all others. We hereby accept such assignment of receivables. We grant the client revocable authorisation to collect under his own name and on our behalf receivables ceded to us. This collection authorisation may be cancelled if the client fails to comply with his payment obligations as agreed.

We undertake to release collateral pledged to us, if the client so wishes, provided that the collateral's value exceeds outstanding collateralized receivables by more than 20%.

If the client is partly or completely in arrears with a financial obligation for which retention of title serves as collateral, or if his financial circumstances deteriorate considerably, we are entitled to demand that retained goods are returned to us, or as the case may be, that the client cedes to us any claims for return that he holds against third parties, or that he discloses the assignment of claim to the third party and collects receivables himself. Retention of title can be asserted without withdrawing from the contract; § 449 II BGB is waived. If we demand that retained goods are returned to us we do not cancel the contract, unless we explicitly say so.

If our goods or plants are combined or mixed with third party goods we become co-owners of the newly created combined or mixed goods proportionate to the value of the goods/plant delivered by us.

## **VIII. Passing of Risk**

The risk of having to pay the price although the goods or plant are damaged or lost passes to the client when the goods or plant are handed over to him. If goods or plants are transported or dispatched, the risk passes to the client at the start of transporting or dispatching. Authoritative for the commercial clauses are the Incoterms in their current version.

## **IX. Default of Acceptance**

If the client remains silent after a reasonable period of grace granted to him, if he refuses to accept the ordered goods or explicitly declares that he does not want them, we may withdraw from the contract or demand damages for non-compliance.

If default of acceptance lasts for longer than one month, the client is liable for monthly storage costs amounting to 2% of the total price without deductions, unless he proves that no damage or depreciation has been caused or that it is considerably lower than our flat rate. If we prove that our storage costs are higher we are entitled to demand payment accordingly. We may also decide to store the goods with a forwarding agent.

We are entitled to demand 25% of the total price, without deductions, as damages for default of acceptance unless the client proves that no damage or depreciation has been caused or that it is considerably lower than our flat rate. We do, however, reserve the right to prove and claim a larger proportion for damages.



## **X. Notice of Defects, Defects Liability, Warranty**

The client has to ascertain immediately after receipt that the goods have been delivered completely and free of defects. If the inspection of the goods or plant reveals obvious and noticeable defects he has to notify us in writing within 14 days after delivery or acceptance and provide a detailed description of the cause for his complaint. Timely despatch of the notice of defects is regarded as adherence to the time-limit. If no proper and/or timely objection is submitted, it is understood that the goods have been accepted as delivered. Hidden defects, which justifiably could not have been detected within the aforementioned time-limit, have to be reported immediately after detection within the liability period.

The burden of proof rests entirely on the client for all prerequisites regarding a liability claim, especially proof of the defect itself, the date when the defect was noticed and that the notice of defect was sent in good time. As a matter of principle the criteria for appearance and workmanship of the goods or the plant are always our written product specifications, or the manufacturer's written product specifications. Public statements, promotions or other verbal advertising cannot be regarded as contractual description of appearance.

In the case of justified objections, submitted properly and timely, we have the option to either replace the defective goods free of charge, or to properly repair the defective goods, or to agree on a reduction in price together with the client. By rendering one of the aforementioned services we shall be deemed to have fully complied with our defects liability.

Defects liability particularly does not cover any damages or defects for which the client is responsible himself, e.g. damages caused by normal wear and tear or incorrect handling or operating, or damages and defects caused by power connections which do not comply with the VDE standard or by water connections with insufficient or excessive pressure.

Unless different provisions are made in these General Terms and Conditions, defects liability claims come under the statute of limitations no later than one year after delivery of the goods or acceptance of the plant. A plant is deemed accepted even if the client has not carried out a final inspection, as is his contractual duty, during the reasonable period of time set by us for the purpose.

No warranties are given, unless explicitly included in the contract in writing and confirmed by us.

## **XI. Liability**

Our liability, irrespective of legal basis, is limited to intent and gross negligence. This does not apply in cases of injury to life, body and health, or breach of essential contractual obligations and compensation of damages caused by delay (in this respect we are liable for any degree of default) as well as liability under the Product Liability Act.

Claims for damages based on breach of essential contractual obligations are, however, limited to foreseeable damages typical for this contract. In cases of gross negligence our liability is also limited to foreseeable damages typical for this contract, unless such negligence has resulted in injury to life, body and health or falls under the Product Liability Act.

Under no circumstances whatsoever shall we be liable for damages caused by the article of sale to the lawful property of the client, e.g. damage to other objects. This provision does not apply in cases of intent or gross negligence and does not override liability for injury to life, body and health.

The provisions contained in clauses 1 to 3 refer to compensation in addition to rendering the service as well as compensation instead of the service, irrespective of legal basis, especially because of defects, non-compliance with contractual obligations or unauthorized actions. They also cover compensation for futile expenditure. Liability for delay, however, is subject to clause 5, while liability for impossibility is subject to clause 6.

If delivery/services are delayed in cases of intent or gross negligence we are liable according to legal regulations. In cases of gross negligence, however, our liability is limited to foreseeable damages typical for this contract unless such negligence has resulted in injury to life, body and health. Otherwise our liability for the delay of delivery/services is limited to the value of the contract in question (excluding VAT). This applies to damages paid together with the goods/services rendered, as well as compensation instead of the goods/services. The client has no further claims – this also includes the time after the period of grace granted to us has lapsed. These restrictions do not override liability for injury to life, body and health.

If delivery/services become impossible in cases of intent or gross negligence we are liable according to legal regulations. In cases of gross negligence our liability is limited to foreseeable damages typical for this contract, however, unless such negligence has resulted in injury to life, body and health. Otherwise our liability for impossibility of performance and for compensation of futile expenditure is limited to the value of the contract in question (excluding sales tax). The contractual partner has no further claims based on impossibility of delivery. This restriction does not apply to liability in cases of intent, gross negligence or injury to life, body and health. The client's right to withdraw from the contract remains unaffected.

Where liability for neglect is not excluded, without excluding damages arising from injury to life, body and health, such claims come under the statute of limitations one year after the claim arising, or in the case of claims for damages because of a defect, from the time when the goods or plant were handed over.

The aforementioned exclusions and restrictions of liability also apply to our employees, representatives or auxiliary persons.



**XII. Storage of Data**

Clients are advised that we store and process their data electronically as is necessary for business purposes and permissible under the German Data Protection Act (§ 26 BDSG).

**XIII. Severability Clause and Alteration of Contract**

Should one of the stipulations of this agreement prove to be invalid, or become invalid, the agreement and the remainder of its content shall nevertheless remain valid. The invalid stipulation is replaced by the appropriate legal provisions. Additional or differing agreements need to be recorded in writing before they can become part of the contract.

**XIV. Domicilium citandi et executandi, applicable Law**

If legally admissible and if no other written agreement is made, the place of performance and place of jurisdiction for both parties to the contract is the domicile of Urban GmbH & Co. KG. The contractual relationship is subject to the laws of the Federal Republic of Germany only, excluding the conflict of laws. International laws on the sale of goods, in particular the UN Convention on Contracts for the International Sale of Goods, do not apply.

As at 2014