

Terms and Conditions of Sale TermaCook GmbH

Status 07/2021

I. Scope of Application

TermaCook GmbH (hereinafter: we, us/our or similar) concludes supply contracts exclusively under our following terms and conditions. Deviations from these conditions are only effective if we confirm them in writing.

Terms and conditions of the client (hereinafter: customer), which we do not in writing are not binding for us, even if we do not expressly contradict them.

These terms and conditions shall also apply to future orders, even if their applicability has not been expressly agreed again. The written form within the meaning of these terms and conditions shall be complied with by e-mails and fax letters.

II. Offers, Documents and Support Services, Conclusion of Contract

(1) Our offers are subject to confirmation. We shall only be bound by them in accordance with our written order confirmation. Orders placed with us shall only become binding in terms of type and scope through such an binding in terms of type and scope only through such an order confirmation. Changes and additions generally require written form, as does any agreement on the possible waiver of the written form.

(2) Employees, irrespective of their qualifications (commercial employees, sales representatives, etc.) are not authorised to conclude legally binding contracts for us on our behalf.

(3) The documents belonging to our offers such as illustrations and drawings, weight, colour and dimension specifications, samples and information in brochures are only approximate, unless we expressly designate them as binding. All offers and other documents handed over to the customer remain our property and are subject to our exclusive copyright. These documents may not be passed on, reproduced be passed on, reproduced, or made accessible to third parties without our consent.

(4) If we hand over documents of third parties, we will refer to this separately.

(5) If orders and deliveries are made based on drawings or other information provided by the customer and if this infringes the industrial property rights of third parties, the customer shall indemnify us from all claims (see also clause X).

(6) Drawings and samples provided to us by the customer which have not led to an order shall be returned to the customer at the customer's request and at the customer's expense. We are entitled to destroy these documents if the customer does not request their return within three months after the submission of our offer.

Support services (e.g., installation, training, or consulting) shall be charged separately.

III. Prices and Terms of Payment, Offsetting and Retention

(1) Unless otherwise stated in our order confirmation, the prices shall be ex works excluding packaging and plus the statutory value added tax applicable on the day of invoicing. Dispatch and packaging are charged at cost price.

Changes in material prices and wages that occur within four months after conclusion of the contract shall entitle us to make corresponding price adjustments. The deduction of early payment discounts requires a special written agreement.

(2) Unless otherwise stated in our order confirmation, the purchase price is due as follows

10 days net without deduction after delivery.

If the payment terms are exceeded, we are entitled in commercial legal transactions to claim interest on arrears in the amount of 9% above the base interest rate. We reserve the right to prove higher damages.

(3) If, after conclusion of the contract, it becomes apparent that our claim for payment is jeopardised by the customer's inability to pay (e.g. in the event of non-compliance with terms of payment, payment stagnation or application for insolvency proceedings), we may refuse our performance and grant the customer a period of grace for payment against delivery, advance payment or provision of security. In the event of the unsuccessful expiry of the time limit, all outstanding claims shall become due and we shall be entitled to withdraw from the contract and to claim damages. The setting of a deadline is dispensable if the customer finally refuses payment or if his inability to perform is obvious.

(4) Cheques and bills of exchange are only accepted on account of performance. Costs associated with this shall be borne by the customer. The offsetting of counterclaims or the assertion of rights of retention shall only be permissible if the customer's claims are undisputed or have been established by a court of law.

(5) A right of retention or right of set-off shall only exist in the case of undisputed counterclaims of the customer or legally established claims. In non-commercial legal transactions, rights of retention exist only if they are based on the same legal relationship.

(6) We are entitled to assign claims against the customer at any time.

IV. Moulds and tools, production equipment

(1) Moulds and tools manufactured by us or on our behalf, with which we manufacture for the customer remain our property, even if the customer has paid for them in full or in part. Such moulds and tools shall, however, be used exclusively for the orders of this customer if he fulfils his payment and acceptance obligations.

Our obligation to store them shall expire two years after the last delivery from the mould or tool.

(2) Insofar as the customer provides models or production equipment, these shall be sent to us free of charge. We may demand that the customer retrieve them at any time.

If the customer does not comply with this request within three months after setting an appropriate deadline, we shall be entitled to return them at the customer's expense. The costs for the maintenance, modification and replacement of such items shall be borne by the customer. This shall also be liable for the technically correct construction and safe execution of the intended area of application.

V. Delivery period and delivery deadlines, obligation to take delivery, delay

(1) The commencement of the delivery period stated in our order confirmation or otherwise agreed with the customer is subject to the clarification of all technical questions, the timely and proper fulfilment of the customer's obligations (e.g. agreed down payment, handing over of necessary documents, punctual handover of necessary documents, timely and sufficient provision of materials).

If these preconditions are not fulfilled in time, the deadline shall be extended by the duration of the delay. We reserve the right to plead non-performance of the contract. Partial deliveries to a reasonable extent for the customer and deviations from the order quantities of up to +/-10% are permissible. The delivery period shall be deemed to have been met upon notification of readiness for dispatch.

(2) If we are prevented from fulfilling our obligations due to unforeseen exceptional circumstances which we are unable to avert despite reasonable care (e.g. operational disruptions, strike, lockout, official interventions, delays in the delivery of delivery of essential raw materials and building materials), the delivery period shall be extended if the delivery or service becomes impossible, the delivery period shall be extended by the duration of the impediment, irrespective of whether these circumstances occur in our factory or in the factory of one of our suppliers. If delivery or performance becomes impossible, we shall be released from our delivery obligation.

If the delivery time is extended by more than two months, the customer is entitled to withdraw from the contract. The assertion of claims for damages is excluded. Adherence to a delivery period presupposes the complete fulfilment of the contractual obligations by the customer.

(3) In the event of difficulties in procuring materials despite careful selection by our upstream supplier, we shall be entitled to postpone the date of delivery by the duration of the hindrance. We are obliged in such a case to inform the customer of this immediately.

If the impediment lasts longer than one month, both parties shall be entitled to withdraw from the parts of the contract that have not yet been fulfilled; the customer, however, only after setting a period of at least three weeks in the case of series tools and eight weeks in the case of tools to be manufactured specifically for the customer and his specification.

Claims for damages are excluded in such cases.

(4) We shall be liable in accordance with the statutory provisions insofar as the delay in delivery is due to a deliberate or grossly negligent breach of contract for which we are responsible; culpability on the part of our representatives or vicarious agents shall be attributed to us. Insofar as the delay in delivery is not breach of contract for which we are responsible, our liability for damages shall be limited to 0.5% for each full week of delay, but in total to a maximum of 5% of the value of that part of the delivery which has not been effected within a reasonable period of grace to be granted to us.

In any case, our liability for damages shall be limited to the foreseeable, typically occurring damage.

(5) If the customer is in default of acceptance or culpably violates other duties to cooperate, we shall be entitled to claim compensation for the damage incurred by us, including additional expenses.

We are entitled to compensation for positive interest. The risk of accidental destruction or accidental deterioration of the object of sale shall pass to the customer at the moment in which the customer is in default of acceptance or debtor's delay.

(6) In the case of call-off orders without a concrete agreement on a term or production batch sizes we may demand a binding specification no later than three months after the order confirmation. If the customer does not comply with this within three weeks, we shall be entitled to set a grace period of three weeks and to withdraw from the contract after its expiry, refuse delivery and demand compensation for damages.

(7) If dispatch or delivery is delayed at the request of the customer, we may, two weeks after notification of readiness for dispatch, charge storage fees of 0.5% of the net invoice amount for each month or part thereof, up to a maximum of 5%.

We reserve the right to assert further claims.

(8) Necessary inspection expenses for the delivery item(s) (e.g. technical inspections) shall be borne by the customer. If a technical test is agreed according to special conditions, the customer shall carry out such tests at its own expense.

(9) If the acceptance of products which are the subject matter of the contract does not take place despite the setting of a period of grace, we shall be entitled to dispatch the goods, to claim the costs incurred plus a surcharge on earnings or to store the goods at the risk of the customer.

In any case, the goods shall be deemed to have been accepted after the fruitless setting of a deadline and dispatch and also in the case of storage, the goods shall be deemed to have been accepted.

VI. Liability for Defects and Limitations of Liability, Compensation, Statute of Limitations

(1) Defects discovered shall be reported to us immediately in writing and in a comprehensible form with information relevant to the identification of the defect. The

customer shall carry out an incoming goods inspection in accordance with § 377 HGB (German Code of Commercial Law)

(2) In the event of justified notices of defects, we shall have the right, within a reasonable period of at least 14 days at our discretion to repair or replace the goods. If the subsequent performance fails, the customer shall be entitled, at his discretion, to demand rescission or reduction of the purchase price.

(3) Claims for damages by the customer, on whatever legal grounds, are excluded, unless we are liable, e.g. under the Product Liability Act or in cases of intent, gross negligence, the absence of warranted characteristics or the breach of essential contractual obligations. Compensation for the breach of essential contractual obligations shall, however, be limited to the foreseeable damage typical for this type of contract, unless there is intent or gross negligence.

(4) In the event of non-compliance with the information in the instructions for use or assembly and in the event of misuse of the goods, there shall be no claims resulting therefrom, in particular no claims for damages or claims for recourse. Likewise, there shall be no claims in the event of damage resulting from improper installation, assembly or repair of the goods, or during transport after the transfer of risk to the customer. In the event of interventions (repairs) all relevant standards must be observed.

(5) A change in the burden of proof to the detriment of the customer is not associated with the above provisions.

(6) In the case of justified notices of defect which have been finally agreed between us and the customer and acknowledged by us, the customer shall only be entitled to withhold payments on the defective product, which are in reasonable proportion to the defect.

Rights of retention on invoices for other deliveries are generally excluded.

(7) If reference samples are provided to the customer for testing, we shall only be liable for the fact that the delivery is made in accordance with the reference sample, taking into account any corrections to be made.

(8) Claims under a right of recourse within the meaning of § 478 BGB (German Civil Code) (recourse of the entrepreneur) exists only insofar as the customer has not entered into any agreements with his customer that go beyond the statutory claim for defects. For the scope of the right of recourse are insignificant deviations of the usability, natural wear and tear, faulty or negligent handling, excessive or negligent treatment, excessive use, use with or by unsuitable operating equipment and the like after acceptance of the delivered goods. Claims from supplier recourse are excluded, if the defective goods have been damaged by the customer or another entrepreneur, e.g. by incorporation into another product.

(9) The limitation period for claims for defects is 12 months, calculated from the transfer of risk.

The limitation period in the case of a delivery recourse according to §§ 478, 479 BGB remains unaffected.

The shortening of the limitation period shall not apply if we can be accused of gross negligence or in the case of bodily injury or damage to health attributable to us or in the case of loss of life of the customer or his vicarious agents.

(10) Insofar as our liability for damages is excluded or limited, this also applies with regard to the personal liability for damages of our employees, representatives and vicarious agents.

(11) In all cases, the special statutory provisions shall remain unaffected in the case of final delivery of the unprocessed goods to a consumer, even if the consumer has further processed them (supplier recourse pursuant to § 478 BGB).

VII. Retention of title

(1) The delivered goods shall remain our property until the agreed price has been paid in full, including all claims arising from the business relationship and future claims, as well until bills of exchange and cheques have been honoured. If there is a current account relationship between the customer and us, the retention of title shall secure the balance claim.

(2) If the customer pays by cheque and we issue him a refinancing bill of exchange for this purpose, the retention of title shall only expire when we can no longer be claimed from the bill of exchange.

(3) The customer shall be permitted to resell the goods in the ordinary course of business transactions. The customer already now assigns his claims from the resale of the reserved goods, in particular the claim for payment against his customers, to us. We hereby accept this assignment. The customer is obliged to notify his debtors of the assignment at our request. Claims and names of the customer's debtors shall be notified to us.

(4) The customer is entitled to collect claims from the resale. In the case of delay in payment or if we become aware of circumstances which, according to commercial circumstances which, in our commercial judgement, are likely to reduce the customer's creditworthiness, we shall be entitled to revoke the right to collect.

(5) Treatment and processing of the goods subject to retention of title shall be carried out for us as manufacturer within the meaning of § 950 BGB (German civil code)

If the reserved goods are processed or mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the net invoice value of the invoice value of the goods subject to retention of title to the net invoice value of the other goods used at the time of processing or mixing.

(6) The transfer of ownership by way of security of goods owned by us is not permitted. In the case of third parties to the goods subject to retention of title, in particular seizure, the customer shall point out our goods and notify us immediately by sending a copy of the seizure protocol.

(7) We shall be entitled to withdraw from the contract in the event of breach of contract by the customer and to demand the return of the goods delivered by us. Any

claims for damages shall remain unaffected. In the event of the customer's inability to pay, we may revoke the right to sell or processing.

(8) If the realisable value of the securities granted exceeds our claims by more than 120 %, we shall be obliged, at the customer's request, to re-transfer or release securities of our choice at the customer's request.

VIII. Goods for exhibition purposes

The provision of goods for exhibition purposes shall only take place on the basis of a separate agreement. This agreement shall stipulate whether and to what extent an "exhibition equipment discount" shall be granted and what special term of payment shall be granted by us; both the discount and the term of payment shall be differentiated according to the goods. The customer shall not be entitled to dispose of the goods for exhibition purposes before the expiry of the agreed retention period. If the customer disrespects this provision, he shall lose the right to delivery of goods for exhibition purposes.

IX. Packaging

There is no obligation to take back packaging material. Special requests of the customer (e.g. special packaging) shall be taken into account within the scope of what is organisationally feasible.

Any additional costs incurred as a result shall be borne by the customer.

X. Industrial Property Rights

(1) If we have to produce or deliver according to drawings, models, samples or using parts provided by the by the customer, the customer shall be responsible for ensuring that the industrial property rights of third parties are not infringed thereby.

If necessary, the customer shall indemnify us claims of third parties and to compensate us for any damages. If the production or delivery is prohibited by a third party with reference to its industrial property rights, shall we be entitled to refrain from supplies without prior examination of the legal situation and demand reimbursement of expenses and damages from the customer.

(2) The customer recognises the industrial property rights to which we are entitled in respect of the goods supplied and any drawings and documents provided by us, in particular also trademark rights, and will observe these and defend them against third parties in consultation with us.

(3) In the event of a culpable infringement of our industrial property rights - irrespective of by whatever means - the customer shall be obliged to compensate us for damages. obliged to pay damages. The obligation to observe our industrial property rights shall be passed on by the customer on the obligation to observe our industrial property rights to his customers at whatever further processing and disclose this to us accordingly.

The customer shall also be liable to us for damages and/or injunctive relief if, within the meaning of the foregoing and the passing on of our goods to third parties (i.e. to the customer's customers), our customer has committed culpable infringements of industrial property rights in, on or with such passed-on goods, which only become apparent to these third parties (customers of the customer).

The amount of the claim for damages to which we are entitled in these cases corresponds to the usual market damage caused by the customer.

In the event of infringements of trademark rights, the customer and its customers shall be liable to us for injunctive relief irrespective of fault. In the event of knowledge of the act of infringement also for damages.

(4) If a third party asserts a claim against the customer for infringement of its industrial property right or copyright (hereinafter referred to as "property right"), the customer shall be liable for damages.

copyright (hereinafter referred to as "property right") by goods delivered by us, we shall be liable to the customer exclusively as follows. 4.1:

4.1 At our discretion and at our expense, we shall either acquire a corresponding right of use or the goods will be modified to such an extent that they no longer encroach on the third party's property right or the goods shall be replaced. If this is not possible under reasonable conditions, we shall take back the goods and refund the purchase price.

4.2 The above obligations shall only apply if the customer immediately notifies us in writing of the claims asserted by the third party, reserves the right to take all defensive measures and settlement negotiations and does not itself acknowledge an infringement of property rights.

4.3 Claims of the customer shall be excluded if the infringement of the property right is due to special specifications of the customer, by an application not foreseeable by us, by use for a purpose not foreseeable by us, or by the customer modifying or the goods or using them together with products not supplied by us.

4.4 Other claims against us, of whatever kind, are excluded.

XI. Final Provisions

(1) The place of performance for all obligations arising from the contractual relationship is Haiger, Germany.

(2) The place of jurisdiction for all disputes arising from the contractual relationship, if the customer is a merchant, a legal entity under public law or a special fund under public law is Haiger, Germany or the competent court for the place of the branch office. However, we shall be free to choose the court having jurisdiction for the customer's place of business. German law shall apply exclusively to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

X. Credit assessment, Data Protection

(1) We are entitled to check the creditworthiness of the customer when concluding contracts and in certain cases in which there is a justified interest.

For this purpose, we transmit the name of the customer and his or its contact details.

(2) For this check as well as in all cases of the use of customer data, we strictly adhere to the following rules of the Data Protection Ordinance (DSGVO). In this respect, we refer to the corresponding information on our website.

Haiger, July 2021