

General Terms and Conditions of Pokolm Frästechnik GmbH & Co. KG

§ 1 Scope of application

(1) These General Terms and Conditions apply to all our business relationships with our customers who are entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB).

(2) Our General Terms and Conditions apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the customer shall only become part of the contract if and insofar as we have expressly agreed to their validity. This requirement of consent shall apply in any case, for example even if the buyer refers to his General Terms and Conditions in the context of the order and we do not expressly object to this. In particular, we expressly object to any conflicting prohibition of assignment.

§ 2 Conclusion of contract

(1) Our offers are subject to change. This shall also apply if we have provided the customer with catalogs, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents - also in electronic form - to which we reserve ownership rights and copyrights.

(2) The order of the goods by the customer shall be deemed a binding contractual offer. Unless otherwise stated in the order, we are entitled to accept this contractual offer within four weeks of its receipt by us.

(3) Acceptance can be declared either in writing or text form (e.g. by order confirmation) or by delivery of the goods to the buyer.

(4) Dimensions, weights, illustrations and drawings are only binding for the execution if they are expressly confirmed when the offer is accepted. Specified gross weights and box dimensions are always non-binding.

§ 3 Delivery, transfer of risk

(1) Delivery shall be ex works in Harsewinkel, which is also the place of performance for the delivery and any subsequent delivery. At the customer's request and expense, the goods will be shipped to another destination (sales shipment). Unless otherwise agreed, we are entitled to determine the type of shipment (in particular transport company, shipping route, packaging) ourselves.

(2) The risk of accidental loss and accidental deterioration of the goods shall pass to the buyer at the latest upon handover. In the case of sale by dispatch, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall already pass upon delivery of the goods to the forwarding agent, carrier or other person or institution designated to carry out the shipment.

(3) In the case of sale by dispatch, the Buyer shall bear the actual transportation costs ex works in Harsewinkel; this shall also include the packaging costs and the costs of any transportation insurance requested by the Buyer. Any customs duties, fees, taxes and other public charges shall be borne by the Buyer.

(4) In the case of special tools, slight excess or short deliveries may occur for production reasons. Insofar as this is reasonable for the customer, quantity deviations of at least two (2) pieces up to +/- 10% shall be deemed to be proper fulfillment of the contract. In this case, we shall only invoice the quantity delivered on the basis of the agreed unit prices.

§ 4 Delivery date

(1) The delivery date shall be agreed individually or specified by us upon acceptance of the order. The delivery time shall be deemed to have been met if the goods have left the warehouse or readiness for dispatch has been notified by the time it expires. Partial deliveries are permissible.

(2) If we are unable to meet binding delivery deadlines for reasons for which we are not responsible, we shall inform the customer of this immediately and at the same time inform the customer of the expected new delivery deadline. If the service is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately reimburse any consideration already paid by the customer. A case of non-availability of the service in this sense is in particular the failure of our supplier to deliver to us in good time if neither we nor our supplier are at fault or we are not obliged to procure in the individual case.

§ 5 Retention of title

(1) We reserve title to the goods sold until full payment of all our current and future claims arising from the purchase contract and an ongoing business relationship (secured claim).

(2) The goods subject to retention of title may neither be pledged to third parties nor assigned as security before full payment of the secured claim.

The customer must inform us immediately in writing if an application is made to open insolvency proceedings or if third parties seize the goods belonging to us (e.g. attachments).

(3) If the customer acts in breach of contract, in particular in the event of non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of the retention of title. The demand for the return of the goods does not at the same time include the declaration of withdrawal; we are rather entitled to merely demand the return of the goods and reserve the right to withdraw from the contract. If the customer does not pay the purchase price due, we may only assert these rights if we have previously set the customer a reasonable deadline for payment without success or if setting such a deadline is dispensable according to the statutory provisions.

(4) The customer is authorized to resell and/or process the goods subject to retention of title in the ordinary course of business until revoked in accordance with (c) below. In this case, the following provisions shall apply in addition.

(a) Any processing or transformation of the purchased goods by the customer shall always be carried out on our behalf. The retention of title shall extend to the full value of the products resulting from the processing, mixing or combination of our goods, whereby we shall be deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same shall apply to the resulting product as to the goods delivered under retention of title.

(b) The customer hereby assigns to us as security the claims against third parties arising from the resale of the goods or the product in total or in the amount of our possible co-ownership share in accordance with the above paragraph. We accept the assignment. The obligations of the customer stated in paragraph 2 shall also apply with regard to the assigned claims. If a current account relationship exists between us and the customer in accordance with § 355 HGB (German Commercial Code), the advance assignment shall also apply to the recognized balance.

(c) The customer shall remain authorized to collect the claim in addition to us. We undertake not to collect the claim as long as the customer meets his payment obligations to us, there is no deficiency in his ability to pay and we do not assert the retention of title by exercising a right in accordance with

paragraph 3. If this is the case, however, we can demand that the buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. In this case, we shall also be entitled to revoke the

customer's authorization to resell and process the goods subject to retention of title.

(d) If the realizable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the buyer's request.

(5) It is not necessary to withdraw from the contract in order to assert the retention of title, unless the customer is a consumer.

(6) The customer must treat the reserved goods and their products with care. He must insure them adequately at his own expense against fire, water and theft at replacement value. If maintenance and inspection work becomes necessary, the customer must carry it out in good time at his own expense

§ 6 Prices and terms of payment

(1) Unless otherwise agreed in individual cases, our current prices at the time of conclusion of the contract shall apply, ex works, plus statutory VAT.

(2) Invoice amounts are to be paid within ten days of invoicing with a 2% discount, but at the latest within thirty days of invoicing without any deductions, unless expressly agreed otherwise. The date of receipt by the Seller shall be decisive for the date of payment.

(3) The customer shall be in default upon expiry of the aforementioned payment deadline. During the period of default, interest shall be charged on the purchase price at the applicable statutory default interest rate. We reserve the right to claim further damages caused by default. Our claim to commercial maturity interest (§ 353 HGB) against merchants remains unaffected.

(4) If the customer defaults on the payment of more than one liability arising from the business relationship, all payment claims arising from the business relationship shall become due for payment immediately.

(5) We are entitled to assign individual or all claims arising from the business relationship to third parties.

§ 7 Defects

(1) The statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title, unless otherwise specified below.

(2) In principle, we are not liable for defects that the buyer is aware of or is grossly negligent in not being aware of when the contract is concluded (§ 442 BGB).

Furthermore, insofar as the conclusion of the contract represents a mutual commercial transaction for the contracting parties, the Buyer's claims for defects presuppose that he has complied with his statutory inspection and notification obligations (§§ 377, 381 HGB). In the case of goods intended for installation or other further processing, an inspection must in any case be carried out immediately prior to processing. If a defect is discovered during delivery, inspection or at any later time, we must be notified immediately in writing.

In any case, obvious defects must be reported in writing within 8 days of delivery and defects not recognizable during the inspection within the same period from discovery. If the Buyer fails to carry out the proper inspection and/or report defects, our liability for the defect not reported or not reported on time or not reported properly shall be excluded in accordance with the statutory provisions.

(3) Unless otherwise agreed, the Buyer shall not be entitled to remedy the defect himself and to demand compensation from us for the expenses objectively required for this purpose. Our liability for material defects is excluded by unauthorized self-remedy.

(4) Deviations in quality, weight and color that are within the scope of customary commercial practice do not constitute a deviation from the agreed or expected quality. The same applies to the deviations in quantity, weight or dimensions reserved in accordance with § 6. The buyer is not entitled to warranty claims due to such deviations.

(5) In the case of tools that are sent to us for completion, reconditioning or reworking, no liability shall be assumed for their defects during processing. If a defect or damage to the material becomes apparent during processing which makes further processing impossible, our claim to remuneration shall remain in force in proportion to the work already carried out.

(6) Claims of the customer for damages or reimbursement of futile expenses shall only exist in accordance with § 8, even in the case of defects, and are otherwise excluded.

§ 8 Other liability

(1) Unless otherwise stated in these General Terms and Conditions, including the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.

(2) We shall be liable for damages - irrespective of the legal grounds - within the scope of fault-based liability in cases of intent and gross negligence. In the event of simple negligence, we shall only be liable subject to a milder standard of liability in accordance with statutory provisions (e.g. for care in our own affairs)

a) for damages resulting from injury to life, limb or health,

b) for damages arising from the not insignificant breach of a material contractual obligation (obligation whose fulfillment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.

(3) The limitations of liability resulting from paragraph 2 shall also apply to breaches of duty by or in favor of persons whose fault we are responsible for according to statutory provisions. They shall not apply if we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods and for claims of the buyer under the Product Liability Act.

(4) The Buyer may only withdraw from or terminate the contract due to a breach of duty that does not consist of a defect if we are responsible for the breach of duty. A free right of termination of the buyer (in particular according to §§ 651, 649 BGB) is excluded. Otherwise, the statutory requirements and legal consequences shall apply.

(5) Liability under the Product Liability Act shall always remain unaffected.

§ 9 Statute of limitations

(1) The general limitation period for claims arising from material defects and defects of title is one year. It shall commence upon delivery or, if acceptance has been agreed, upon acceptance.

(2) However, if the goods are a building or an item that has been used for a building in accordance with its normal use and has caused its defectiveness (building material), the limitation period shall be 5 years from delivery in accordance with the statutory provisions (Section 438 (1) No. 2 BGB). Other special statutory provisions on the limitation period (in particular § 438 Para. 1 No. 1, Para. 3, §§ 444, 479 BGB) remain unaffected.

(3) The above limitation periods shall also apply to contractual and non-contractual claims for damages by the customer. However, claims for damages by the buyer pursuant to § 8 para. 2 sentence 1 and sentence 2(a) and pursuant to the Product Liability Act shall become time-barred exclusively in accordance with the statutory limitation periods.

§ 10 Place of jurisdiction

(1) The GTC and the contractual relationship between us and the customer shall be governed by the law of the Federal Republic of Germany to the exclusion of

international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Gütersloh, insofar as the customer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law. In all cases, however, we are also entitled to bring an action at the place of performance of the delivery obligation in accordance with these General Terms and Conditions or an overriding individual agreement or at the customer's general place of jurisdiction. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.