

Standard Terms and Conditions of Deliveries and Services (Terms and Conditions of Sale) of Jäckle & Ess System GmbH



§ 1 Validity of the Terms and Conditions of Business

- 1.1 All our deliveries, services and tenders take place exclusively on the basis of these Standard Terms and Conditions of Deliveries and Services Payment (hereinafter called "these business conditions"). These business conditions are an element of all agreements that we conclude with our contractual partners (hereinafter called "customers"). They shall only apply to persons who, when concluding the contract, are acting in the exercise of their commercial or independent professional activity (entrepreneurs) as well as to legal entities under public law.
- 1.2 The customer's Standard Terms and Conditions of Business do not apply, even if we do not contradict their validity in individual cases. Neither does reference to a letter that contains the customer's or a third party's Standard Terms and Conditions of Business, or refers to such, constitute an agreement with the validity of the aforesaid Standard Terms and Conditions of Business. They also do not become a contractual element through conclusive actions, such as the production of a performance by us.
- 1.3 The business conditions apply to all agreements on deliveries and services on our part, as well as all peripheral services. These business conditions are valid for all future deliveries and services on our part even without a separate agreement of inclusion.

§ 2 Tender and conclusion of the agreement

- 2.1 Insofar as our tenders are marked expressly as being subject to change, we can also revoke these immediately after receipt of acceptance by the customer.
- 2.2 The customer does not acquire any copyright to any tenders or cost estimates submitted by us, nor to any drawings, illustrations, calculations, descriptions, models, tools and other documents and material resources made available to him. This also applies to those materials and documents mentioned that are expressly labelled "confidential" or whose confidential character arises from the circumstances. The passing on of the abovementioned materials and documents to third parties requires at any rate our permission. The customer must ensure this by appropriate agreements with his employees or any other persons who work with knowledge and consent in his area of responsibilities. The abovementioned materials and documents must be returned immediately at the customer's expense, if an agreement does not come into being or they are no longer required for further contractual implementation.

§ 3 Prices

- 3.1 Unless otherwise stated in the order confirmation, our prices are valid "ex Works", excluding packaging; this will be charged separately.
- 3.2 Legal value-added tax is not included in our prices. It is shown separately in the invoice in the amount legally prescribed on the day of invoicing. In the case of foreign transactions, the value-added tax no longer applies; however, the recipient must pay the taxes and fees incurred for the transfer into the recipient's country, especially customs duties and the additional legal taxes or charges incurred in the recipient's country itself.
- 3.3 The deduction of a discount for cash requires a separate agreement. The customer's Standard Terms and Conditions of Business, which call for the deduction of a cash discount, do not apply.

§ 4 Implementation of the deliveries and services, delivery and service times

- 4.1 Unless otherwise agreed, the delivery takes place "ex Works".
- 4.2 The start of the delivery or service time stated by us presupposes the clarification of all technical issues.
- 4.3 Furthermore, the observance of our delivery and service obligations presupposes the customer's punctual and proper performance. We are fully entitled to the plea of non-performance.
- 4.4 If the person ordering is in default of taking delivery or infringes any other duties to cooperate, we are entitled to request replacement of any loss incurred by us in this respect, including any additional expenditure. More extensive claims remain unaffected.
- 4.5 Insofar as the conditions of § 4 (4) are met, the risk of accidental loss or unintentional deterioration of the object to be delivered passes to the customer at that point in time, when he has fallen into default of taking delivery.
- 4.6 If it has been agreed with the customer that our delivery or service does not have to take place at a fixed time, but within a certain period, we are entitled to deliver or produce our performance before the expiration of the period also. If a fixed date has been agreed with the customer, we are entitled to premature delivery or production of the performance, after having given the customer reasonable notice of this before delivery or production of the performance. This does not apply, if the delivery can only take place on the agreed date for reasons discernible for us.
- 4.7 Unless otherwise agreed, the customer, in the case of agreements that entitle him to request partial deliveries from a total quantity of goods, is obligated to give us punctual requests and assortment plans for approximate identical monthly quantities. If the customer does not request delivery punctually or does not plan in good time, we are entitled to take over the planning ourselves and to deliver the goods after a reasonable extended deadline has passed fruitlessly. If the customer fails to request delivery at all or in good time or fails to plan at all or in good time, we are entitled to withdraw from the entire agreement after prior warning. Any compensation claims to which we are legally entitled remain at any rate unaffected.
- 4.8 With regard to order for goods to be delivered on demand according to § 4 (7) of these business conditions, we are entitled, unless otherwise agreed, to procure the material for the entire order and to manufacture the entire quantity ordered immediately. Requests from the customer for changes can no longer be taken into consideration after the order has been placed.
- 4.9 Increased or short deliveries are permissible in accordance with ordinary trade usage.
- 4.10 The import, export or other transfer of the delivery item or individual components may be subject to a permit requirement in Germany and abroad under certain conditions. The customer is responsible for obtaining official permits in good time.

§ 5 Delays in delivery

- 5.1 Stoppages caused by force majeure, strikes for which we are not responsible or lock-outs or a lack of operating and/or raw materials entitle us, to withdraw from the not yet fulfilled agreement, if the above-mentioned circumstances make delivery or performance impossible not only temporarily and in addition were not discernible on conclusion of the agreement.
- 5.2 Insofar as we are responsible for a delay in delivery and the customer incurs damage as a result, the customer shall be entitled to demand a lump-sum compensation for delay from the fourth week after the occurrence of the delay. This shall amount 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 total delivery which was not provided on time as a result of the delay in delivery. A further claim for damages due to delay shall only exist if one of the exceptions to the limitations of liability set out in § 8 applies. We reserve the right to prove that the customer has not suffered any damage or that the damage is significantly less than the above lump sum.

§ 6 Place of performance, shipment, packaging, passing of the risk

- 6.1 The place of performance for all obligations from the contractual relationship with the customer is Bad Waldsee-Gaisbeuren/Germany.
- 6.2 Unless otherwise agreed, we will select the most economical packaging known to us and the most economical type of shipment known to us.
- 6.3 Unless otherwise agreed, the risk passes to the customer at the latest with the handover of the delivered objects to the shipping contractor, carrier or other company appointed with the implementation of the consignment. § 4 (4) remains unaffected.
- 6.4 The shipment will only be insured by us against theft, breakage, damage during transport, fire and water damage or any other insurable risks at the express written request of the customer and at his expense.
- 6.5 We will only take back packaging in our storehouses (return depots). The customer pays the costs of transporting the packaging to the respective return depot. If packaging different from the standard packaging (special packaging) is used at the customer's request, the customer is obliged to recycle or dispose of this at his own expense.

§ 7 Warranty

- 7.1 The objects delivered by us must be carefully examined immediately after delivery to the customer or to the third party appointed by him. They are considered approved, if a complaint, that could have been discovered on careful examination, is not reported in writing within three days after receipt of the goods, the date of sending the complaint to us being decisive. If the defect was not noticeable by careful examination, the obligation to report the complaint immediately in writing is valid from the time of discovery.
- 7.2 If a delivery or service defect exists, for which we are responsible, we are obliged, at our option, to remedy the defect or deliver a replacement (supplementary performance). In the case of remedying the defect, we are obliged to pay all costs required to remedy the defect, in particular transport, labour and material costs, unless these are increased by the fact that the purchased object was taken to a different location than the original place of consignment. This does not apply, if transporting the delivered object to another location corresponds to its agreed use. If we select subsequent performance in the form of replacement, the delivered objects with failures must be sent back to us carriage paid, whereby the customer is obliged to select the most economical type of shipment. We are entitled to refuse subsequent performance if this would involve disproportionate costs.
- 7.3 The right to withdraw from the contract due to a defect shall only exist if we have allowed a reasonable period of time set for us for subsequent performance to expire fruitlessly or if subsequent performance has repeatedly failed and the customer cannot reasonably be expected to make a further attempt to remedy the defect. If there is only an insignificant defect which does not restrict the usability, the customer shall only be entitled to a reduction of the purchase price.
- 7.4 Claims for damages can only be asserted in accordance with the following § 8. Section 9 shall apply to the limitation period.
- 7.5 If software is included in the scope of delivery, the customer is granted a non-exclusive right to use the software in relation to the specific subject matter of the contract. Use of the software on more than one system is prohibited. The customer may only copy, revise, translate or convert the software from the object code into the source code to the extent permitted by law in accordance with §§ 69 a ff. of the UrhG (German Copyright Act). All other rights to the software and the documentation shall remain with us or our software supplier.
- 7.6 Claims for defects due to software errors shall only exist insofar as the usability of the delivery item is restricted by the defect. The prerequisite is that the minimum requirements for the hardware and software equipment at the customer's premises specified in the licence are fulfilled. The provisions of §§ 7 and 8 shall apply accordingly. In particular, any liability for software malfunctions in the event of a breach of the customer's duty of care shall be excluded.
- 7.7 The delivery of used objects takes place excluding any warranty whatsoever.
- 7.8 Defects in electronic components are also excluded from the warranty if the delivery item has not been used in accordance with the product specifications. This applies in particular to harmful environmental influences such as excessive ambient temperatures or excessive humidity and condensation.

§ 8 Liability for damages

- 8.1 We shall be liable for damage that has not occurred to the object of the contract itself - irrespective of the legal grounds - for intent or for grossly negligent conduct on the part of our executive bodies and senior vicarious agents as well as in the event of culpable injury to life, limb or health. We shall also be liable for defects which we have fraudulently concealed, within the scope of a guarantee promise or insofar as liability for personal injury or damage to property is mandatory under the Produkthaftungsgesetz (German Product Liability Act).
- 8.2 In the event of damage to property and financial loss caused by slight negligence, we and our vicarious agents shall only be liable in the event of a breach of an essential contractual obligation, but limited in amount to the damage foreseeable at the time of conclusion of the contract and typical for the contract. Material contractual obligations are those whose fulfilment forms the basis of the contract and on which the customer may rely. These include in particular the obligation to deliver on time and free of defects.
- 8.3 Further claims are excluded.
- 8.4 Our liability is excluded in particular in the following cases, insofar as we are not responsible for them: Unsuitable or improper use, faulty commissioning by the customer or third parties, normal wear and tear, improper maintenance or repair, chemical or electrical influences.
- 8.5 The provisions under § 9 shall apply to the limitation period.

§ 9 Warranty period and other limitation periods

- 9.1 Claims for defects, irrespective of the legal grounds, shall become statute-barred 12 months after delivery to the customer or a third party designated by the customer. Insofar as we provide services for subsequent performance, the limitation period for claims for defects shall only begin to run again if we have unconditionally acknowledged the obligation to provide subsequent performance. Any supplementary performance provided by us as a gesture of goodwill shall not constitute an acknowledgement of the notified defects which would trigger the commencement of the limitation period.
- 9.2 all other respects, all other claims of the customer - irrespective of the legal grounds - shall become statute-barred 12 months after the date on which the customer became aware of them or should have become aware of them without gross negligence.
- 9.3 The limitation period for recourse claims of the buyer due to supplier recourse in accordance with § 445b BGB (German civil code) remains unaffected. The limitation period for these recourse claims shall commence at the earliest two months after the time at which the customer has fulfilled the warranty claims of its purchaser. This suspension of expiry shall end no later than five years after the date of delivery.
- 9.4 The limitation period of 12 months does not apply to the unlimited liability for damages arising from injury to life, body and health, for intent and gross negligence and warranty as well as for product liability claims. It also does not apply to defects in a building or to delivery items that have been used for a building in accordance with their customary use and have caused its defectiveness.

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§ 10 Reservation of ownership

- 10.1 We retain the right to ownership of the delivered object until all payments from the delivery agreement have been received. In the event of breach of contract by the customer, especially in the case of default of payment, we are entitled to take the delivered object back after a reasonable extended deadline has passed fruitlessly. Taking back the delivered object does not signify a withdrawal from the agreement, unless expressly declared by us in writing. The seizure of the delivered goods object by us invariably represents a withdrawal from the agreement. After repossessing taking back the delivered goods object, we are authorised to sell them; the proceeds from the sale will be deducted from the customer's liabilities - minus reasonable realisation costs.
- 10.2 The customer is obliged to keep the delivered objects in safe custody for us and to treat them with care.
- 10.3 In the event of seizures or any other third-party encroachments on our delivered objects, the customer must notify us immediately in writing so that we can take legal action according to § 771 ZPO (Civil Procedure Rules). If the third party is not in a position to refund us the legal and out-of-court costs of a lawsuit according to § 771 ZPO (Civil Procedure Rules), the customer person ordering is liable for the loss incurred by us.
- 10.4 The customer is entitled to re-sell the delivered object in the normal course of business; however, he now already assigns us all demands amounting to the final invoice amount (including value-added tax) of our demand arising against his customers or third parties from the resale, regardless of whether the delivered object is re-sold with or without processing. The customer is also authorised to collect this demand after the assignment. Our authorisation to collect the demand ourselves remains unaffected by this. However, we agree not to collect the demand as long as the customer fulfils his payment obligations from the collected revenue, does not fall behind in his payments, and in particular no application for commencement of insolvency proceedings has been filed or there is a suspension of payments. However, if this is the case, we can request that the customer informs us of the assigned demands and their debtor immediately, gives us all details necessary for their collection, hands over the relevant documentation and notifies the debtor (third party) of the assignment immediately and informs us thereof by means of a copy/accompanying letter.
- 10.5 The processing or transformation of the delivered objects by the customer will always be carried out on our behalf by us. If the delivered object is processed with other objects that do not belong to us, we acquire co-ownership of the new object in the ratio of the value of the delivered object (final invoice amount including value-added tax) to the other processed objects at the time of processing. The same provisions apply otherwise for the object created by the aforesaid processing as for the object delivered with reservations.
- 10.6 If the delivered object is inseparably mixed with other objects that do not belong to us, we acquire co-ownership of the new object in the ratio of the value of the delivered object (final invoice amount including value-added tax) to the other mixed objects at the time of mixing. If the mixing takes place in a way in which the customer's object is to be regarded as the main object, it is considered agreed that the customer will transfer proportionate co-ownership to us. The customer will safeguard the created sole ownership or co-ownership for us.
- 10.7 At the customer's request, we undertake to release the securities to which we are entitled insofar as the feasible value of our securities exceeds the demands to be safeguarded by more than 10 %; we are entitled to select the securities to be released.

§ 11 Terms of payment

- 11.1 Unless otherwise agreed, our invoice amounts are payable within 30 days without any deduction. On expiration of this deadline, the customer is in default of payment without a warning on our part being required.
- 11.2 The customer may not exercise any right of set-off unless his/its counterclaim shall be un-disputed or conclusively ruled upon. The same applies to the assertion of a right of retention.

§ 12 Written form and final provisions

- 12.1 Any regulations deviating from these business conditions require the written form.
- 12.2 The legal venue for any disputes from the business relationship between us and the customer is Ravensburg/Germany. However, we are also entitled to take legal action against the customer at his standard legal venue as well as at the location to which the delivered object was sent at the customer's request.
- 12.3 All legal relationships in connection with entering in, performing under or termination of this agreement shall be governed and construed in all respects in accordance with the laws of the Federal Republic of Germany with the exclusion of the Convention on Contracts for the International Sale of Goods (CISG). This also applies, if the legal relationships arise from tort or based on any other legal bases.