

Terms and conditions, sales and delivery

§ 1 Scope of the provisions

- (1) These terms and conditions for sales issued by TESTING Bluhm & Feuerherdt GmbH, Motzener Straße 26 b, 12277 Berlin, HRB 44 273 B AG Charlottenburg (subsequently „TESTING“) apply solely to companies, legal persons under public law or public assets as established by § 310 section 1 BGB (subsequently the „client“). We accept and recognize the validity of terms and conditions provided by the customer and which conflict with or differ to these established here only and exclusively upon the provision of our express written consent.
- (2) These terms and conditions for sales also apply to all future commercial operations with the customer in as much as they apply to legal transactions of a related nature.

§ 2 Quotes, conclusion of the contract

- (1) Our quotes are subject to change. All the documents sent within the scope of our offer (such as diagrams, pictures and description) are only approximately authoritative and are provided merely for the purposes of exemplification unless it has been expressly stated that they are binding.
- (2) A customer purchase order is a binding quote. We can accept this quote within two weeks by dispatching confirmation of order (also in written form e.g. e-mail or fax) or by dispatching the goods ordered to the delivery address of the customer.
- (3) The purchase order must include complete and clear ordering information (amount, article identification). We do not accept any liability following the provision of imprecise or contradictory information. Any extra costs incurred arising from the provision of such information are to be borne by the customer.
- (4) Cancellation of the purchase order by the customer requires the written form (e.g. e-mail, fax) and must be issued before acceptance of the quote by TESTING in accordance with section 2. Cancellation after acceptance of the offer is only possible with the assent of TESTING. Any costs arising from the purchase order are to be borne by the customer.
- (5) All documents delivered to the customer upon the placing of an order (e.g. calculations diagrams etc.) remain the sole property of TESTING (including copyright). We also retain copyright of these documents. These documents may not be made available to any third parties, unless we provide the customer with express written permission to do so. As far as we do not accept the quote from the customer within the deadline established in section 2, these documents are to be returned to us without delay.

§ 3 Prices and payment

- (1) Our prices are quoted as net prices in EUROS excluding VAT. Our prices are ex works prices plus packing, as far as the order confirmation does not indicate anything to the contrary.
- (2) Payment of the purchase price is to be made without exception to the account named.
- (3) The minimum order value amounts to 120.00 € plus the statutory applicable Value Added Tax.
- (4) Unless a fixed price agreement has been concluded, we reserve the right to undertake reasonable alterations to our prices to take into account changes in labour cost material costs and the costs of distribution for deliveries performed 3 or more months after the conclusion of the contract.
- (5) If payment is arranged in a foreign currency, all costs arising from changes in the rate of exchange are to be borne by the customer.
- (6) Packaging and freight costs will also be billed. Loaned, returnable packaging and loaned pallets remain the sole property of TESTING and are to be returned in faultless condition with the next delivery. If the packaging is not returned within a month of delivery, we will place an invoice for the cost price.
- (7) The customer undertakes to pay the remuneration that has been contractually agreed within fourteen days of receipt of the invoice without any deductions. Payment shall be made by remittance to one of our bank accounts given below. Any differing methods of payment or differing payment dates are subject to special agreement.
- (8) The customer shall be in default if he fails to make payment by the agreed date, without any reminder being required in such a case, we have the right - without prejudice to other statutory claims - to require default interest at a rate of 9 percentage points above the applicable basis interest rate of the European Central Bank p.a., without any reminder being required. Upon entry of the delay, we are entitled to claim a lump sum of 40 Euros. Insofar as we can provide evidence of higher damages due to default, we have the right to claim them accordingly while taking into account the lump sum.
- (9) The only method of payment open to new customers is payment in advance or cash on delivery.
- (10) In the case of delayed payment or breach of duty on the part of the customer, all claims made by TESTING are due immediately, even if a delay in payment or other form of later due date has been arranged. This also applies to cases in which the customer ceases payments; if TESTING receives information which indicates considerable and well-founded doubts relating to the customer's creditworthiness or if insolvency proceedings are opened regarding his assets.
- (11) Bills of exchange and cheques will only be accepted as payment in exceptional cases following separate and prior arrangement. In such cases, these will only be accepted if they are discountable with a duration of max. 90 days. Costs and expenses are to be borne by the customer.

§ 4 Set-off and retention

- (1) The customer only has the right to setoff if he is in possession of a legally binding or undisputed counterclaim.
- (2) The customer is only entitled to exercise a right of retention if his counterclaim is founded on the same contractual relationship.

§ 5 Delivery and delivery time

- (1) The terms of delivery outlined in the confirmation of the order are not binding for TESTING, despite them being subject to extremely careful planning. Under no circumstances does a delay in delivery provide the grounds for cancelling an order (quote) unless this has been expressly arranged beforehand.
- (2) The start of the delivery-date as indicated by TESTING assumes the punctual and correct completion of all customer obligations. We reserve the right to make the objection of a non-fulfilled contract.
- (3) If the delivery is delayed following the onset of inadvertable events (e.g. disruptions in operation, intervention by authorities, material shortages, industrial action etc.), the delivery time will be extended by an appropriate period. If the same reasons make delivery impossible, we are released from the obligation to deliver. The customer is to be informed without delay.
- (4) Should the customer default acceptance, or should he culpably infringe any other obligations to co-operate, then TESTING is entitled to claim for any of the resulting damages including any additional expenditure. We reserve the right to claim for further damages. As long as all the preceding prerequisites have been fulfilled, the danger of an accidental loss or deterioration in the state of the object of purchase is transferred to the customer at the time at which the customer defaults acceptance or enters into default.
- (5) Further claims to compensation exist only if the delay results from premeditation or gross negligence.
- (6) We are entitled to complete delivery in appropriate instalments.
- (7) If the customer is found to be in delay with his payments, or experiences financial collapse, we are entitled to refuse all further deliveries.

§ 6 Passing of risk upon dispatch

If the goods are dispatched to the customer in accordance with his order, then all risks of accidental loss or deterioration in the condition of the goods are transferred to the customer with dispatch of the goods; upon leaving the premises or warehouse at the latest. This applies, regardless of whether the goods are dispatched from the place of performance and who bears the freight costs.

§ 7 Title retention

- (1) The delivered goods remain the property of TESTING (reservation of retention) until we receive full payment of all contractually agreed monies outstanding. This also applies for all future deliveries, even if we make no express and repeated claim to this. We are entitled to reclaim the purchase object upon infringement of the contract on the part of the customer.
- (2) Upon discontinuation during an unpaid current invoice, the right of retention applies for the balance involved.
- (3) The customer is obliged to handle the purchase object with care until it comes into his ownership. In particular, he is obliged to insure it at his own expense (value as new) against theft, fire, water damage (note: only permissible upon the sale of high-value goods). If maintenance and inspection work becomes necessary, the customer is to perform these in due time at his own expense. As long as the property rights have not been transferred, the customer is obliged to inform us immediately in writing if the object delivered has been distrained, or subject to any other interference by a third party. As far as the third party is not in a position to reimburse us with the court and out of court costs of a successful legal claim in accordance with § 771 ZPO, the customer is liable for any losses which we incur.
- (4) The customer is entitled to resell the goods subject to retention within the course of normal business dealings. The customer cedes to us all earnings from his sales of the goods subject to retention to his customers or third parties to the sum total of our invoice (including VAT). Our right to cession applies irrespectively of whether the purchase object is sold on with or without further processing. The customer remains entitled to collect the claim even after cession. Our entitlement to collect our claim ourselves remains unaffected. However, we will not collect the claim as long as the customer complies with his obligation to payment from the collected proceeds, is not in default of payment and in particular, has not applied for insolvency.
- (5) The handling and processing or remodelling of the purchase object by the customer is always to be effected in our name and on our behalf. In this case, the customer's expectant right towards the purchase object continues on the thus processed or otherwise remodelled object. Insofar as the purchase object has been processed together with other objects not belonging to us, we acquire the coownership of the new object equal to the share which corresponds with the proportion of the objective value of our purchase good to the other item at the time of said processing. The same applies to the case of mixture. Insofar as the mixture is performed in a manner with the result that the customer's object is to be viewed as the main object, it is agreed that the customer transfers co-ownership to us pro rata, thus maintaining the thus developed sole ownership or co-ownership for us. To safeguard our claim against the customer, the customer also cedes to us such claims which have accrued to him through the combination of the goods subject to retention with a property towards a third party for security. We accept this cession now.
- (6) We oblige ourselves to free up the securities owed to us upon demand of the customer insofar as their value exceeds the demands to be secured by more than 20%. In the case of multiple securities, the selection is to be performed by TESTING.

§ 8 Guarantee, notification of defects and recourse

- (1) Customer guarantee rights can only be activated if the customer has first performed all of his duties of investigation and reproof in the manner prescribed by § 377 HGB.
- (2) Claims for shortcomings for new goods must be made 12 months after delivery after which time they become subject to prescription. A guarantee is not provided for used goods. The previous provisions do not apply as far as the law (in accordance with § 438 section 1 No. 2 8GB Bauwerke und Sachen für Bauwerke), § 479 section 1 8GB (right of recourse) and § 634 a, section 1 8GB (defects in construction) dictate longer respites. The customer must first obtain our consent before returning any goods.
- (3) Should the goods delivered display a fault which despite all due care and attention existed before the transfer of risk, we shall either remedy the fault (given notification of a defect within due time) or provide a replacement. The course of action is to be chosen at our discretion. We must always be accorded the opportunity for supplementary performance within an adequate period. Any right of recourse remain unaffected by the previous provision.
- (4) If the supplementary performance miscarries, the customer is entitled to withdraw from the contract or make reduced payment. This does not affect any claims to compensation for damage.
- (5) Claims for shortcomings are not constituted by the following cases: only negligible deviation from the character of the goods arranged, only inconsiderable restriction of usability, upon normal wear or deterioration and damage occurring after the transfer of risk, following incorrect or careless handling, being subject to excessive demands, unsuitable operating resources, defective building work, unsuitable foundations or upon becoming subject to outside influences not foreseen by the contract. If customers or third parties undertake any inappropriate or incorrect maintenance or servicing activities or alterations, such work and any of their effects do not constitute any claim for shortcomings.
- (6) Claims made by the customer arising from the generation of any expenses arising from the pursuit of supplementary services, especially transport, labour and material costs are ruled out insofar as the expenses increase because the goods which we delivered were subsequently transported to a location other than the place of business of the customer. An exception is presented by a case in which the transport corresponds with their intended use.
- (7) A right of recourse on the part of the customer is only constituted against us insofar as the customer has failed to complete an agreement with his customer regarding claims for shortcomings exceeding the legally mandatory provisions. Moreover, the scope of the customer's right of recourse viz a viz the supplier is bound by section 6.
- (8) In general all spare parts like calotte, sealings and so on are excluded from warranty.

§ 9 Software

- (1) TESTING is liable only for the correct operation of software which is isolated from a customer software environment. We are not liable in any way for malfunctions resulting from its integration in a software environment.
- (2) The customer is to check the requirements on the program functions themselves as well as the suitability of its integration in a software environment. The customer alone is responsible for the choice of the hard and software employed to reach the desired result. He is also responsible for the installation and operation of the programs as well as their results.

§ 10 Final provision

- (1) Both this contract as well as the entire privity of contract between the parties is subject to the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG). With controversy of the interpretation of these contractual conditions the German version is valid.
- (2) The place of delivery and exclusive jurisdiction for all disputes arising from this contract is our business location, unless the order confirmation indicates anything to the contrary.
- (3) All agreements made between the parties to the end of performing this contract are recorded in writing in this agreement.
- (4) If any individual provision of this contract is deemed to be invalid or become so or be deemed to be incomplete, this fact has no effect on the validity of the remaining provisions of the contract. The parties commit themselves to replace the invalid provision with a valid provision which corresponds commercially as closely as possible to the spirit and purpose of the invalid provision/fills this incomplete clause.
- (5) TESTING informs their contractual partner herewith that business-related data and other data necessary for conducting business will be gathered, saved and processed within the framework of the federal data protection law (Bundesdatenschutzgesetzes) § 28 BDSG).