

# **General Terms and Conditions of Delivery and Sale**

for use in business transactions with companies

## **Jauch Quartz GmbH**

### **Preamble**

Our deliveries and services – also in the future – are subject to the following General Terms and Conditions even if we do not refer to them specifically in individual cases. The validity of the General Terms and Conditions can only be excluded in whole or in part by explicit written agreement in individual business transactions. General Terms and Conditions, in particular the customer's terms and conditions of purchase, have no validity for our deliveries and services. They shall also not bind us in any way if we do not specifically object to them in individual cases; we hereby object to and reject them. Our General Terms and Conditions of Delivery and Sale shall be deemed accepted, at the latest upon receipt of the goods or services.

### **I. SCOPE OF DELIVERY OBLIGATION**

1. Our offers are subject to change without notice, even though they are issued on request of the customer. A legally binding contractual relationship only exists with the customer if we have confirmed the contract in writing, which can also be made by fax, in a computer written manner without a signature or by e-mail; the same applies to contract amendments or supplements.

Our written order confirmation shall be decisive for the scope, type and time of delivery.

2. We reserve the right to make design and execution changes to our products. Our catalogues as well as our product presentations on the Internet are constantly revised. Illustrations and drawings contained therein are non-binding and are not part of the agreed quality. They do not constitute a guarantee of durability or quality.
3. The documents belonging to the offer, such as drawings, data sheets, pictures, plans, files, etc. are only approximate unless they are expressly designated as binding. The documents remain our property; we reserve all rights to them. They shall not be made accessible to third parties without our written consent and must be returned to us immediately at any time upon request.
4. Call-off orders shall be called-off and accepted in a timely manner and in agreed partial quantities. In the case of call-off orders without agreement on running times, production lot sizes and acceptance dates, we may demand a binding commitment no later than three months after order confirmation. If the customer does not comply with this request within three weeks, we are entitled to set a two-week grace period and to withdraw from the contract after fruitless expiry or cancel the delivery and demand compensation for damages.

If the contractual quantity is exceeded by the individual call-offs, we shall be entitled, but not obliged, to deliver the surplus. We may invoice the surplus at the prices valid at the time of the call-off or delivery.

## **II. PRICE**

1. The prices are in principle EURO prices. The statutory value added tax is additionally provided on the invoice in the respectively applicable amount.
2. The prices quoted apply to domestic deliveries ex works, uninsured and excluding packaging. The prices quoted apply to international deliveries free German border or FOB German airport or seaport, including export packaging and transport insurance.
3. Surcharges and recalculations on the agreed remuneration are permissible if circumstances, such as increases in material costs, wages, energy costs or public charges etc., force us to do so and the delivery or service is to take place later than four months after conclusion of the contract. In the event of other price increases, the customer has a right of withdrawal if the list price has increased considerably more than the general cost of living. Deliveries from subsequent orders that occur after the date of any price change will be charged at the new prices without the customer having a right to withdraw from the contract.

## **III. DELIVERY**

1. The delivery period begins with the sending of the order confirmation, however not before clarification of all details of order execution and not before receipt of an agreed upon advance payment or provision of materials. The delivery deadline is met if the delivery item has been dispatched or collected for shipping before its expiry, or if a notification concerning readiness for shipment is sent in the event that the dispatch does not take place at no fault of our own.
2. Force majeure and other events not caused by us that may prevent a smooth execution of the order, in particular delays in delivery on the part of our suppliers, transport and operational disruptions, labor disputes, material or energy shortages, shall entitle us to withdraw from the contract in whole or in part or to postpone delivery without the customer having the right to make any claims for compensation. The customer may demand a declaration from us as to whether we intend to withdraw from the contract or whether we intend to fulfill the contract within a reasonable period of time. If we do not make such a declaration, the customer may withdraw from the contract.

The aforementioned events or circumstances are not our responsibility if they occur during an already existing delivery delay.

3. In case of a delay in delivery for which we are responsible, we shall be granted a reasonable grace period. After expiry of this period, the customer may demand compensation for damages and/or withdraw from the contract to the extent that the goods have not been reported ready for dispatch or have not been delivered by expiry of the period. The right to withdraw from the contract does not exist if we are not responsible for the delay in delivery, i.e. exceeding the delivery deadline.
4. The customer shall only be entitled to claims for damages instead of performance if the cause of damage is due to intent or gross negligence on our part. This shall not apply if there is a transaction for delivery by a fixed date.
5. Delivery obligations and deadlines shall be suspended if the customer is in default with the acceptance of the goods or other obligations, without this affecting our rights arising from the customer's default. Delivery obligations and deadlines shall also be suspended if the customer has exceeded the credit limit granted by us. In this case, the risk of accidental

loss or accidental deterioration shall pass to the customer at the time at which the customer defaults.

6. The originally agreed delivery date shall be cancelled if the order is amended with our written consent.
7. Reasonable partial deliveries as well as deviations (max. +/-10%) from the order quantity are allowed, taking into account what is reasonable for the customer.
8. Weight and quantity of the goods delivered shall be decisive for the calculation as determined by us.
9. To enable the customer to track the products supplied as well as a constant continuous, gapless batch tracking of all components used, we have implemented SAP-controlled batch tracking. Our system generates a unique number for the ordered quantity of goods. All date codes for a batch are recorded by us and allow unambiguous identification of the components supplied. A batch/delivery supplied by us to the customer can include multiple date codes.

#### **IV. DISPATCH**

1. Shipping is done from a location to be determined by us at the expense and risk of the customer.
2. Packaging, type and route of shipping shall be chosen by us at our own discretion, unless the customer has special wishes in this respect. Additional costs for special requests made by the customer shall be borne by the customer. We assume no obligation for the least-expensive method of shipping.
3. If shipment or delivery is delayed upon request of the customer, we shall be entitled to set a reasonable acceptance deadline for the customer and, after its fruitless expiry, to demand immediate acceptance and compensation for our damage caused by default.

#### **V. TERMS OF PAYMENT**

1. The terms and conditions stated in our order confirmation shall apply to payments.
2. The customer shall bear the cost of the customer's payment, in particular all types of bank charges and costs.
3. Cheques shall only be accepted subject to customary reservations. For payments of any kind, the day on which we can dispose of the amount shall be deemed the settlement date.
4. If payments are deferred or made later than agreed, interest in the amount of nine percentage points above the respective base interest rate shall be charged for the interim period without the need for a reminder. We reserve the right to assert further claims for damages caused by default. The customer reserves the right to prove lower damages caused by default. Furthermore, we can claim a lump sum for reminders amounting to € 40,00.

5. The customer is not entitled to set-off counterclaims unless the customer's demands are accepted by us, undisputed or legally established. The customer has no right of retention based on disputed counterclaims.
6. All of our claims shall become due immediately if the terms of payment are not complied with or if we become aware of circumstances which are suitable to deteriorate the creditworthiness of the customer. We shall then also be entitled to make outstanding deliveries only against advance payment or provision of security or to withdraw from the contract after a reasonable grace period and/or to demand compensation for damages instead of performance. In addition, we may prohibit the resale and processing of the delivered goods and demand their return or the transfer of indirect ownership of the delivered goods at the expense of the customer and revoke the collection authorization in accordance with Section IX.
7. The customer hereby authorizes us to enter the customer's premises and operation facilities in the aforementioned cases and to take away the delivered goods.
7. Payments shall generally be set off against the oldest invoice due. As long as an older invoice is outstanding, the customer is not entitled to claim discounts for the payment of later invoices.
8. We are entitled to assign all our claims against the customer to third parties. The customer hereby agrees to this.

## **VI. COMPLAINTS**

1. Complaints due to incomplete or incorrect delivery or complaints due to recognisable defects are to be notified to us in writing immediately, at the latest however within two weeks after receipt of the goods. Other defects are to be reported to us in writing immediately, at the latest within two weeks after discovery.

Warranty claims are excluded if complaints or notifications of defects are not communicated in due time. In the event of timely notification, we shall be obliged to provide a warranty in accordance with Section VII.

2. If there is transport damage, a railway or post damage assessment or such from a carrier is to be provided to us by the customer.
3. Defects being present in only part of the delivered goods do not entitle the customer to complain about the entire delivery, unless the partial delivery is of no interest to the customer.

## **VII. WARRANTY**

1. In the event of defects in the delivered goods, we shall be entitled at our discretion to remedy the defects or make a replacement delivery within a warranty period of 12 (twelve) months. This does not apply if the law prescribes longer periods. In the event of rectification of defects, we shall be obliged in accordance with the statutory provisions to bear the expenses required for the purpose of rectifying the defects, provided that such expenses are not increased by the fact that the goods have been transported to a place other than the place of performance.
2. The customer shall grant us sufficient time and opportunity required at our reasonable discretion to remedy the defect. Replaced parts become our property.

3. If the subsequent performance fails, or a reasonable period of grace granted to us expires without delivering again or remedying the defect, or if the subsequent performance is impossible or is refused by us, the customer shall have the right to withdraw from the contract or to reduce the purchase price as well as in the event of our inability to perform the subsequent performance.
4. The warranty does not apply to defects and/or damage resulting from natural wear and tear, nor to defects and/or damage resulting from faulty or negligent handling, excessive strain, unsuitable use, incorrect handling, etc., nor to such influences not assumed under the contract, unless the damage is attributable to our fault.
5. The warranty claim cannot be transferred to third parties without our consent.
6. We shall not be liable for the resulting defects in the event of improper modifications and repair work on the delivery items carried out by the customer or third parties.
7. Our liability for essential third-party products shall be limited to the assignment of the warranty claims to which we are entitled against the supplier of the third-party product, unless the satisfaction of the assigned right fails or the assigned claim cannot be enforced for other reasons.
8. Further claims of the customer against us on whatever legal grounds are excluded, unless otherwise stipulated below, in particular claims for compensation for damages which do not arise and/or exist on the delivered goods themselves (e.g. loss of profit, consequential damages, other financial losses). This exemption from liability does not apply if we are compulsorily liable as a result of intent, gross negligence or a promise of guarantee or if an essential contractual obligation has been breached or in the event of injury to life, limb or health.

In case of negligence, but not gross negligence, our liability is limited to the compensation of the typical, foreseeable damage.

9. The above provisions shall apply mutatis mutandis to the delivery of goods other than those stipulated in the contract.

## **VIII. LIABILITY AND STATUTE OF LIMITATIONS**

1. The exclusion and limitation of our liability for damages, as regulated in Section VII. 8, shall also apply mutatis mutandis to all cases of our liability for damages due to breach of duties arising from contractual or quasi-contractual obligations and from unlawful acts. Claims according to Articles 1, 4 of the German Product Liability Act (Produkthaftungsgesetz) as well as claims based on impediments to performance upon conclusion of the contract or impossibility of performance for which we are responsible shall remain unaffected from the aforementioned exclusion of liability. This exemption from liability shall not apply if we are compulsorily liable due to intent, gross negligence or a promise of guarantee or if an essential contractual obligation has been breached or in the event of injury to life, limb or health.
2. If our liability for damages is excluded or limited, this shall also apply to the personal liability of our executive bodies, employees and vicarious agents.
3. The claims of the customer mentioned in Paragraph 1 shall expire in principle after 24 (twenty-four) months, calculated from the end of the year of transfer of risk. If the statutory period of limitation is shorter than 24 months, this period shall apply to the Customer's

respective claims. The shortening of the limitation period shall not apply to claims arising from unlawful acts or product liability.

4. The statutory regulations governing the burden of proof shall remain unaffected.

## **IX. RESERVATION OF TITLE**

1. All delivered goods shall remain our property (reserved goods) until all claims have been settled, in particular the respective balance claims to which we are entitled from the business relationship with the customer. This shall also apply if payments are made for specially designated claims.
2. If the customer combines and mixes the reserved goods with other goods, we shall be entitled to co-ownership of the new item in the ratio of the invoice value of the reserved goods to the invoice value of the other goods used. If our ownership expires as a result of combination, the customer hereby transfers to us his ownership rights to the new item to the extent of the invoice value of the reserved goods and shall store the item for us free of charge. The resulting co-ownership rights shall be regarded as reserved goods within the meaning of Paragraph 1. We accept the transfer.
3. The customer may only sell the reserved goods in the ordinary course of business, at the customer's terms and conditions, if they contain a comprehensive retention of title corresponding to these General Terms and Conditions, and as long as the customer is not in default, provided that the claims from the resale are transferred to us in accordance with Paragraphs 4 and 6. The customer shall not be entitled to dispose of the reserved goods in any other way; in particular, the right to dispose of the reserved goods shall be deemed to be revoked without further ado if insolvency proceedings are instituted against the assets of the customer or liquidation is initiated.
4. The customer's claims arising from the resale of the reserved goods are hereby assigned to us in the amount of the invoice amount. They serve as collateral to the same extent as the reserved goods. We hereby accept the assignment.
5. If the reserved goods are sold by the customer together with other goods not sold by us, the assignment of the claim from the resale shall only apply to the amount of our invoice value of the reserved goods sold in each case. In the event of the sale of goods in which we have co-ownership shares pursuant to Paragraph 2, the assignment of the claim shall apply to the amount of these co-ownership shares.
6. If the reserved goods are used by the customer to fulfill a contract for work and services or a contract for work and materials, Paragraphs 4 and 5 shall apply mutatis mutandis to the claim arising from this contract.
7. The customer is entitled to collect claims from the sale in accordance with Paragraphs 3, 5 and 6 until our revocation, which is permissible at any time. We shall only make use of the right of revocation in the cases set out in Paragraph 3 and Section V. 5. In no case shall the customer be entitled to assign the claims to any other party. At our request the customer is obliged to inform his customer(s) immediately of the assignment to us - unless we do so ourselves - and to provide us with the information and documents required for collection. The customer is not permitted to pledge or assign the reserved goods as collateral.
8. Our reservation of title is conditional to the extent that upon full payment of all claims, ownership of the reserved goods shall pass to the customer without further ado and the customer shall be entitled to the assigned claims without restriction. If the value of the

existing collateral exceeds the secured claims by more than 20% in total, we shall be obliged to release collateral of our choice at the customer's request. The realisable value of the collateral is decisive for the valuation of the collateral.

9. The customer shall notify us immediately of any seizure or any other risk to or impairment of our property rights and claims by third parties and shall hand over the seizure records or other documents and shall do everything in his power to safeguard our rights.
10. We are entitled at any time to enter the warehouse and business premises of the customer in order to remove, separate or label the reserved goods. Upon request, the customer shall provide us with all relevant information concerning the reserved goods and hand over all necessary documents. The customer is obliged to comprehensively insure the reserved goods in our favour at the customer's expense and to prove the insurance to us upon request. The customer hereby assigns all resulting insurance claims to us. We accept the assignment.
11. The assertion of our reservation of title shall not be deemed a withdrawal from the contract. The customer's right to possession of the reserved goods shall expire if the customer fails to fulfill his obligations under this or any other contract. We shall then be entitled to take possession of the reserved goods ourselves and, without prejudice to the customer's payment and other obligations towards us, to dispose of them in the best possible way by private sale or by auction. The proceeds of the sale shall be credited to the customer's payables after deduction of the costs. Any surplus shall be paid to the customer.
12. If the reservation of title or the assignment is not effective according to the law of the jurisdiction in which the goods are located, the collateral corresponding to the reservation of title or the assignment in this jurisdiction shall be deemed agreed. If the cooperation of the customer is required, the customer shall take all measures necessary to establish and maintain such rights.

## **X. MISCELLANEOUS**

1. Place of fulfillment and jurisdiction for both contractual parties is D-78056 Villingen-Schwenningen, Germany. We are also entitled to file suit against the customer at his general place of jurisdiction.
2. The law of the Federal Republic of Germany shall apply exclusively to all legal relationships between us and the customer.
3. The customer shall bear all fees, costs and expenses incurred in association with any legal proceedings against him outside Germany.
4. Should any individual provision of these terms and conditions and the contractual provisions be or become invalid, the validity of the remaining provisions shall not be affected thereby. The invalid provisions shall be reinterpreted in such a way that the intended legal and economic purpose is achieved. The same shall apply if a contractual gap, which needs to be filled, becomes apparent during the execution of the contract. The contracting parties undertake to replace the invalid provisions immediately by legally effective agreements or to close the contractual gap.
5. The data of the customer shall be stored by us within the scope of the purpose of the contractual relationship.

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