

# **General Terms and Conditions of Delivery and Sale** for use in business transactions with companies

## **Jauch Quartz GmbH – Version of November 2015**

### **Preamble**

Our deliveries and services are subject to the following General Terms and Conditions even if we do not refer to them in individual cases. The validity of the General Conditions can only be wholly or partially excluded with express written agreement in connection with an individual business transaction. General Terms and Conditions of the purchaser, in particular conditions of sale, have no validity for our deliveries and services. They do not oblige us in any way if we do not object to them in individual cases; we hereby object to and reject them. These General Terms and Conditions of Delivery and Sale are considered as recognized, at the latest, with acceptance of the goods or services.

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

1. Our offers are subject to change even though they are issued on request of the purchaser. A legally binding contractual relationship only exists with the purchaser 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 is controlling for the scope, type and time of delivery.

2. We reserve the right to change the design of our products and their execution. Our catalog and presentation of our products on the Internet are constantly revised. The illustrations and drawings that it contains are not binding or part of the agreed quality. They do not guarantee the durability nor the quality.
3. The documents belonging to the offer, such as drawings, data sheets, pictures, plans, files, etc., are only approximations unless they are expressly designated as binding. The documents remain our property; we reserve all rights to them. They may not be disclosed to third parties and are to be returned to us immediately upon request at any time.
4. Call orders must be retrieved and accepted in a timely manner and in agreed partial quantities. For call orders without an agreement concerning timeframes, manufacturing quantities and acceptance dates, we may demand a binding commitment no later than three months after order confirmation. If the purchaser 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 individual requests, we are entitled to deliver the surplus, but not required to do so. We can calculate the surplus using the prices valid at the time of order or supply.

### **II. PRICE**

1. The prices are in EUROS. The statutory sales tax is additionally provided in the respectively applicable amount on the invoice.
2. Prices for domestic deliveries ex works are uninsured and exclude packaging. This also applies for international deliveries, which include transportation to the German border or FOB to a German airport or seaport, including export packaging and transport insurance.
3. Markups and recalculations on the agreed fee are permitted if our circumstances, e.g., increases in material costs, wages or energy costs, increases in public expense, etc., should require this, and if delivery or performance is to be made later than four months after conclusion of the contract. In the case of other price increases, the purchaser has a right of withdrawal if the list price has risen 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 purchaser having a right of withdrawal.

### **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 material. 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 allow for a smooth execution of the contract in question, in particular delays in delivery on the part of our supplier, transport and operational disturbances, labor disputes, material or energy shortages, entitle us to rescind the contract in whole or in part or to postpone delivery without the purchaser having the right to make any claims for compensation. The purchaser may demand an explanation from us concerning whether we will withdraw from the contract or whether we want to fulfill the contract within a reasonable period of time. If we do not provide an explanation, the purchaser 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 not at fault, we are to be given a reasonable grace period. After this period, the purchaser may demand compensation for damages and/or withdraw from the contract if no notification is provided that the goods are ready to ship or have been dispatched. Right of withdrawal does not exist if we are not responsible for the delay in delivery, i.e., exceeding the delivery deadline.
4. The purchaser is only entitled to claims for damages instead of performance if the cause of damage is due to intent or gross negligence on our part. This does not apply if there is a transaction for delivery by a fixed date.
5. Delivery obligations and deadlines are suspended as long as the purchaser is in delay concerning acceptance of the goods or other obligations, without our rights arising from the delay in performance by the purchaser being affected, or if the purchaser has exceeded the credit limit granted by us. In this case, the risk of accidental loss or accidental deterioration of the delivery item passes to the purchaser at the moment in which the purchaser is in delay in performance.

6. The originally agreed delivery date is nullified if there is a change to the order 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 purchaser.
8. Weight and quantity of the goods delivered, as we have determined them, are controlling for the calculation.
9. To enable the purchaser 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 purchaser 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 purchaser.
2. We choose the packaging, shipping method and shipping method at our own discretion if the purchaser does not make special requests. Additional costs for special requests made by the purchaser are paid for by the purchaser. We assume no obligation to choose the least-expensive method of shipping.
3. If shipment or delivery is delayed upon request of the purchaser, we are entitled to set a reasonable acceptance deadline and to demand both immediate acceptance and compensation for damage caused by delay after the fruitless expiry of the reasonable acceptance deadline.

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

1. The terms and conditions stated in our order confirmation apply for payments.
2. The purchaser bears the cost of the purchaser's payment, in particular all types of bank fees and costs.
3. Checks are only accepted subject to customary reservations. For payments of all kinds, the day on which we can dispose of the amount is considered the settlement date.
4. If payments are deferred or made later than agreed, interest in the amount of eight percentage points above the respective base interest rate is charged without the need for a reminder. We reserve the right to enforce further claims for damages caused by delay. The purchaser has the right to prove lower damages caused by delay.
5. The purchaser is not entitled to set-off counterclaims unless the purchaser's demands are accepted by us, undisputed or legally ascertained. The customer has no right of retention based on disputed counterclaims.
6. All of our claims become due immediately if the terms of payment are not complied with or circumstances become known to us that are likely to reduce the creditworthiness of the purchaser. We are then also entitled only to perform outstanding deliveries against

advance payment or security or to withdraw from the contract after an appropriate grace period and/or to demand compensation for damages instead of performance. We can also prohibit the resale and the processing of the delivered goods and demand their return or the transfer of indirect ownership of the delivered goods at the expense of the purchaser and revoke the collection authorization in accordance with Section IX. 7. The purchaser permits us to enter the purchaser's premises and operation rooms in the above cases and to take away the goods.

7. Payments are offset against the oldest due invoice. As long as an older invoice is open, the purchaser is not authorized to claim discounts on the payment of subsequent invoices.

## **VI. COMPLAINTS**

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

Warranty claims are excluded in the case of complaints that are not communicated on time. When complaints are communicated on time, we are bound to the warranty referred to in Section VII.

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

## **VII. WARRANTY**

1. In case of defects in the delivered goods, we are entitled, at our discretion, to eliminate the defect or supply a replacement within a warranty period of 12 (twelve) months. This does not apply insofar as the law necessarily prescribes longer periods. In the case that defects must be corrected, we are obliged to bear the expenses necessary for the correction of defects according to the statutory regulations insofar as these costs are not increased by the fact that the goods have been transported to a place other than the place of performance.
2. The purchaser shall grant us sufficient time and opportunity, at our reasonable discretion, to remedy the defect. Replaced parts become our property.
3. If supplementary performance fails, we shall allow a reasonable grace period granted to us to elapse without redelivering or fixing the defect or if subsequent fulfillment is impossible or is refused by us, the purchaser has the right to withdraw from the contract or to a reduction in price as well as in the case that we fail to provide subsequent performance.
4. The warranty does not apply to defects and/or damage due to natural wear and tear nor to defects and/or damages incurred as a result of faulty or negligent handling, excessive strain, unsuitable use, incorrect handling, etc. nor to such influences not specified in the contract insofar as we are not at fault for the damage.

5. The warranty claim cannot be transferred to a third party without our consent.
6. If the purchaser or a third party makes improper changes and repairs to the delivery items, we are not liable for resulting defects.
7. For essential third-party products, our liability is limited to the assignment of the warranty claims, which we have against the supplier of the third-party product, unless satisfaction from the assigned rights fails or the assigned claim cannot be enforced for other reasons.
8. Any further claims of the purchaser against us, no matter for whatever legal reasons, in particular a claim for compensation for damages not caused to or present on the delivered goods (e.g., lost profits, consequential, other pecuniary losses) are excluded unless otherwise regulated below. This exemption from liability does not apply if we are specifically liable due to intent, gross negligence or the promise of a guarantee, or an essential contractual obligation is violated, or there is injury to body, life and health.

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

9. The foregoing provisions correspondingly apply to the delivery of to items other than the actual contract goods.

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

1. The exclusion and limitation of our liability for damages, as stipulated in Section VII. 8, apply mutatis mutandis in all cases of liability for damages due to the violation of duties arising from contractual or similar legal obligations and from illegal actions. Claims pursuant to Subsection 1, 4 of the Product Liability Law as well as claims due to obstruction at the time of contract fulfillment or justified impossibility remain unaffected from the aforementioned exclusion. This exemption from liability does not apply if we are specifically liable due to intent, gross negligence or the promise of a guarantee or a material contractual obligation is violated as well as in the case of injury to body, life or health.
2. If our liability for damages is excluded or limited, this also applies to the personal liability of our institutions/committees, employees and vicarious agents.
3. The claims of the purchaser referred to in Paragraph 1 expire in 24 (twenty-four) months, counting from the end of the year of the transfer of risk. If the statutory limitation period is shorter than 24 months, this period shall then apply for the relevant claims of the purchaser. The shortening of the period of limitation does not apply to claims arising from illegal activity or product liability.
4. The statutory provisions governing the burden of proof remain unaffected.

#### **IX. RESERVATION OF TITLE**

1. All delivered goods remain our property (reserved goods) until fulfillment of all claims, including the respective balance claims, which are due to us from the business relationship with the purchaser. This also applies if payments are made on specifically designated claims.

2. If the purchaser combines, mixes or amalgamates the reserved goods with other goods, we have a right 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. If our ownership ceases to exist due to the combination, the purchaser shall transfer to us the purchaser's rightful ownership of the new item to the extent of the invoice value of the reserved goods and keeps them free of charge for us. The resulting co-ownership counts as reserved goods within the meaning of Paragraph 1. We accept the transfer.
3. The purchaser may sell the reserved goods in the ordinary course of business with the Purchaser's terms and conditions of business if they involve a comprehensive retention of title corresponding to these General Terms and Conditions, and as long as the purchaser is not in default, provided that the claims from the resale are transferred to us according to Paragraphs 4 and 6. The purchaser is not entitled to any other type of disposal of the goods; in particular, the permission to dispose of the goods without further ado is revoked if insolvency proceedings concerning the assets of the purchaser have been filed or liquidation has been initiated.
4. The claims of the purchaser from the resale of the reserved goods are hereby assigned to us. They serve as collateral to same extent as the reserved goods. We hereby accept the assignment.
5. If the purchaser sells the reserved goods together with others, not sold by us, the assignment of the claim from the resale shall only apply to the amount of our invoice value of the respectively sold goods. At the sale of goods, in which we have co-ownership according to Paragraph 2, the assignment of the claim applies to the amount of these co-ownership shares.
6. If the Purchaser uses the goods to fulfill a works or supply contract, Paragraphs 4 and 5 shall correspondingly apply for the claims under this agreement.
7. The purchaser is entitled to collect claims from the sale according to Paragraphs 3, 5 and 6 up until our revocation, which is permitted at any time. We will only make use of the right of revocation in those cases stipulated in Paragraph 3 as well as in Section V. 5. The purchaser is not entitled to assign the claims in any other way. At our request, the purchaser is obliged to immediately inform the purchaser's customer(s) of the assignment to us if we do not do that ourselves and to give us the information and documents necessary for collecting claims. The purchaser shall not pledge or transfer the title of the goods.
8. Our retention of title is conditional to the extent that ownership of the goods passes without further ado to the purchaser upon full payment of all claims and the purchaser is fully entitled to the assigned claims. If the value of the existing collateral exceeds secured claims by more than 20%, we are obliged to release collateral of our choice upon the purchaser's request. The realizable value of collateral is controlling for assessment of the collateral.
9. The purchaser shall inform us immediately of any garnishment of or any other danger or impairment to our ownership and debt securities by third parties and shall hand over the attachment orders and other documents and shall do everything to protect our rights.
10. We are entitled, at any time, to enter the warehouse and the premises of the purchaser in order to repossess the goods, separate them or mark them. Upon request, the purchaser shall provide us with all appropriate information concerning the goods and hand over necessary documents to us. The purchaser shall fully insure the goods at the purchaser's own expense, and do so in our favor, and provide evidence of such

insurance to us upon request. The purchaser hereby assigns to us all resulting claims; we accept the assignment.

11. The assertion of our reservation of ownership does not constitute withdrawal from the contract. The right of the purchaser to the possession of the reserved goods expires if the purchaser does not meet the purchaser's obligations under this or any other contract. We are then entitled to take possession of the goods and, without prejudice to payment and other obligations of the purchaser owed to us, to exploit them through sale on the open market or by way of an auction. The proceeds will be applied to the purchaser after deduction of the purchaser's payables. Any excess is to be paid to the purchaser.
12. If the reservation of title or the assignment is not effective according to the law of the area in which the goods are located, the reservation of title or the assignment in this area is agreed upon corresponding collateral. If the participation of the purchaser is necessary in this respect, the purchaser is to take all measures necessary for the establishment and preservation of such rights.

## **X. MISCELLANEOUS**

1. Place of fulfillment and jurisdiction for both parties is 78050 Villingen Schwenningen, Germany. We are also entitled to file suit against the purchaser at the purchaser's general place of jurisdiction.
2. Only the law of the Federal Republic of Germany applies to all legal relationships between us and the purchaser.
3. Should any individual provision or contractual condition be or become invalid or unenforceable, the validity of the remaining provisions remains unaffected. The invalid provisions are to be revised in order to achieve the legal and economic purpose that was originally intended. The same applies if a contract loophole is discovered during execution of the contract. The contracting parties commit themselves immediately to replace the invalid provisions with legally binding agreements or to close contractual loopholes.
4. We shall store the data of the purchaser as part of the intended purpose of the contractual relationship.