

SANDER MARINE GMBH & CO. KG., BREMEN - GENERAL TERMS OF SALE AND DELIVERY (2/2019)

1. General

- (1) Our supplies and services are subject solely to the following terms of sale and delivery. We hereby object to any contradicting or deviating terms proposed by the customer. Such terms only apply if we explicitly agree to them in writing.
- (2) The following terms of sale and delivery shall also become a constituent part of all future business.

2. Offers, agreements

- (1) Our offers are not binding and are subject to confirmation unless expressly indicated otherwise.
- (2) No order submitted is accepted by us unless and until we have confirmed acceptance in writing. Oral collateral agreements, subsequent modifications of the contract as well as agreements and promises of whatever type, including statements made by our employees, shall not become legally binding unless and until expressly confirmed by us in writing. The written order confirmation determines the scope of contract.
- (3) Specifications and information contained in product catalogues, price lists and documents associated with any offer, such as illustrations, drawings, information on weights and dimensions, are only binding if and to the extent an agreement expressly refers to them. We reserve title and copyright in cost estimates, drawings and other documents. These may not be disclosed to third parties.
- (4) Any public statements by the manufacturer or by us regarding the goods shall have no impact on the scope of characteristics as agreed with the customer unless the agreement itself expressly refers to them.
- (5) It is the customer's duty to examine goods with regard to their suitability for the customer's intended use.

3. Prices and terms of payment

- (1) Unless otherwise expressly confirmed by us, all prices are ex works (EXW Sander Marine GmbH & Co. KG., Bremen Incoterms 2010) plus VAT at the applicable statutory rate on delivery.
- (2) For payments by bank transfer, cheque, bill of exchange or similar, the value date (*Wertstellungsdatum*) is to be considered as date of receipt of the payment. Bills of exchange and cheques shall only be accepted on account of performance (*erfüllungshalber*). Payments must be made without any deductions, net and unless otherwise agreed quarterly in advance.
- (3) There shall be no right to set off a counterclaim against our claims to payment unless it is either undisputed or a court has finally adjudicated such counterclaim. In these cases the customer is also entitled to exercise a right of retention to the extent its counterclaim results from the same contractual relationship.
- (4) If the customer culpably delayed (*Verzug*) payment of significant amounts, all other claims arising from deliveries and services rendered under the same contractual relationship shall become immediately due and payable irrespective of any beforehand agreed payment dates. We are entitled to invoice the customer interest on the amount due at a rate of 8 percentage points above the base interest rate.
- (5) If we are obliged to perform in advance and after conclusion of a contract became aware of a deterioration in the financial situation of the customer jeopardising our legitimate claims, we shall only be obliged to fulfil any outstanding deliveries and services against either advance payment or granting of sufficient security. If the customer does not fulfil this obligation, we shall be entitled to set a reasonable period of grace for such advance payment or security payment and may after fruitless expiry of such period of grace rescind the contract. Other legal rights shall remain unaffected.

4. Delivery periods, culpable delay (*Verzug*), force majeure

- (1) Delivery dates or periods can be agreed as being binding or non-binding, however shall be agreed in writing to be valid. Delivery dates marked "ca.", "approximately" and similar are non-binding.
- (2) A delivery period shall begin on the date of the order confirmation, however not before due receipt of all documents, permits and approvals to be provided by the customer. Likewise, observation of the delivery period by us is subject to observation of the agreed payment conditions by the customer and due clarification and approval of the plans and observation of the other obligations assumed by the customer.
- (3) The delivery period shall be deemed to have been met if, by expiry of this period, the goods have either left our site or the customer was notified that they are ready for dispatch.
- (4) If the performance of our contractual duties becomes impossible or unreasonably difficult due to force majeure, these duties shall be suspended until the force majeure event no longer exists. This shall also apply if we are in culpable delay in performance (*Leistungsverzug*). We are obliged to immediately notify the customer of the occurrence and of the termination of such events. Should a force majeure event exist for more than three months, either party shall be entitled to rescind the contract. Possible statutory rights to rescission shall remain unaffected. Force majeure are external, unforeseeable and inevitable events, such as e.g. natural disaster, raw material and energy shortness, fire, war and riot or other incidents for which we are not responsible, regardless of whether they occur in our business or in a third party's business, upon which the production or transportation of the goods essentially depends. Industrial disputes occurring in our own or in an external business shall entitle us to rescind the contract if they result in our performance becoming impossible (*Unmöglichkeit der Leistung*). We shall be entitled to extend our term of performance in cases of any delay due to industrial disputes occurring.
- (5) Correct and due self-supply is reserved.
- (6) If the delivery was delayed due to circumstances for which the customer is responsible, the customer shall be invoiced for any costs which result from having to store the items to be delivered as of one month after sending of the notification that the order is ready for dispatch.

5. Delivery, risk, shipment, shipping expenses

- (1) The risk passes to the customer at the time the consignment has been handed over to the shipping company or has left our site for the purpose of shipment. If shipment is delayed due to customer's request, the risk shall pass to the customer on notification that the order is ready for dispatch.
- (2) The packing shall be carried out with due care. The package shall not be taken back.
- (3) To the extent that we arrange shipment/transportation upon customer's request, all shipments shall be sent at customer's cost and risk. Goods not collected on an agreed date shall be stored at customer's cost and risk. The choice of the route and the mode of dispatch is left to our due discretion unless an express written agreement has been concluded in this respect.
- (4) If delivery is arranged carriage paid (*frachtfrei*), the customer shall bear all extra costs which are incurred as a result of special shipment requests. Insurance against risks, in particular breakage, transport, fire and war shall only be arranged upon explicit instruction of and at the cost of the customer.

6. Reservation of title

- (1) We reserve title in all goods supplied by us until payment of all of our existing and future claims arising from the business relationship with the customer (including all balance claims from current account). In the case of payment by cheque or by bill of exchange, the reservation of title shall remain valid until those are cashed and the amount is credited to our account.
- (2) The customer is entitled to dispose of the retained goods in the ordinary course of business provided that it observes its obligations arising from the business relationship with us in due time and in full. Pledges and transfers by way of security are not permitted. The customer hereby assigns to us all claims resulting from the resale of the retained goods, including balance claims from current account, to which it becomes entitled vis-à-vis its customer or third parties, in the amount of the total invoice amount (including VAT) agreed with us, irrespective of whether the retained goods were sold on without or after any further processing. The customer is entitled to collect the claims which arise from the resale of the retained goods. However, our right to collect claims shall remain unaffected. We shall not collect the claims whilst the customer observes its obligations arising from the business relationship. Upon our revocation of the customer's authority to collect claims, the customer shall be obliged to submit us names and addresses of the purchasers of the retained goods.
- (3) Any processing or transformation of the retained goods shall always be carried out for us as manufacturer. The expectant right of the customer in the retained goods continues in respect of the altered goods. If the retained goods are processed, using items which do not belong to us, we shall acquire co-ownership of the new item in the same proportion as objective value of our retained goods to the other processed goods at the time of processing. The same provisions which apply to retained goods shall also apply to the items which are created by processing.
- (4) In order to secure our claims, the customer hereby also assigns to us all contractual and statutory claims which it acquires vis-à-vis third parties by or due to combining the retained goods with real property, respectively due to installation of retained goods in a building.

- (5) The customer shall inform us without undue delay of any access and of other impairments (e.g. pledges) of third parties concerning either the retained goods or claims arising from the resale of retained goods assigned to us, stating hereby all circumstances which are relevant to ensure our rights. Any costs of interventions to ensure our rights shall be borne by the customer.
- (6) The customer is obliged to insure the retained goods against fire, water damage, natural hazards and theft and to provide evidence that such insurance has been taken out. The customer hereby assigns all claims against the insurance company to us to the extent the retained goods are concerned.
- (7) We undertake to release the securities to which we are entitled on request of the customer where the realisable value of our securities exceeds the claims to be secured by more than 10 %. The securities to be released shall be selected by us.
- (8) We are entitled to demand information from the customer at any time with respect to the remaining retained goods and for the purpose of checking this information we are entitled to view the business premises of the customer and to inspect its business records.
- (9) In the case of customer's breach of contract (*Pflichtverletzung*), in particular in the case of culpably delayed payments (*Zahlungsverzug*), we shall be entitled to claim return of the retained goods and/or to rescind the contract; the customer shall be obliged to a respective return. Our demand for return of retained goods shall not be construed as rescission of the contract; such rescission would be explicitly declared by us.

7. Complaints and warranty

- (1) The customer shall inspect the delivered goods without undue delay and notify us of any obvious defects immediately but not later than within 14 days of receipt of the goods. Hidden defects which could not be identified despite careful inspection must be notified without undue delay after their discovery. The customer shall give us the opportunity to review whether the complaint is justified. If the customer fails to notify us pursuant to the above terms regarding obvious and hidden defects, this shall be deemed to be an acceptance without reservations and leads to an exclusion of all warranty rights (*Gewährleistungsrechte*).
- (2) We shall not be liable for any goods not suitable for the customer's purposes if and to the extent that such unsuitability can be attributed to the customer's specifications, instructions and/or to materials or components delivered by the customer. The same shall apply with regard to the quality of a prior performance by another company.
- (3) The warranty rights shall not cover, and we shall not be liable for defects that are caused by or related to improper storage, faulty maintenance, misuse, unusual external conditions, non-adherence to installation instructions or incorrect installation, alterations or reparations of the goods carried out without our prior written consent.
- (4) Any measures taken by us with the aim of reducing the amount of damage shall not be deemed to be an acknowledgement of a defect. Negotiations about a complaint shall not be deemed to be a waiver of the objection that the complaint regarding the defect was not made in due time, is objectively unjustified or otherwise insufficient.
- (5) If the sold goods were defect (*mangelhaft*), we shall be entitled, at our due discretion, to either remedy the defect by repairing such defect or by replacing the defect goods. If the defect is to be repaired, we shall be obliged to bear all costs necessary for the purpose of repairing the defect, in particular transport, travel, work and material costs.
- (6) The relevant statutory provisions shall apply to the customer's rights to claim reduction of the purchase price (*Minderung*) and to rescind the contract.

8. Liability

- (1) In all cases the following provisions shall exclusively govern our liability for damages, irrespective of whether such liability is based on contractual or non-contractual claims.
- (2) We shall be liable in accordance with the relevant statutory provisions for damages arising out of a fraudulent concealment of a defect or in connection with a guarantee given by us in relation to the specific characteristics of the goods.
- (3) Furthermore, if we or any of our representatives or vicarious agents wilfully or negligently causes any injury of body, life and health, we shall be liable for damages in accordance with the relevant statutory provisions.
- (4) If the customer claims damages based on the intent or gross negligence by us or any of our representatives or vicarious agents, or based on a negligent breach of an "essential contractual obligation" (*wesentliche Vertragspflicht*), we shall also be liable in accordance with the relevant statutory provisions. However, in such cases our liability shall be limited up to the amount of foreseeable and typical damages, unless we acted wilfully or with gross negligence or any of our representatives or vicarious agents acted wilfully. "Essential contractual obligation" in such context shall describe any obligation contractually specified in detail, a breach of which would endanger achievement of the contractual purpose as such. Thus, the term "essential contractual obligation" describes an obligation, the accomplishment of which enables the execution of the contract in the first place, and on the adherence to which the customer may generally rely.
- (5) Furthermore, we shall be liable in accordance with the imperative provisions of the Product Liability Act (*Produkthaftungsgesetz*) of 15 December 1989.
- (6) In all other respects our liability for damages shall be excluded. Unless stipulated otherwise above, we therefore shall not be liable for damages which are not incurred with regard to the goods themselves (for example loss of profit or other pure financial loss to the customer), or for damages resulting from the breach of incidental obligations based on contract or law, such as wrongful advice, care, information, construction of packaging and instruction regarding handling, or for claims arising out of non-contractual liability including product liability in accordance with Section 823 BGB.
- (7) To the extent our liability is excluded or limited, this shall also apply to the personal liability of our employees, representatives and vicarious agents.

9. Statutory limitation

- (1) The claims of the customer owing to defects shall become time-barred one year after delivery of the goods. §§ 478, 479 of the German Civil Code remain unaffected hereby.
- (2) Claims of the customer for damages for other legal reasons shall become time-barred after one year. § 199 (1) and (3) of the German Civil Code apply to the commencement of the limitation period.
- (3) Liability for wilful acts (*Vorsatz*), damage arising from injury to life, body or health and liability arising from assumed warranties as well as liability under the Product Liability Act remain unaffected by the aforementioned retention periods; the statutory periods shall apply related to them.

10. Place of performance, place of jurisdiction and applicable law

- (1) Unless otherwise stated in these general terms of sale and delivery, place of performance (*Erfüllungsort*) shall be our place of business (Bremen).
- (2) The exclusive place of jurisdiction shall be Bremen. We are entitled to reach a final decision under the rules of arbitration of the International Chamber of Commerce (ICC). With regard to a concrete matter the customer is entitled to request a binding pre-litigation declaration regarding our consent to commence proceedings in the ordinary courts of law. The period for declaration is two weeks and starts upon delivery. After the expiration of the declaration period objections regarding the court of jurisdiction are forfeited. If the court of arbitration settles the dispute, the number of judges is three. If the value of the claim is below 100.000 EUR the dispute is settled by one judge. The place of arbitration shall be Hamburg, Germany. The language of proceedings shall be English, written documents may also be handed in in German. The parties agree to keep the arbitration, also the mere existence, confidential, except to the extent disclosure is required by law, regulation or an order of a competent court.
- (3) The law of the Federal Republic of Germany shall apply, excluding its private international law and the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).