

General terms and conditions of business and delivery

Carrier Pool Systems GmbH ("CPS")

1. Scope of application

1.1. These General Terms and Conditions of Business (hereinafter referred to as "Conditions") shall apply to the business relations with customers (hereinafter: "Purchaser") of CPS. They shall only apply if the purchaser is an entrepreneur in the sense of § 14 BGB, a legal person of public law or a public-law fund. The conditions apply - in their respective version - for all future deliveries, services or offers to the purchaser, even if they are not agreed again separately.

1.2. The terms of business of the purchaser or of third parties shall not apply, even if CPS does not object to their validity in individual cases. Even if CPS refers to a letter that contains or refers to the terms of business of the customer or a third party, the CPS is not in agreement with the validity of the terms of business.

1.3. Individual agreements with the customer (subsidiary agreements / amendments / amendments) made in individual cases shall in any case take precedence over these conditions. A written agreement or a written confirmation from CPS is decisive for the content of such agreements.

2. Offer | Purchase order Performance

2.1. Offers from CPS are free. Contracts, subsidiary agreements, amendments and additions must be in writing, verbal agreements of the written confirmation.

2.2. Orders are only binding upon CPS's written order confirmation. CPS may accept orders or orders within fourteen days of receipt.

2.3. The declaration (offer, order confirmation) of CPS is decisive for the content, nature and scope of the service. (Eg weights, dimensions, color shades, performance values, load bearing capacity, tolerances and technical data), in particular in brochures, catalogs and offers (also in electronic form) as well as representations (eg drawings and illustrations) Guaranteed quality characteristics, but merely approximate approximate values; These are non-binding, insofar as they were not expressly designated as binding by CPS. Commercial deviations in qualitative and quantitative terms are permissible insofar as they do not impair the usability for the purpose of the contract. This also applies to deviations which are due to legal requirements or represent technical improvements, as well as the replacement of components by equivalent parts.

2.4. Within a tolerance of 10% of the total order quantity, production-related additional and short deliveries are permissible. As a result of this, the total price changes.

2.5. The customer bears the risk of misuse and application insofar as CPS has not expressly guaranteed a certain usability or applicability.

2.6. In the case of plans, drawings and other documents made available to the Purchaser by CPS, CPS reserves the right to use property rights and copyrights. They may only be made accessible to third parties with the prior written consent of CPS.

3. Prices | Terms of payment

3.1. The prices of CPS are in EURO ex works excluding sales tax, packing, freight, postage, customs fees, etc. The value-added tax is determined according to the value-added tax on the day of the invoice.

3.2. The prices confirmed by CPS apply. If delivery is to take place more than four months after conclusion of the contract, a price adjustment shall be deemed agreed, as long as the cost factors have changed with CPS. In so far as the agreed prices are based on the list prices of CPS and the delivery is to be effected only more than four months after conclusion of the contract, the list prices of CPS valid at the time of delivery shall apply.

3.3. All invoices are to be paid within 14 days from receipt of invoice and delivery or acceptance without any deduction, unless otherwise agreed in writing. The payment receipt at CPS is decisive for compliance with the payment target. If the payment is exceeded, CPS may charge interest on arrears at a rate which CPS calculates for overdraft credit, but at least 8 percentage points above the respective base rate. CPS the proof of a higher arrears is allowed and the customer is able to prove that CPS did not result in any damage or a significantly lower loss.

3.4. If, after conclusion of the contract, CPS is threatened by a lack of performance by the Purchaser (eg by requesting the opening of an insolvency proceeding), CPS shall be entitled to refuse performance and to cancel the contract if applicable (§ 321 BGB) . In the case of contracts concerning the production of unacceptable items (individual products), CPS can immediately declare the rescission; The legal regulations

The dispensability of the deadline remains unaffected.

4. Delivery periods | Partial delivery

4.1. Delivery periods and dates are non-binding, unless they are agreed in writing and expressly as binding. Specified delivery times begin with the sending of the order confirmation by CPS. If dispatch has been agreed, delivery periods and delivery dates refer to the date of handing over to the freight forwarder, freight carrier or other third party responsible for the transport.

4.2. The indicated delivery times and dates refer to a normal course of business and extend adequately in the case of late receipt of documents, advance payments or other advance payments by the Purchaser, with further clarification of technical questions or subsequent amendments of the contract by the Purchaser.

4.3. If CPS can not comply with binding delivery deadlines for reasons beyond CPS (non-availability of the service), CPS will notify the customer without delay and at the same time inform the customer of the expected new delivery period. If the performance is also not available within the new delivery period, CPS is entitled to withdraw from the contract in whole or in part. As a case of the non-availability of the service in the above sense, the non-timely self-deliveries by suppliers of CPS, if CPS has concluded a congruent cover transaction, neither CPS nor the supplier is at fault or CPS is not obliged to procure it.

4.4. The occurrence of the delay in delivery is determined by law. In any case, a reminder is required by the purchaser.

4.5. CPS is entitled to partial deliveries if

- the partial delivery is usable for the purchaser within the scope of the contractual purpose,
- the delivery of the remaining ordered goods is ensured and
- the purchaser does not incur any substantial additional costs or additional costs (unless CPS is willing to accept these costs).

4.6. The rights of the customer pursuant to section 8 of these terms and conditions and the statutory rights, in particular in the case of exclusion of the performance obligation (eg due to impossibility or unreasonable performance and / or supplementary performance) shall remain unaffected.

5. Shipping | Transfer of risk Decrease

5.1. In the absence of any special agreement, CPS shall select the type and route of shipment as and when it deems appropriate. The consignment is insured by CPS only at the explicit request of the customer and at his expense against theft, breakage, transport, fire and water damage or other insurable risks.

5.2. The risk shall pass to the customer at the latest upon handing over of the goods (whereby the commencement of the loading process is decisive) to the freight forwarder, freight carrier or other third parties who are responsible for the execution of the dispatch. This also applies if partial deliveries are made or CPS has taken over other services (eg shipping or installation). If the dispatch or delivery is delayed as a result of a circumstance which is the cause of the customer, the risk shall pass from the day on which the delivery item is ready for dispatch and CPS has indicated this to the purchaser.

5.3. Storage costs after transfer of risk shall be borne by the Purchaser. When stored by CPS, the storage costs are [0.25]% of the invoice amount of the delivered items to be stored per week. The parties are entitled to assert and prove further or lower storage costs.

5.4. If the goods are to be inspected, the goods shall be deemed to be accepted if:

- the delivery and, if VERENDER also owes the installation, the installation is completed,
- CPS informs the customer of the acceptance of the inspection according to this clause 5.4. And has requested him to take delivery,
- twelve workdays have elapsed since the delivery or installation, or the customer has begun to use the goods and in this case six workdays have elapsed since delivery or installation; and
- the Purchaser has refused to accept the acceptance within this period for a reason other than CPS, which makes the use of the goods impossible or substantially impaired.

6. Proprietary reservation

6.1. Until the full payment of all current and future claims arising from the contractual relationship and a current business relationship (hereinafter referred to as "secured claims"), CPS retains title to the goods sold.

6.2. The goods subject to retention of title may neither be pledged to third parties nor transferred to third parties for security before complete payment of the secured claims. The Purchaser shall immediately notify CPS in writing if and insofar as access by third parties to the goods belonging to the CPS occurs.

6.3. In case of breach of contract by the customer, in particular in case of non-payment of the purchase price, CPS is entitled to withdraw from the contract or to demand the goods due to the reservation of title. The obligation to surrender does not include the declaration of withdrawal at the same time; On the contrary, CPS is entitled to

Goods and to reserve CPS the rescission. If Purchaser does not pay the due purchase price, CPS may only assert such rights if the Purchaser has previously been unsuccessfully set a reasonable deadline or if such a deadline is no longer required by law.

6.4. The Purchaser shall be entitled to resell and / or process the goods subject to retention of title in the normal course of business. The following provisions shall also apply in addition:

(A) The retention of title extends to the full value of the products resulting from the processing, mixing or combination of our products, whereby CPS is the manufacturer. If the processing, mixing or connection with goods of third parties remains the right of ownership, CPS acquires co-ownership in the ratio of the invoice values of the processed, mixed or connected goods. The same applies to the product which is produced as to the products obtained under Ownership reservation.

(B) The buyer against the third party arising from the resale of the goods or the product already assigns the security to CPS in full or in the amount of the co-ownership share of CPS pursuant to the preceding paragraph. CPS accepts the assignment. The requirements set out in point 6.2. Shall also apply in respect of the assigned claims.

(C) The Purchaser shall remain authorized to collect the claim in addition to CPS. CPS undertakes not to collect the claim as long as the customer complies with his payment obligations CPS, is not in default with payment, no application for opening insolvency proceedings is filed and no other lack of his capacity exists. If this is the case, CPS may require the customer to notify CPS of the assigned claims and their debtors, to provide all the information required for collection, to hand over the related documents and to notify the debtors (third parties) of the assignment.

(D) If the realizable value of the collateral exceeds the claims of CPS by more than 10%, CPS shall, at the request of the Purchaser, release collateral at the option of CPS.

7. Warranty

7.1. The statutory provisions apply to the rights of the purchaser in the case of material and legal deficiencies (including incorrect and short delivery, improper assembly or faulty assembly instructions), unless otherwise stipulated in the following.

7.2. The goods must be inspected immediately after delivery to the purchaser or to the third party designated by him. In the case of obvious defects or other defects, which would have been recognizable in the case of an immediate and careful investigation, the customer shall be

deemed to have accepted the goods if CPS does not receive a written complaint within seven working days after delivery. With regard to other defects, the delivery items shall be deemed to have been approved by the Purchaser if CPS does not arrive within seven working days after the date of the defect; The defect was already recognizable to the customer at an earlier date in normal use, but this earlier date is decisive for the commencement of the complaint period.

7.3. If an acceptance of the goods or an initial sample inspection has been agreed, the complaint is excluded from defects which the customer could have ascertained with careful inspection or initial sample inspection.

7.4. CPS shall be given the opportunity to ascertain the defect. The complained goods must be returned to CPS without delay on request. CPS assumes the cost of the most favorable shipping route for a justified complaint; This does not apply to the extent that the costs increase, Because the delivery item is located in a different place than the place Of the intended use. In the case of deliveries of quantities, CPS shall be given the opportunity to sort out the defective goods. If the purchaser fails to comply with these obligations or makes changes to the goods already complained about without the consent of CPS, he will lose any warranty claims. The warranty is also void if the purchaser improperly treats, maintains, stores, processes or uses the goods and makes the defect removal impossible or unreasonable. The same applies to defects which only slightly reduce the value or usability of the goods.

7.5. In the case of material defects of the goods, CPS is, at its own discretion, initially obliged and entitled to remedy or replace the goods. In case of failure, ie impossibility, unreasonableness, refusal or unreasonable delay of the improvement or replacement delivery, the buyer can withdraw from the contract or reduce the purchase price appropriately.

7.6. In the case of defects of components of other manufacturers which CPS can not remedy, CPS will, at its own option, assert its own warranty claims against the manufacturers and suppliers for the account of the customer or assign them to the purchaser. Warranty claims against CPS in case of such defects are subject to the other conditions and subject to these conditions only if the judicial enforcement of the aforementioned claims against the manufacturer and suppliers was unsuccessful or is futile (eg due to insolvency). During the duration of the legal dispute, the limitation of the customer's warranty claims against CPS is inhibited.

7.7. An agreed delivery of used items in the individual case with the purchaser takes place under exclusion of any warranty for defects.

7.8. If a defect is attributable to the fault of CPS, the Purchaser may only demand compensation under the conditions set out in section 8.

8. Liability for damages due to fault

8.1. Unless otherwise stated in these provisions, including the following provisions, CPS shall be liable in the case of a breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions.

8.2. CPS shall be liable for compensation (irrespective of the legal basis) only in cases of intent and gross negligence. CPS is only liable for simple negligence

(A) for damage resulting from injury to life, body or health,

(B) for damages resulting from a breach of a material contractual obligation (obligation whose fulfillment of the contractual performance is only possible at first and on the compliance of which the contractual partner may regularly trust and trust); In this case, however, the liability of CPS is limited to the replacement of the foreseeable, typically occurring damage.

8.3. The procedure laid down in point 8.2. Shall not apply if CPS has maliciously concealed a defect or has assumed a guarantee for the quality of the goods. The same applies to the claims of the customer under the Product Liability Act.

8.4. Because of a breach of duty, which is not in a defect, the customer can only rescind or terminate if CPS is responsible for the breach of duty. A free right of termination of the customer (in particular according to §§ 651, 649 BGB) is excluded. In addition, the legal requirements and legal consequences apply.

8.5. The foregoing exclusions and limitations apply equally to CPS's executive bodies, legal representatives, employees and other vicarious agents.

8.6. Insofar as CPS Sellers provide technical information or act as advisors and this information or advice does not belong to the contractually agreed scope of services which it owes, this is done free of charge and under

Exclusion of liability.

9. Statute of limitations

9.1. By way of derogation from § 438 para. 1 no. 3 BGB, the general period of limitation for claims arising out of material and legal deficiencies is one year from delivery. If an acceptance is agreed, the limitation begins with the acceptance.

9.2. If, however, the goods are a building or a thing which has been used for a building according to its usual usage and caused its defect (building material), the statute of limitations is 5 years from delivery (§ 438 para. 1 no. 2 BGB). (§ 438 para. 1 no. 1 BGB), in case of fraudulent use of the seller (§ 438 paragraph 3 BGB) and for claims in the supplier's remedy at the time of final delivery to a consumer (§ 479 BGB).

9.3. The above limitation periods of the purchase right also apply to contractual and non - contractual claims for damages on the part of the customer, which are based on a defect of the goods, unless the application of the regular Statutory limitation period (§§ 195, 199 BGB) would result in a shorter limitation period in individual cases. The statute of limitations of the Product Liability Act shall remain unaffected in all cases. Otherwise, claims for damages by the customer pursuant to Art. Clause 8 exclusively the statutory limitation periods.

10. Privacy Policy

The Purchaser is aware that CPS stores data from the contractual relationship pursuant to § 28 Bundesdatenschutzgesetz (Data Protection Act) for the purpose of data processing and reserves the right to transfer the data to third parties (eg insurance companies) as far as the contract is required.

11. Place of Performance | Court of Jurisdiction | Legal choice | Other provisions

11.1. The place of performance for all obligations arising from this contractual relationship is the place of business of CPS (Ratingen). The court of jurisdiction for all disputes arising from the contractual relationship is the place of business of CPS (Ratingen) insofar as the customer is a full buyer, a legal person of public law or a public law special fund. CPS is also entitled to assert claims at any other jurisdiction.

11.2. The law of the Federal Republic of Germany. The application of the United Nations Convention on the International Sale of Goods (CISG / UN Convention on Contracts for the International Sale of Goods) of 11 April 1980 is hereby excluded.

11.3. In so far as the contract or these General Terms of Delivery contain gaps in the regulations, the legally effective regulations which the contracting parties would have agreed upon according to the economic objectives of the contract and the purpose of these General Terms and Conditions of Delivery if they had known the regulatory gaps shall be deemed to have been agreed upon.

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