

## § 1 Scope

- (1) These General Terms and Conditions of Trade and Delivery (GTCTD) apply to all contracts concluded by YOURDOOR (hereafter: 'we') with companies as defined by § 14 of the German Civil Code (BGB), a legal person under public law or a special fund under public law (hereafter referred to as: the 'customer') and apply in particular to contracts for the sale and/or delivery of goods (hereinafter referred to as 'contracts'). The GTCTD do not apply to consumers as defined by § 13 of the German Civil Code (BGB). We expressly contradict the validity of any purchasing conditions or other conditions used by the customer; these shall not become part of the contract even if we perform the contracts without any reservations in the knowledge of opposing purchasing conditions or purchasing conditions that differ from these GTCTD or any other conditions of the customer.
- (2) Deviations from and supplements to these GTCTD are effective only with our express written confirmation and apply only to the respective contract for which they have been agreed. This also applies to the assumption of warranty.
- (3) Our GTCTD also apply as being a master agreement for future quotations and contracts for the sale and/or delivery of goods with the same customer without attention having to be drawn to these terms and conditions by us again in each individual case.

## § 2 Quotations, conclusion of contracts, right of modification

- (1) Our quotations are without obligation at all times. A contract will only come into effect if confirmed in writing by us with 14 days of receipt of an order which is confirmed and authorised in writing or if we perform delivery within this time period.
- (2) We reserve right of ownership and copyright to illustrations, drawings, calculations and other files and documents. They must not be made accessible to third parties. This applies in particular to files and documents that are marked as being confidential. Prior to their disclosure to third parties, the customer requires our express written approval. Documents, such as samples, brochures, catalogues, illustrations, drawings, weight specifications and dimensional specifications are only binding as approximations, unless they are expressly declared in writing to be binding.
- (3) Where we advise the customer in connection with the conclusion of the contract, we do so to the best of our knowledge; no consultancy contract shall come into being as a result. Specifications and information on the suitability and use of the products are without obligation and do not release the customer from performing independent checks and tests with regard to the suitability of the delivered products for the purposes intended.
- (4) We reserve the right to make minor product modifications and product modifications that are usual within the trade. Furthermore, we are entitled to modify the products if this arises from a technical further development of the production processes and/or products and the modification is not unreasonable for the customer.

### § 3 Prices, terms of payment and default in payment

- (1) Unless otherwise agreed upon in writing, our prices as current at the time of conclusion of the contract shall apply at all times. All prices are 'ex works' (EXW INCOTERMS 2010) and subject to the currently valid statutory rate of value-added tax and any other taxes, customs duties, levies and charges, unless otherwise agreed in writing. Cost estimates are provided subject to a charge.
- (2) We reserve the right to amend prices if, after conclusion of the contract, a cost reduction or cost increase occurs, in particular as the result of collective wage agreements, material and energy cost changes or changes in the transport costs, provided that contract performance does not occur within four months of conclusion of the contract. Proof of cost increases will be submitted to the customer on request.
- (3) Unless otherwise agreed in writing, invoices are due within eight calendar days of delivery and receipt of the invoice by the customer, less 2% discount, or at the latest within 30 calendar days of delivery and receipt of the invoice by the customer without any deduction.
- (4) The customer is entitled to set-off or retention, even if a notification of defects has taken place, if its counter-claims have been legally established or are undisputed.
- (5) If, after conclusion of the contract, there is a significant deterioration or change in the financial circumstances of the customer, through which our claim to the consideration is endangered, or if, although such a situation already existed for the customer at the time of conclusion of the contract, it did not become known to us until after the event, we are entitled to refuse our performance until the consideration has been fulfilled. A significant deterioration shall be assumed in particular in the event of enforcement measures against the customer, the rejection of an important loan, the issuing of bad cheques and bill protests. In these cases, we are entitled to set the customer a reasonable time limit, conditional upon counter-performance, for the provision of the consideration or a surety. If the consideration or surety is then not provided, we shall be entitled to withdraw from the contract.
- (6) The customer shall automatically be deemed to be in default of payment 30 calendar days after the due date and receipt of the invoice, unless the customer is not responsible for the non-performance. If payment in instalments has been agreed and the buyer is in default with at least one instalment, the remaining debts from the contract shall fall due immediately.

### § 4 Delivery dates and performance deadlines

- (1) Delivery dates and performance deadlines are binding only if we have expressly confirmed them in writing. Prior clarification of all technical queries between the parties to the contract is a precondition for the beginning of the delivery time specified by us.
- (2) Delivery dates and performance time limits shall be extended to a reasonable extent if the customer fails to fulfil his duty of cooperation in good time or demands modifications to the product.
- (3) Compliance with the delivery dates and performance deadlines is subject to us being supplied correctly and in good time by our suppliers. We will notify the customer as soon as possible of any impending delays.

- (4) Force majeure and other external events which have no operational connection, are not foreseeable and cannot be averted through the application of due diligence shall release the parties to the contract from their performance duties arising from the contracts for the duration of the disruption and to the extent of its effect. In particular, labour disputes, civil unrest, floods and other natural disasters, fire, explosions, failure of operating resources, war, strikes and other industrial disturbances, embargoes and other regulatory measures or restrictions are deemed to be force majeure. If a state of force majeure persists for a period of more than eight weeks, each party to the contract is entitled to withdraw from the contract concerned.

#### § 5 Delivery and the passing of risk

- (1) Deliveries will be effected 'ex works' (EXW INCOTERMS 2010), unless otherwise agreed in writing
- (2) Partial deliveries are permitted, in as far as this can be reasonably expected of the customer.
- (3) Where, in exceptional cases, consignment by us is agreed upon, we shall dispatch the products to the destination specified by the customer. In such cases, the cost of consignment – including packaging – will be borne by the customer. At our due discretion, we are entitled to specify the type of consignment (in particular the forwarding company and the transport route) and the packaging. In the cases defined under sentence 1 of this paragraph, the risk shall pass to the customer upon receipt by the customer of our notification of readiness for dispatch, or, – if the latter is not provided for under the contract – at the latest upon delivery of the products to the freight forwarder, carrier or other transport entity. This also applies in the case of partial deliveries or if we have agreed to perform other services (e.g. consignment, transport or erection).
- (4) Where, in exceptional cases, it has been agreed that delivery will be effected by us, the customer shall provide expert personnel and any requisite technical equipment (e.g. a forklift truck) in good time for the purpose of enabling unloading in compliance with the contract. The customer must ensure that the transport vehicle has direct access to the place of unloading and can be unloaded there without delay. If these preconditions are not met, the customer must bear any resulting additional expenses and losses.
- (5) If the customer culpably infringes his duties of cooperation and as a result delays acceptance of the product or is in default of acceptance, the customer shall bear the resulting additional expenses incurred. In particular, these include storage costs amounting to at least 0.5% of the net invoice amount of the product concerned for each month of storage or any part thereof and any other losses incurred. We reserve the right to assert further claims.
- (6) In the event of default with regard to the duty of cooperation or acceptance default, the risk of accidental loss and incidental deterioration of the product passes to the customer.
- (7) In order to fulfil our duties pursuant to the provisions of the Packing Ordinance, we cooperate with a waste management company (ISD Intersroh AG, Cologne) which operates nationwide. The return of packaging to us in accordance with the provisions of the Packaging Ordinance is effected in such a way that the customer hands over the packaging originating from and used by us free of charge to the waste management company at a waste disposal centre designated by ISD.

## § 6 Delivery delay

- (1) In the event of delivery delay, we are liable in accordance with the statutory stipulations in as far as the contract is in exceptional cases a contract with delivery by a fixed date or the interest of the customer in further performance of the contract has ceased to exist. In this case, if we are not charged with wilful intent and there is no loss of life, physical injury or damage to health, our liability is limited to the typical contractual, foreseeable damage.
- (2) Otherwise, in the case of a delivery delay, in addition to the consideration, the customer can also demand compensation for any damage caused by the delay. This right to claim damages in addition to the consideration is, however, limited to 0.5% of the net invoice amount of the delivery concerned per full week of delay, but to a maximum of 5% of the net invoice amount of the delivery concerned, in as far as we are not charged with wilful intent or gross negligence and there is no loss of life, physical injury or damage to health. The right of the customer to withdraw from the contract after expiry of the reasonable period of grace and/or to claim for damages on the grounds of non-performance in accordance with § 11 remains unaffected.

## § 7 Retention of title

- (1) We reserve the right of ownership to the products delivered to the customer (hereinafter referred to as the 'goods subject to retention of title') until such time as payment of the purchase price has been effected in full and until all purchase price claims against the customer in existence at the time of conclusion of the contract have been settled.
- (2) In the event of the attachment of a debt or other interventions by third parties in the goods subject to retention of title, the customer shall notify us immediately in writing so that we can institute third-party proceedings in accordance with § 771 of the Code of Civil Procedure (ZPO) and take other measures for protection of the ownership of the goods subject to retention of title. The customer shall support us in securing and enforcing our proprietary rights. If the third party is not in a position to reimburse us for the court costs or out-of-court costs of a legal action in accordance with § 771 of the Code of Civil Procedure (ZPO), the customer shall be liable for the loss incurred by us.
- (3) If the goods subject to retention of title are combined or inseparably amalgamated with items which do not belong to us, we shall acquire co-ownership in the new item in the ratio of the value of the goods subject to retention of title (total invoice amount including value-added tax) to the other connected or amalgamated objects at the time of connection or amalgamation. If the connection or amalgamation takes place in such a way that an item belonging to the customer must be regarded as the main item, it is deemed to be agreed that the customer herewith transfers to us co-ownership in the new item in the ratio of the value of the goods subject to retention of title (total invoice amount including value-added tax) to the other connected or amalgamated objects at the time of connection or amalgamation. We accept this transfer of ownership.
- (4) The processing or transformation of the goods subject to retention of title shall be performed for us at all times by the customer. If the goods subject to retention of title are processed with objects that do not belong to the customer, we shall acquire co-ownership in the new item in the ratio of the value of the goods subject to retention of title (total invoice amount including value-added tax) to the other processed objects at the time of the processing.

- (5) The customer shall store free of charge for us the goods subject to retention of title, of which we are entitled to sole ownership or co-ownership. The customer is under obligation to treat the contractual products with care; in particular, the customer is under obligation to insure them adequately at own cost against fire, water and theft at replacement value.
- (6) The customer is entitled to sell the goods subject to retention of title in regular business transactions. The customer herewith assigns to us the claims from the resale of the goods subject to retention of title, regardless of whether they are processed further, connected, amalgamated or not, to the amount of our account receivable from the contract for the product. We accept this assignment. The grant the customer the revocable authorisation to collect the assigned receivables. Our right to collection of the receivables remains unaffected. We shall not ourselves collect the amounts receivable and will not revoke the collection authorisation as long as the customer meets his payment obligations and is not in default with payment. On reasonable grounds, we are entitled to request the customer to advise the purchaser of the assignment, provide us with the requisite information for the purpose of asserting our rights and surrender the documents.

#### **§ 8 Material defects**

- (1) The customer must inspect the products immediately on receipt, in as far as this is feasible in the regular course of business, and must notify us in writing of any defects found, without delay but at the latest within five working days of delivery. Defects that were not perceivable in the course of a regular goods received inspection must be reported by the customer in writing, at the latest within three working days of discovery of the defects. Otherwise, the delivered products shall be deemed to be approved, unless the defect has been fraudulently concealed by us.
- (2) In as far as the customer was not already under obligation to inspect the products in accordance with § 8 (1), he must subject the products to an external visual inspection prior to installation (e.g. before installing these products on the premises of his end customer). Defects detected during this visual inspection must be reported by the customer in writing without delay, but at the latest within three working days of discovery of the defects. Otherwise, the delivered products shall be deemed to be approved, unless the defect has been fraudulently concealed by us. The duty to examine and give notice of defects in accordance with § 8 (1) shall remain unaffected.
- (3) Where, in exceptional cases, consignment by us has been agreed upon and the delivery is incomplete or there is externally visible transport damage, the customer must report this to the forwarding company upon delivery. Transport damage which is not externally visible must be reported to the forwarding company in text form (e.g. by fax, letter or e-mail) within seven days of delivery. We must be informed of such notification in any case.
- (4) Unless otherwise agreed upon, the contractually owed condition of the products shall result exclusively from the agreed product specifications. The properties of samples and specimens are binding only if they have been expressly agreed upon as being the condition of the products; this agreement is required to be in writing. Specifications as to the condition and durability as well as other specifications are guarantees only if they are agreed and designated as such. The guarantee requires written confirmation by our executive management.

- (5) In the case of a material defect, we are entitled to implement subsequent performance within a reasonable period of grace set by the customer. We are entitled to choose the type of subsequent performance. The customer is entitled to withdraw from the contract or reduce the purchase price if subsequent performance fails, is unreasonable for the customer, is denied by us or is not executed within the reasonable time limit set by the buyer. In the case of only minor defects, the customer is not entitled to withdraw from the contract.
- (6) In the case of subsequent performance, we are under obligation to bear the expenses incurred for the purpose of subsequent performance, in particular the transport and material costs, provided that these are not increased by the defective product being brought to a location other than the place of performance, unless the change of location corresponds with the agreed use of the product. If we were originally not under obligation to install the product, subsequent performance will include neither removal of the defective product nor re-installation of the defect-free product. In this case the removal and installation costs are not deemed to be subsequent performance costs and will not be borne by us as part of the subsequent performance.
- (7) No right to claim for defects exists where the condition of the product deteriorates due to
- unsuitable or improper use or storage,
  - unsuitable or improper transport or
  - incorrect or negligent handling
- by the customer.
- (8) Neither does a right to claim for defects apply where a deterioration of the product results from a typical change in the characteristics or functionality of the products (e.g. product-typical abrasion, wear).
- (9) We cannot guarantee the functionality of doors as products if dark-coloured door panels are used. The use of dark-coloured door panels, in particular the use of double-skinned doors exposed to the sun, can cause the door panels to heat up. This can cause deflection of the sections, restricting the functionality of the door. The customer is therefore not entitled to claim for defects where the use of dark-coloured door panels leads to a restriction of the functionality of doors.
- (10) The customer shall have right of recourse against us in accordance with § 445a only in as far as the final customer is a consumer.
- (11) An entitlement of the customer to compensation for damage shall exist only in accordance with the mandatory statutory provisions and the provision set out in § 11 below.

## § 9 Defects of title

- (1) If the rights of third parties oppose the contractually compliant use of the products, the customer shall inform us immediately in writing of the assertion of such third-party rights and shall grant us all powers of attorney and accord us the requisite authorities to defend the products against the asserted rights of third parties at our own cost.

- (2) If the rights of third parties stand in opposition to a contractually compliant use of the products, at our own option we shall dispose of the rights of the third parties or the assertion thereof by taking suitable measures, obtain the usage rights for the customer from the third party at our own cost or replace the products so that they no longer infringe the rights of third parties, if and as far as the contractual compliance of the products is not impaired by this.
- (3) The customer is entitled to withdraw from the contract or reduce the purchase price, if the subsequent performance in accordance with § 9 (2) is unreasonable for the customer, is denied by us or we do not comply with the request for subsequent performance within a reasonable time limit set by the customer. In the case of only minor impairment of the contractually compliant use of the products, withdrawal from the contract is excluded.
- (4) Claims on the grounds of infringement of commercial property rights or of the copyright of third parties are excluded, if this infringement is based on an instruction given by the customer, an unauthorised modification or contractually non-compliant use of the products by the customer.
- (5) A right to claim compensation for damage in accordance with the statutory provisions and the provisions set out in § 11 exists only if we were aware of or should have been aware of the conflicting rights of third parties.

#### **§ 10 Limitation of the right to claim for defects**

The right to file claims on the grounds of material defects or deficiencies in title are limited to the expiry of 12 months after delivery of the products to the customer. This does not apply (i) to any rights to claims recorded in § 11, (ii) to cases of recourse in accordance with §§ 445a, 445b of the German Civil Code (BGB) in conjunction with § 478 BGB, in as far as the final customer is a consumer or (iii) to products that represent a structure or in accordance with their usual use have been used for a structure and have caused the latter's defectiveness; in cases (i) to (iii), the statutory limitations apply.

#### **§ 11 Liability**

- (1) We assume unlimited liability in the case of culpable loss of life, physical injury or damage to health caused by us, our legal representatives or agents.
- (2) We are liable for our own wilful intent and gross negligence as well as for the wilful intent and gross negligence of our legal representatives and agents. However, where we or our legal representatives or agents are not guilty of wilful intent and there is no instance as per § 11 (1), such liability is restricted to the contract-typical, foreseeable damage.
- (3) Furthermore, we are liable for the culpable infringement of obligations whose fulfilment is essential for the due and proper performance of the contract and which the customer regularly relies and may rely on us, our legal representatives or agents to fulfil. However, where we, our legal representatives or agents are not guilty of wilful intent and there is no instance as per § 11 (1), such liability is restricted to the contract-typical, foreseeable damage.
- (4) Furthermore, we are liable in the event of the fraudulent concealment of a defect or if a guarantee is accepted. In the latter case, the extent of the liability is governed by the guarantee declaration. Furthermore, we are liable in cases of mandatory statutory liability, for example, pursuant to the Product Liability Act.

- (5) In all other cases, liability – for whatever legal reason – is excluded, unless otherwise provided for in these GTCTD.
- (6) In as far as our liability in accordance with the foregoing provisions is excluded or restricted, this shall apply also for the personal liability of our corporate agencies, legal representatives, members of staff, employees and agents.
- (7) The customer will inform and consult us immediately and comprehensively in cases where the customer intends to lodge a claim against us in accordance with the foregoing provisions. The customer shall immediately give us the opportunity to investigate the claim.

#### **§ 12 Applicable law and place of jurisdiction**

- (1) These GTCTD and all contracts are subject to the law of the Federal Republic of Germany, with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- (2) Exclusive jurisdiction for all disputes relating to the rights and duties arising from these GTCTD and the contracts, including their effectiveness, lies with the courts with competence for the registered office of our company (i.e. the registered office of the SOMMER-Gruppe company which concluded the contract with the customer). However, we are entitled to take legal action against the customer at his general place of jurisdiction.

#### **§ 13 Other provisions**

- (1) Without our previous written approval, the customer is not entitled to assign to third parties any rights or claims arising from the contract.
- (2) Any amendments or supplements to these GTCTD must be made in writing. This also applies to the amendment of the clause relating to the necessity of written form.
- (3) The invalidity or infeasibility of one or several provisions of these GTCTD does not affect the validity of the other provisions of these GTCTD. The same applies if these GTCTD do not include a provision that is inherently necessary. The parties to the contract shall replace the ineffective or infeasible provision with an effective and enforceable provision which comes as close as possible to the economic purpose of the ineffective or infeasible provision. Should these GTCTD be incomplete, the parties to the contract shall come to an agreement with the content that they would have agreed to for the purpose of these GTCTD if the omission from the provisions had been known at the time of concluding the contract.