

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

### **of Albert Pasvahl (GmbH & Co.)**

#### **I. General**

1. These General Terms and Conditions of Sale and Delivery shall only apply if the Buyer is an entrepreneur pursuant to Section 14 German Civil Code (Bürgerliches Gesetzbuch, BGB), a legal person under public law or special fund under public law.
2. These General Terms and Conditions of Sale and Delivery shall apply exclusively to the entire business relationship, including future sales, between Albert Pasvahl (GmbH & Co.) and the Buyer. Other Terms and Conditions of Purchase or General Business Terms and Conditions of the Buyer are hereby invalid. They shall also not apply even if Albert Pasvahl (GmbH & Co.) does not expressly disapprove them.
3. Albert Pasvahl (GmbH & Co.) shall be entitled to amend its General Terms and Conditions of Sale and Delivery no. 01/2002, effective for the entire future business relationship with the Buyer following the corresponding notification.
4. If a Framework Agreement exists between the Buyer and Albert Pasvahl (GmbH & Co.), these General Terms and Conditions of Sale and Delivery shall apply to this Framework Agreement and to the individual order.

#### **II. Contract formation**

1. Offers from Albert Pasvahl (GmbH & Co.) are non-binding and subject to change, i.e. they simply represent a request to the Buyer to submit an offer from his side. The information and documents provided within the scope of Contract formation, including figures, drawings, weight and size information, are approximate values only, to the extent that they are not expressly stated as binding. We reserve the right to variations usual in the industry. If Albert Pasvahl (GmbH & Co.) provides the Buyer with drawings or technical documents regarding the technical object of purchase to be delivered, they shall remain the property of Albert Pasvahl (GmbH & Co.).
2. Orders from the Buyer are binding to Albert Pasvahl (GmbH & Co.). Insofar as Albert Pasvahl (GmbH & Co.) does not otherwise confirm in writing, the delivery or invoice shall be deemed confirmation of the order, i.e. acceptance of the offer.

#### **III. Delivery date, scope of delivery, delay in delivery**

1. Delivery dates and deadlines shall only be deemed as approximately agreed, unless otherwise stipulated. Insofar as a fixed delivery date has been agreed, this shall be deemed met upon notification that goods are ready for shipping, even if the goods cannot be shipped on time owing to circumstances for which Albert Pasvahl (GmbH & Co.) is not at fault.
2. Albert Pasvahl (GmbH & Co.) shall be entitled to make partial deliveries to the extent that these do not cause unreasonable hardship for the Buyer.

3. The Buyer shall inspect and acknowledge the delivery note. Any objections must be lodged with Albert Pasvahl (GmbH & Co.) in writing and without undue delay. The acknowledged delivery quantity shall otherwise be deemed approved (cf. Section 377 German Commercial Code (Handelsgesetzbuch, HGB)).
4. In the event of a delay in delivery, the Buyer shall be obliged to grant Albert Pasvahl (GmbH & Co.) an additional delivery period of no less than 4 weeks. The purchaser may not withdraw from the contract until expiry of such additional period. The deadline shall be deemed met if the Buyer has been informed that the goods are ready for shipping and are shipped shortly afterwards.

#### **IV. Prices, payment terms**

1. Prices are ex works Albert Pasvahl (GmbH & Co.) and exclude VAT, freight, duties, postage, packing, insurance, and other expenses. Packing is charged at cost.
2. In the absence of special agreements, invoices shall be immediately due in full.
3. If the Buyer is in default, Albert Pasvahl (GmbH & Co.) shall be entitled to demand interest in arrears in the amount of 9% above the base rate, and a fixed charge of €40.00. We reserve the right to assert greater damage caused by default upon production of evidence.
4. The Buyer may not offset any counterclaims or exercise a right of retention unless its counterclaims on which the offsetting or the right of retention is based are undisputed or established in a court of law, or if there is a relationship requiring reciprocal performance (Section 320 BGB) between those claims and the claims asserted by Albert Pasvahl (GmbH & Co.). In addition, rights of retention are regularly excluded if they are not based on the same contractual relationship.

#### **V. Transfer of risk, acceptance**

1. Risk shall transfer to the Buyer on handover of goods. If the goods are shipped at the request of the Buyer, Section 447 BGB shall apply, i.e. on handover of goods to the forwarder, freight carrier, or postal service, the risk of accidental loss or deterioration of the shipment shall transfer to the Buyer.
2. The aforementioned provision shall also apply if partial deliveries are made.
3. If shipping or acceptance is delayed, the risk shall transfer to the Buyer from the date of notification that the goods are ready for shipping or acceptance, unless Albert Pasvahl (GmbH & Co.) is at fault for the delay.

#### **VI. Warranty, notice of defects**

1. The Buyer shall be obliged to inspect the deliveries without undue delay pursuant to Section 377 HGB, and to give notice of any defects in writing. Likewise, the Buyer is obliged to report promptly any hidden defects as soon as these become apparent. A report shall be deemed prompt if submitted within seven calendar days (from detection or detectability). The previous three sentences shall only apply with respect to merchants.
2. Excessive or short deliveries and incorrect deliveries shall also be deemed defects. In these cases, the Buyer shall also be obliged to give immediate notice of defects pursuant to VI., paragraph 1, insofar as he is a merchant.

3. The warranty period for new items is 1 year from handover; no warranty is offered for used items. The time limitation periods in the case of recourse claims against a Seller pursuant to Sections 445b, 478 BGB and claims for damages of any kind (including those for default with obligation of Albert Pasvahl (GmbH & Co.) to remedy defects) remain unaffected by this provision. In addition, the provisions of Section VII (General Limitation of Liability) shall apply.
4. The aforementioned provisions shall not apply in the case of a quality guarantee (Section 443 BGB). This shall only exist if explicitly identified as such in the Contract. Oral information and information in the documents of Albert Pasvahl (GmbH & Co.) does not contain quality guarantees; tests, samples, dimensions, DIN specifications, performance specifications, and other information regarding the quality of the deliverable are for specification purposes and do not constitute a quality guarantee. To the extent that the materials to be used by Albert Pasvahl (GmbH & Co.) are contractually specified, this only guarantees conformity with the specification and not the suitability of materials for the contractual purpose. The Buyer must satisfy itself of the suitability.
5. The occurrence of hydrogen embrittlement shall not constitute a defect, in particular if special product treatments or coatings are applied. In these cases, in accordance with the present state of the art and fastener specifications, there is a general risk of hydrogen embrittlement at a strength class of 12.9 (= minimum tensile strength and ratio of lower yield stress to the nominal tensile strength), at 10.9 in most cases, and at 8.8 in extreme cases.  
Damage which has occurred due to external factors, incorrect set-up and handling, defective operation or maintenance, corrosion or normal wear and tear does not constitute a defect.  
Small variances in quality, weight, quantity, presentation or colour that are usual in the industry or result from the technology or raw material used do not constitute defects.
6. Transport damage must be reported to Albert Pasvahl (GmbH & Co.) without undue delay. The Buyer must arrange the necessary formalities with the freight carrier, in particular to make all necessary assessments for protection of the right to recourse with regard to third parties. To the extent that breakages, losses, or similar, which are usual in the industry, remain within reasonable limits, no grounds for complaint shall exist.
7. Insofar as a defect exists and has been reported on time, Albert Pasvahl (GmbH & Co.) shall remedy the defect within a reasonable period through replacement delivery or remediation. Albert Pasvahl (GmbH & Co.) has the option to choose between the two alternatives for supplementary performance. The law shall apply in all other cases.
8. If Albert Pasvahl (GmbH & Co.) remedies the defect, it shall bear all expenses necessary to remedy the defect, especially the costs of transport, travel, work and material unless they are increased due to the fact that the item being purchased was taken to a place other than the place of performance.

## **VII. General limitation of liability**

1. Claims for compensation of any kind within and outside the liability for defects – arising from delay or impossibility, incorrect advice, breaches on formation of the Contract due to infringement of other Contract obligations, from unauthorised handling or other legal grounds – in particular in the event

of damage which does not occur on the deliverable itself – against Albert Pasvahl (GmbH & Co.) are excluded, unless otherwise stipulated in the following provisions.

2. Liability shall only exist in the case of wilful intent or gross negligence, and on infringement of material contractual obligations, even in the case of ordinary negligence. “Material contractual duties” are duties that must be complied with in order to make the proper performance of the contract possible in the first place and on the observance of which the Buyer regularly relies and may regularly rely.
3. The liability of Albert Pasvahl (GmbH & Co.) is limited to the reasonably foreseeable damage typically incurred with this type of contract unless it is due to an intentional act. The aforementioned liability limits shall not apply in the case of injury to life, limb and health, in the case of defects fraudulently concealed by Albert Pasvahl (GmbH & Co.), or in the case of faults in the delivered object, to the extent that liability exists for damage to private property and for personal injury pursuant to the Product Liability Act, and in the case of non-compliance with a quality guarantee.
4. Claims by the Buyer for compensation of expenses pursuant to Section 284 BGB are waived insofar as claims for damages in lieu of performance are excluded according to the provisions above.
5. The aforementioned liability limits shall also apply in favour of the employees of Albert Pasvahl (GmbH & Co.), company bodies, and other vicarious agents.
6. The onus of proof according to law is not changed by the provisions of this contract clause.

### **VIII. Retention of title, guarantees**

1. Albert Pasvahl (GmbH & Co.) has the right to retention of title for the deliverable until receipt of all payments arising from the business relationship.
2. The Buyer shall adequately insure the goods subject to retention of title against theft, breakage, fire, water, and other damage.
3. The Buyer shall be entitled to resell the deliverable in the normal course of business; it shall not be permitted to pledge, transfer by way of security, or assign for security. The Buyer shall however assign to Albert Pasvahl (GmbH & Co.) all claims that accrue to it against the customer or third party as a result of the resale, and regardless of whether the goods subject to retention of title are sold without or after processing. The Buyer shall also be authorised to collect these claims following assignment. The authority of Albert Pasvahl (GmbH & Co.) to collect the claims itself shall remain unaffected; Albert Pasvahl (GmbH & Co.) shall however undertake not to collect claims for as long as the Buyer properly meets his payment obligations. Albert Pasvahl (GmbH & Co.) can demand that the Buyer disclose the claims assigned and their debtors, provide all information required for the collection, submit the related documents and notify the debtors of the assignment. If the deliverable is resold with other goods which do not belong to Albert Pasvahl (GmbH & Co.), the claim of the Buyer against the customer in the amount of the delivery price agreed between Albert Pasvahl (GmbH & Co.) and the Buyer shall be deemed assigned. Albert Pasvahl (GmbH & Co.) shall accept the assignments included in this section.

4. The processing or alteration of property subject to retention of title is always carried out by the Buyer for Albert Pasvahl (GmbH & Co.). If the goods subject to retention of title are processed or inseparably mixed with other goods that do not belong to Albert Pasvahl (GmbH & Co.), Albert Pasvahl (GmbH & Co.) shall acquire co-ownership of the new goods in the ratio of the invoice price of the goods subject to retention of title to the other processed or mixed goods at the time of processing or mixing. The Buyer now transfers to Albert Pasvahl (GmbH & Co.) in advance its co-ownership rights arising in the event of the above, and in the amount of the invoice price of the goods subject to retention of title. Albert Pasvahl (GmbH & Co.) shall accept the assignments.
5. Albert Pasvahl (GmbH & Co.) shall be entitled to demand reasonable guarantees for proper performance of the Buyer's obligations. Albert Pasvahl (GmbH & Co.) shall be obliged to release guarantees to which it is entitled, to the extent that their value exceeds the claims to be secured by more than 10%, insofar as these have not yet been settled.
6. If the Buyer's assistance is needed to make the retention of title effective, as, for example, in the case of registrations that are required by law in the Buyer's country, the Buyer must act accordingly on request.
7. If the Buyer defaults on payment, Albert Pasvahl (GmbH & Co.) may prohibit it from disposing of the goods subject to retention of title completely or, at the option of Albert Pasvahl (GmbH & Co.), in part, e.g. only with regard to selling or further processing, etc. If the objective conditions are present under which the Buyer is subject to the duty to file an insolvency application, then the Buyer must, without need of a demand to that effect, refrain from disposing of the reserved goods in any manner whatsoever. The Buyer is obliged to promptly inform Albert Pasvahl (GmbH & Co.) of its inventory of goods subject to retention of title. In this event, Albert Pasvahl (GmbH & Co.) is also entitled to rescind the contract and demand that the goods subject to retention of title be returned. If the reserved goods have been transformed, processed, intermixed, mingled or combined with other products, Albert Pasvahl (GmbH & Co.) shall be entitled to demand their surrender to a trustee; the Buyer is obliged to disclose all co-owners of the reserved goods along with their names or company names, addresses, and with all shares. The same applies analogously to receivables that have been assigned to Albert Pasvahl (GmbH & Co.) in accordance with the preceding paragraphs; in addition, without being asked the Buyer must give Albert Pasvahl (GmbH & Co.) the names and addresses of all debtors along with copies of the documents substantiating the receivables from them.

#### **IX. Performance obligation, impossibility and non-performance**

1. All events due to force majeure for which Albert Pasvahl (GmbH & Co.) is not at fault, e.g. strikes, lockouts, natural phenomena, official action or other unforeseen circumstances at Albert Pasvahl (GmbH & Co.) or at the Seller, which mean that delivery is impossible in its entirety or in part, shall absolve Albert Pasvahl (GmbH & Co.) from the performance of the assigned contractual obligations for the duration of these events. Albert Pasvahl (GmbH & Co.) shall be obliged to notify the Buyer in writing without undue delay if such an event occurs. Albert Pasvahl (GmbH & Co.) shall also be

obliged to notify the Buyer of the expected duration of such an event. Either party shall be entitled to rescind the contract if such an event continues for more than 3 months. In this event, Albert Pasvahl (GmbH & Co.) shall undertake to reimburse any payments already made by the Buyer without undue delay.

2. The provision of the aforementioned paragraph shall apply in favour of the Buyer if a case of force majeure occurs on his side.
3. Delivery is contingent upon punctual and complete delivery to the Buyer.
4. In the event that the contract is cancelled, Albert Pasvahl (GmbH & Co.) shall be entitled to use returned goods at its own direction.

#### **X. Place of performance, place of jurisdiction, applicable law**

1. The place of performance for all mutual claims shall be the registered office of Albert Pasvahl (GmbH & Co.).
2. If the Buyer has its registered office in the EU or in the European Economic Area, sole jurisdiction shall be the registered office of Albert Pasvahl (GmbH & Co.). Each party is free to bring an action against the other party in the general jurisdiction of their registered office.

On the other hand, if the Buyer's registered office is located outside of the EU and the European Economic Area, all disputes arising under and in connection with the contracts concluded subject to the applicability of these General Terms and Conditions shall exclusively be settled by the court of arbitration of the chamber of commerce of Hamburg. Its decisions are final and there is no recourse to the ordinary courts. The defendant is entitled to bring a counter-claim before the court of arbitration. The place of arbitration is Hamburg; the language of the proceedings is German. The proceedings, in particular the taking of evidence, will be conducted pursuant to the Rules of the Court of Arbitration of the Hamburg Chamber of Commerce and the rules of Book 10 of the German Code of Civil Procedure (Zivilprozessordnung). Procedural principles of common law, including, without limitation, regarding the production of documents, do not apply (neither directly nor by analogy). If, in connection with the arbitration proceedings, one party must pay the other party's legal costs, then such costs are limited to the costs that may be charged according to the German Lawyers' Compensation Act (Rechtsanwaltsvergütungsgesetz, RVG).

3. The law of the Federal Republic of Germany shall apply exclusively, to the exclusion of UN Convention on Contracts for the International Sale of Goods.

#### **XI. Miscellaneous provisions**

1. If one of the provisions of these General Terms and Conditions of Sale and Delivery is or becomes invalid, this shall not affect the validity of the remaining provisions of the contract. A provision required by the parties shall be defined in its place; the statutory provision shall otherwise apply. In no event shall the relevant provision in these General Terms and Conditions of Sale and Delivery be replaced by the Business Terms and Conditions of the Buyer.

2. Any amendments or additions to the contract require written approval from Albert Pasvahl (GmbH & Co.) to enter into effect; this shall also apply to any deviation from the contractual requirement for written form itself.
3. Legally relevant declarations of intent such as notice of termination, rescission notices, demands for purchase price reductions, or compensation shall only be valid if made in writing.

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