

General Terms and Conditions of Business of AICHINGER GmbH

§ 1 General, Scope

- (1) These General Terms and Conditions of Business apply to all business relationships between AICHINGER GmbH and our clients (hereinafter referred to as: „the Client“). Our General Terms and Conditions of Business apply only if the Client is either entrepreneur (§ 14 German Civil Code [BGB]), Merchant (§ 1 German Commercial Code [HGB]) or a legal person under public law or a special fund under public law.
- (2) Our General Terms and Conditions of Business apply specifically to contracts relating to the manufacture, delivery and installation of shop fittings (hereinafter referred to as: „Delivery of Fittings“). In addition, they apply specifically to the sale and/or delivery of movable goods (hereinafter referred to as: „Sale of Goods“), regardless of whether we manufacture said goods ourselves or purchase them from a sub-contractor (§§ 433, 650 BGB). The applicable version of our General Terms and Conditions of Business also serves as a framework agreement for future contracts relating to the Delivery of Fittings and Sale of Goods to the same Client, with no obligation on our part to make explicit reference to this fact in each instance; we will inform the Client immediately of any changes to our General Terms and Conditions of Business.
- (3) Our General Terms and Conditions of Business apply exclusively. Alternative, conflicting or supplementary General Terms and Conditions of Business produced by the Client only form part of the contract if, and to the extent that, we have explicitly approved their validity. This requirement for approval applies in every instance; even if, for example, we make deliveries to the Client without reservation in full knowledge of the General Terms and Conditions of Business of the Client.
- (4) Separate agreements concluded with the Client (including subsidiary agreements, addendums and amendments) always take precedence over these General Terms and Conditions of Business. The content of agreements of this nature is governed either by a contract or by our confirmation in text form.
- (5) Material declarations and notifications addressed to us by the Client after conclusion of the contract (e.g. deadlines, notification of defects, declaration of withdrawal or reduction) must be made in writing in order to become legally valid.
- (6) Information regarding the validity of statutory provisions is provided purely for the purposes of clarification. As such, said statutory provisions apply even in the absence of such clarification, provided they have not been directly amended or explicitly excluded by the provisions of these General Terms and Conditions of Business.

§ 2 Conclusion of the contract

- (1) Our quotations are non-binding and subject to change without notice. This provision also applies if we have provided the Client with any catalogues, technical documentation (e.g. drawings, plans, calculations, costings, references to DIN standards), other product descriptions or documents, including those provided in electronic format, to which we reserve the right of title and intellectual property rights.
- (2) The order placed by the Client is a binding offer of contract. Insofar as the order does not contain any indication to the contrary, we are entitled to accept this offer of contract at any time up to four weeks after receipt.
- (3) Acceptance may be declared in text form (e.g. by confirmation of the order) or by means of delivery of the goods to the Client or by commencement of the obligations or order processing and planning under the contract for work and services. Unless otherwise agreed, the receipt of the acceptance at the customer's is not required.

§ 3 Delivery date, delivery deadline and default of delivery; contractual penalty

- (1) The delivery date may be agreed separately. We will make a non-binding suggestion of a delivery date when submitting the acceptance of the order. No delivery may be demanded prior to this date. If this does not happen, the delivery deadline for Sale of Goods is four weeks from conclusion of the contract.
- (2) If, through no fault of our own, we are unable to meet binding delivery deadlines (impossibility of performance), we will inform the Client immediately and simultaneously notify the Client of the expected new delivery deadline. If performance is still not possible by the new delivery deadline, we are entitled to withdraw, fully or partially, from the contract; we shall reimburse the Client immediately for any counter-performance on his part. A specific example of impossibility of performance in this respect is the failure of our supplier to make deliveries to us on schedule, where we have made a corresponding hedging transaction, neither we nor the supplier are at fault, or the procurement obligation is not ours in the specific instance.
- (3) Entry into default of delivery on our part is governed by statutory provisions. However, the Client must issue a reminder in each instance. If we enter into default of delivery, the Client is entitled to request flat-rate compensation for the damage he incurs as a result of the default. The flat-rate compensation is 0.5% of the net price (delivery value) per full calendar week of default, up to a maximum of 5% of the delivery value of the goods or fittings subject to delay. We retain the right to demonstrate that the Client has incurred no damage or lesser damage than the amount of the flat-rate compensation.
- (4) The rights of the Client in accordance with § 8 of these General Terms and Conditions of Business, and our statutory rights, specifically those relating to exclusion of the duty of performance (e.g. as a result of performance and/or supplementary work being impossible or unreasonable), remain unaffected.

§ 4 Delivery, transfer of risk, acceptance, default of acceptance and contractual penalty

- (1) Delivery of Fittings will take place at the agreed place of performance. The customer will be obligated to accept the delivery if no substantial defects exist. The results of the acceptance process will be documented in a joint acceptance report. The Client is entitled to refuse acceptance if our goods or services are seriously deficient.

If the Client fails to accept our goods or services despite them being largely defect-free and despite a corresponding request for acceptance, we will request acceptance within a reasonable timeframe. A period of 12 working days is considered a reasonable timeframe. If this deadline passes without acceptance, the fittings will be deemed accepted in accordance with § 640 para. 2 sentence 1 BGB. Further, acceptance will be implied through proper usage of the goods or services or through any other behaviour on the part of the Client from which it can be inferred that the goods or services are largely in line with contractual obligations.

- (2) The goods must be delivered ex warehouse, which is also the place of performance. At the request and cost of the Client, the goods can be dispatched to an alternative place of destination (sale by delivery to a place other than the place of performance). In the absence of any agreement to the contrary, we are entitled to determine the nature of the delivery process (specifically the carrier, the dispatch route and the packaging) ourselves.

Acceptance of the risk of accidental damage to and accidental deterioration of the goods will be transferred upon handover to the Client at the latest. In the case of sale by delivery to a place other than the place of performance, however, acceptance of the risk of accidental damage to and accidental deterioration of the goods, and acceptance of the risk of delay, will be transferred upon delivery of the goods to the carrier, haulier or other person or body commissioned to dispatch the goods. Transfer of risk will be governed by any agreement reached on acceptance of the goods. Further, the applicable statutory provisions of German law on contracts for work and services [Werkvertragsrecht] apply to agreed acceptance of the goods. If the Client is in default of acceptance, risk will be deemed transferred or accepted.

- (3) If the Client enters into default of acceptance, fails to fulfil an obligation to co-operate or if there is a delay to our Delivery of Fittings or goods for other reasons attributable to the Client, we are entitled to request compensation for the resulting damage, including any extra expenses (e.g. warehouse costs). For each full calendar week of default of acceptance there will be flat-rate reimbursement in the amount of 0.5% of the net price (delivery value), up to a maximum of 10% of the delivery value; calculation will begin at the delivery deadline or, if there is no delivery deadline, upon notification that the goods are ready for dispatch.

The right to demonstrate greater damage, and our statutory rights (specifically compensation for extra expenses, appropriate reimbursement, termination, withdrawal, damages), remain unaffected; the flat-rate compensation must, however, be offset against further monetary claims. The Client reserves the right to demonstrate that we have incurred no damage or lesser damage than the amount of the flat-rate compensation.

§ 5 Remuneration, prices and terms of payment, exclusion of set off

- (1) Remuneration for Delivery of Fittings will be agreed on a case-by-case basis.
- (2) Further, our current prices (ex warehouse) at the time of conclusion of the contract, plus statutory sales tax, apply.
- (3) In the case of sale by delivery to a place other than the place of performance (§ 4 para. (2)), the Client shall bear the costs of transportation ex warehouse and the costs of any transportation insurance he may require. The Client shall bear the costs of any customs duties, fees, taxes and other public or fiscal charges. In line with the provisions of the German Packaging Ordinance, we will not take back or dispose of any transportation packaging or other packaging materials; with the exception of standard pallets (Euro pallets), packaging will become the property of the Client.
- (4) In the case of contracts relating to the Delivery of Fittings, we are entitled to request payment of an initial instalment in the amount of 40% of the total remuneration eight weeks prior to the delivery date. We are entitled to request payment of a second instalment in the amount up to 60% of the total remuneration 14 days prior to the delivery date. The instalments are due for immediate payment on receipt of the invoice. In case of delayed payments by the customer, there may be delays with regards to the delivery date. Any binding delivery dates will no longer be binding in this case. We reserve the right to refuse performance in case of delayed payments.
- (5) Further, the purchase price and/or our (remaining) remuneration is due for payment within eight days of receipt of the invoice and delivery of the goods and/or acceptance of the fittings.
- (6) The Client will be deemed in default once these payment terms have elapsed. During the period of default, the purchase price and/or our remuneration is subject to the applicable statutory default interest rate. We reserve the right to make a further claim for damage incurred as a result of the default. Our right to assert claims against merchants for commercial interest payable from the due date (§ 353 HGB) remains unaffected.
- (7) The Client only has the right to set off and the right to retention insofar as his claim is legally established or undisputed. If the Delivery of Fittings exhibits defects, the opposing rights of the Client, specifically those in accordance with § 7 para. 6 sentence 2 of these General Terms and Conditions of Business, remain unaffected.
- (8) If, following conclusion of the contract, it becomes apparent that our right to remuneration is at risk owing to an inability on the part of the Client to adequately fulfil his contractual obligations (e.g. due to a petition for bankruptcy), we are entitled, in accordance with statutory provisions, to refuse supply of goods or services and, subject to a deadline where applicable, to withdraw from the contract (§ 321 BGB). In the case of contracts relating to the manufacture of non-fungible goods (custom-made), we are entitled to declare our withdrawal from the contract immediately; statutory regulations regarding the expendability of the deadline remain unaffected.

§ 6 Reservation of title

- (1) Until such time as all current and future claims in connection with the Delivery of Fittings and/or the Sale of Goods (hereinafter jointly referred to as: „the Goods Subject to Reservation of Title“) and/or any existing business relationship (secured claims) have been settled, we reserve the right of title to the Goods Subject to Reservation of Title.
- (2) The Goods Subject to Reservation of Title must not be pledged to a third party or transferred as security prior to payment in full of the secured claims. The Client must inform us in writing immediately if, and to what extent, third parties have access to the Goods Subject to Reservation of Title that belong to us.
- (3) If the Client acts contrary to the terms of the contract, specifically through failure to pay the remuneration due, we are entitled, in accordance with statutory provisions, to withdraw from the contract and/or to invoke our rights and reclaim the Goods Subject to Reservation of Title. Invoking our right to reclaim the Goods Subject to Reservation of Title does not automatically indicate a declaration of withdrawal from the contract; rather, we are entitled simply to reclaim the Goods Subject to Reservation of Title and reserve our right to withdrawal. If the Client fails to pay the remuneration due, we are only entitled to assert these rights if we have previously given the Client a reasonable deadline within which to pay and he has failed to do so, or if statutory provisions stipulate that such a deadline is expendable.
- (4) The Client is entitled, in the course of ordinary business, to redistribute and/or process the Goods Subject to Reservation of Title if these goods are intended for resale. In this case, the following additional provisions apply:
 - [a] Reservation of title extends to the full value of any products derived from the further processing, mixing or combination of the Goods Subject to Reservation of Title, whereby we become the manufacturer. If, by means of further processing, mixing or combination with goods belonging to third parties the right of title of said third parties is reserved, we will acquire co-ownership proportionate to the invoice total of the Goods Subject to Reservation of Title that have been further processed, mixed or combined.

Further, the resulting products will be subject to the same provisions as the Goods Subject to Reservation of Title that have been supplied subject to reservation of title.

(b) By way of security, the Client shall hereby assign to us, in full or in the amount of our share of ownership in accordance with the preceding paragraph, any claims against third parties in connection with the resale of the Goods Subject to Reservation of Title or resulting products. We hereby accept the assignment. The Client's obligations outlined in paragraph (2) also apply with regard to the assigned claims.

(c) The Client also retains his entitlement to assert the claim. We undertake not to assert the claim during such time as the Client honours his payment obligations to us, does not enter into default of payment, does not petition for bankruptcy and there is no other inability on the part of the client to adequately fulfil his contractual obligations. If, however, any of the above scenarios comes to pass, we are entitled to request that the Client furnish us with details of the assigned claims and the associated debtors, make all the necessary declarations for assertion of a claim, provide us with the accompanying documentation and inform the debtors (third parties) of the assignment of claims.

(d) If the tangible value of the security exceeds the value of our claim by more than 10%, we will, at the request of the Client, release securities of our choice.

§ 7 Claims due to defects on the part of the Client

(1) In the absence of any subsequent provisions to the contrary, the rights of the Client in connection with material defects and defects of title (including incorrect and incomplete delivery, improper assembly and inadequate assembly instructions) are in line with the applicable statutory provisions. In all instances, the special statutory provisions relating to ultimate delivery of the goods to a consumer (recourse of the supplier in accordance with §§ 478, 479 BGB) remain unaffected.

(2) The basis of our liability for defects is the agreement made regarding the specifications of the goods. An agreement regarding the specifications of the goods is constituted by all product descriptions that form the subject of the specific contract and are included in the quotations (§ 2 para. (1)) and the order confirmations (§ 2 para. (3)); the point above applies regardless of whether the product description was produced by the Client, the manufacturer or us.

(3) Insofar as no agreement has been made regarding specifications, the applicable statutory provisions must be applied to determine whether or not a defect is present (§ 434 para. 1 sentences 2 and 3 BGB, § 633 para. 2 sentences 2 and 3 BGB). However, we accept no liability for public comments made by the manufacturer or other third parties (e.g. advertising) that are not expressly part of the contract.

(4) Claims due to defects on the part of the Client are subject to fulfilment by the Client of his statutory obligation to examine and provide notification of defects (§§ 377, 381 HGB). If a defect is found upon examination or subsequently, the Client must inform us immediately. Notification will be deemed provided immediately if it is received within two weeks; prompt dispatch of the notification will be sufficient to guarantee observance of the deadline. Irrespective of this obligation to examine and provide notification of defects, the Client must inform us within two weeks of delivery of any obvious defects (including incorrect and incomplete delivery); again, prompt dispatch of the notification will be sufficient to guarantee observance of the deadline. If the Client fails to properly examine and/or provide notification of defects, we will accept no liability for defects of which we have not been properly notified.

(5) If the fittings/goods supplied exhibit defects, we are initially entitled to determine whether we will perform supplementary work to rectify the defect (rework) or deliver a defect-free item (replacement). Our right under the terms of applicable statutory regulations to refuse supplementary work remains unaffected.

(6) We are entitled to make the completion of any supplementary work due contingent upon payment by the Client of the remuneration due. The Client, however, is entitled to withhold a component of the remuneration proportionate to the defect. The provisions of § 641 para. 3 BGB remain unaffected.

(7) The Client must provide us with the necessary time and opportunity to complete the supplementary work due; specifically, the Client must provide us with the goods subject to complaint for the purposes of verification and/or access to the supplied fittings. In the case of replacement, the Client must, in line with the applicable statutory provisions, return the defective fittings/goods to us. Insofar as we were not originally responsible for installation, any supplementary work due will not include removal or refitting of the defective fittings/goods.

(8) If the presence of a defect is proven, we shall bear the expenses for any verification or supplementary work, specifically, transportation, shipping, labour and material costs (but not costs of removal and refitting); further, if the presence of a defect is proven, we shall bear the costs of removal and refitting if we were originally responsible for installation. However, if the Client's request for rectification of a defect proves to be unjustified, we are entitled to request compensation from the Client for the costs incurred.

(9) In urgent cases, e.g. if there is a risk to operational safety or action is necessary in order to prevent disproportionate damage, the Client is entitled to rectify the defect himself and to request compensation from us for the objectively necessary costs. The Client shall inform us immediately, where possible in advance, if he completes such work himself. The Client does not have said right to complete the work himself if, subject to the applicable statutory provisions, we were entitled to refuse the corresponding supplementary work.

(10) If the supplementary work is not successful or a reasonable deadline to be imposed by the Client passes without successful completion of the work or is deemed expendable in accordance with the applicable statutory provisions, the Client is entitled to withdraw from the contract or to reduce the remuneration/purchase price. However, a minor defect does not entitle the Client to withdraw from the contract. The provisions of § 634 no. 2 and no. 3 BGB remain unaffected.

(11) The rights of the Client to claim damages and/or reimbursement of unfruitful expenses exist only as defined by § 8 and are otherwise excluded.

§ 8 Subsequent liability, termination

(1) In the absence of any agreements to the contrary in these General Terms and Conditions of

Business and the subsequent provisions, we shall be liable for any breach of obligations, contractual or otherwise, to the extent determined by the applicable statutory provisions.

(2) In the case of intent and gross negligence, regardless of the legal foundation, we shall be liable for damages. In the case of ordinary negligence, we shall be liable only:

a) For damages arising from harm to life, body or health

b) For damages arising from the breach of a material contractual obligation (an obligation that must be fulfilled in order to ensure proper fulfilment of the contract and in whose fulfilment the contractual partner regularly trusts and should be entitled to trust); in this instance, however, our liability is limited to compensation for foreseeable, typical damages.

(3) The liability limitations arising from para. (2) do not apply if we have maliciously failed to disclose a defect or if the specifications of the fittings/goods have been guaranteed. The same applies to claims on the part of the Client under the terms of the German Product Liability Act [ProdHaftG].

(4) The Client is only entitled to withdraw from or terminate the contract due to a contractual breach that does not result in a defect, if that contractual breach is attributable to us. The Client has no free right of termination (specifically in accordance with §§ 650, 648 BGB). Further, the applicable statutory provisions and legal consequences apply.

§ 9 Non-fulfilment by the Client, flat-rate compensation

If the Client fails, through fault of his own, to fulfil his contractual obligations, we are entitled to request damages to the extent permitted in accordance with statutory provisions. In the case of culpable non-fulfilment, the compensation will be a flat rate of 30% of the agreed remuneration (net). If the Client has already paid contractual penalties in accordance with § 3 para. (3) and § 4 para. (3), these payments shall be offset against the flat-rate compensation.

The right to demonstrate greater damage, and our statutory rights (specifically compensation for extra expenses, appropriate reimbursement, termination, withdrawal, damages), remain unaffected; the flat-rate compensation must, however, be offset against further monetary claims. The Client reserves the right to demonstrate that we have incurred no damage or lesser damage than the amount of the flat-rate compensation.

§ 10 Limitation of actions and liability in time

(1) Contrary to § 438 para. 1 no. 3 and § 634a para. 1 no. 1 BGB, the general limitation period for claims in connection with material defect or defect of title is one year from delivery. If acceptance of risk has been agreed, the limitation period begins upon acceptance.

(2) However, if the fittings/goods constitute a structure e.g. building or an item that has been used in the usual way for a structure and has resulted in a defect of that structure (construction materials), the limitation period in line with statutory provisions is five years from delivery or acceptance, where acceptance has been agreed (§ 438 para. 1 no. 2 BGB and § 634a para. 1 no. 2 BGB). Special statutory provisions relating to the rights of third parties to return a purchased item (§ 438 para. 1 no. 1 BGB), malicious intent (§ 438 para. 3 and § 634a para. 3 BGB) and for claims in connection with supplier recourse relating to ultimate delivery to a consumer (§ 479 BGB) remain unaffected.

(3) The limitation periods associated with the purchase and sale of goods and services as well as the German law on contracts for work and services, including any extensions outlined above, also apply to contractual and non-contractual claims for damages on the part of the Client that are based on a defect affecting the fittings/goods, unless application of the standard statutory limitation period (§§ 195, 199 BGB) would result in a shorter limitation period. In all instances, the limitation periods associated with the ProdHaftG remain unaffected. In all other respects, the statutory limitation periods apply to claims for compensation on the part of the Client in accordance with § 8 and all other claims.

§ 11 Operation, maintenance and care; product manual; notes on acceptance

On acceptance, we will provide the Client with a product manual. The Client must confirm receipt of the product manual in the acceptance report. The product manual contains full instructions on the operation, maintenance and care of the supplied fittings. The Client must observe these instructions and in cases of doubt must contact us if he has any difficulty operating the fittings.

§ 12 Intellectual property rights and rights of use

Unless separately agreed in each instance, the Client has no rights of use to the brochures, photos, descriptions, drafts, drawings etc. that we produce. Statutory protection of intellectual property rights remains unaffected.

§ 13 Choice of law and court of jurisdiction

(1) These General Terms and Conditions of Business and all other legal relationships between us and the Client are solely subject to the law of the Federal Republic of Germany, to the exclusion of uniform international law; specifically, the UN Convention on Contracts for the International Sale of Goods shall not be applicable. The requirements and effects of reservation of title in accordance with § 6 are subject to the prevailing law at the storage location, insofar as, subsequently, the choice of law in favour of German law becomes impermissible or ineffective.

(2) If the Client is an entrepreneur as defined by the German Commercial Code, a legal person under public law or a special fund under public law, the sole court of jurisdiction for all disputes arising directly or indirectly from the contractual relationship, even internationally, is our headquarters in Wendelstein (Germany). However, we reserve the right to bring an action at the general court of jurisdiction of the Client.

§ 14 Final provisions

Should a provision of these General Terms and Conditions of Business be or become completely or partially invalid or should it become apparent that there is a gap in these General Terms and Conditions of Business, the validity of the remaining provisions of these General Terms and Conditions of Business and/or any contract concluded on the basis of these General Terms and Conditions of Business remains unaffected.

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