

## General Terms and Conditions of Taller GmbH

### General Terms and Conditions of Delivery and Payment (edition August 2019)



Unless otherwise expressly agreed the following general terms and conditions of delivery and payment have exclusive application to all deliveries - including deliveries made in the future. We hereby expressly refute any contrary or supplementary conditions of purchase used by any of our customers. They are not binding on us unless expressly confirmed by us.

#### 1. Quotations and scope of deliveries

**1.1** - Our quotations are given without obligation. The customer's quotations are binding. Contracts are not concluded until orders are confirmed by us in at least text form within the meaning of § 126b BGB [German Civil Code] (fax or email satisfactory, hereinafter called 'TEXT FORM') or until delivery is made.

**1.2** - Drawings, diagrams, weights and measures that form part of a quotation are approximations only and are not binding unless expressly stated to be binding.

**1.3** - We retain our rights at all times over cost estimates, drawings and other documentation, especially title, copyright and all other rights of use, reproduction or exploitation. The customer may not grant third parties access thereto without our express approval.

**1.4** - In the case of custom-made products we have the right either to a maximum 10% leeway in agreed delivery quantities, up or down, on a corresponding price adjustment being made, unless this should be unreasonable for the customer.

#### 2. Costs and title in the case of specially designed tools

If we manufacture specially designed tools in order to perform supply contracts with a customer these are charged for separately. In the case of firm orders for binding quantities it may also be agreed that the tool costs be spread over the price of parts. We always retain title to specially designed tools. We have the right to scrap specially designed tools 2 years after the final delivery of custom-made products without being liable to the customer in damages.

#### 3. Price and payment

**3.1** - Unless otherwise agreed, our prices are quoted ex works exclusive of packaging, carriage and VAT. Settlement must be made in Euros.

**3.2** - Payment is to be done in advance without any discount unless expressly agreed to the contrary. The terms of payment for machinery, tools and spare parts are mentioned in the quotation.

**3.3** - Payment is not deemed made to us until freely available to us at a bank. We do not generally accept cheques and bills of exchange but if we give our express consent they are accepted as given for the purposes of performance only. The customer bears the discounting costs and expenses. They are due and payable immediately. We state on our invoices to whom our customer has to make payment to discharge the debt.

**3.4** - In the event of a customer being in arrears of payment it will owe us default interest per annum in an amount of 9 percentage points above base rate or 10% per annum, whichever is the greater.

**3.5** - The retention of payments and the offsetting of counterclaims are not permitted unless the customer's reciprocal rights or counterclaims are undisputed, acknowledged or established by way of a final court order or have at least reached the decision stage. The offsetting or exercise of a right of retention is also possible if the customer's reciprocal rights or counterclaims and our claim are based in law on a reciprocal relationship.

**3.6** - If a significant deterioration of assets should arise at a customer as a result of which our claims might be jeopardised or if a customer suspends its payments, we have the right to ask for advance payment. Should the customer fail to make payment within the statutory deadline set by us despite being asked twice we have the right to cancel in whole or in part the part of the supply contract outstanding on either side.

**3.7** - In the case of deliveries that are made more than 4 months after the conclusion of a contract, whether by agreement or due to circumstances for which we are not responsible, we will make reasonable price adjustments if prices and costs on which our calculations were based (especially staffing, raw material and energy costs) should have changed by at least 5% since the contract was agreed so that our profits change accordingly. In such a case we will give comprehensible reasons for the change in price calculation or change in prices and will inform the customer of any corresponding change in prices in TEXT FORM. In the case of a price rise the customer will have the right to cancel the delivery affected by the price rise for a period of two weeks from such notification. Notice of cancellation must be given in TEXT FORM.

#### 4. Risk and delivery dates

**4.1** - Unless specifically agreed, the risk passes to the customer as soon as we hand the goods over to the carrier or, if dispatch should be delayed without blame attaching to us, as soon as we notify the customer that the goods are ready for dispatch. If so requested by the customer, we will insure consignments at its expense against theft, breakage, damage in transit, fire and water damage and any other insurable risks.

**4.2** - Delivery in instalments is permitted to a reasonable extent. Delivery in instalments will be unreasonable, e.g. where the customer has no interest in delivery in instalments or if merely a minor quantity has not (yet) been delivered prior to delivery in instalments or remains after delivery has been made in instalments.

**4.3** - The delivery period commences when the order confirmation is dispatched or when all technical and commercial details of the order have been clarified and any agreed advance payment received, whichever is the later. The delivery date is deemed met if the goods leave the works before the expiry of the delivery period or if notice of readiness for dispatch is given before the expiry of the delivery period provided that dispatch is delayed due to no fault on our part.

**4.4** - In the event of culpable delay in delivery our liability is limited to a lump-sum amount of damages of 0.5% per complete week, the maximum amount being 5% of the net order value of the late delivery. The customer will only have further claims for delay in delivery in so far as we are liable under clause 8 (Liability in damages). The customer must inform us by not later than the conclusion of the contract if any contract penalties apply in dealings with its own customers.

**4.5** - If dispatch should be delayed due to circumstances for which we are not responsible the risk passes to the customer when notice of readiness for dispatch is given and we will store the goods at the customer's expense; for storing the goods we will charge per month the costs actually incurred at a minimum of 0.5% of the net invoice value of the delivery stored; the customer will be free during our operation hours to collect the delivered goods at its own risk and expense.

#### **5. Modifications required by the customer and force majeure**

**5.1** - The delivery period may be reasonably extended in the event of modifications being required by the customer and accepted by us or on the occurrence of force majeure, especially unforeseen and unavoidable events for which we are not responsible (e.g. lawful strikes or lockouts, breakdowns, problems in obtaining materials or energy supplies, transport delays, shortages of labour, energy or raw materials, official measures and difficulties in obtaining consents, especially import and export licences). This applies even if the obstacles occur at one of our own suppliers without blame.

**5.2** - Both parties have the right to cancel in so far as the problem resulting from force majeure is not purely temporary. Claims in damages are excluded in the absence of blame in the cases set out in clause 5.1. We will inform the customer of the beginning and ending of the force majeure as soon as possible.

#### **6. Retention of title**

**6.1** - We retain title to goods supplied until such time as all payments have been received and accepted cheques and bills of exchange have been irrevocably credited in relation to the business connection with the customer ('**retention goods**'). Where business is conducted on an open account basis our retention of title applies to the acknowledged balance.

**6.2** - The customer is obliged to treat retention goods carefully; it is obliged, in particular, to insure them against loss, damage, water and fire at sufficient reinstatement value at its own expense. The insurance policy and proof of payment of premiums must be produced to us by the customer on request. It hereby assigns to us any claims and rights that it might have under the insurance policy. We accept this assignment. The assignment is subject to the condition subsequent that the customer acquires full title.

**6.3** - The treatment and processing of retention goods by the customer is always undertaken on our behalf, but without liability being assumed by us. In the event of goods being processed and combined with other products we acquire joint title to the new product in the proportion that the invoice value of the retention goods bears to that of the other materials processed at the time of such processing. The same applies mutatis mutandis in the event of retention goods being mixed with other materials.

**6.4** - The customer has the right to resell retention goods in the normal course of business; however, it hereby assigns to us in advance the full amount of all claims that might accrue to it against its own customers or third parties as a result of the goods being resold or reused on behalf of its own customers. The assignment also encompasses, in particular, the accounts receivable that the customer acquires as a result of its own customers making payment to its banks. We accept such assignment.

**6.5** - The customer has the right to collect debts assigned to us provided that it meets its payment obligations out of the proceeds received.

**6.6** - If the customer should fail to meet its payment obligations we may revoke permission to reuse and resell the goods and may require the customer to give us details of the receivables assigned, their debtors and everything needed to collect the debts, to hand over the relevant documentation and to inform its debtors of the assignment.

**6.7** - If we state that we are validly cancelling the contract we are free to sell elsewhere.

**6.8** - As long as our retention of title continues the customer may not transfer title as security or pledge the goods concerned without our written consent. Third-party claims on retention goods must be promptly notified to us. The customer bears the costs incurred in resisting such claims unless they are reimbursed by the third party.

**6.9** - If the value of security should exceed our claims by more than 10% we will to that extent release such security at the customer's request as it may choose.

#### **7. Duty to notify defects and warranty**

**7.1** - The customer must inspect the goods as soon as we have effected delivery and, if a defect should be discovered, must immediately notify such defect to us in TEXT FORM no later than 8 working days after the goods are received. The customer must also immediately notify us of any hidden defects in TEXT FORM no later than 3 working days after they are discovered. Notification must state the specific defect concerned. If due notification should not be given the goods will be deemed approved. The provision in § 377 HGB [German Commercial Code] also applies.

**7.2** - The limitation period is 12 months from delivery or from acceptance where acceptance is required by law. In the cases of §§ 438 para.1 no. 2, 438 para 3, 634a para. 1 no. 2, 634a para.3 BGB (German Civil Code), the statute of limitation provided for therein applies. Where we are liable in damages under clause 8 the warranty period for the claim in damages will be governed by statute.

**7.3** - Unless otherwise agreed, variations in quality, colour, size, number, weight or finish that are of minor value or customary in the trade, unavoidable technically or in conformity with standards, do not constitute defects.

**7.4** - Infringement of third-party rights may not – subject to clause 8 for claims for liability in damages – result in liability under a warranty unless those rights are protected in the Federal Republic of Germany. We do not undertake examination of infringements of third-party rights extending beyond Germany's borders. We are not, in principle, aware of the actual place of installation or use of our products. The customer is therefore obliged to carry out its own checks to establish whether any infringement of property rights or other breaches of rights at the place of delivery or use might result from the delivery or use of products.

**7.5** - In the event of justified complaints we will make good the defect or supply a flawless product, as we may choose. If subsequent performance by us by way of making good the defect or supplying a replacement should be unsuccessful on two occasions or if subsequent performance should be unjustifiably refused or delayed by us the customer may then, provided that the statutory conditions are fulfilled, demand a price reduction or cancel the contract and claim damages under clause 8.

The costs of subsequent performance incurred as a result of an item purchased having been taken after delivery to a place other than the customer's business establishment will be borne by the customer.

Subsequent performance does not include the installation or dismantling of goods or assumption of liability for the costs thereof.

**7.6** - If a defect is due to a significant third-party product we have the right to initially restrict any liability on our part to the assignment of liability rights and claims for defects accruing to us against the supplier of the third-party product unless satisfaction under the right assigned should fail or it should be impossible for the right assigned to be exercised for some other reason. In that eventuality the customer will have the rights under clause 7.5. Clause 8 alone will apply to claims for liability in damages.

**7.7** - Our plug inserts are manufactured according to current national and international standards. Liability for defects in the establishment of crimped connections is excluded if the customer uses crimping machines and spare and wearing parts made by a different manufacturer instead of the original BASICcrimp, ECOcrimp, or PROcrimp-line crimping machines (together called 'crimping machines') and their original crimping tools, spare and wearing parts (together called 'spare parts') unless the replacement of the original crimping machines and original spare parts by another manufacturer's crimping machines and spare parts is proven not to be the cause of the defects.

## **8. Liability in damages**

**8.1** - If we, our statutory representatives, employees or agents should with intent or gross negligence be in breach of duty of any kind and based on any grounds whatsoever, especially under the contractual relationship or as a result of committing a tortious act with intent or gross negligence, we will be liable for the resultant loss or damage sustained by the customer in accordance with the law.

**8.2** - If we, our statutory representatives, employees or agents should be in breach of duty as a result of simple carelessness of any kind and based on any grounds whatsoever, especially under the contractual relationship or as a result of committing a tortious act due to simple carelessness, then the customer's claims in damages against us will be excluded unless it should be a case of simple careless breach of a material contractual obligation. In such a case our liability is limited to foreseeable loss or damage typical of the contract. A material contractual obligation for this purpose means one the fulfilment of which is essential to due performance of the contract and on compliance with which the customer duly relies and is properly entitled to rely.

**8.3** - The above exclusions from liability and/or limits on liability do not apply to culpable harm to life or limb or damage to health, nor in the event of fraudulent concealment of a defect or of failure to honor a warranty of quality or where we have mandatory liability under the provisions of the Product Liability Act.

**8.4** - The statutory rules on burden of proof are not affected by the above provisions.

## **9. Right of assignment**

We have the right to assign claims under our business relationship. An assignment of the customer's claims is only permissible with our express consent and also only then possible – subject to the rule in § 354a HGB [German Commercial Code]

## **10. Place of performance; venue; choice of law**

**10.1** - Unless otherwise agreed, the place of performance of all services under supply contracts, including payment, is our head office.

**10.2** - The exclusive international venue for all disputes arising out of the supply contract is the Federal Republic of Germany. The exclusive local venue is the court having jurisdiction at our head office where the customer is a businessman, a legal person governed by public law or a special fund under public law. However, we are also entitled to issue proceedings in the court having jurisdiction at the customer's head office.

**10.3** - German law alone applies to the exclusion of the UN Convention on the International Sale of Goods (CISG) and to the exclusion of private international law.

**10.4** - If individual provisions of these terms and conditions of delivery should be invalid in whole or in part the remaining provisions shall still be valid.