

## **General Terms and Conditions of Sale and Delivery (GTC) of Adams Armaturen GmbH, Herne**

### **1. Scope of Application**

- 1.1 We conclude contracts only according to our current General Terms and Conditions of Sale and Delivery (GTC). Our GTC do not apply to private consumers. Our General Terms and Conditions of Business apply to all subsequent business transactions once they have been received by the customer. New versions are valid from our written notice of change.
- 1.2 Conflicting, deviating or unilateral terms and conditions of the customer shall not bind us. This shall also apply even if we do not expressly contradict such terms and conditions or perform or accept services without reservation.
- 1.3 References to the validity of legal regulations have only clarifying meaning. Therefore, even without such clarification, the statutory provisions shall apply to the extent that they are not directly amended or expressly excluded in these GTCs.

### **2. Conclusion of Contract**

- 2.1 Our offer to conclude a contract is always "subject to confirmation", so that we may freely revoke the offer until receipt of the order placement. Anything else shall only apply if we expressly declare the offer to be binding.
- 2.2 If the customer's order was preceded by our offer, the contract is concluded upon receipt of the customer's order. If the customer submits an offer to us or if his order deviates from our offer, the contract is only concluded upon customer's receipt of our order confirmation. At the customer's request, our order confirmation shall be made in writing.
- 2.3 In the event that we do not issue an order confirmation in response to an offer by the customer, the contract shall be concluded upon performance of our services or upon receipt of our invoice, whatever occurs first.
- 2.4 The customer is bound to his offer for 4 weeks from the date of confirmation of receipt by us.
- 2.5 Orders with an invoice value of less than € 50.00 net will only be processed by us with our express prior consent.
- 2.6 The information contained in our brochures and catalogues such as illustrations, drawings, weights and dimensions are non-binding unless we have expressly designated them as binding.

### **3. Prices**

- 3.1 Our prices are quoted ex works or warehouse and do not include packaging, freight, postage, value security and transport insurance, unless otherwise agreed. Value-added tax to be added if applicable. In case of agreed deliveries abroad, the customer bears customs duty. Discounts, rebates or bonuses only to be granted based on separate written agreement.
- 3.2 In case of deliveries to an EU member state other than Germany, we do not charge VAT if a valid VAT identification number of the customer is available. In such case, the customer undertakes to confirm to us within one month, based on a form provided by us, that the goods have reached the final destination within the EU member state other than Germany (EU Entry Certificate). In the event of collection of goods by the customer the customer is always obliged to arrange for remittance of all payments to us from a company owned bank account. If individual preconditions are not met, we are subsequently entitled to

invoice value added tax at the rate of value added tax applicable at the time.

- 3.3 In the event that a tax liability under a delivery within the European Union arises according to German VAT law retrospectively for other reasons, we reserve the right to invoice the German VAT retrospectively. The customer shall always be responsible for the remittance of the customary national sales tax on Intra- EU - Community purchase in the other EU member state.
- 3.4 We shall remain entitled to adjust the prices to be paid on the basis of the contract concluded with the customer at our reasonable discretion the development of the costs which are decisive for the price calculation. A price increase may be considered and a price reduction may apply if, for example, the costs of wages (e. g. due to collective bargaining agreements), input materials, energy, freight or public tax increase or decrease. Increases in one cost element may only be used for a total increase of the price to the extent that same are not compensated for by possible declining costs in other areas. In the case of cost reductions, prices are to be reduced insofar as these cost reductions are not fully or partially offset by increases in other areas. When exercising our reasonable discretion, we will choose the respective dates of a price change in such a way that cost reductions will not be taken into account according to standards that are less favourable for the customer than cost increases, i. e. cost reductions will have at least the same effect on prices as cost increases.

### **4. Due Date(s) and Payments**

- 4.1 Our claims shall become due on the earliest collection date stated in our notification of readiness for delivery or, in the case of an agreed delivery, on delivery of the goods to the customer's premises, unless a later payment date has been agreed upon in writing.
- 4.2 Payment and discount periods granted by us begin with the invoice date. Agreed cash discount deductions are only permissible if our customer is not in default with other claims arising from our business relationship. The relevant credit note on our business account is decisive for the timeliness of payment.
- 4.3 Payments are to be made in EURO free of deductions, expenses and costs to a bank named by us. Agreed cash discount deductions are only permissible if the customer is not in default with another claim from our business relationship.
- 4.4 If the customer does not effect payment by latest two days after receipt of our notice of readiness for delivery or, in the case of an agreed delivery, two days after delivery, he shall be in default, unless he has received our invoice in advance or an agreed payment date has expired beforehand. In these cases, the customer is already in default if he does not effect payment at the latest one day after receipt of invoice or on the payment date. In commercial business transactions, we initially charge interest on arrears of 5 percentage points p. a. from the due date (according to this Section 4.); from the date on which default occurs, interest on arrears of 9 percentage points p. a. above the respective base interest rate shall be charged. The assertion of any further claims for damages caused by delay remains unaffected.
- 4.5 We reserve the right to allocate payments for the repayment of the oldest invoice items due, including accrued interest and costs, in the following order: costs, interest, principal claim.

- 4.6 Payment terms granted do not apply if we discern a significant deterioration in the customer's financial situation or if our customer provides incorrect or incomplete information or, despite being requested to do so, does not provide any information about his creditworthiness. In such cases, outstanding receivables shall become due immediately insofar as the customer is not entitled to any rights to refuse performance. Furthermore, we can assert our security rights and make outstanding deliveries dependent on the provision of appropriate security or payment under concurrent condition against delivery. If the customer refuses to do so, we may, insofar as we have not yet rendered our services, withdraw from the contract without the customer being able to derive any rights from this.
- 4.7 Bills of exchange and cheques shall only be accepted by special agreement and only on account of performance. Bills of exchange must be discountable. Bills of exchange and discount charges shall be borne by the customer; they shall be invoiced from the due date of the invoice amount and are due immediately. The term of the bills of exchange may not exceed 90 days after the invoice date.
- 4.8 In the case of orders with an invoice value of more than € 75,000.00 net, we shall be entitled to demand appropriate instalment payments commensurate with the production process.

## **5. Delivery, Transfer of Risk, Delivery Periods, Origin of Goods**

- 5.1 The terms of delivery apply ex works (Incoterms 2010). Risk of price and performance shall pass to the customer by latest at the end of our normal business hours on the earliest collection date stated in our notification of readiness for delivery, however, in the case of a generic obligation, only if we have rejected the goods. Shipment of the goods shall only take place after written agreement and at the customer's risk.
- 5.2 Fixed delivery dates require our written confirmation.
- 5.3 Delays in delivery due to unforeseeable extraordinary events such as e. g. governmental measures, traffic disruptions, machine damage or industrial disputes shall release us from the delivery obligation as long as they persist, insofar as we are not responsible for the disruption. If such a disruption is permanent, we shall be released from our delivery obligation altogether. In this case, advance payments made by the customer will be refunded by us.
- 5.4 Insofar as we are unable to make deliveries because we are not supplied by our own suppliers, even though we have concluded congruent hedging transactions, we shall be released from our obligation to perform and may withdraw from the respective contract in question, unless we have culpably caused the non-delivery. We will inform the customer of this. We will reimburse the customer for any payments already made. In such a case, the customer shall not be entitled to any further claims.
- 5.5 There is no legal entitlement to the delivery of goods originating from the European Union within the meaning of customs preferential provisions, unless such a goods origin has been expressly agreed.

## **6. Goods contrary to contract**

- 6.1 If a defect in the delivered goods exists, the customer shall only be entitled to demand subsequent delivery of the goods. Rectification of defects is excluded, as this would normally cause disproportionate costs and the customer would not suffer any significant disadvantages due to the exclusion of rectification of defects. Alternatively, we can also repair the goods instead of subsequent delivery.

- 6.2 If the supplementary performance fails or if it does not take place within a reasonable period of time set to us, the customer can withdraw from the contract or reduce the purchase price. Compensation for damages may only be claimed under the conditions set out in Clause 7 here below.
- 6.3 The statutory duties of inspection and notification of defects according to § 377 HGB (German Commercial Code) apply. Our customer's initial sample approvals do not release the customer from his duties to inspect and give notice of defects, nor do they restrict them.
- 6.4 The warranty period is 12 months. It begins with delivery ex works (Incoterms 2010) with collection, otherwise with delivery of the goods.
- 6.5 The operational wear and tear of wearing parts does not constitute a defect and thus does not give rise to any warranty claims on the part of the customer. The same shall apply mutatis mutandis to defects that occur as a result of unsuitable or improper use, faulty assembly or commissioning of the delivered goods by the customer, in particular in the event of non-observance of our IOMs or any other faulty treatment, unsuitable equipment, replacement materials or other unsuitable framework conditions.
- 6.6 In the event of non-compliance with our IOMs, any quality or durability guarantees that we may have assumed vis-à-vis the customer shall also lapse.

## **7. Liability and Insurance**

- 7.1 Claims for damages on the part of the customer, irrespective of the legal grounds, as well as claims for reimbursement of futile expenses are excluded, unless the cause of damage is based either on an intentional or grossly negligent breach of duty or on at least a negligent breach of a contractual obligation, the fulfilment of which characterizes the contract and on which the customer may rely (essential contractual obligation); In the latter case, the liability is limited in amount to the damage foreseeable and typical for the contract at the time of conclusion of the contract.
- 7.2 The aforementioned limitation of liability in accordance with section 7.1 also applies to the personal liability of our employees, representatives and organs as well as to our vicarious agents.
- 7.3 The limitations of liability in accordance with Sections 7.1 and 7.2 shall not apply to personal injury, i. e. damage resulting from injury to life, limb or health, in the case of liability under the Product Liability Act and insofar as we have exceptionally assumed a guarantee.
- 7.4 We are not obliged to take out insurance against damage of any kind. Insofar as we take out insurances at our discretion or at the express request of the customer, the costs shall be borne by the customer.

## **8. Statute of Limitations**

- 8.1 The limitation period for claims of the customer arising from any quality or durability guarantees assumed by us begins - unless expressly stipulated otherwise in the guarantee declaration - with purchase or work delivery contracts with the delivery of the goods, in the case of work contracts with acceptance by the customer.
- 8.2 Contrary to § 195 BGB, the knowledge-dependent regular limitation period for claims of the customer is 24 months. The commencement of such agreements shall be governed by Section 199 (1) of the German Civil Code (BGB). Deviating from § 199 Paragraph 3 No. 1 BGB, the

knowledge-independent limitation period for claims for damages of the customer is five years, beginning with the origin of the claim.

- 8.3 Contrary to Clause 8.1, contractual claims for damages and claims for reimbursement of the customer's futile expenses, which are based on a defect of the goods, as well as the right to subsequent performance in accordance with Clause 6.4 shall become statute-barred in 12 months. Recourse claims according to § 478 f. BGB remain unaffected by this.
- 8.4 Clauses 8.1 and 8.3, first sentence, shall not apply in the event of willful or grossly negligent breach of duty or breach of material contractual obligations or in the cases referred to in Clause 7.3. The statutory limitation periods shall apply here.
- 8.5 Our payment claims and interest claims shall become statute-barred after five years, unless a longer period of time is stipulated by law. The limitation period begins at the end of the year in which our claim arose and we became aware of the facts on which the claim is based.

### 9 Retention of Title

- 9.1 We reserve ownership of the delivered goods ("Reserved Goods") until complete settlement of our claims against the customer ("Secured Claims") and the encashment of all cheques and bills of exchange. Secured receivables are all current and future claims arising from the business relationship with the customer, including any current account balance claims.
- 9.2 The customer is obliged to keep the goods subject to retention of title in safe custody for us and to maintain and repair them - if necessary - at his own expense. The customer is obliged to insure the reserved goods against loss and damage at replacement value within the framework customary for a prudent businessman. Upon request, he must provide us with proof of this insurance without delay by means of written confirmation from the insurer. The customer hereby assigns his claims for corresponding insurance benefits to us in advance. We accept the assignment.
- 9.3 The customer processes the reserved goods for us. We will become co-owners of the new thing. Our co-ownership share corresponds to the ratio of the objective market value of the goods subject to retention of title to the objective market value of the new item at the time of processing. The new item shall be deemed to be goods subject to retention of title.
- 9.4 The connection or mixing of the goods subject to retention of title with other items shall also be effected on our behalf. We will become co-owners of the new thing. Our co-ownership share corresponds to the ratio of the objective market value of the goods subject to retention of title to the objective market value of the new item at the time of combination or mixing. The new item shall be deemed to be goods subject to retention of title.
- 9.5 If our title lapses as a result of the goods subject to retention of title being combined or mixed with a main item, the customer shall already now transfer to us the ownership of the main item to which he is entitled in proportion to the ratio of the objective market value of the goods subject to retention of title to the main item at the time of combination or mixing. We accept the transfer. The main item is deemed to be goods subject to retention of title.
- 9.6 The customer is entitled to dispose of the reserved goods in the ordinary course of business as long as he is not in default of payment. This does not apply if a prohibition of assignment with regard to the customer's purchase price or compensation for work has been agreed between the customer and his customers. The customer shall not be entitled to transfer the reserved goods by way of security, pledge or other encumbrances, nor shall the customer be entitled to sell them in order to rent the reserved goods back ("sale-and-lease-back").
- 9.7 If the goods subject to retention of title are sold by the customer, he hereby assigns to us in advance his claims against his customers or third parties (including any balance claims from current accounts) resulting from the resale, including all security and ancillary rights, including claims from bills of exchange and cheques in the amount of the secured claims. We accept the assignment. If the goods subject to retention of title are sold together with other items at a total price, the assignment shall be limited to the proportionate amount of the customer's invoice for the goods subject to retention of title that are sold together with the goods. If goods are sold to which we have acquired co-ownership in accordance with Clauses 9.3,9.4 or 9.5, the assignment shall be limited to that part of the claim which corresponds to our co-ownership share.
- 9.8 The customer may collect the claims assigned to us in his own name and for his own account in accordance with Clauses 9.2 and 9.7, unless we revoke this authorization. Our right to collect the assigned claims ourselves remains unaffected by this. However, we shall not collect the assigned claims ourselves and shall not revoke the customer's direct debit authorization if the customer is not in default with his existing obligations to us or if his financial situation deteriorates significantly. In such a case, the customer is obliged to provide us with all information and documents necessary for asserting the assigned claims.
- 9.9 The customer is obliged to secure our rights to the goods subject to retention of title in the amount of the secured claims when reselling the goods subject to retention of title, insofar as this is feasible in the ordinary course of business. This can be done by the customer making the transfer of ownership of the goods sold by him to his customers dependent on their complete payment.
- 9.10 The customer may not assign his claims from the resale of the goods subject to retention of title in order to have them collected by way of factoring unless he irrevocably obliges the factor to effect the counter-performance directly to us in this respect as secured claims.
- 9.11 The customer must inform us without delay of any compulsory execution measures by third parties in respect of the reserved goods or in respect of the claims assigned to us or other securities, providing us with the information necessary for an intervention action; this shall also apply to impairments of any other kind. Insofar as our action for intervention is successful and the third party is unable to reimburse the necessary costs incurred by us, the customer shall be liable for this.
- 9.12 We undertake to release the securities to which we are entitled in accordance with the above provisions at the customer's request insofar as the value realizable from the securities exceeds 110 % or the estimated value of the goods subject to retention of title exceeds 150 % of the secured claims. The selection of the reserved goods to be released is incumbent upon us. The realisable value is the liquidation proceeds to be achieved for the reserved goods in a (hypothetical) insolvency of the customer at the time of our decision on the demand for release. The estimated value is the market price of the reserved goods at this time.
- 9.13 Insofar as the retention of title should not be valid under foreign law in the country in which the goods subject to retention of title are located, the customer shall provide an equivalent security at our request. If he fails to comply with

this request, we may demand immediate settlement of all outstanding invoices.

#### **10. Industrial Property Rights**

- 10.1 The customer does not acquire any rights to illustrations, drawings, models, plans, software, samples and other documents as long as this is not absolutely necessary for the execution of the contract. We therefore retain all our rights to the illustrations, drawings, models, plans, software, samples and other documents, including copyrights, trademark rights, company rights and rights to know-how. Without our consent, illustrations, drawings, models, plans, software, samples and other documents may not be reproduced or distributed by the customer or disclosed to third parties.
- 10.2 The illustrations, drawings, models, plans, software, samples and other documents shall be returned to us without delay upon request or if the order is not placed.
- 10.3 We shall be entitled to demand appropriate remuneration for models, drawings, plans or similar documents prepared by us if we are not awarded the order.
- 10.4 It is the sole responsibility of the customer to ensure that due to his condition specifications for the goods and their further processing, industrial property rights or other rights of third parties are not infringed.
- 10.5 If a claim is asserted against us by a third party on the basis of a specification of the customer's quality due to an infringement of industrial property rights, the customer shall, at his own expense, either obtain a right of use for the relevant specifications of quality or change them in such a way that the industrial property right is not infringed. In this respect, the customer shall indemnify us in full against all claims of third parties, including costs of legal defence and/or prosecution, upon first written request.

#### **11. Netting prohibition / Right of Retention**

- 11.1 The customer can only set off against our claims if his

counterclaim is undisputed or legally established or ready for decision. In the event of delivery of goods in breach of contract within the meaning of No. 6 of these GT&C the counter rights of our customer from the same contractual relationship shall remain unaffected. The same applies to the assertion of a right to refuse performance or right of retention.

- 11.2 In addition, the customer may only base a right of retention on claims from the same contractual relationship on which his obligation is based and only assert such a right of retention if we have not provided an appropriate security despite a written request by the customer.

#### **12. Other Provisions**

- 12.1 The place of performance is the headquarters of our head office in 44653 Herne, Germany. The place of jurisdiction for all disputes arising from commercial transactions with registered traders and legal entities under public law is Bochum for both parties (§ 38 ZPO). This also applies to bill of exchange and cheque processes. We can also claim against our customer at his general place of jurisdiction.
- 12.2 German law shall apply to the exclusion of the CISG.
- 12.3 Amendments or additions to these GTC must be made in writing. This also applies to the cancellation of this requirement for written form or a deviation from it.
- 12.4 If individual provisions of these GTC or the delivery transaction are or become invalid in whole or in part, this shall not affect the validity of the remaining provisions or other parts of such clauses.
- 12.5 In the event of any discrepancies between the German and English language versions of these GTCs, the provisions of the German language version of the GTCs shall prevail over the provisions of the English language version.

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