

## **General Terms and Conditions of Plan M GmbH GmbH (as of May 2016)**

### **§ 1 General – Scope of Application**

1. These General Terms and Conditions shall apply to shipments and quotations of Plan M GmbH. We shall not accept any customer terms and conditions that are in conflict with or deviating from our General Terms and Conditions, unless we have expressly consented to their application in writing. Our General Terms and Conditions shall also apply if, being aware of customer conditions that are in conflict with or deviating from our General Terms and Conditions, we execute the shipment to the customer without raising objections.
2. All agreements made between our company and the customer in terms of the execution of the contract, are stipulated in this contract in writing.
3. Our General Terms and Conditions shall apply only to entrepreneurs pursuant to §310 Section 1BGB (German Civil Code).

### **§2 Quotation – Quotation Documents**

1. Our quotations are made subject to change, unless otherwise stipulated in the order confirmation.
2. We reserve all property and copy rights pertaining to images, drawings, calculations and other documents. This shall also apply to such written documents marked as “confidential”. The customer shall undertake to obtain our express consent prior to forwarding any such documents to third parties.

### **§ 3 Prices – Payment Terms**

1. Unless otherwise stipulated in the order confirmation, our prices shall be quoted ex shipping location, excluding packaging and freight; both of which shall be billed separately.
2. We reserve the right to adjust our prices accordingly if upon execution of the contract, cost decreases or cost increases should occur, in particular as a result of union negotiations or changes in the prices of materials. Upon request, we shall document such changes to the customer.
3. Our prices do not include applicable value-added tax; same shall be added to the invoice in the amount required by law on the date of billing and shall be stipulated separately.
4. The deduction of any cash discounts shall be subject to a specific written agreement to that effect.
5. Unless otherwise stipulated in the order confirmation, the purchase price shall be due for payment without deduction immediately. In the event of late payment, we shall charge interest at the rate of eight percentage points above the pertinent base interest rate pursuant to § 288 Section 2 BGB. This shall be without prejudice to the claiming of further damages.
6. In the event that upon execution of the contract it should become evident, that our entitlement to compensation is at a risk as a result of the customer's lack of ability to pay, or if the customer should be in default of payment for a substantial amount due or if other circumstances arise that indicate a substantial decline in the customer's standing upon execution of the contract, we shall be entitled to the legally available remedies to refuse service. In such cases, we shall also have the right to make payable immediately any receivables from the ongoing business relationship with the customer that are not yet due at the time.
7. In the event that the customer should rescind from an order placed without due cause, we shall have the right to claim damages for lost profits based on an all-inclusive damage compensation amount of 10 % of the gross order value. This shall be without prejudice to the option to claim higher damages if applicable. The customer shall likewise be entitled to prove that the actual damages incurred translated into a lesser amount.
8. The customer shall have the right to set off receivables from invoices due only if such counter claims have been ordered final by a court of law, are undisputed or have been accepted by us. Moreover, the

customer shall have the right to exercise the right to withhold only to the extent that the customer's counter claim stems from the same contractual relationship.

#### **§ 4 Delivery times and deadlines**

1. The start of the delivery time stipulated by us shall be contingent upon the clarification of all technical issues, the provision of the documents, approvals, releases, etc. to be rendered by the purchaser, if applicable and shall begin at the earliest on the date of the order confirmation. In the event that a down payment has been agreed upon, the delivery time shall not begin until same has been received.
2. Compliance with our delivery time shall be subject to the correct and on time receipt of our own supplies and shall furthermore be contingent upon the on time and proper fulfillment of customer's obligations. This shall be without prejudice to the application of the objection of non-fulfillment of contract.
3. Events of force majeure shall entitle us to delay the shipment for the duration of the impediment and a reasonable start-up time beyond. This shall also apply if such events occur during a default already in progress. The term of force majeure shall also comprise currency and trade policy and other governmental measures, strike, lockout, operational incidents we are not responsible for (e.g. fire, raw material and energy shortages), the obstruction of the distribution channels, delays in import/customs processing, as well as all other circumstances which substantially complicate the provision of goods and services or make same impossible for reasons beyond our control.

In the event that due to one of the above circumstances the execution of the contract should become intolerable for one of the contracting parties, said party shall have the right to rescind from the contract.

4. We shall have the right to perform partial shipments during the delivery time provided such shipments do not result in disadvantages of use.
5. In the event that the customer should be in default of acceptance or culpably breach any other contribution obligations, we shall have the right to demand reimbursement of any damages incurred as a result, including any additional expenditures. This shall be without prejudice to exercising any other remedies.
6. In the event that the prerequisites pursuant to Section 5 apply, the risk of accidental loss or accidental adverse impact on the purchase object shall transfer to the customer at the time the latter enters into default of acceptance or fulfillment of obligations owed.
7. We shall be liable pursuant to statute, if the purchase agreement the claim is based upon is a fixed transaction pursuant to § 286 Section 2 No. 4 BGB or § 376 HGB (German Trade Law). We shall also be liable pursuant to statute if due to a delay in delivery we are responsible for, the customer is entitled to claim that customer's interest in the continued fulfillment of the contract has ceased.
8. Moreover, we shall be liable pursuant to statute, if the delivery delay is the result of an intentional or grossly negligent breach of contract on our part; we shall be responsible for any culpability of our agents or representatives in this case. If the delivery delay was not caused by an intentional breach of contract we are responsible for, our liability for damages shall be limited to the foreseeable, typically incurred damages.
9. We shall furthermore be liable pursuant to statute if the delivery delay we are responsible for is based on the culpable breach of an integral contractual obligation; in this case our liability for damages shall be limited to the foreseeable, typically incurred damages.
10. Incidentally, in the event of delivery delay we shall be liable for each completed week of delay with an all-inclusive delivery delay compensation in the amount of 3 % of the shipment value, however, with a total not to exceed 15 % of the shipment value.
11. This shall be without prejudice to the customer's right to pursue other statutory remedies.

#### **§ 5 Risk Transfer – Packaging Costs**

1. Unless otherwise stipulated in the order confirmation, the agreed upon mode of delivery shall be "ex factory".

2. Goods shall be packaged based on our experience or as requested by the customer at the latter's expense. We shall accept returned packaging. The costs for return transportation or in-house disposal shall not be reimbursed by us.

## **§ 6 Liability for Defects**

1. Deficiency claims of the customer shall be contingent upon the former's proper compliance with all inspection and claim filing obligations pursuant to § 377 HGB. Defect claims shall be filed immediately.
2. In the event of a deficiency in the purchase object, the customer shall, at customer's discretion, have the option to claim remedy in the form of elimination of the defect or in the form of the delivery of a replacement object that is free of defects. In the event of defect elimination, we shall be required to cover all required expenditures, in particular transportation, handling, labor and material costs, provided same are not increased by the fact that the purchase object was moved to a location other than the place of fulfillment.
3. In the event that the remedial action should fail, the customer shall, at customer's discretion, have the right to rescind from the contract or demand reduction.
4. We shall be liable pursuant to statutory requirements if the customer claims compensation for damages is based on intent or gross neglect, including the intent and gross neglect of our representatives or agents. In the event that we are not accused of intentional breach of contract, the liability for damage compensation shall be limited to the foreseeable, typically incurred damages.
5. We shall furthermore be liable pursuant to statute if the defect we are responsible for is based on the culpable breach of an integral contractual obligation; in this case our liability for damages shall be limited to the foreseeable, typically incurred damages.
6. In the event that the customer is entitled to damage compensation in lieu of performance, our liability in conjunction with Section 3 shall be limited to the foreseeable, typically incurred damages.
7. This shall be without prejudice to our liability due to culpable personal injury, loss of life or health damages; the same shall also apply to mandatory liability pursuant to the German Product Liability Act.
8. Unless stipulated otherwise in the above, any liability shall be excluded.
9. The statute of limitations for claims of defects shall be 12 months as of the date of risk transfer.
10. This shall be without prejudice to the statute of limitations in the event of delivery recourse pursuant to §§ 478, 479 BGB; it shall be five years as of the delivery date of the defective object.

## **§ 7 Comprehensive Liability**

1. Any liability for damages beyond the liability stipulated in § 7 shall be excluded, regardless of the legal nature of the claim filed. This shall in particular apply to damage compensation claims resulting from culpability upon execution of the contract, based on other breaches of obligations or based on tortious liability for material damages pursuant to § 823 BGB.
2. The limitation pursuant to Section 1 shall also apply if the customer in lieu of filing claims for reimbursement of damages files for reimbursement of futile expenditures instead of performance.
3. If the liability for damages is limited or excluded for us, this shall also apply to the personal liability for damages of our employees, workers, representatives and agents.

## **§ 8 Retention of Title**

1. We shall retain the title in the purchase object until we have received all payments due for the delivery contract. In the event of customer's contract breaching conduct, in particular in the event of default of payment, we shall have the right to reclaim the purchase object. The seizure of the purchase object by us shall also constitute our rescission from the contract. Upon seizure of the purchase object, we shall have the right to liquidate same, the liquidation revenues shall be deducted from customer's payables minus reasonable liquidation expenses.

2. The customer shall undertake to handle the purchase object with care; in particular, customer shall be required to adequately insure same at its new value against damages resulting from fire, water or theft at customer's expense. In the event that maintenance and inspection work should be required, the customer shall perform same in a timely manner at customer's expense.
3. The customer shall promptly notify us in writing of any attachments or other third party manipulations, so that we can file a lawsuit pursuant to § 771 ZPO (German Code of Civil Procedure). In the event that the third party should be unable to reimburse us for any in and out-of-court costs of such a lawsuit pursuant to § 771 ZPO; the customer shall be liable for the expenses incurred by us.
4. The customer shall have the right to resell the purchase object by way of regular business transactions; however, customer herewith assigns all receivables equal to the amount billed by us (including VAT) customer generates as a result of such resales from customer's clients or third parties; and this shall be done regardless of whether the purchase object was resold as is or upon further processing. The customer shall retain the right to collect such receivables upon assignment. This shall be without prejudice to our right to collect said receivables ourselves. We shall, however, undertake not to collect said receivables as long as the customer meets customer's payment obligations with the income generated, as long as customer is not in default of payment and in particular, as long as no proceedings for settlement or insolvency are filed against the customer or the customer ceases to pay. However, should any of the aforementioned occur, we shall have the right to demand that the customer notifies us of the receivables assigned and the related debtors, and provides us with all information required for collection, hands over the respective documents and notifies the debtors (third parties) of the assignment.
5. Any processing or modification of the purchase object by the customer shall always be performed on our behalf. If the purchase object is processed along with other objects not belonging to us, we shall attain co-ownership in the new object at the ratio of the value of the purchase object (invoiced amount plus VAT) to the other objects integrated at the time of processing. Incidentally, the same provisions as those governing the purchase object delivered under the retention of title shall also apply to the object created as a result of processing.
6. If the purchase object is inseparably blended with other objects that do not belong to us, we shall attain co-ownership in the new object at the ratio of the value of the purchase object (invoiced amount plus VAT) to the other objects integrated at the time of blending. If the blending is done in such manner that the object of the customer makes up the majority of the new object, it shall be deemed agreed upon, that the customer assigns pro-rated co-title to us. The customer shall keep in customer's custody the thus created sole title or co-title on our behalf.
7. As collateral for our receivables from the customer, the latter shall assign to us also the receivables against third parties generated as a result of the connection of the purchase object with land.
8. We shall undertake to release the collateral we are entitled to upon customer's request to the extent that the collectable amount of our collateral exceeds the receivables to be securitized by more than 10 %; we shall have the right to choose the receivables to be released.

## **§ 9 Place of Jurisdiction – Place of Fulfillment**

1. In the event that the customer is a business person, our business domicile shall be the agreed upon place of jurisdiction; however, we shall have the right to also file suit against the customer with the competent court at the latter's place of domicile or residence.
2. The contract shall be governed by the laws of the Federal Republic of Germany. The application of the UN Convention on the International Sale of Goods (CISG) shall be excluded, even if the customer is domiciled abroad.
3. Unless otherwise stipulated in the order confirmation, our business domicile shall be the agreed upon place of fulfillment.