

General terms and conditions of sale, delivery and payment for entrepreneurs

Jordan Reflektoren GmbH & Co. KG · Schneiderstraße 76 · D-40764 Langenfeld

1. General provisions - scope of validity

- 1.1 These General Terms and Condition of Sale, Delivery and Payment for entrepreneurs ("Unternehmer", cf. Sec. 14 German Civil Code (*BGB*)), legal persons under public law and special funds under public law within the meaning of Sec. 310(1) German Civil Code (*BGB*) (hereinafter referred to as "Terms and Conditions of Sale") of Jordan Reflektoren GmbH & Co. KG (hereinafter referred to as "Jordan") shall apply exclusively. Jordan does not acknowledge any conflicting general terms and conditions of sale, or any that deviate from Jordan's General Terms and Conditions of Sale, of the purchaser unless Jordan has expressly consented in writing to their validity. Jordan's Terms and Conditions of Sale shall also apply if it makes delivery to the purchaser without reservation in awareness of any conflicting terms and conditions of the purchaser or any which deviate from its own terms and conditions of sale, including any procurement guidelines of corporations or bodies under public law.
- 1.2 Any agreements concluded between Jordan and the purchaser to execute a contract and any amendments and additions to the contract shall require the written form.
- 1.3 Jordan's Terms and Conditions of Sale shall also apply to any future transactions with the purchaser within the scope of its activity based on ongoing business relations.

2. Offer- offer documentation

- 2.1 Should an order placed with Jordan constitute an offer within the meaning of Sec. 145 German Civil Code (*BGB*), Jordan may accept it within 4 weeks of receipt.
- 2.2 An offer made by Jordan shall be subject to change without notice unless the offer declares anything to the contrary or Jordan has declared anything to the contrary in writing. A contract shall only be concluded if Jordan has confirmed an order in writing or Jordan executes the order.
- 2.3 Jordan reserves rights of ownership and copyrights in illustrations, drawings, calculations and any other documentation. None of these documents may be made available to third parties. The latter shall in particular also apply to any written documents which are marked "confidential". They may only be passed on to third parties by the purchaser upon Jordan's prior express written consent.

3. Prices - terms of payment - costs of tools

- 3.1 In so far as nothing to the contrary is stated in the order confirmation, Jordan's prices shall be "ex works" (Incoterms 2000), exclusive of packaging. The latter shall be invoiced separately. The shipping costs shall therefore be charged to purchaser in addition.
- 3.2 Jordan reserves the right to reasonably amend its prices if manufacturing costs and/or overheads decrease or increase after concluding the agreement, in particular due to any collective wage agreements or changes in the price of materials, and the agreed delivery date is at least four (4) weeks after conclusion of the agreement. Jordan shall provide the purchaser with evidence of such changes in costs upon request.
- 3.3 All prices are understood to be in euros, exclusive of the respective VAT, if any, to be charged on the goods. A deduction of an early payment discount by purchaser shall only be admissible if such has expressly been agreed in advance in writing.
- 3.4 Unless anything to the contrary has been agreed in writing, all invoices shall be payable once the services owed by Jordan have been provided, within 30 days of receipt of the invoice. Should the purchaser fall into arrears with payment, Jordan shall be entitled to charge the statutory arrears interest. Jordan reserves the right to assert any further rights.
- 3.5 The purchaser shall only be entitled to offset payments if its counterclaims have been finally established (*res iudicata*) or are undisputed or have been recognised by Jordan. The purchaser shall only be entitled to exercise a right of retention or right to refuse to perform if the same prerequisites are fulfilled in the case of counterclaims and, in addition, its counterclaim is based on the same contractual relationship. The purchaser shall, however, be entitled to retain an appropriate amount in case of justified claims for defects.
- 3.6 Should Jordan shall be obliged to provide its services in advance, and should it, after conclusion of the agreement, become aware of any circumstances according to which its claim to payment is at risk through the purchaser's lack of ability to pay, Jordan may, at its option, either require a security to be provided within a reasonable period of time or request payment to be made concurrently upon delivery. Should the purchaser not comply with this request, Jordan shall be entitled to withdraw from the contract, subject to asserting further statutory rights.
- 3.7 The purchaser shall only acquire ownership in Jordan's tools if it has expressly been agreed in writing.

4. Delivery time

- 4.1 Unless anything to the contrary has been agreed or anything to the contrary arises from the contractual relationship, the delivery time specified by Jordan shall always be non-binding. The delivery time specified by Jordan shall commence once the necessary issues have been clarified, especially technical issues, and provided that the purchaser has fulfilled its obligations.
- 4.2 Jordan shall only be obliged to fulfil its obligation to deliver if the purchaser has fulfilled its obligations in good time and in proper form.
- 4.3 Any delays in delivery based on Acts of God (*force majeure*) or based on unforeseeable circumstances which are not the fault of Jordan, such as disruptions to business, strikes, lock-outs, lack of means of transport, difficulties in obtaining raw materials, official decrees and measures, or Jordan not being supplied in good time by its own suppliers, shall not be deemed default on the part of Jordan. Any delivery time agreed shall be extended by the duration of the impediment.
- 4.4 Should the purchaser set Jordan a reasonable grace period following its default, it shall, after the fruitless expiry of such period, be entitled to withdraw from the contract. In such a case, the purchaser shall only be entitled to assert any damage claims due to non-fulfilment if the default is

due to intent or gross negligence or culpable infringement of material obligations by Jordan (namely, such obligations upon the fulfilment of which by Jordan the purchaser may rely).

- 4.5 Should the purchaser be in default with acceptance or should it infringe any other obligations to co-operate, Jordan shall be entitled to require compensation for the damage incurred to it, including any additional expenditure incurred. In such a case, the risk of any accidental destruction or coincidental deterioration in the item(s) purchased shall also pass to the purchaser as from the date on which the purchaser is in default with acceptance of the latter.
- 4.6 Jordan shall be entitled to make partial deliveries unless such is contrary to the purchaser's recognisable interests.
- 4.7 The purchaser shall not have any remedies or claims if Jordan delivers additional items or shortfalls in items within the usual commercial scope of +/- 10%.

5. Passing of risk - packaging expenses

- 5.1 Unless anything to the contrary has been agreed in writing, "ex works" (Incoterms 2010) shall be the agreed delivery clause vis-à-vis entrepreneurs and corporations under public law.
- 5.2 No transportation packaging or any other packaging as per the German packaging ordinance shall be taken back. The purchaser shall be obliged to dispose of the packaging at its own expense.
- 5.3 If the Customer expressly requests it, Jordan will have the delivery covered by transport insurance. Any costs incurred thereby are to be borne by the purchaser.

6. Warranty for defects

- 6.1 The warranty claims (claims for defects) of the commercial purchaser assume that the latter inspects the goods without delay following receipt, and notifies Jordan of any visible defects without delay after examining the goods, or any hidden defects without delay following their discovery, giving specific details of the defect in writing (cf. Sec. 377 German Commercial Code (*HGB*)). Should the purchaser not be a merchant, it shall be required to notify Jordan of obvious defects in writing within 14 days of their discovery; otherwise the purchaser shall lose its right to assert such obvious defects.
- 6.2 Warranty claims are excluded in case of a slight deviation from the agreed characteristics of the goods, or if the usability of the goods is only insignificantly impaired.
- 6.3 Should any services or deliveries provided by Jordan be defective, Jordan shall be entitled, at its option, to fulfil its obligations to subsequent performance ("Nacherfüllung") by repairing the goods or by delivering new goods.
- 6.4 Should Jordan be in default with subsequent performance, it shall be entitled to request the purchaser to state to Jordan in writing within a reasonable period of time whether the purchaser continues to require subsequent performance or whether it will assert the other rights that it is entitled to assert. Should the purchaser not respond within a reasonable period of time, Jordan shall, under clause 6.3, be entitled to continue to provide subsequent performance.
- 6.5 Should the purchaser, for reasons that are not Jordan's fault, wrongly complain of the existence of a defect, Jordan shall be entitled to charge the purchaser any reasonable expenses incurred to it for establishing and remedying such defect.
- 6.6 Claims on the part of the purchaser shall be excluded in regard to the expenditure incurred for the purpose of subsequent performance, in particular the costs of transportation, road tolls, labour and the cost of materials, in so far as such expenses are increased because the goods supplied have been brought to a location that is different from the original location, unless such transportation of the goods is in conformance with the contract and Jordan is aware of it. Jordan shall be entitled to pass on to the purchaser any additional expenses arising therefrom.
- 6.7 Any statutory rights of recourse against Jordan on the part of the purchaser arising from the sale of consumer goods (cf. Secs. 478 and 479 German Civil Code (*BGB*)) shall be excluded in regard to the agreements of the purchaser with its customers, which extend beyond the customers' statutory claims for defects.
- 6.8 Any warranty claims on the part of the purchaser shall become statute-barred within 12 months of the passing of risk. The statutory periods of limitation shall apply in regard to claims for defects, however, if the latter statutorily amount to more than 24 months, such as in regard to items usually used for structures (cf. Sec. 438 (1) no. 2b) German Civil Code (*BGB*)), rights of recourse (cf. Sec. 479 (1) German Civil Code) and structures and structural defects (cf. Secs. 634a, 438 (1) no. 2a) German Civil Code), in the case of damage being caused intentionally or as the result of gross negligence and in the case of fraudulent concealment of a defect by Jordan, as well as in the case of claims being asserted by Jordan under Sec. 634 no. 4) and 436 (3) German Civil Code in the case of infringement of material contractual obligations (meaning obligations, fulfilment of which by Jordan the purchaser may rely on). Such periods of limitation shall also apply to consequential damages, in particular under Sec. 437 no. 3 or 634 no. 4 German Civil Code (damages in the case of defects). Should the purchaser require subsequent performance based on a defect, the period of limitation until subsequent performance shall only be suspended, and will not start to run anew.
- 6.9 Before the purchaser can assert any further claims or remedies (withdrawal from the contract, a reduction in the price, damages, reimbursement of expenses), Jordan shall first of all be given the opportunity of subsequent performance within a reasonable period of time, in so far as Jordan has not given any different type of specific guarantee. Should the subsequent performance be unsuccessful in spite of at least two attempts, and the subsequent performance be impossible, and Jordan refuse to carry it out, the purchaser may withdraw from the contract or reduce the remuneration.
- 6.10 In regard to any damage claims due to defects, Clause 8 of these terms and conditions shall apply. The assertion of any further claims and rights

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against Jordan or its vicarious agents due to a defect *in rem* shall be excluded.

7. Intellectual property rights; defects in title

7.1 Unless otherwise agreed, Jordan shall only be obliged to deliver the item(s) free of rights of third parties in the country of the agreed place of delivery.

7.2 In the event of any infringement of intellectual property rights of third parties that is Jordan's fault, Jordan may, at its option, either obtain and grant a sufficient right of use for the agreed or presumed use at its own expense or alter the item delivered in such a way that the intellectual property is not infringed, or replace the item delivered, as long as the respective agreed or presumed use of the item delivered by the purchaser is not materially impaired thereby. Should the latter not be possible or be unreasonable for Jordan, the purchaser shall be entitled to assert the statutory claims and rights. In regard to any damage claims Clause 8 shall apply.

7.3 In addition, Clause 6 of these terms and conditions shall apply *mutatis mutandis*.

8. Claims for compensation for damage and liability for any other reasons

8.1 The assertion of damages resulting from defects in the services owed to the purchaser by Jordan, as well as the assertion of consequential damages, in particular lost profits, based on such defects, shall be excluded unless Jordan has caused such defects intentionally, based on gross negligence or through culpable infringement of material contractual obligations (i.e. obligations, the fulfilment of which by Jordan the purchaser may rely on). This limitation of liability shall also apply to any claims for reimbursement of expenses on the part of the purchaser due to defects. Jordan's liability in the case of negligence shall, however, be limited to the typical contractual, foreseeable damage.

8.2 The assertion of damages for an infringement of any service life guarantee issued by Jordan or any third parties for whom Jordan is liable (cf. Sec. 443 (2) German Civil Code) shall be excluded unless Jordan has culpably caused the infringement.

8.3 Any damage claims and claim for reimbursement of expenses on the part of the purchaser, regardless of on what legal grounds, in particular due to infringement of obligations arising from the contractual relationship and tort, shall be excluded in so far as nothing to the contrary arises from clauses 8.1 and 8.4.

8.4 The statutory provisions in regard to claims arising from Secs. 1 and 4 German Product Liability Act, in cases of wilful intent on the part of Jordan, in the case of injury to life, bodily injury and damage to health and based on taking on a guarantee with respect to the existence of a particular characteristic (a quality guaranty) shall apply.

8.5 The aforementioned provisions under clause 8 shall not alter the statutory burden of proof.

8.6 In so far as Jordan's liability is excluded or limited, the latter shall also apply to the personal liability on the part of all Jordan's employees, agents, representatives and officers.

8.7 In regard to the statute of limitations for any damage claims of the purchaser, clause 6.8 of these terms and conditions shall apply *mutatis mutandis*. In regard to any claims arising from the German Product Liability Act or based on injury to the body, the health or life, the statutory periods of limitation shall apply.

9. Retention of title

9.1 Jordan reserves ownership and title in the items supplied until such time as all payments arising from the business relationship with the purchaser have been received. In the event of purchaser's breach of contract, in particular in the case of arrears of payment, Jordan shall be entitled to take back the item supplied after setting a reasonable deadline. Taking back the item supplied shall not constitute any withdrawal from the contract by Jordan unless Jordan has expressly declared the latter in writing. Seizure (attachment) of the item supplied by Jordan shall always constitute withdrawal from the contract. The withdrawal from the contract shall not exclude the assertion of damage claims against the purchaser. Upon taking back the item, Jordan shall be authorised to sale it. The proceeds of the sale shall be offset against the purchaser's obligations, subject to deduction of reasonable expenses in connection with the utilisation. The provisions of the German Insolvency Regulations (*InsO*) (if applicable) shall remain unaffected.

9.2 The purchaser shall be obliged to handle the items purchased with care, and it shall in particular be obliged to adequately insure it against damage and losses caused by fire, water and theft, at the reinstatement value, at its own expense. If servicing or inspection works are necessary, the purchaser shall be required to carry the latter out at its own expense, in good time.

9.3 In the event of any seizures (attachment) or other interventions by third parties, the purchaser shall be required to inform Jordan in writing without delay. The purchaser shall be liable vis-à-vis Jordan for the judicial and extrajudicial expenses of any action necessary under Sec. 771 German Code on Civil Procedure (*ZPO*) (third party action against execution).

9.4 The purchaser shall be entitled to sell on the items purchased within the course of regular business. However, it already at this point assigns to Jordan any receivables owed to it by its customers or third parties from selling the item on in the amount of the final invoice (including VAT) of the Jordan claim, and regardless of whether the item supplied has been sold on without or following processing.

The purchaser shall continue to be entitled to collect such receivables, even following assignment. Jordan shall, however, be authorised to collect the receivable itself if the purchaser no longer complies with its payment obligations arising from the proceeds realised or falls into arrears with payment, or if an application for institution of insolvency proceedings has been filed or it ceases payments. In such cases, Jordan may require the purchaser to disclose to it the receivables assigned, and

the respective debtors, provide it with any details necessary for collection, hand over to it the associated documentation and notify the debtor(s) (third parties) of the assignment. Jordan shall, however, only be entitled to collect the receivable if nothing to the contrary is contained in the German Insolvency Regulations (*InsO*), if applicable.

9.5 The processing or alteration by the purchaser of the item supplied shall always be carried out by the purchaser on behalf of Jordan. Should the item supplied be processed together with other items, not belonging to Jordan, Jordan shall acquire co-ownership in the new item pro rata to the value of the item supplied (final amount invoiced, including VAT) to the other items processed at the time of processing. In addition, the same shall apply to the item emerging through processing as to the items supplied subject to reservation.

9.6 Should the items supplied by Jordan be incorporated into properties in such a way that they become the property of the landowner upon being installed, clause 9.5 above shall apply accordingly.

9.7 Jordan undertakes to release the securities to which it is entitled, at the purchaser's request if the value of its securities exceeds the receivables to be collateralised by over 20 %. Jordan shall be free to choose the securities to be released.

9.8 Should the item delivered be outside Germany, the following shall apply: Should the item delivered have been supplied prior to payment of any amounts owed by the purchaser arising from the contract, it shall, in so far as permissible under the law pertaining to the laws governing the delivery item, remain Jordan's property until such time as payment is made in full. Should such law not permit retention of ownership, however should it permit Jordan to reserve any other rights in the delivery item, Jordan may exercise any rights of this nature. The purchaser shall be obliged to co-operate in regard to any measures taken by Jordan in order to protect its right of ownership or any alternative right in the delivery item substituting the right of ownership.

10. Place of jurisdiction - place of performance

10.1 Should the purchaser be a merchant, the exclusive place of jurisdiction shall be our principal place of business. Jordan shall, however, be also entitled to sue the purchaser at any other court having jurisdiction over the purchaser's residence or the purchaser's branch.

10.2 Unless anything to the contrary arises from Jordan's order confirmation, the place of performance shall be Jordan's principal place of business.

11. Applicable law, severability clause

11.1 The legal relations between the parties shall be governed exclusively by German law, subject to exclusion of the United Nations Convention on Contracts for the International Sale of Goods (UNCITRAL/*CISG*).

11.2 Should any individual provisions of this agreement or these General Terms and Conditions be invalid, the validity of the remaining provisions shall not be affected thereby.

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