

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF THE TILLMANN GROUP

(on the Internet at: www.tillmann-gruppe.de)

As of: September 2020

1. SCOPE OF APPLICATION, FORM

- (1) These General Terms and Conditions of Sale and Delivery (GT&Cs S&D) shall apply to all sale and supply contracts entered into by companies of the Tillmann Group as the seller/supplier. An overview of the companies belonging to the Tillmann Group is provided in the attached appendix or can be viewed at www.tillmann-gruppe.de at any time. These GT&Cs S&D shall apply only if the contractual partner (hereinafter also "Client") is a business owner (Section 14 *BGB* [German Civil Code]), a legal entity under public law or a public special fund.
- (2) Unless otherwise agreed upon, the GT&Cs S&D as worded at the time of the conclusion of the contract or, in any event, as last communicated to the Client in writing shall, without our having to refer to them again in each individual case, be deemed to be a master agreement also for future contracts of the same type with the Client.
- (3) Our GT&Cs S&D shall apply exclusively. General terms and conditions of business or other deviating terms and conditions of the Client shall not apply, even if we do not expressly object to them, or even if we refer to a letter containing the terms and conditions of business of the Client or a third party, unless these have been expressly consented to in writing in each individual case. However, such acceptance shall then invariably apply only to the consenting Tillmann Group company.
- (4) These provisions shall apply in addition to any and all other agreements additionally entered into by the parties, e.g. master supply contracts, quality assurance agreements. In any event, individual agreements made with the Client in the individual case concerned shall take precedence over these GT&Cs S&D. A written contract or our written confirmation shall be decisive for the content of such agreements, unless proven otherwise.
- (5) Legally relevant declarations and notifications by the contracting parties in respect of the contract (e.g. any setting of time limits, declarations of acceptance, approvals) shall be submitted in writing, i.e. in written or text form (e.g. letter, email, telefax). Statutory requirements of form and other proof, particularly in the case of doubts concerning the legitimacy of the party making the declaration, shall remain unaffected.

2. OFFERS, CONCLUSION OF A CONTRACT

- (1) Our offers shall be subject to change without notice and be non-binding, unless otherwise expressly indicated. This shall apply even if we have made available drawings, illustrations, dimensions and other performance data in respect of which we reserve rights of title and copyrights.
- (2) Verbal assurances given by our employees prior to the conclusion of this contract shall be non-binding. Verbal agreements or assurances, in particular descriptions of qualities, technical data, plans, up-to-date drawings, shall only be effective if confirmed by us in writing.
- (3) The Client's order for the goods shall be deemed to be a binding offer of a contract. Unless otherwise ensues from the order, we shall be entitled to accept the offer once the details of the order have been clarified, but at least within 3 weeks from the time when we receive the order.

3. PRODUCT APPROVAL

- (1) The products ordered shall invariably be produced in accordance with the Client's requirements. These requirements (agreement on qualities, technical data, plans, up-to-date drawings etc.) must be expressly agreed upon as such in writing and be approved by the Client. Where the approval is not effected exclusively in writing, the approval shall take place on site at the respective production plant.
- (2) Unless otherwise expressly agreed upon, the approval shall be effected no later than within one week of receipt of a corresponding request. Unless change requests are submitted to us in writing within the one-week time limit, the approval shall be deemed given. However, we shall remain free to await the Client's formal approval before we produce the products ordered. In this case, we shall, without delay, point out to the Client this option as well as possible effects on the scheduled delivery periods in accordance with Section 4 (3).
- (3) Approval shall serve as confirmation of the qualities of the product. If the further deliveries are made in conformity with the product approval, the contractual obligations relating to the product features shall be deemed fulfilled.
- (4) Changes to the delivery item in terms of engineering and design following product approval may be demanded by the Client only if we can be reasonably expected to accept such changes, and their effects, in particular any increase or reduction in costs, as well as delivery dates have been mutually agreed upon in writing beforehand.

4. SCHEDULED DELIVERY PERIODS AND DEFAULT IN DELIVERY

- (1) Scheduled delivery dates and periods shall be binding only after we have confirmed them in writing. We may also bring about such confirmation by unilaterally specifying the delivery dates and periods when accepting the order. Unless the Client objects thereto without delay, these shall be deemed agreed upon.

- (2) The Client must have provided us in due time with all information necessary for performing the contract and made all applicable down payments as agreed upon. Incoming payments shall be deemed made once they have been credited to the bank account.
- (3) Scheduled delivery periods shall each begin on the date of acknowledgement of the order and shall be extended accordingly in the event of any subsequent placement of additional orders, changes to the order or late approval. Agreed delivery dates shall, in the absence of a direct special agreement, relate to provision of the goods for hand-over or for shipment ex works or ex warehouse.
- (4) Where we are unable to meet binding delivery periods for reasons not attributable to us (non-availability), we shall inform the Client thereof without delay and, at the same time, communicate the expected new delivery period. If the service is also unavailable within the new delivery period, we shall be entitled to wholly or partly rescind the contract; any counter-performance already rendered by the Client shall be refunded by us without delay. In particular, failure of our supplier to supply us in due time shall be deemed to be a case of non-availability of the service in this sense, provided that we have entered into a congruent covering transaction, neither we nor our supplier is at fault, and we are under no obligation to make a procurement in the individual case concerned.
- (5) A prerequisite for default in delivery is the issuance of a reminder by the Client.

5. DELIVERY, PASSAGE OF RISK, ACCEPTANCE, DEFAULT IN ACCEPTANCE

- (1) As a rule and unless otherwise agreed upon, delivery shall, on the basis of the Incoterms 2020, take place ex warehouse/works that is also the place of performance for the delivery and any supplementary performance. At the Client's request and expense, the goods shall be shipped to a different destination (sale by dispatch). In this case, we shall, unless otherwise specified by the Client, be entitled to decide ourselves upon the method of shipment (in particular the transport company, the shipment route and the packaging).
- (2) Unless packaging guidelines have been laid down, the products shall be packaged in such a way that safe transportation is possible. There shall be no additional protection against corrosion. The cost of packaging, packaging types or packaging changes specially requested by the Client shall be borne by the Client.
- (3) The risk of accidental destruction and accidental deterioration of the goods shall pass to the Client no later than at the time of hand-over. If we hand over the goods to the forwarder or carrier as agreed upon, or the Client defaults on acceptance, this shall be deemed to be equivalent to hand-over or acceptance. Where acceptance has been agreed upon, acceptance shall be decisive for the passage of risk.
- (4) Insofar as the goods provided are not accepted by the agreed delivery date or within the delivery period, they shall be deemed accepted at the end of the fifth business day after the delivery date or delivery period and be invoiced. Storage costs and other extra expenditure shall be borne by the Client.

If the Client defaults on acceptance or breaches other duties to cooperate, we shall be entitled to invoice for the loss incurred upon us, including any extra expenditure. Compensation shall amount to 0.5 % of the purchase price per calendar week. In the event of definitive non-acceptance, the flat rate shall be increased to 10 %. The Client shall remain permitted to prove that no loss at all, or only a loss significantly lower than the above flat rate, has been incurred upon us. The right to prove a higher loss or to assert our statutory claims shall remain unaffected hereby.

- (5) We shall be entitled to make sub-deliveries insofar as the Client can be reasonably expected to accept these. These shall be separately invoiced in each case.
- (6) In the case of call-off orders, the Client shall, unless otherwise agreed upon, request delivery of the goods in batches customary in this sector within two weeks of our notification of readiness for hand-over or shipment. If such delivery request exceeds the agreed order quantity, we shall be entitled to deliver only this order quantity or to charge the market price for the extra quantity. If the Client omits to allot the delivery requests, we shall be entitled to allot the delivery requests ourselves in accordance with Section 315 *BGB*. Call-off orders shall, unless a term has been agreed upon, have a maximum term of 12 months. The remaining stock may be dispatched at the end of the term.

6. PRICES AND PAYMENT TERMS

- (1) Unless otherwise agreed upon in the individual case concerned, our respective ex-warehouse prices current at the time of the conclusion of the contract, plus value-added tax at the statutory rate, shall apply. In the absence of a provision to the contrary, these prices shall - apart from the alloy surcharge separately indicated - be fixed prices.
- (2) We shall be entitled to adjust the agreed prices if the period between the acknowledgement of the order and the delivery of the goods exceeds six weeks, and price increases arise with regard to the cost of materials and/or labour costs and/or other costs. We shall inform the Client of the price adjustment.
- (3) In the case of a sale by dispatch, the Client shall bear the ex-warehouse transport costs and the costs of any desired transport insurance as well as any customs duties, charges, taxes and other public levies.
- (4) Invoiced amounts shall be due, without any deductions, within 30 days of issuance of the invoice and delivery. The Client shall enter into default when the above time limit for payment expires. In relation to merchants, our claim to commercial interest on overdue payments (Section 353 *HGB* [German Commercial Code]) shall remain unaffected.
- (5) If the Client defaults on payment or exceeds the credit limit, we shall have the right to retain the consignment of goods until all claims are settled, or the credit limit is fallen below, taking account of the order value.
- (6) If, after the conclusion of the contract, we become aware of a risk that the Client will be unable to pay, we shall be entitled to carry out outstanding deliveries only on an advance-payment basis or in exchange for the provision of security. If these services have not been rendered by the time when a reasonable time limit expires, we may discontinue the deliveries or wholly or partly rescind some or all contracts. The assertion of further rights

shall remain unaffected.

- (7) The assignment of claims arising from this contractual relationship shall be permissible only with our prior written consent. There shall be no entitlement to the granting of such consent. Section 354a *HGB* shall remain unaffected.

7. RETENTION OF TITLE

- (1) Until all our present and future claims have been fully paid, regardless of their legal basis and the point in time when they arose, we shall retain title to the goods delivered (ordinary, prolonged or extended retention of title).
- (2) The goods under retention of title shall not be pledged to third parties, or assigned as security, before the claims secured have been fully paid. The Client shall notify us in writing without delay if an application for the institution of insolvency proceedings is filed, or third parties seize (e.g. attach) the goods belonging to us.
- (3) If the Client acts in breach of the contract, particularly by not paying the purchase price due, we shall be entitled, subject to the statutory provisions, to rescind the contract and/or reclaim the goods on the basis of the retention of title. Such reclaiming shall not simultaneously constitute a declaration of rescission. On the contrary, we shall be entitled to merely reclaim the goods and reserve a right of rescission.
- (4) The Client shall be authorised, until this authorisation is revoked, to on-sell and/or process in the ordinary course of business the goods under retention of title. In such case, the following provisions shall additionally apply:
 - (a) The retention of title shall extend to the products, at their full value, resulting from any processing, mixing or combining of our goods; in this respect, we shall be deemed to be the manufacturer. If, in the event of processing, mixing or combining with third-party goods, the right of title of these third parties remains in effect, we shall acquire joint title in the ratio of the invoiced values of the goods processed, mixed or combined. In all other respects, the resulting product shall be subject to the same terms as those applicable to the goods delivered under retention of title.
 - (b) The Client assigns to us in advance as security, in total or in the sum of any co-ownership share in accordance with the above subsection, the claims arising against third parties from any on-selling of the goods or products. We accept this assignment.

8. DEFECT-RELATED CLAIMS OF THE CLIENT

- (1) Unless otherwise stipulated below, the Client's rights in the event of defects in quality or title shall be governed by the statutory provisions. The special statutory provisions invariably remain unaffected in cases where unprocessed goods are ultimately delivered to a consumer, even if the consumer further processes the goods (supplier recourse). Claims arising from supplier recourse shall be ruled out if the defective goods have been further

processed by the Client or another business owner.

- (2) Above all, our liability for defects shall be based on the agreements entered into concerning the qualities of the goods as well as the approvals.
- (3) Deviations in quantity or weight that are customary in the trade and are within a range of up to 10 % of the order quantity shall be permissible and shall, subject to proof of the deviation, entitle the Client exclusively to a pro-rata reduction in the purchase price.
- (4) As a rule, we shall not be liable for defects that the buyer was aware of, or was unaware of due to gross negligence, at the time of the conclusion of the contract (Section 434 (1), sentences 2 and 3 *BGB*). A prerequisite for the Client's defect-related claims is that the Client must have complied with its statutory duties to inspect the goods and give notification of any defects (Sections 377, 381 *HGB*). In the case of goods intended for installation or for other further processing, an inspection must invariably be carried out immediately prior to the processing. If a defect becomes apparent in the course of the delivery or the inspection or at any other subsequent point in time, we must be notified thereof in writing without delay. In any event, obvious defects must be reported without delay, and defects not detectable during the inspection must be reported in writing within 5 business days of discovery. If the Client fails to properly inspect the goods / give notification of defects, our liability for the defect not reported in due time or not properly reported shall be ruled out in accordance with the statutory provisions.
- (5) We reserve the right to choose the method of defect elimination.
- (6) We shall have the right to inspect and test products complained of. The Client shall give us the necessary time for doing so and provide us with access to the products. We may also demand that the products be returned at our expense.

9. OTHER LIABILITY

- (1) Unless otherwise ensues from these GT&Cs S&D, including the following provisions, we shall be liable in accordance with the statutory provisions in the event of any breach of contractual or extra-contractual duties.
- (2) We shall - regardless of the legal basis - be liable for damages within the scope of liability for fault in cases of wrongful intent and gross negligence. In cases of ordinary negligence, we shall, subject to statutory limitations of liability (e.g. exercise of the same diligence as in our own affairs; immaterial breach of duty), be liable only:
 - (a) for loss arising from mortal injury, physical harm or health damage,
 - (b) for loss arising from a breach of a material contractual duty (an obligation where its fulfilment is a prerequisite for the proper implementation of the contract, and where the contractual partner normally expects, and may expect, compliance); in this case, our liability shall however be limited to compensation for the foreseeable loss typically occurring, but the maximum amount shall not exceed the sum of the purchase price.
- (3) The limitations of liability ensuing from (2) shall also apply in cases of breach of duty by, or for the benefit of, persons whose fault we are responsible for under statutory provisions. These limitations shall not apply insofar as we have fraudulently concealed a defect or have

provided a guarantee for the qualities of the goods; nor shall they apply to claims of the Client under the *Produkthaftungsgesetz* [Product Liability Act].

- (4) The Client may rescind or terminate the contract on account of a breach of duty unrelated to a defect only if we are responsible for the breach of duty. Any free right of termination on the part of the Client (particularly under Sections 650, 648 *BGB*) is ruled out. In all other respects, the statutory prerequisites and legal consequences shall apply.

10. MAINTENANCE OF SECRECY, COPYRIGHTS AND PROPERTY RIGHTS

- (1) The Client undertakes to treat as a trade secret all non-obvious, commercial and technical details that come to its knowledge in the course of the business relationship. Order-specific data, drawings, models, samples and similar items shall not be made available or accessible to unauthorised third parties. Reproduction of such items shall be permissible only within the scope of the operational requirements and the provisions of copyright law.
- (2) All copyrights, property rights and know-how in connection with the manufacture of the products shall remain exclusively with the Tillmann Group companies. The Client shall not receive a licence or rights of use in this connection, neither on a fee basis nor on a non-fee basis and neither on a limited basis nor on a non-limited basis.
- (3) We shall not be under any obligation to check whether property rights are breached as a result of specifications of qualities, samples or the like provided by the Client in advance. If it becomes apparent that these cause third-party rights to be infringed, the Client shall be liable for the third parties' claims.
- (4) If a third party invoking property rights to which it is entitled prohibits us from producing or delivering, we shall, insofar as we are not responsible for the infringement of rights, be entitled to discontinue the production or delivery until the legal position has been clarified. If the delay makes it unreasonable to expect the order to be continued, we shall be entitled to rescission.
- (5) The Client shall, without delay, inform us of third-party property right claims concerning the products delivered and leave the legal defence to us at its expense.

11. STATUTE OF LIMITATION

- (1) Contrary to Section 438 (1), sentence 3 *BGB*, the general limitation period for claims arising from defects in quality or title is one year from the time of delivery or the passage of risk.
- (2) If, however, the goods are a structure or an item that has been used for a structure commensurately with its customary use and has caused this structure to be defective (building material), the limitation period shall, in accordance with the statutory provision, be 5 years from delivery (Section 438 (1), no. 2 *BGB*). Other statutory special provisions relating to limitation (in particular Section 438 (1), no. 1, (3), Sections 444, 445b *BGB*) shall also remain unaffected.

- (3) The above limitation periods under sales law shall also apply to contractual and extra-contractual damage claims of the buyer that are based on a defect in the goods, unless application of the regular statute of limitation (Sections 195, 199 *BGB*) would lead to a shorter limitation period in the individual case concerned. However, damage claims of the buyer under Section 9 (2), sentences 1 and 2 (a) as well as under the *Produkthaftungsgesetz* shall become statute-barred exclusively in accordance with the statutory limitation periods.

12. FINAL PROVISIONS

- (1) Choice of law

These GT&Cs S&D and the contractual relationship between us and the contractual partner shall be governed by the laws of the Federal Republic of Germany, excluding UN sales law.

- (2) Place of jurisdiction

If the contractual partner is a merchant as defined by the *Handelsgesetzbuch* [German Commercial Code], a legal entity under public law or a special fund under public law, the place where our respective registered office is situated shall - also internationally - be the exclusive place of jurisdiction for all disputes ensuing from the contractual relationship. However, we shall also invariably be entitled to file a lawsuit at the place of performance of the delivery obligation in accordance with these GT&Cs S&D or any overriding individual agreement or at the Client's place of general jurisdiction. Overriding statutory provisions, in particular those relating to exclusive jurisdiction, shall remain unaffected.

- (3) Severability, amendments and supplements

- (a) If any provision in these GT&Cs S&D is or becomes wholly or partly void, ineffective or inoperable, or an intrinsically essential provision is lacking, this shall not affect the effectiveness or operability of any of the other remaining provisions of these GT&Cs S&D. Such void, ineffective or inoperable provision shall be deemed replaced, or such omission filled, with a legally permissible provision that reflects as closely as possible what the parties intended or would have agreed upon in accordance with the spirit and purpose of these GT&Cs S&D, had they been aware of the provision or omission. If a provision is void due to a measure of performance or time (time limit or set date) specified therein, the provision shall be deemed agreed upon with a legally permissible measure that comes closest to the original measure.
- (b) Amendments and supplements to these GT&Cs S&D must be in writing. This shall also apply to any waiver of this written form requirement. Section 127 (2) *BGB* is inapplicable.

Annex: Companies of the Tillmann Group

Tillmann Profil GmbH

Zum Dümpel 14

59846 Sundern

Bertrams Leichlingen GmbH

Hochstraße 29

42799 Leichlingen

Kirchhoff & Lehr GmbH

Am Gewerbegebiet 17

01477 Arnsdorf

Tillmann Werkzeugbau Profiltechnik GmbH

Märkische Straße 65

59757 Arnsberg