



## **General Terms and Conditions of Payment and Delivery (GTCPD) of Saréco Deutschland GmbH**

### **I. General**

1. All of our deliveries and services - including in the future - are carried out exclusively on the basis of these terms and conditions of payment and delivery. This shall also apply to all future business of this type, even if these conditions have not been specifically referred to in the individual case in future.
2. We hereby expressly exclude conflicting terms and conditions of our contractual partner (hereinafter: buyers or purchasers). They shall not apply to us, even if we do not contradict them again upon conclusion of contract.

### **II. Offers, prices**

1. Our offers are non-binding. Orders shall only be binding upon us where they have been confirmed by us or where we have discharged them by delivering the goods.
2. Unless otherwise agreed in writing, our prices are ex works, excluding packaging. Freight and all applicable taxes (e.g. VAT) and duties. Taxes and duties shall be charged at the rates valid at the time the invoice is issued.
3. If delivery periods of more than 4 months have been agreed, we shall be entitled to pass on increases in costs for material, manufacture, assembly, personnel, delivery or similar that have occurred in the meantime to the buyer to the corresponding extent.

### **III. Terms of payment**

1. Our invoices are due immediately.
2. Discount and target agreements only apply to the confirmed order and do not constitute a postponement of the due date. The contractual partner is only entitled to deduct a cash discount if the buyer is not in arrears with us with the fulfilment of other payment claims at the time of receipt of payment.
3. In case of payment default, the buyer shall owe default interest in the amount of the statutory default interest rate.
4. If the buyer defaults in full or in part, regardless of the legal reason, or if it has stopped making payments, all of our claims, even if we have accepted bills of exchange to settle them, shall be due immediately, even in cases in which longer payment periods have been granted.
5. Should the buyer's financial situation deteriorate significantly, and should such deterioration jeopardize our claim from the respective legal relationship, we shall be entitled to demand advance payment or appropriate security. This also applies if we become aware of such prior circumstances after conclusion of the contract. If the advance payment or security deposit is not made within the grace period despite a reminder and a reasonable grace period, we shall be entitled to withdraw from the contract and to demand compensation, in particular compensation in lieu of performance.

### **IV. Offsetting and right of retention**

Offsetting of counterclaims or the assertion of a right of retention by the buyer is excluded, unless the offsetting or right of retention of the buyer are based on the same legal relationship, Section 320 BGB, or the claims are undisputed or legally established.

### **V. Delivery, deadlines and dates as well as acceptance**

1. The specified delivery times are only approximate. Fixed-date transactions must be expressly agreed.
2. Our deliveries are made ex works, EXW (our factory in Ibbenbüren), Incoterm 2020. In any case, transport shall be carried out at the buyer's expense and risk. The buyer shall also bear the risk of transportation, even if we do not deliver in accordance with sentence 1, e.g. if we deliver free of charge as an exception. Transport insurance is only taken out at the request of the buyer and only at the buyer's expense.
3. If we assume the organization of the shipment, we shall be entitled to determine the shipping route and means as well as the forwarder and carrier, unless otherwise agreed.

4. Delivery periods concerning us shall begin at the earliest with the date of our order confirmation; they shall be extended by the period by which the buyer is in arrears with us in respect to this or other contracts. All other claims against the buyer shall remain unaffected. The above shall apply accordingly to delivery dates.
5. Timely and correct self-delivery shall be reserved. We shall not be responsible for delayed or omitted deliveries caused by our upstream suppliers unless we are responsible therefor. We shall also immediately inform the buyer of such obstacles.
6. We shall be entitled to make reasonable partial deliveries. Partial deliveries shall be invoiced at the value of the partial delivery and shall be paid by the buyer in accordance with Clause III.
7. In the event of delays in delivery due to force majeure, riots, strikes, lockouts, depletion of raw materials or operational disruptions for which we are not responsible, including in the case of our suppliers, the delivery time shall be extended at least by the period until the disruption is remedied, insofar as the disruption affects the manufacture or delivery of the delivery item. We shall inform the buyer of the beginning and end of such hindrances without delay.

Both the buyer and ourselves also have the right, in the event of permanent operational disruptions caused by force majeure, riot, strike, lockout, raw material depletion or operational interruptions for which we are not responsible, or in the event that we are not supplied by our upstream suppliers through no fault of our own, to the exclusion of claims for compensation of either party, to withdraw from the contract in full or in part. Any services rendered must be reimbursed immediately in the event of withdrawal. The contractual partner who intends to withdraw from the contract in accordance with the above provisions must announce this with a notice period of two weeks. Permanent disruptions in the above sense can be assumed if the disruption lasts longer than five weeks.

8. Clause VIII.2 applies to claims for compensation by the buyer due to our delay in delivery.
9. Insofar as an acceptance has to take place, our deliveries and services shall be deemed accepted, without prejudice to other (fictitious) acceptance, if and when
  - a) the delivery (and, if owed: also) the installation is complete,
  - b) we have notified the buyer of completion according lit. a, and asked it to carry out acceptance,
  - c) twelve working days have passed since delivery or installation or the buyer has started to use our deliveries and/or services (e.g. put into operation or further processed a delivery) and, in this case, six working days have passed since delivery or installation and
  - d) the buyer has not carried out acceptance of the goods within this period for a reason other than a defect that has been reported to us and which makes the delivery and/or service impossible to use or significantly impairs it.

## **VI. Retention of title**

1. If we have already received full payment when an item is dispatched, ownership is transferred to the buyer when the item is handed over to the buyer, unless otherwise agreed in individual cases.
2. If we deliver in advance of payment – that is, the delivery of the goods takes place at a time when we have not yet received in full or in part the remuneration owed for the respective goods (goods subject to retention of title) – the following shall also apply:
  - a) We shall retain title to all goods subject to retention of title delivered by us up until their purchase price has been paid and additionally, until all of our claims from the business relationship, including contracts concluded subsequently and for which legal reason whatsoever – including all contingent liabilities (in particular cheques, bills of exchange) – are paid.
  - b) In the event that the retention of title only becomes valid through entry in certain registers and/or in compliance with special other legal conditions, the customer undertakes to create these conditions. All resulting costs shall be borne by the purchaser.
  - c) The buyer shall be entitled to further process and resell the goods subject to retention of title in the ordinary course of business, as long as it is not in default with the fulfilment of its obligations to us or ceases to make payments. The following applies specifically:
    - i. Machining or transformation of goods subject to retention of title is effected by us as producers in accordance with Section 950 BGB (German Civil Code) without obligation on our part. The buyer

does not acquire ownership of the new item through processing or transformation of the goods subject to retention of title.

If the goods subject to retention of title are processed, mixed, blended or combined with other items, we shall acquire joint ownership of the new item in a proportion that corresponds to the ratio of the invoice value of our goods subject to retention of title to the total value.

The provisions applicable to the goods subject to retention of title apply accordingly to the joint ownership shares arising in accordance with the above provisions.

- ii. The buyer hereby assigns the claims from the resale or other sales transactions, such as work supply contracts with all ancillary rights to us, proportionately to the extent that the goods subject to retention of title have been processed, mixed or blended and we have obtained joint ownership of them in the amount of our invoice value, or if the goods are permanently installed.  
Insofar as the goods subject to retention of title are processed, mixed, blended or permanently installed, we are entitled to a first-rate fraction of the respective claim from the resale in relation to the invoice value of our goods subject to retention of title to the invoice value of the item.  
If the goods subject to retention of title are sold by the buyer together with other goods not supplied by us, the customer hereby assigns a first-rate share of the claim from the resale to us in the amount of the invoice value of our goods subject to retention of title.  
If the buyer has sold this claim within the scope of real factoring, it hereby assigns the lieu of claim to us.  
In the event the buyer places the claim from resale in a current account relationship with its customer, the buyer hereby assigns its claims from the current account relationship to us in the amount of the invoice value of the goods subject to retention of title.  
The assignment includes not only payment claims, but also claims for surrender, in particular in the event that the buyer also sells under reservation of title.
  - iii. We hereby accept the above assignments.
  - iv. The buyer is entitled to collect claims assigned to us until we withdraw our consent. The direct debit authorization expires upon revocation, which shall occur if the buyer defaults on payment or if the buyer suspends payment. The same shall apply in the event of a significant deterioration in the financial circumstances of the purchaser that endanger our claim. In these cases, we are authorized by the buyer to inform its customers of the assignment and to collect the claim ourselves.
  - v. Upon request, the buyer is obligated to submit to us a precise list of the claims due to the purchaser with the name and address of the customer, the amount of the individual claims, invoice date etc. and to provide us with all the information and documents necessary for the assertion of the assigned claims and to permit the review of this information.
  - vi. Amounts received by the buyer from assigned claims shall be kept separately for us until the transfer.
- d) Pledges or the granting of security interests in the goods subject to retention of title or the assigned claims are not permitted. We must be informed immediately of any pledge, with indication of the pledge creditor.
  - e) If the value of the security to which we are entitled exceeds our total claim against the buyer by more than 10%, we are obligated to release security at the buyer's request.
  - f) In the event of late payment or suspension of payment by the buyer, we shall be entitled to take back the goods subject to retention of title, specifically according to the additional legal requirements. We can satisfy our claims by selling the reclaimed goods subject to retention of title in the open market.
  - g) The buyer shall store the goods subject to retention of title for us free of charge. It must insure it against the customary risks, such as fire, theft and water, to the customary extent. The buyer hereby assigns to us its claims for compensation arisen from damages of the above nature, up to the amount of our claims, to which it is entitled against insurance companies or other parties obligated to provide compensation. We hereby accept this assignment.

### **VII. Quality and dimensions, over-/under delivery**

1. Quality and dimensions are determined according to DIN standards, unless foreign standards have been agreed in writing. If no DIN standards exist, the corresponding Euro standards apply, and in the absence of such, if necessary, the commercial custom. The use of the standards only serves to describe the goods and does not constitute any warranty of properties or guarantees.
2. Fixed dimensions and separating cuts are only delivered within the tolerances permitted according to DIN standards.
3. In the case of fixed-dimension and cut-to-size deliveries, the number of items ordered can be over- or under-delivered by 10%.

### **VIII. Claims for defects/compensation**

1. Insofar as we are obligated to carry out subsequent performance, we shall, at our discretion, carry this out by rectification or subsequent delivery. The place of supplementary performance is our registered office. Section 377 HGB (German Commercial Code) remains unaffected.

Replaced parts become our property. In the event of the removal of a defect, we shall be obligated to bear all the costs which are required for the purpose of the removal of the defect, in particular transport costs, traveling expenses, labour and material costs provided that said costs are not increased by the fact that the object of sale was carried to a place other than the contractually required place. The buyer's rights in accordance with § 439 III BGB remain unaffected.

Small, technically unavoidable deviations in quality, colour, width, weight or design do not constitute defects. Furthermore, the buyer is entitled to statutory rights of withdrawal from the contract and reduction of payment, provided that the statutory requirements in this respect are met. Claims for damages exist only in accordance with the following provisions.

2. In the event of culpable violation of an essential contractual obligation (so-called cardinal obligation), we are liable for damages if the legal requirements are met but limited in amount to the typically occurring and foreseeable damage, unless otherwise regulated below. Cardinal obligations are those obligations, the fulfilment of which is essential to the proper execution of the contract and on the observance of which the buyer can regularly rely, and furthermore, those which, if violated, jeopardize the achievement of the contract purpose.

The buyer is entitled to unlimited claims for damages against us in accordance with the statutory provisions if these are caused by us, one of our legal representatives or vicarious agents and are based on

- a. culpable injury to life, limb or health, or on
- b. an intentional or grossly negligent breach of duty or
- c. mandatory legal provisions on liability (e.g. the Product Liability Act or data protection law) or
- d. the violation of an obligation from an assumed procurement risk or an assumed guarantee.

Further compensation claims against us, our legal representatives and vicarious agents are excluded, whatever their legal ground.

The legal burden of proof remains.

### **IX. Limitation of claims for defects**

1. The buyer's claims for material defects lapse after one year, unless,
  - a) the goods delivered by us are normally used in a building pursuant to their usual use and said goods caused the defect to the building, or
  - b) the defect was fraudulently concealed or is the result of an intentional breach of duty by us or our legal representatives or performing agents, or
  - c) these are claims that are based on a guarantee or procurement risk that we assume, or
  - d) it concerns claims for damages or
  - e) it concerns claims according to Section 445a BGB.

In cases a) to d), the statutory limitation periods apply.

In case e), the statutory limitation periods also apply if the last contract in the supply chain is a consumer goods purchase within the meaning of Section 474 BGB (in particular: the last buyer is a consumer who buys an item from an entrepreneur); otherwise (without the participation of a consumer as the last buyer), the limitation period is 14 months.

2. The statutory provisions on the suspension, interruption of expiry and the commencement and recommencement of limitation periods are not affected.
3. § 8 a) to c) apply to legal defects accordingly.

**X. Place of performance, place of jurisdiction and applicable law**

1. The place of performance is our registered office.
2. The place of jurisdiction is Ibbenbüren to the extent that the local court (Amtsgericht) is competent and Münster to the extent that the district court (Landgericht) is competent, if our contractual partner is a merchant or a legal person under public law. We reserve the right to take action against our contractual partner at its general place of jurisdiction if it does not have a domicile in Germany.
3. The law of the Federal Republic of Germany shall apply to all legal relationships between us and the buyer, to the exclusion of those legal norms that refer to foreign legal systems and to the exclusion of the provisions of the Vienna UN Convention on Contracts for the International Sale of Goods (CISG).

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