

General terms and conditions of business of ProLock Werkzeugsysteme

Art. 1

Conclusion and subject of the agreement

The general terms and conditions of business and delivery below shall apply exclusively – even if no reference is made to them in the individual case – to all our offers, deliveries, services and work performed, and in particular also to future business transactions. Any deviating provisions agreed shall require to be confirmed by us in writing in order to be valid. The aforementioned clause requiring the written form may only be dispensed with in writing. Deviating General Terms and Conditions of Business of the Customer shall not be applicable, even if we do not expressly contradict them in the individual case. Our Conditions of Sale shall only apply to companies within the meaning of Sec. 310 (1) German Civil Code (BGB).

Art. 2

Offers and conclusion of the agreement

(1) All our offers and cost estimates are non-binding and subject to change without notice. For the conclusion of the agreement, our written order confirmation shall be pertinent. Measurements, weights, figures and drawings, or any other details, shall only be binding, in regard to the execution of the order, if the latter have explicitly been confirmed in writing. The technical data pertaining to our own products, as well as those to be found in our commercial range, shall apply subject to change.

(2) For the scope of the order, solely our written order confirmation shall be pertinent. Any subsequent additions, amendments or other subsidiary agreements shall require to be confirmed by us in writing in order to be valid.

(3) Unless they are marked to the contrary, all measurements will be given in millimetres. Tolerances shall be in accordance with the applicable DIN standards, or otherwise ProLock works standards.

Art. 3 Prices

(1) Prices agreed are in euros, exclusive of VAT, packaging, freight, postage and insurance. Value Added Tax, at the respective statutory rate, will be added to the prices.

(2) The numbers of items, quantities and weights ascertained by us shall be pertinent for calculating the net prices, unless the recipient immediately contests the latter. The unit prices shall apply to the standard execution types specified. When repeat orders are placed for specially-designed goods, we reserve the right to recalculate the price each time.

(3) We charge for tool sets consisting of combinations in accordance with the price lists for individual tools. For combinations of tools that are not included in the price list, a surcharge in the amount of our general rates is applied for adapting them in line with the intended function.

(4) The net value of goods invoiced by us shall be pertinent for calculating shipping and packing

costs. Domestic orders: For orders under EUR 300.00 we charge for shipping and packing depending on the weight. As from a net value of goods of EUR 300.00 we deliver free of any shipping and packing costs up to a weight of 30 kg. Any additional costs incurred for express delivery are to be borne by the customer, as well as any special forms of packaging and despatch in line with the customer's wishes.

Orders from abroad: Packing and shipping costs are charged ex works.

(5) We shall be entitled to charge the customer the usual costs of a creditworthiness check.

(6) Should any costs relating to the order change considerably after concluding the transaction, the contracting parties shall be obliged to agree upon a price adjustment. A change in costs shall be deemed considerable if the respective charges increase or decrease by over 20%. Should no agreement be reached, we shall be entitled to withdraw from the contract within two weeks of the negotiations failing.

Art. 4 Terms of payment

(1) Unless anything to the contrary has been agreed, the amount invoiced shall be due for payment within 10 days of invoicing with a 2% cash discount or at the latest within 30 days of invoicing without any deduction. Work contracted out (e.g. repairs, services) shall be due for payment immediately upon invoicing, without any deduction. The aforementioned payment deadlines shall be deemed to have been complied only to the extent that we are able to access and use the funds within these deadlines. Payments must be made to our paying agent without any additional costs for us. Payment in cash shall be equivalent to payment to one of our business accounts once we are able to access and use the funds.

(2) Offsetting shall only be permissible with undisputed claims or any which have been established with legal finality. The customer shall have no right of retention unless it is based on the same contractual relationship.

(3) We shall be entitled to request payments to account for services provided.

(4) In the case of first orders, we shall only deliver in return for advance payment or cash on delivery.

Art. 5 Delivery

(1) Unless anything to the contrary has explicitly been agreed, we shall deliver ex works or distribution centre.

(2) Said delivery dates shall only be deemed non-binding orientational data, unless they have expressly been designated binding.

(3) The delivery deadline shall commence upon the order confirmation being submitted, however not prior to the customer producing any applicable documentation, authorisations and clearances to be obtained or prior to receipt of any deposit agreed.

(4) The delivery deadline is deemed to have been adhered to if the items to be delivered have left

the factory prior to its expiry or readiness for despatch has been notified to the customer.

(5) Unforeseen events that are beyond our control (e.g. disruptions to business, strikes or lock-outs at either our premises or those of one of our suppliers or carriers) shall extend the delivery time accordingly. The same shall apply in the event of any retrospective changes to the order.

(6) We can only guarantee delivery times subject to timely and proper deliveries from our own suppliers. We shall be entitled to deliver prematurely or make partial deliveries, and also to issue interim invoices. We shall, moreover, be entitled to alter the agreed contractual items or deviate from its description if such alteration or deviation is reasonable for the customer, taking into account our interests.

(7) Should the delivery be delayed at the customer's wish, or should the customer default in formally accepting the deliveries in good time, any storage costs incurred shall be charged to the customer as from the calendar month following the notification of the contractual items being ready for acceptance. We shall, however, be entitled, following the setting and fruitless expiry of a reasonable deadline, to make use of the contractual items and/or to re-deliver them to the Customer with a reasonably extended deadline.

(8) We shall not be in default if the customer, on its part, is late in providing information that is necessary for us to be able to execute the contract.

(8) Call-off orders shall be accepted in full, subject to any agreement to the contrary, within three months of the order being confirmed. Following the expiry of this period, the residual or entire delivery shall be made at the customer's expense. The Customer shall be obliged to take delivery of the item purchased. Clause 8 of this Article shall apply mutatis mutandis.

(10) We reserve the right to deliver more or less than the quantity ordered, within a reasonable scope.

Art. 6 Passing of risk

(1) The risk shall pass to the customer once the contractual items leave our works or warehouse, regardless of whether by means of our own transport or third party transport.

(2) Should the delivery be delayed due to a circumstance that is the customer's fault, the risk shall pass to the customer upon the notification being issued that the contractual items are ready for acceptance. The latter shall also apply if partial deliveries are made, or if we have agreed to perform other services, e.g. relating to the shipping costs, making delivery or installation.

(3) Deliveries shall not be insured against breakage or damage in transit, fire, theft, etc., unless the customer specifically requests it. Should the customer request that insurance be concluded, the latter shall be concluded at the customer's expense.

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Art. 7 Reservation of ownership

(1) We reserve our ownership in all items purchased until such time as payment of all present and future claims arising from the business connection with the customer has been made in full. The latter shall apply without regard to the legal grounds or the time at which such claims arise, i.e. in particular also to any claims arising from bills of exchange, cheques, money orders or the balance to be settled by the customer arising from an existing current account held with us.

(2) The customer may neither pledge items ordered that are subject to a reservation of ownership, nor assign them by way of security. In the case of distraint, seizure or any other dispositions by a third party, the customer shall be required to inform us without delay. It may only sell on contractual items that are subject to reservation of ownership in the orderly course of business, as long as the claim arising from the resale passes to us. In the event of selling the items on, the customer already at this point assigns to us its claims arising from the resale of contractual items, including the corresponding receivables arising from bills of exchange or cheques, along with any ancillary rights. In the event of an item ordered being sold together with other goods, not belonging to us, at an overall price, the claim shall only be assigned in the amount of the sum that we have charged to the customer for the contractual item also sold, inclusive of VAT. No separate deed of assignment shall be required in regard to the individual sales.

(3) The customer shall collect the receivables from selling the items on in trust, as long as we are in agreement with the latter. Upon our request, the customer shall inform its customer of the assignment, simultaneously notifying us.

(4) Should a contractual item be processed on, joined with or mixed with other items, not belonging to us, the customer hereby assigns a co-ownership share in the new item in the amount of the selling price charged to the customer, inclusive of the respective VAT to us. The customer shall store the new item on our behalf, free of charge.

(5) Should the value of the collateral posted in favour of us exceed the total value of our claims by more than 20%, we shall be obliged, to that extent, at the customer's request, to release collateral of our choice.

In the event of a breach of duty on the part of the customer, in particular in the case of arrears of payment, we shall be entitled, after withdrawing from the contract, to take back the contractual items, and the customer shall be obliged to hand them over to us. The costs of taking back the items shall, in such a case, be the customer's responsibility. In regard to the use of items supplied and fetched back again, as compensation for use and to cover any loss in value which may have occurred in the process we shall be entitled to charge an amount corresponding to the rental price for the period of use usual in the market. The

customer shall, however, be permitted to provide evidence that no damage has been incurred to us, or that the damage to us is considerably less than the lump sum charged.

Art. 8 Liens

In order to secure our claims, we shall be entitled to retain a contractual lien in the contractual items which have come into our possession as a result of the order. The contractual lien can also be asserted based on claims arising from orders or any other services executed previously, as long as the latter are connected with the contractual item. In regard to any further claims arising from the business connection, we shall only be entitled to retain a contractual lien if such claims are undisputed or a legal title issued with legal finality exists and the contractual item is the property of the customer.

Art. 9 Liability for defects

(1) The customer's rights in regard to defects assume that the latter has fulfilled its obligations of examination and reporting the defect due in accordance with Sec. 377 German Commercial Code in proper form.

(2) In so far as there is a defect in the item(s) purchased, we shall, at our option, be entitled to carry out subsequent fulfilment in the form of either remedying the defect or delivering a new item, free of defects.

(3) Should the subsequent fulfilment be unsuccessful, the customer may, at his, her or its option, demand a reduction in the consideration or request to withdraw from the agreement. In the event of only minor infringement of contract, in particular in the case of only minor defects, the customer shall not be entitled to withdraw from the contract.

(4) We shall be liable in accordance with the statutory provisions in so far as the customer asserts claims for compensation for damage based on intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. In so far as we are not accused of any wilful contractual infringement, the liability to pay compensation for damage shall be limited to the foreseeable damage typically occurring.

(5) We shall be liable in accordance with the statutory provisions in so far as we culpably infringe a material contractual obligation; in this case, however, the liability for compensation for damage shall be limited to the foreseeable damage typically occurring.

(6) Liability due to culpable injury to life, the body or health shall remain unaffected thereby; this shall also apply to the mandatory liability in accordance with the Product Liability Act.

(7) In so far as nothing to the contrary has been provided for above, any liability shall be excluded.

(8) The period of limitation for claims concerning defects shall amount to 12 months, reckoned from the passing of risk.

(9) The statutory period of limitation in the event of compensation in regard to delivery in

accordance with Secs. 478, 479 German Civil Code shall remain unaffected.

Art. 10 Total liability

(1) Any liability to pay compensation for damage extending beyond what is provided for in Clause 9 above shall be excluded – without taking into

consideration the legal nature of the claim asserted. This shall in particular apply to claims for compensation for damage arising from culpa in contrahendo, due to any other infringements of obligations or due to tortious claims for compensation for damage to property pursuant to Sec. 823 German Civil Code.

(2) In so far as the liability to pay compensation for damage in relation to us is excluded or limited, this shall also apply in regard to the personal liability to pay compensation on the part of our employees, representatives and vicarious agents.

Art. 11 Choice of law, place of performance and place of jurisdiction

(1) German law is to be applied to any legal relations entered into with us. German law shall also govern the application of these General Terms and Conditions of Business. The application of the United Nations Convention of 11/04/1980 on Contracts for the International Sale of Goods (CISG - "Vienna Convention") is excluded.

(2) The place of performance shall be Albstadt for both parties; the place of jurisdiction shall be the company's registered office - also for any lawsuits filed relating to cheques and bills of exchange.

(3) The applicable law of the Federal Republic of Germany and exclusion of the provisions of the United Nations Convention of 11 April 1980 on the International Sale of Goods (UNCITRAL – BGBl1989 II S 596) shall apply to any legal relations between us and the customer.

(4) We shall at our option also be entitled to sue the Customer at the location of the Customer's principal place of business.

Severability clause

Should any individual provisions of the agreement with the customer, including these General Terms and Conditions of Business, be or become invalid, in whole or in part, the validity of the remaining provisions shall not be affected thereby. The wholly or partially invalid provision shall be replaced by a provision, the economic outcome of which comes as close as possible to the invalid provision.