

# General Terms and Conditions

valid from 01.04.2010 – AQS Logistic Systems GmbH

## § 1 General Conditions, scope of applicability

- 1.1. Our General Terms and Conditions of Business shall apply exclusively. We do not recognise any conflicting conditions of the customer or any which deviate from our General Terms and Conditions of Business unless we have expressly agreed their validity in writing. Our General Terms and Conditions of Business shall also apply even if we make deliveries to the customer without reservation, in awareness of any its terms and conditions which are in conflict with or different from ours.
- 1.2. Our General Terms and Conditions of Business shall only apply to traders within the meaning of Sec. 14 German Civil Code (BGB).
- 1.3. Our General Terms and Conditions of Business shall also apply to future agreements with the same customer. It shall not be necessary to exhibit them again in order to incorporate them.
- 1.4. All agreements which are concluded between us and the customer for the purpose of executing this agreement are laid down in writing in the agreement. Any oral agreements or agreements made by telephone shall be non-binding, unless they have been confirmed in writing.
- 1.5 In so far as any assembly conditions are attached to the order documents, these shall form a component of the agreement concluded.

## § 2 Offers/offer documentation/basis for calculation

- 2.1. Our offers are subject to change without notice. In order to be effective, the agreement shall require our written order confirmation.
- 2.2. Should the customer's order be deemed an offer, we may accept it within four weeks.
- 2.3. We reserve rights of ownership and copyrights in the illustrations, drawings, calculations and any other documentation subject to copyright drawn up by us. This also applies if the documents are handed over to the customer – for whatever reason. They are to be returned upon request, and may not be made accessible to third parties – without our written consent. Replicas and imitations are not permitted.
- 2.4. Minor deviations from details which are contained in the documentation belonging to the offer are expressly reserved, in so far as they do not permanently impair the function of the agreed service.
- 2.5 In so far as not described in any other way, our racks are calculated on the basis of the following rules and regulations: DIN 18800 or Eurocode 3, DIN 1055 or Eurocode 1, BGR 234.

## § 3 Prices

- 3.1. Our prices apply "ex works", excluding packaging. The packaging is charged for separately.
- 3.2. We reserve the right to alter our prices appropriately if any increases or decreases in costs, in particular due to material costs, an increase in commodity prices, supplies, wages and salaries, freight or public dues, occur after concluding the agreement. We will, if requested, provide the customer with evidence of these alterations in the costs.
- 3.3. The statutory VAT is not included in our prices. The statutorily determined amount as at the respective date of invoicing will be shown separately on the invoice.

## § 4 Terms and conditions of payment/offsetting

- 4.1. Payments for goods and ancillary services are to be made in cash within 10 days of receipt of the invoice. A cash discount is only granted in the case of a special written agreement.
- 4.2. Should we, after concluding the agreement, become aware of any circumstances which, according to our best judgement, give us reason to doubt the customer's creditworthiness, for example the institution of insolvency proceedings, any signs of impending cessation of payment (non-adherence to payment terms, etc.), our claims shall immediately be due, independently of the term of any bills of exchange accepted or credited or any payment terms granted. In this case, we shall also be entitled to only effect any deliveries still outstanding in return for advance payment or a security deposit.
- 4.3. All payments are to be made in euros. In so far as the prices in our offer are reproduced in different currencies, the official Euro exchange rate of the foreign exchange centre in Frankfurt am Main (12 noon CET) is to be taken as a basis, for the day on which the written order confirmation was issued by us, when making payment.
- 4.4. Payment may only be made by means of bills of exchange and cheques with our consent. Should payment by means of a bill of exchange or cheque be agreed, the bill of exchange or cheque will only be accepted by us as conditional payment; any note charges and expenses, as well as the risk of timely presentation and disputing of payment shall be borne by the customer.
- 4.5. In the event of payment arrears, notwithstanding our other rights we shall be authorised to keep back any deliveries already ordered or any work agreed upon until such time as all claims have been settled in full.
- 4.6. The customer shall only be entitled to offset our claims following our written agreement or in the case of claims which have been determined as being legally valid or undisputed. In addition, it shall only be authorised to exercise rights of retention in so far as its counterclaim is based on the same contractual relationship.
- 4.7. When agreeing partial deliveries, the customer is obliged, upon request, to make part payments in the amount corresponding to the value of the partial delivery in relation to the complete delivery.

## § 5 Delivery period/delay

- 5.1. Should it be necessary, in order to carry out our service, to enlist the customer's co-operation, for example in obtaining official authorisations, and concerning the clearance of drawings, etc., the delivery deadlines specified by us shall only commence once the customer has fulfilled all the commitments and obligations incumbent upon it in proper form.
- 5.2. Should the customer fall into arrears with acceptance or should it violate the obligations to co-operate incumbent upon it, we shall be entitled to require compensation for the damage incurred to us to that extent, including any additional expenditure. Any special services necessary to that extent shall be charged to the time sheet. We reserve the right to assert any further claims. The customer shall be obliged to temporarily store any goods already delivered until such time as the complete service has been provided by us, at its own expense and risk, for the period of the default of acceptance and the violation of any existing obligations to co-operate.
- 5.3. Should delivery deadlines be given in the order documentation as approximate deadlines, we shall be entitled to exceed the dates specified by a maximum of two weeks. Should use be made of this right, we will notify it as early as possible. All the subsequent contractual deadlines shall be extended accordingly.
- 5.4. Acts of God shall entitle us to postpone delivery by the duration of the hindrance. Any legitimate industrial action, mobilisation, war, blockade, prohibitions and restrictions on imports or exports, shortages of raw materials or energy, fire, traffic blocks, bad weather situations (e.g. during assembly) and any other circumstances which are not our fault shall be equivalent to Acts of God. In this respect, it is irrelevant whether they occur at our premises, those of one of our suppliers or those of another sub-contractor.
- 5.5. Should we, when making a delivery, provide evidence that, in spite of carefully selecting our suppliers, and in spite of concluding the necessary contracts on reasonable conditions, we did not receive the delivery from our suppliers in good time, the delivery deadline shall be extended by the period of the delay which was caused by the goods not having been supplied by our suppliers in good time.
- 5.6. Should delivery become impossible due to events described in Clauses 5.4. and 5.5., or should the temporary hindrance in providing services take longer than four weeks as a result, we shall be entitled to withdraw from the contract. The customer may, after four weeks have expired, request from us a statement concerning whether

we are withdrawing or whether we wish to deliver within a reasonable period of time. Should we not respond within a reasonable period of time, the customer may, on its part, exercise the rights of withdrawal which it is statutorily entitled to exercise.

5.7. In regard to a delay in delivery which is due to wilful or grossly negligent contractual infringement which is our fault, we shall be liable in accordance with the statutory provisions, in regard to which the compensation for damage in the event of grossly negligent contractual infringement shall be limited to the foreseeable damage typically occurring.

In regard to a delay in delivery which is due to culpable infringement of a significant contractual obligation, we shall be liable in accordance with the statutory provisions, in regard to which the compensation for damage shall be limited to the foreseeable damage typically occurring.

Any further liability for delay shall be excluded. Liability for injury to life, the body and the health shall not be affected thereby.

#### **§ 6 Despatch, packaging**

6.1. In the event of despatch by us, in so far as no special agreement is stipulated in the order confirmation we shall be free to select the means of transport. Any additional expenses for a mode of shipment desired by the customer or expedited shipment shall be borne by the customer, and in fact also if we accept the freight charges.

6.2. In the event of rescission of the contract, in so far as the termination of the contractual relationship is its fault the customer shall be required to return the goods supplied by us to our place of business in Herdorf at its own expense and risk.

6.3. In so far as it does not wish us to take back the transportation and outer packaging used by us, the customer shall be obliged to return it to our place of business in Herdorf within the usual business hours. Transportation and outer packaging shall only be taken back by us if it is free of any impurities (substances which do not originate from the goods supplied) and sorted into the different types of packaging material. Should the customer not comply with this obligation, it shall be required to bear the additional expenditure caused to us thereby.

#### **§ 7 Delivery/collection and passing of risk**

7.1. Upon delivery of the goods, they will be unloaded from the vehicles by the customer.

7.2. In the event of the customer collecting the goods itself, only lorries or containers which permit sideways loading with fork-lift trucks may be loaded. Should several collection vehicles arrive simultaneously, they will be attended to one after the other.

7.3. Should the goods be delivered by us and assembled or erected by the customer, the risk shall pass to the customer upon the goods being supplied to the location stipulated in the order confirmation. This shall also apply to partial deliveries.

7.4. Should delivery or despatch of the goods be delayed for reasons which are the fault of the customer, the risk of destruction or deterioration, in particular the risk of the surface quality being impaired by long-term storage outdoors, shall pass to the customer upon receipt of the notification that they are ready for delivery or dispatch.

#### **§ 8 Acceptance**

8.1. Acceptance shall be carried out in accordance with the statutory provisions (Secs. 640 et seq. German Civil Code (BGB)), supplemented by the provisions below.

8.2. Should the goods be assembled and erected by us, acceptance of the goods shall be carried out by us without delay in accordance with a corresponding notification of completion of the work.

8.3. The result of the acceptance is to be set down in writing and signed by both the customer (or its representative) and us (or our representative). Any reservations in regard to known defects, as well as any other objections by the customer, are to be incorporated into the report.

8.4. Should the customer have put the goods into use following erection and assembly of them, as well after receipt of the certificate of completion of the work, acceptance shall be deemed to have occurred following the expiry of 14 working days as from commencement of use, in so far as we make reference thereto and no significant defects have expressly been notified by the customer within the aforementioned period.

8.5. We reserve the right to claim a sum of money as a penalty if the customer or a person entitled to represent the customer is not present at the agreed appointment for acceptance. We may claim as a penalty 0.2% of the net order value per day of any delay substantiated by the latter, however a maximum of only 2% of the entire order value.

#### **§ 9 Notice of defects**

9.1. Rights of the customer in regard to defects shall assume that the customer complies with its examination and notification obligations due pursuant to Sec. 377 German Commercial Code (HGB).

9.2. Upon despatch of the goods the customer shall be required, in addition, to itself notify any damage or objection or have it confirmed to the freight forwarder or freight carrier responsible without delay.

9.3. Any minor defects shall not entitle the customer to withhold payment.

#### **§ 10 Claims in regard to defects**

10.1. Any warranties concerning the quality of the goods must inherently expressly be designated by us. In particular, references to DIN norms or any other technical norms shall not, without a special agreement, constitute a warranty for the quality of the item or the work.

10.2. Any details regarding load capacity shall only be valid in the event of assembly by us or assembly in accordance with our instructions. Should the assembly be carried out by the customer and not be compliant with the instructions for assembly, we cannot take on any guarantee in regarding to the stipulated loads.

10.3. Should any goods supplied by us or any work produced by us be defective, the customer's claims shall initially be limited to subsequent fulfilment. The subsequent fulfilment shall be carried out, at our option, by eliminating the defect or by supplying a new item. Should the subsequent improvement fail, the customer may, at its option, reduce the remuneration for the work or, if the statutory prerequisites are present, if it is not construction works but an item, which is liable to a defect, withdraw from the contract.

10.4. Should the customer claim compensation for damage,

- we shall be liable in accordance with the statutory provisions if the claims for compensation for damage are based on intent or gross negligence by us or our assistants;

- we shall be liable in accordance with the statutory provisions if we have culpably infringed a significant contractual obligation;

- in so far as we have not committed any deliberate contractual infringement, our liability shall be limited to the foreseeable damage typically occurring.

10.5. Liability due to culpable injury to life, the body and the health, as well as compulsory liability in accordance with the Product Liability Act, shall not be affected thereby.

10.6. The period of limitation for notification of defects shall be as follows:

- in so far as the service owed by us consists in the manufacture or provision of construction work or in the provision of an item which, according to its usual intended purpose, is used for construction work and which it has caused to be defective, five years;

- in all other cases, 12 months, in so far as the defects claimed by the customer are not based on intent or gross negligence and not on injury to life, the body or the health.

## **§ 11 Limitation of liability**

Should a claim for compensation for damage be made against us due to breach of duty which does not concern delay or a warranty,

- we shall be liable in accordance with the statutory provisions in so far as the claims for compensation for damage are based on intent or gross negligence by us or our assistants;

- we shall be liable in accordance with the statutory provisions if we have culpably infringed a significant contractual obligation;

- in so far as we have not committed any deliberate contractual infringement, our liability shall be limited to the foreseeable damage typically occurring.

Any further liability shall be excluded – without taking into consideration the legal nature of the claim asserted. Liability for damage arising from injury to life, the body or the health shall remain unaffected thereby.

## **§12 Reservation of ownership**

12.1. The goods shall remain our property until such time as full payment of all sums due to us has been made by the customer. Putting individual payments requested into current invoices or references to account balances and the recognition of them shall not abrogate the reservation of ownership. In the event of conduct on the part of the customer which infringes the contract, in particular in the case of arrears of payment, after setting a reasonable deadline we shall be entitled to take back the goods supplied. Taking back the goods shall not constitute withdrawal from the contract unless we have expressly declared this in writing. A levy of execution of the item by us shall always constitute withdrawal from the contract. After taking back the goods, we shall be authorised to dispose of them; the proceeds of sale shall be offset against the customer's liabilities - less the reasonable expenses of disposal.

12.2. The customer shall continue to be entitled to sell the goods in the orderly course of business; this shall exclude pledging or transfer of ownership by way of security by the customer. It already at this time assigns to us all accounts receivable which accrue to it from selling on the goods to its customers or third parties in the amount of the final invoice amount (including VAT) of our claim, and in fact independently of whether the goods have been sold on without further processing or after further processing. The customer shall also remain authorised to collect these accounts receivable following the assignment. Our authority to collect the accounts receivable ourselves shall not be affected thereby. However, we undertake not to collect the accounts receivable as long as the customer complies with its payment obligations arising from the revenues retained, does not fall into arrears with payment, and in particular no application for the institution of settlement or insolvency proceedings has been filed, nor is there any cessation of payment. Should this, however, be the case, we may require the customer to disclose the receivables assigned and their debtors, provide all details necessary for their collection, hand over the associated documentation and notify the debtors (third parties) of the assignment.

The customer is required to notify us without delay in the event of levy of execution or any other interventions by third parties, so that we can file the action pursuant to Sec. 771 German Code on Civil Procedure (ZPO). In so far as the third party is not in a position to reimburse us the judicial and extrajudicial expenses pursuant to Sec. 771 German Code on Civil Procedure (ZPO), the customer shall be liable for the expenditure incurred to us.

The processing or alteration of the goods by the customer shall always be carried out for us. Should the goods be processed together with other items, not belonging to us, we shall acquire co-ownership in the new item in the proportion of the value of the goods (final invoice amount, including VAT) to the other items processed at the time of processing. In addition, the same as to the goods supplied shall apply to the item which emerges due to the processing subject to reservation. Should we only be entitled to a joint share in ownership in the goods, we shall acquire the joint share in ownership in the new item in the relevant proportion.

12.5. Should goods subject to retention of title account for a significant component of the customer's property, the customer already at this point assigns to us the accounts receivable arising from the sale of the property or rights in the property, limited to the amount of the value of the goods subject to retention of title, with all ancillary rights and with ranking prior to the others. Should the goods form a significant component of the property of a third party, the customer already now assigns to us the accounts receivable from the third party arising from this combination of goods and property in the amount of the value of the goods (final invoice amount, including VAT), including ancillary rights to secure our claims with ranking prior to the others.

12.6. In so far as the realisable total value of the securities granted to us exceeds 110% of our remaining claims still outstanding against the customer, not only on a temporary basis, we shall be obliged, at the customer's request, to release the securities to which we are entitled which exceed this sum. It is incumbent upon us to select the securities to be released.

## **§ 13 Storage of data**

Upon the contract coming into force, the customer hereby grants us its consent that its personal details are stored by us for the purpose of processing the order and invoicing by means of electronic data processing.

## **§ 14 Final provisions**

14.1. Should one of the foregoing provisions have become invalid or not be a contractual component, the validity of the remaining provisions shall not be affected thereby. In this case the parties already at this point undertake to enter into negotiations with the aim of replacing the invalid provision by a clause which comes nearest to what the parties economically desired with the previous provision.

14.2. The contractual relations between the customer and us shall exclusively be subject to the law of the Federal Republic of Germany, under exclusion of the UN Convention on the International Sale of Goods of April 1980.

14.3. In so far as nothing else emerges from the order confirmation, the place of fulfilment for the delivery of the goods, for all payments and for all bills of exchange received shall be at our place of business in Herdorf.

14.4. The place of jurisdiction for all legal disputes arising from this contractual relationship, as well as in regard to its emergence and its validity (also actions concerning bills of exchange) shall, if the customer is a trader, legal person under public law or special fund governed by public law, be Montabaur. We shall, however, be entitled, at our discretion, to also sue the customer at its place of residence or place of business.