

General Terms and Conditions for the Manufacture and/or Delivery of Goods
(GENERAL TERMS AND CONDITIONS)
Status: May 2009
of TAG Composites & Carpets GmbH, Gladbacher Strasse 465, 47805 Krefeld
- hereinafter referred to as TAG -

1. General provisions

- 1.1 These terms and conditions apply exclusively to all business transactions including future transactions. They are the sole basis on which TAG manufactures and/or delivers goods. This shall apply irrespective of whether these transactions are sales contracts or contracts for work and materials. These GENERAL TERMS AND CONDITIONS shall not apply to transactions where TAG processes its customers' goods on their behalf but other terms and conditions shall apply.
- 1.2 TAG shall not accept any terms and conditions of the customer that conflict with or deviate from the GENERAL TERMS AND CONDITIONS unless TAG has expressly agreed in writing that they are valid. The GENERAL TERMS AND CONDITIONS shall also apply if TAG makes a delivery to the customer unconditionally with knowledge of the customer's conflicting or deviating terms and conditions.
- 1.3 These GENERAL TERMS AND CONDITIONS shall be deemed accepted at the latest when TAG takes delivery of the goods.
- 1.4 All agreements between TAG and the customer for the purpose of fulfilling this contract are set forth in writing in this contract.
- 1.5 TAG's representatives are only entrusted with the procurement of business and not with its conclusion.
- 1.6 TAG's quotations are not binding in any way. Sales contracts and other contracts for delivery shall only be deemed concluded when TAG has issued a written order confirmation after receiving the order.
- 1.7 The GENERAL TERMS AND CONDITIONS shall apply only to contractors and public law entities within the meaning of § 310 BGB [German Civil Code].

2. Prices

- 2.1 VAT at the legal rate is not included in TAG's prices. It shall be stated separately on the invoice at the legally valid rate on the invoice date.
- 2.2 TAG reserves the right to increase prices where contracts have an agreed delivery period of more than 4 months in accordance with any increases in cost due to collective agreements or increases in the price of materials. If the increase is more than 5 % of the agreed price, the customer shall have the right to terminate the contract within seven days of receiving TAG's request for the increase.

3. Payment terms

- 3.1 Invoices are issued on the delivery date (5.2). They are payable in full 30 days after their date of issue. No cash discount shall be granted even if payment is made prior to this.
- 3.2 Payment date is deemed to be the date on which the amount is finally at TAG's disposal.
- 3.3 All payments must be made in euros. TAG expressly reserves the right to refuse bills of exchange. Bills of exchange and cheques shall only be accepted on account of performance. Bank, discount, collection charges and other expenses shall be charged to the customer and shall be due immediately. TAG assumes no guarantee for the correct presentation of bills of exchange and cheques.
- 3.4 The customer shall only have a right of set-off if its counter-claims are recognised by declaratory judgement, are uncontested or recognised by TAG. The customer shall also be entitled to exercise a right of retention where its counter-claim is based on the same contractual relationship.
- 3.5 The material criterion for the conclusion of any contract shall be the customer's ability to pay.

4. Default in payment

- 4.1 The customer shall be in default if it fails to pay following a reminder sent by TAG after payment of the price becomes due. Notwithstanding this, the customer shall be in default unless it makes payment on a specific date stipulated in the contract. This shall not affect the statutory regulation, according to which a debtor is also automatically in default thirty days after receipt of an invoice.
- 4.2 If the customer defaults in making a due payment, TAG can require the remuneration agreed for further deliveries to be paid in cash before performing any other manufacturing or deliveries. TAG can also refuse temporarily to make further deliveries and nevertheless invoice the goods when they are ready for dispatch. This provision shall apply regardless of TAG's other rights.
- 4.3 The customer can, within a time limit of 5 working days after being requested to make payment, make the pre-payments provided for in 4.2 dependent on TAG providing a performance bond from a major German bank or public savings bank at the customer's expense for the amount of the pre-payments due.

5. Delivery periods and delivery dates

- 5.1 Delivery periods and delivery dates are based on TAG's written confirmation.
- 5.2 The date of delivery is deemed the date on which the goods are sent to the customer, or at the customer's request – by sending a ready-for-dispatch note – the date on which the goods are placed in store by TAG.
- 5.3 TAG has the right to make partial deliveries.

6. Delay in delivery

- 6.1 In the event of delay in the manufacture and/or delivery of goods, the customer's damage claims shall be limited in total to a maximum 5% of the invoice value of the deliveries and services affected by the delay. If the delay is less than 10 weeks and the customer is not entitled to any damage claim for non-performance, the customer's damage claims shall be limited to ½ % of the invoice value of the deliveries and services affected by the delay for each full week of delay. If delay is due to the intentional or gross negligence of TAG, its legal representatives or vicarious agents or a material breach of duty, statutory liability shall apply.
- 6.2 If, after TAG has already delayed delivery, the customer sets a reasonable period of grace with threat of rejection, the customer shall have the right, after this period of grace has expired in vain, to rescind the contract. The customer shall only be entitled to damage claims for non-performance amounting to the foreseeable damage if the delay is due to intentional or gross negligence or a material breach of duty. Furthermore, a damage claim shall be limited to 50 % of the damage incurred.
- 6.3 Limitation of liability according to 6.1 and 6.2 shall not apply if a commercial transaction for delivery by a fixed date was agreed. This shall also apply if the customer can assert that it is no longer interested in the performance of the contract due to the delay for which TAG is responsible.
- 6.4 TAG's compliance with its delivery commitment requires that the customer has duly fulfilled its obligations in a timely manner.

7. Force majeure

- 7.1 Measures in the course of industrial disputes, especially strikes and lock-outs and unforeseen obstructions that are outside the control of TAG, shall release TAG from its duty to deliver/provide services for the duration of their effects, and if they make it impossible for TAG to perform, shall release TAG in any way from its duty to deliver/provide services. This shall also apply if sub-suppliers are affected by such circumstances. In important cases, TAG shall notify the customer as soon as possible about commencement and duration of such obstructions.
- 7.2 If the delay lasts for longer than 3 months, the customer shall be entitled, after setting a reasonable time limit in writing with threat of rescission, to rescind that part of the contract not yet performed.
- 7.3 If the delay lasts for longer than 4 months and manufacture and/or delivery is only possible with obstructions to performance that are no longer reasonable or only possible with unreasonable additional expense, TAG can rescind the contract, also if an extension of the delivery period was initially agreed with the customer.

8. Passing of risk and shipment, customer's default

- 8.1 Place of performance for deliveries by TAG is TAG's works or warehouse where the goods are kept prior to shipment. The risk of accidental loss and accidental deterioration of the goods shall pass to the customer when the goods are handed over to the carrier but at the latest when they leave the works or warehouse. This passing of risk depends on whether the goods are shipped from the place of performance, which party bears the freight charges and which party carries out transportation. If shipment is delayed by circumstances for which the customer is responsible, the risk shall pass to the customer as of the date on which the goods are ready for dispatch but TAG shall be obliged at the customer's request and expense to arrange the insurance which the customer requires.
- 8.2 TAG deliveries are uninsured. At the customer's request, TAG shall insure shipments at the customer's expense against theft, breakage, transport damage, fire loss and water damage and other insurable risks. Freight charges and customs duties shall be borne by the customer. If TAG assumes the freight charges as an exception, TAG shall determine the type of shipment and the carrier.
- 8.3 The customer's duty to accept the delivery item and any obligation to call up orders are primary obligations of the customer, as is the obligation to pay the price. The customer's primary obligations are also obligations to obtain all necessary import licences and any letters of credit. TAG may make production

- and delivery dependent on the receipt of all necessary import licences and letters of credit. This shall not affect statutory regulations concerning the customer's default.
- 8.4 Irrespective of its other rights, TAG may, during the customer's default in one of the obligations stipulated in 8.3, otherwise dispose of the goods, and reasonably extend the delivery period and time of performance due to the required provision, procurement or production of new goods.
- 8.5 Any damage claims for non-performance made by TAG can be asserted in an amount of 15 % of the purchase price without proof of damage. A higher amount for these damage claims must be fixed, if TAG proves an exceptionally high level of damage in an individual case. A lower amount must be fixed or dispensed with completely, if the customer proves that TAG's damage is lower than 15 % or that TAG incurred no damage whatsoever.
- 9. Notice of defects**
- 9.1 TAG must be notified of any visible defects immediately in writing but at the latest within 10 days of receipt of the goods, and in any case before the goods are cut, processed or otherwise changed. Notification of defects that are not visible must be given in writing immediately they are discovered but at the latest within a time limit of 6 months after the goods are received by the customer or at its place of delivery. The customer may not derive any rights from its failure to give written notice of defects in due time.
- 9.2 If TAG places the goods in store before delivery at the customer's request or the customer defaults in accepting delivery, the date of receipt of the ready-for-dispatch note shall replace the date of receipt of the goods. The customer has the right and is obliged to inspect not only the goods delivered but also the goods placed in store.
- 10. Warranty**
- 10.1 If TAG is responsible for a defect, TAG shall at its option be obliged to eliminate the defect or deliver a replacement.
- 10.2 If elimination of a defect/a replacement delivery is excluded or fails, the customer shall have the option to rescind the contract or to request a corresponding lower price (reduction). This shall require the setting of a time limit for supplementary performance.
- 10.3 Unless otherwise stipulated below (10.4 and 10.5), further claims by the customer – for whatever legal grounds – shall be excluded. TAG shall therefore not be liable for damages that are not incurred to the delivery item itself. In particular, TAG shall not be liable for the customer's lost profit or other financial loss.
- 10.4 If the damage was caused by intentional or gross negligence, TAG shall be liable according to statutory regulations.
- 10.5 If TAG fails through its own negligence to comply with a material contractual obligation, liability shall be limited to damage typical for the contract. Liability shall also be excluded according to 10.3.
- 10.6 The customer alone is responsible for compliance with any legal and official regulations in using the goods delivered by TAG. No objection may be made to customary deviations or slight technical deviations that are unavoidable (e.g. in the quality, colour, width, weight, equipment, design).
- 10.7 If the customer has the goods rectified on its own authority, the warranty obligation shall cease to exist.
- 11. Total liability**
- 11.1 A more far-reaching liability for damages than that provided for in 10.3-10.5 is excluded – regardless of the legal nature of the claim asserted.
- 11.2 The stipulation in 11.1 shall not apply to claims under §§ 1, 4 Produkthaftungsgesetz [Product Liability Act]. Unless limitation of liability applies according to 10.5 to claims under the manufacturer's liability of § 823 BGB, TAG's liability shall be limited to the amount paid by the insurance. If this is not paid or not paid in full, TAG shall be liable up to the amount insured.
- 11.3 The stipulation in 11.1 shall also not apply where TAG is initially unable to perform or is responsible for not being able to perform.
- 11.4 The stipulation in 11.1 shall also not apply if damage, which can be covered and is usually covered by a reasonable third party liability insurance, is caused by conduct which gives rise to liability.
- 11.5 If TAG's liability is excluded or limited, this shall also apply to the personal liability of TAG's salaried employees, workers, employees, representatives and vicarious agents.
- 12. Retention of title and other provision of security**
- 12.1 TAG's deliveries are subject to retention of title which is extended and prolonged according to the following provisions:
TAG shall retain title to the goods delivered as goods subject to retention of title until they are paid for and until all existing claims and claims still to be incurred in connection with the delivery item under the business connection with the customer are paid and fulfilled. This extended retention of title shall continue to exist if the individual claims are included in a current invoice or the balance is drawn and recognised. If TAG contracts any contingent liabilities in the customer's interest (payment by cheque, bill of exchange), the extended and prolonged right of retention shall not lapse until TAG is released in full from such liabilities.
- 12.2 If the customer or a third party processes the goods subject to retention of title on their own or with goods that do not belong to TAG into new movable property, the processing shall be on behalf of TAG, without TAG being bound by this. TAG shall thus acquire co-ownership of the new property in the ratio of the invoice value of the processed goods subject to retention of title to the value of the new property at the time of processing. If the goods subject to retention of title are connected, mixed or combined with goods that do not belong to TAG according to §§ 947, 948 of the German Civil Code, TAG shall acquire co-ownership in accordance with statutory provisions. If, by processing, connecting, mixing or combining, TAG does not acquire the co-ownership share provided for by these provisions, the customer herewith transfers co-ownership to TAG in the ratio of the invoice value of the goods subject to retention of title to the value of the new property at the time of processing, connecting, mixing or combining. The customer shall keep the goods which are co-owned by TAG free of charge for TAG and handle them with care. The goods co-owned by TAG shall be deemed goods subject to retention of title within the meaning of these provisions. TAG's co-ownership shall pass to the customer upon fulfilment of the claims specified in 12.1.
- 12.3 If goods subject to retention of title are sold by the customer on their own or together with goods that do not belong to TAG, the customer shall herewith assign to TAG the claims arising from the resale in the amount of the invoice value of the goods subject to retention of title. If the resold goods subject to retention of title are co-owned by TAG, assignment of the claims shall cover the amount that corresponds to the invoice value of the TAG delivery processed, connected, mixed or combined into the new property. Invoice value within the meaning of these provisions is the amount stated on TAG's invoice. If the claim from the resale is placed in a current account, the assignment of the future claim shall relate to the closing balance amounting to the invoice value within the meaning of the foregoing provisions.
- 12.4 The customer shall only be entitled and authorised to use and resell the goods subject to retention of title only in the customary and normal course of business, and only subject to the proviso that the claims from the resale according to 12.3 shall pass to TAG. The customer is not otherwise entitled to dispose of the goods subject to retention of title. The customer must notify TAG immediately of any impediment to its rights over the goods subject to retention of title or the assigned claims, irrespective of the customer's obligation to assert the rights on behalf of TAG in the case of imminent danger.
- 12.5 If the customer defaults in payment or fails to meet its obligations under 12. of these GENERAL TERMS AND CONDITIONS, TAG shall have the right to request the return of the goods subject to retention of title and revoke the customer's authorisation to collect the claims assigned to TAG. In such case, the customer shall be obliged to notify its customers of the assignment. Where revocation of authorisation is justified, TAG shall itself also have the right to notify the debtors of the assignment. This stipulation shall apply accordingly to the suspension of payments, petition in insolvency or institution of insolvency proceedings, judicial or extrajudicial composition proceedings, other disintegration of the customer's assets or in the case of a cheque or bill protest against the customer. At TAG's request, the customer shall be obliged at any time to specify the debtors of the assigned claims, to give all further details and hand over documents which allow TAG to assert the assigned claims against the debtors if the conditions for revocation of the collection authorisation are given.
- 12.6 Taking back the goods subject to retention of title shall not constitute TAG's rescission of the contract unless TAG expressly stated this.
- 12.7 At TAG's request, the customer shall be obliged to insure the goods subject to retention of title against loss, damage and theft at the customer's expense, and to prove that such an insurance exists. In this case, the customer herewith already assigns to TAG its claim to the sum insured, limited to the invoice value of the goods for which the insurance cover is used.
- 12.8 Title to or co-ownership in the goods subject to retention of title and the assigned claims shall pass to the customer upon payment of all TAG's claims for which security is provided according to 12.1. TAG undertakes to release the securities to which it is entitled at the customer's request to the extent that the realisable value of the securities for the benefit of TAG exceeds the securing claims by more than 10 % or the nominal amount by more than 50 %. TAG shall be responsible for choosing the securities to be released.
- 13. Applicable law, place of performance, legal venue, partial invalidity**
- 13.1 All legal relations between the parties shall be governed by the Law of the Federal Republic of Germany. Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- 13.2 Place of performance with respect to all rights and obligations arising under and in connection with the contractual relationship, in particular with respect to the manufacture and/or delivery of goods and payment, is Krefeld. This shall not affect 8.1 of these GENERAL TERMS AND CONDITIONS.
- 13.3 Any disputes hereunder – also with respect to legal actions for claims arising out of cheques and bills of exchange – shall be settled solely before a Krefeld court of law but subject to the proviso that TAG is entitled to have recourse to any otherwise competent court of law.