

# Seebach GmbH - General Terms and Conditions of Sale and Delivery (with Entrepreneurs)

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## § 1 Scope

- These General Terms and Conditions of Sale and Delivery shall apply exclusively to business relationships between Seebach GmbH and entrepreneurs, legal persons under public law or special funds under public law pursuant to Section 310 (1) of the Bürgerliches Gesetzbuch (German Civil Code – BGB).
- These General Terms and Conditions of Sale and Delivery shall also apply to all future business transactions with the Ordering Party, providing they are legal transactions of a related type.
- Seebach GmbH shall recognize terms and conditions of the Ordering Party that conflict with, or diverge from, these General Terms and Conditions of Sale and Delivery only if it gives its express written consent to their applicability. In the absence of the written consent of Seebach GmbH, the Ordering Party's divergent terms and conditions shall not be valid even if no express objection has been raised against them.

## § 2 Offer and Contract Formation

- If and to the extent that the Ordering Party has not entered into any other express agreement with Seebach GmbH, offers made by Seebach GmbH shall be subject to change and non-binding.
- By ordering goods, the Ordering Party shall make a binding declaration that it intends to purchase the ordered goods. Seebach GmbH shall be entitled to accept the offer contained in the order within a period of two weeks of receipt thereof. The contract shall be formed only with Seebach GmbH's written acknowledgement or execution of the order.
- All agreements between Seebach GmbH and the Ordering Party must be recorded in writing. This shall also apply to collateral agreements and commitments as well as subsequent contact amendments. Telephone or oral agreements, as well as arrangements made with representatives of Seebach GmbH, shall not have legally binding effect for Seebach GmbH until they have been confirmed by it in writing. This shall not apply to cases in which a legal representative acts for Seebach GmbH.

## § 3 Submitted Documents

- Seebach GmbH shall retain all ownership rights and copyrights to all documents submitted to the Ordering Party in connection with placement of the order, including, but not limited to, costings, drawings, tools and samples.
- Said documents shall not, unless Seebach GmbH has given the Ordering Party its express written consent, be made accessible to third parties. Where Seebach GmbH fails to accept the offer by means of acknowledgement of the order within the period laid down in § 2 (2) sentence 2 of the General Terms and Conditions of Sale and Delivery, said documents shall be returned to Seebach GmbH without delay and without retention of any copies or duplications

## § 4 Prices, Payment and Default of Payment

- Prices of Seebach GmbH shall be applicable in euro ex works, excluding packaging and transport costs and other ancillary costs, such as insurance and customs clearance costs or expenses, and shall be subject to VAT at the prevailing rate. Costs incurred shall be invoiced separately by Seebach GmbH.
- Unless otherwise agreed, the purchase price shall be paid in the currency in which the invoice has been issued. Payment shall be made solely to the accounts on the reverse hereof. A discount deduction shall be permitted only in the event of a special written agreement.
- Seebach GmbH shall not be obliged to accept bills of exchange or cheques as payment. If they are accepted, this shall be solely on account of performance and not in lieu of performance. Acceptance of the bill of exchange or cheque shall not constitute any deferment of the principal claim. Discount shall be charged for accepted bills of exchange; in the case of bills of exchange relating to out-of-town locations and other countries, the Ordering Party shall be charged any collection expenses and exchange rate losses.
- Unless otherwise agreed, the purchase price shall be paid at a discount of 2% within 10 days of receipt of invoice or net and without deduction within 30 days of receipt of invoice. Upon expiry of this period, the Ordering Party shall be in default, with no further reminder being required.
- Default interest in each case of default of payment by the Ordering Party shall be 8% p.a. above the base interest rate applicable at the time. Seebach GmbH shall reserve the right to assert a higher loss caused by default.
- Seebach GmbH shall reserve the right to make appropriate changes to prices due to changes in costs (including, but not limited to, wage, materials and sales costs) for deliveries that occur later than 4 months after contract formation.
- In the event of default of payment, all outstanding claims of Seebach GmbH against the Ordering Party arising from the joint business relationship shall become due immediately and without any deduction. If the Ordering Party fails to comply with the agreed payments or if it fails to furnish the security demanded of it, Seebach GmbH's obligation to perform shall no longer apply or it shall have a right of retention.
- All claims of Seebach GmbH against the Ordering Party arising from the joint business relationship shall also become due in the event of deferment if the Ordering Party ceases to make its payments, is overindebted, insolvency proceedings are instituted against it or a petition for the institution of said proceedings is presented or the institution of said proceedings is rejected due to insufficient funds or Seebach GmbH becomes aware of circumstances that are likely to reduce the Ordering Party's creditworthiness significantly. Seebach GmbH shall, at its option and after setting a grace period, then be entitled to demand return of the supplied goods, to make further deliveries contingent upon advance payments or provision of security, to demand compensation and to rescind the contract.
- If delivery dates are postponed at the request of the Ordering Party, payment shall be made as if delivery had been provided in accordance with the contract.

## § 5 Delivery Periods, Partial Deliveries, Default of Delivery and Acceptance

- Agreed delivery periods shall be adhered to as far as possible. Unless otherwise expressly agreed, the delivery time shall be deemed to be merely indicative. The delivery time shall commence on the day on which the acknowledgement of the order is dispatched and shall be extended commensurately in the event of occurrence of unforeseen obstacles which Seebach GmbH, despite exercising reasonable care in accordance with the circumstances of the case, could not avert. Such events, which include official actions, strikes and lock-outs, failure to deliver or late delivery on the part of the suppliers of Seebach GmbH, shall extend the delivery period commensurately.
- Seebach GmbH shall be entitled, at its option, to fulfil orders in partial deliveries, which, if the remaining parts are provided within the agreed performance period, or the partial deliveries provided are not without interest to the Ordering Party, may not be refused by the latter. Each partial delivery shall, in the case of a bilateral commercial transaction, be an independent transaction.
- Underdeliveries and overdeliveries in the amount of 10% shall be permitted. In the case of ongoing orders, Seebach GmbH shall endeavour to offset unavoidable overdeliveries and underdeliveries as far as possible in the next delivery in order to restrict the quantity variance to a minimum.
- If Seebach GmbH defaults on delivery, the Ordering Party shall set it a reasonable grace period for fulfilment, which shall not be less than two weeks. Upon expiry of this reasonable grace period without result, the Ordering Party may rescind the contract. The Ordering Party shall not be entitled to claims for damages in accordance with the restrictions set out in § 8 (6) sentence 2 of the General Terms and Conditions of Sale and Delivery.
- If the Ordering Party defaults on acceptance or if it is in culpable breach of other obligations to cooperate, Seebach GmbH shall be entitled to demand compensation for any loss incurred in this respect. This shall also include compensation for any necessary additional expenses. Seebach GmbH shall reserve the right to assert further claims. If the aforementioned prerequisites have been met, the risk of accidental destruction or accidental deterioration of the object of the sale shall pass to the Ordering Party at the moment in time at which the latter defaulted on acceptance or was in debtor's delay.
- In the event of a complete or partial cancellation of orders, the Ordering Party shall undertake to purchase the goods ordered by it for two months, as well as primary material for two further months. The purchase obligation shall be based on the average purchase quantity over the last twelve months prior to the cancellation.

## § 6 Place of Performance and Fulfilment, Transfer of Risk

- The place of performance and fulfilment for the services to be rendered by Seebach GmbH shall be the plant/warehouse of Seebach GmbH in Vellmar.
- Upon delivery of the goods to the Ordering Party at the plant/warehouse of Seebach GmbH, the risk of accidental destruction and accidental deterioration shall pass to the Ordering Party. From the time of delivery at the plant/warehouse of Seebach GmbH, the emoluments of the object shall accrue to the Ordering Party and it shall bear any charges thereon. If the Ordering Party is in default of acceptance of the goods, this shall be equivalent to delivery.
- If, at the request of the Ordering Party, the goods are sent to it, the risk of accidental destruction and accidental deterioration of the goods shall pass to the Ordering Party upon delivery of the goods to the forwarding agent, freight carrier or other person or company appointed to execute the dispatch (including execution by employees of Seebach GmbH itself). The aforementioned provision shall apply irrespective of whether the goods are dispatched from the place of fulfilment or who bears the packaging costs, freight costs or export. In accordance with the restrictions set forth in § 8 (6) sentence 2 of the General Terms and Conditions of Sale and Delivery, Seebach GmbH shall not be liable for the selected manner of dispatch even if this manner of dispatch differs, without pressing reasons, from the Ordering Party's instruction in respect of dispatch.

## § 7 Retention of Title

- Seebach GmbH shall expressly retain title to the delivered objects until such time as all receivables arising from this delivery contract with the Ordering Party have been settled in full. In addition, Seebach GmbH shall expressly retain title to the delivered objects until such time as all receivables arising from the business relationship with the Ordering Party have been settled in full. The aforementioned retentions of title shall extend to the finished goods manufactured by the Ordering Party from the objects without provisional acquisition by the processing ordering party. The aforementioned retentions shall also apply to all future deliveries even if Seebach GmbH does not expressly invoke them. Seebach GmbH shall be entitled to demand the surrender of objects owned by it if the Ordering Party is in breach of the contract.

- The Ordering Party shall, as long as ownership has not passed to it, be obliged to care for the object of purchase like a third-party object. It shall, in particular, be obliged to take out adequate replacement value insurance, at its own expense, against theft, fire and water damage. The Ordering Party shall, in order to provide security for all claims of Seebach GmbH arising from the business relationship with the Ordering Party, hereby assign its claims against the companies insuring the ordered goods to Seebach GmbH, which shall hereby accept the assignment. If maintenance and service work need to be carried out, the Ordering Party shall perform such work in good time at its own expense. As long as ownership has not passed to the Ordering Party, the Ordering Party shall notify Seebach GmbH in writing without delay if the supplied object is seized or otherwise subjected to third-party interventions. If the third party is unable to surrender the object to Seebach GmbH and/or to reimburse Seebach GmbH for the judicial and extrajudicial costs, particularly the costs of third party counterclaim proceedings, the Ordering Party shall be liable for any loss incurred by Seebach GmbH and any necessary expenses undertaken by Seebach GmbH.
- The Ordering Party shall be entitled to sell on the goods subject to retention of title in the ordinary course of business. The Ordering Party shall, in order to provide security for all claims of Seebach GmbH arising from the business relationship with the Ordering Party, hereby assign the receivables of the Ordering Party arising from the onward sale of the goods subject to retention of title to Seebach GmbH, in the amount of the final invoice total (including value added tax) agreed with it, which assignment shall hereby be accepted by Seebach GmbH. This assignment shall apply irrespective of whether the object of sale has been sold on without or after processing. The Ordering Party shall, even after the assignment, continue to have authority to collect the receivable in the ordinary course of business. This shall not affect the authority of Seebach GmbH to collect the receivable itself. Seebach GmbH shall not, however, collect the receivable as long as the Ordering Party complies with its payment obligations arising from the proceeds received, is not in default of payment, in particular, no petition for institution of insolvency proceedings has been presented and is not in breach of the contract.
- The machining and processing or transformation of the object of sale by the Ordering Party shall always be carried out in the name and on behalf of Seebach GmbH, which, without provisional acquisition by the processing ordering party, shall thereby become the owner of the transformed objects, but not be placed under any obligation as a result of the machining and processing or transformation. In this case, the Ordering Party's reversionary interest in the object of sale shall continue in the transformed object. If the object of sale is processed with other objects not owned by Seebach GmbH, which are likewise subject to retention of title by a third party, Seebach GmbH shall acquire co-ownership of the new object proportionately to the objective value of its object of sale in relation to the other processed items at the time of processing. The same shall apply in the event of combining and mixing. To provide security for all claims of Seebach GmbH arising from the business relationship with the Ordering Party, the Ordering Party shall hereby also assign to Seebach GmbH such receivables as arise against a third party due to the combination, mixing and processing of the goods subject to retention of title. Seebach GmbH shall hereby accept said assignment.

## § 8 Notification of Defects, Warranty, Limitation Period and Recourse / Manufacturer's Recourse

- Warranty claims of the Ordering Party shall be contingent upon its having complied properly with its examination and notification obligations in accordance with Section 377 of the Handelsgesetzbuch (German Commercial Code – HGB). Failure in this respect shall preclude the possibility of asserting warranty claims.
- In terms of the characteristics of the goods, only the agreed customer drawing shall, in principle, apply. The Ordering Party shall receive no independent or dependent warranties from Seebach GmbH. In addition, public statements, fulsome recommendations or advertising shall not constitute a contractual indication of the characteristics of the goods or any kind of warranty.
- If, despite all the care exercised, the supplied goods have a defect, which already existed at the time the risk passed, Seebach GmbH shall initially have the right, at its option, to remedy the defect or to supply an object free of defects. The Ordering Party shall afford Seebach GmbH an opportunity of subsequent performance within a reasonable period. Rights to recourse shall remain unaffected by the aforementioned provision. If the subsequent performance fails, the Ordering Party may rescind the delivery contract or reduce payment.
- The Ordering Party shall have no warranty claims, in accordance with the restrictions set forth in § 8 (6) sentence 2 of the General Terms and Conditions of Sale and Delivery, in the event of merely negligible divergence from the agreed characteristics, in the event of merely negligible impairment of utility, in the event of natural wear and tear, in the event of damage caused by incorrect or negligent handling, excessive stress or strain, unsuitable operating equipment, inadequate construction work, unsuitable building foundations or due to special external influences which were not provided for under the delivery contract. If improper repairs or changes are carried out by the Ordering Party or third parties, no warranty claims shall likewise be asserted for them and any consequences resulting therefrom, in accordance with the restrictions set forth in § 8 (6) sentence 2 of the General Terms and Conditions of Sale and Delivery.
- Claims of the Ordering Party on account of the expenses required for the purpose of subsequent performance, particularly transport, workmen's travel, labour and materials costs, shall be excluded to the extent that the expenses increase because the goods supplied by Seebach GmbH have subsequently been transferred to a location other than the Ordering Party's branch office, unless said transfer complies with their intended use.
- Claims for damages and reimbursement of expenses by the Ordering Party in relation to Seebach GmbH, arising from and in connection with this delivery contract, particularly the assertion, by the Ordering Party, of damages and consequential damages caused by defects, including lost profit, shall be excluded. This shall not affect the liability of Seebach GmbH (including, in each case, liability for conduct of its legal representatives and its vicarious agents) for damage that is due to gross negligence, willful intent or malice, for damage arising from injury to life, limb or health and for damage arising from a breach of obligations, the fulfilment of which is essential to the proper performance of the delivery contract and on the fulfilment of which the Ordering Party may routinely rely (material obligations).
- In the event of onward sales, by the Ordering Party, of goods of Seebach GmbH to a consumer as a customer or to other companies as customers, who, in turn, sell the goods to a consumer, Seebach GmbH shall grant the Ordering Party for each warranty claim asserted by a consumer or purchaser and reported to Seebach GmbH by the Ordering Party, a reasonable discount as equivalent compensation. In return, the Ordering Party shall waive any recourse action pursuant to Sections 478 and 479 of the BGB.
- Warranty claims shall become time-barred in 12 months from delivery of the goods supplied by Seebach GmbH to the place of performance and fulfilment pursuant to § 6 (1) of the General Terms and Conditions of Sale and Delivery, unless an object pursuant to Section 438 (1) no. 2 of the BGB is involved and unless the restrictions set forth in § 8 (6) sentence 2 of the General Terms and Conditions of Sale and Delivery take effect.
- Seebach GmbH shall be entitled to set off an Ordering Party's claims against it or to assert a right of retention, even in the event of different due dates. If the settlement of the Ordering Party does not suffice to settle all receivables of Seebach GmbH, Seebach GmbH shall determine the debt to which the payment shall be credited.

## § 9 Force Majeure

- Force majeure, labour disputes, no-fault business disruptions, riots, official actions and other unavoidable events shall release Seebach GmbH, for the duration of their existence, from the obligation to carry out timely delivery. During such events and within two weeks of their termination, Seebach GmbH shall, without prejudice to its other rights, be entitled to rescind the delivery contract, either in whole or in part, providing said events are not of negligible duration and Seebach GmbH can no longer be reasonably expected to adhere to the unchanged delivery contract.

## § 10 Non-Disclosure

- The Ordering Party shall give an undertaking and ensure that it and its employees, advisers, customers and other business partners shall always treat in strict confidence all commercial and technical details not in the public domain that have become, and still are, known to it or them as a result of the business relationship with Seebach GmbH and shall not make said details accessible to third parties in any way without the written consent of Seebach GmbH.
- Drawings, models, templates, samples etc. must not be made accessible to unauthorized third parties without the prior written consent of Seebach GmbH. Copying said items shall be permitted only to the extent required by operations and permitted by copyright provisions. All rights to these items, including, but not limited to, copyrights shall remain with Seebach GmbH.

## § 11 Set-Offs and Rights of Retention, Prohibition of Assignment

- The Ordering Party shall have the right to set-off or to exercise rights of retention vis-à-vis Seebach GmbH, particularly in relation to payments from earlier or other transactions in the current business relationship, only in respect of claims that are uncontested or have become res judicata. The Ordering Party shall not be entitled to assign its claims against Seebach GmbH to third parties except in the case of Section 354 a of the Handelsgesetzbuch (German Commercial Code – HGB).

## § 12 Miscellaneous

- This delivery contract and the entire legal relationships between the Parties shall be governed by the substantive law of the Federal Republic of Germany. Application of the UN Convention on the International Sale of Goods (CISG) shall be excluded.
- The venue for all disputes arising from and in connection with this delivery contract with the Ordering Party as merchant shall be Kassel. Seebach GmbH shall, however, also be entitled to sue the Ordering Party at the location relevant to its registered office.
- All agreements made between the Parties for the purpose of execution of this delivery contract shall require the written form. This shall also apply to any amendment of this written form clause.
- If individual provisions in this delivery contract are or become invalid or contain a lacuna, this shall not affect the remaining provisions. Instead of the invalid provision, the Parties shall undertake to make a statutorily permitted provision, which comes as close as possible to the intent of the invalid provision or fills this lacuna.