

## **General Terms and Conditions of Sale of Ueberholz GmbH – Ueberholz new lighting**

### **Section 1 General – Are of Application**

- 1.1 Our Terms and Conditions of Sale shall apply exclusively.
- 1.2 Any contradictory, deviating or complementary general terms and conditions of our customers shall not become part of the agreement, not even if we are aware of such terms and conditions, unless we expressly agree in writing with their applicability. Our Terms and Conditions of Sale shall also apply in the event that we execute delivery to the customer without any reservation despite being aware of conditions to the contrary or conditions of the customer which deviate from our terms and conditions.
- 1.3 Upon placement of the first order after receipt of these Terms and Conditions of Sale, and after placement of each additional order, the customer shall agree said Terms and Conditions of Sale are the binding regulation applicable to the business relationship with us, and shall waive the formulation and application of their own pre-formulated contractual provisions for a large number of agreements.
- 1.4 Our Terms and Conditions of Sale shall only apply vis-à-vis entrepreneurs in accordance with the legal definition provided for in detail in Section 310 German Civil Code (*Bürgerliches Gesetzbuch*, BGB).
- 1.5 All agreements made between us and the customer for the purpose of fulfilling the agreement shall be deemed to have been set out in writing in the agreement.

### **Section 2 Conclusion of the Agreement**

- 2.1 Our offers shall be subject to change. Technical modifications as well as deviations in form/colour/weight shall remain reserved within the framework of what is reasonable. The documents associated with the offer shall not constitute a warranty of features, but shall only serve as a guide for the purchaser.
- 2.2 By placing an order for goods, the customer shall declare in a binding manner that they want to acquire the goods ordered by them. We shall be entitled to accept the contractual offer underlying the order within a period of two (2) weeks after receipt by us. Acceptance may be declared either in writing or by delivery of the goods.
- 2.3 The agreement shall be concluded subject to the proviso that the goods are delivered to us both correctly and in due time by our sub-contractors. This shall only apply in the event that we are not responsible for non-delivery. We shall be deemed not to be responsible for said non-delivery in particular in the event that a congruent covering transaction is concluded with our sub-contractor and said sub-contractor's non-delivery is incorrect or in default.
- 2.4 In the event that the entrepreneur orders the goods by electronic means, the obligation to confirm the order in accordance with Section 312 e I German Civil Code shall be excluded.

### **Section 3 Reservation of Ownership**

- 3.1 We reserve ownership in the purchased item until receipt of all payments resulting from the business relationship with the customer. If the customer acts in a way contrary to the contractual obligations, in particular in the event of any default of payment, we shall be entitled to take back the purchased item. Our taking back the purchased item shall be regarded as a withdrawal from the agreement. After taking back the purchased item, we shall be entitled to sell it; the proceeds from such sale shall be set off against the liabilities of the customer, after deduction of reasonable sale costs.
- 3.2 The customer shall be obliged to handle the purchased item with good care; the customer shall be obliged, in particular, to insure such item adequately at their own expense at the original value of the item against damage by fire, water and theft. In so far as any maintenance and inspection work needs to be done, the customer shall be obliged to carry out said work in due time and at their own expense.
- 3.3 In the event of seizures or any other interventions by third parties, the customer must notify us without undue delay in writing so that we may bring an action before court in accordance with Section 771 German Code of Civil

Procedure (*Zivilprozessordnung*, ZPO). To the extent that the third party is unable to reimburse to us the judicial or out-of-court costs of any action in accordance with Section 771 German Code of Civil Procedure, the customer shall be liable for the loss incurred to us.

- 3.4 The customer shall be entitled to resell the purchased item in the ordinary course of business; the customer shall, however, assign to us at this time all claims in the amount of the final invoice value (including the value added tax) of our claim which accrue from said reselling vis-à-vis their purchasers or third parties, independent of whether or not the purchased item has been resold without or after any further processing. The customer shall still be entitled to collect such claim even after said assignment. Our entitlement to collect the claim ourselves shall not be affected by this. We shall be obligated, however, to refrain from said collection as long as the customer fulfils their payment obligations from the proceeds received, does not fall behind schedule with payment, especially if no suspension of payment occurs, or any application for initiation of settlement or insolvency proceedings is filed. If this is the case, however, we may require the customer to disclose to us the claims assigned and the respective debtors, to provide us with any information necessary for such collection, to make available to us the associated documents necessary in this regard and to inform the debtors (third parties) of such assignment.
- 3.5 In the event that the purchased item is inseparably intermingled with other items not belonging to us, we shall acquire joint ownership in the new item in the ratio of the value of the purchased item (final invoice amount including VAT) to the value of the other items intermingled at the time of such commingling. If the items are intermingled in such a manner that the item of the customer is to be considered the main item, then it shall be deemed to be agreed upon that the customer shall transfer to us joint ownership on a pro rata basis. The customer shall keep the thus formed sole ownership or joint ownership on our behalf.
- 3.6 In order to secure our claims, the customer shall also assign to us any claim against them which arises against a third party due to the combination of the purchased item with real property.
- 3.7 We shall be obligated to release the collateral securities to which we are entitled at the request of the customer in so far as the realisable value of our collateral securities exceeds the claims to be secured by more than 10%; the selection of the collateral securities to be released shall be at our discretion.
- 3.8 We reserve the property rights and copyrights to all illustrations, drawings, calculations and other documents.

#### **Section 4 Prices – Terms of Payment**

- 4.1 Our prices specified in the offer shall apply subject to the proviso that the order data underlying the placement of the order remains unchanged. Our prices shall be understood to be “ex works”. The value added tax shall not be included; it shall be specified separately in the amount applicable on the date of invoicing. Shipping packaging, freight, postage, shipping costs and insurance shall be calculated separately.
- 4.2 Unless otherwise provided for in the order confirmation, the delivery shall be agreed upon as “ex works”. The dispatch shall be performed freight forward and, as a general rule, against cash on delivery, unless any other agreement has been made in this regard. If we do not deliver the goods against cash on delivery, the customer shall be obliged to pay the purchase price net (without deduction) within a period of ten (10) days. After expiry of this time limit, the customer shall be deemed to have fallen behind with payment. Cash discounts shall require a separate arrangement. The assertion of defects or reductions shall not affect the due date of the remaining purchase price payment. Defects to some of the goods delivered shall not entitle the customer to reject the entire delivery. After the occurrence of the default, the customer shall pay interest on the monetary debt in the amount of 8% above the base interest rate. We reserve the right to demonstrate and assert a higher damage caused by default.
- 4.3 The customer shall be entitled to rights of set-off only if their counter-claims have been established by force of law, are undisputed or have been acknowledged by us. The customer shall be entitled to exercise any right of retention only to the extent that their counter-claim is based on the same contractual relationship.
- 4.4 Terms of payment practiced but not agreed upon may be adapted by us at any time within a reasonable time limit.

4.5 In the event of services performed in advance on our part, in particular in the case of additional services, we shall be entitled to require the provision of a collateral security and make our service dependent on said collateral security. The same shall apply, in particular, if doubts occur with regard to the customer's creditworthiness, in the event of any lack of coverage or liquidity shortfalls or if the initial credit volume is increased. We shall be entitled to invoice partial deliveries as special transactions. If our terms of payment are not met or if the customer becomes the object of other events which give rise to doubts about the customer's creditworthiness or if we become aware of the existence of such circumstances prior to the conclusion of the agreement only at a later point in time, we shall be entitled, notwithstanding our other statutory rights, to make further deliveries from the same legal relationship dependent on the repayment of the outstanding claims resulting therefrom for the duration of the default of payment.

## **Section 5 Delivery Term**

5.1 The start of the time of delivery indicated by us shall imply the clarification of all technical issues.

5.2 Furthermore, compliance with our delivery obligation shall also require the timely and proper fulfilment of the customer's obligation. The right to defend the non-fulfilment of the agreement shall remain reserved.

5.3 The risk of accidental loss or accidental deterioration of the goods shall pass on to the customer upon handover, in the case of any sale by delivery to a place other than the place of performance upon delivery of the item to the freight forwarder, the freight carrier or any other person determined to execute the delivery.

5.4 Handover shall be performed irrespective of whether or not the customer is in default with acceptance.

5.5 The delivery time information provided shall be complied with, if possible. In the event that the delivery time agreed upon is exceeded, claims for compensation for damages on the part of the customer based on any negligent violation of the agreement shall be excluded. The specified delivery time shall only be approximate. If we are prevented from performing the delivery in due time due to unforeseeable events or circumstances for which we are not responsible and which cannot be prevented if reasonable care is taken, the delivery time shall be extended accordingly.

## **Section 6 Warranty**

6.1 We shall confirm that the goods delivered by us are in compliance with the statutory provisions as regards their composition, quality, packaging, declaration and goods specifications. Claims for defects on the part of the customer shall imply that the customer has properly fulfilled any and all of their obligations of examination and notification of defects in accordance with Section 377 German Commercial Code (*Handelsgesetzbuch*, HGB).

6.2 In the event of defects in the goods, we shall initially provide a warranty at our discretion, either by subsequent repair or replacement delivery. If subsequent repair fails, the customer may, at their discretion and as a general rule, require the reduction of the remuneration (abatement) or the rescission of the agreement (withdrawal). In the case of an only minor infringement of the contractual agreement, in particular in the event of only minor defects, however, the customer shall not be entitled to any right of withdrawal.

6.3 If the customer decides to withdraw from the agreement based on a defect in title or a material defect after subsequent performance has failed, the customer shall, in addition thereto, not be entitled to compensation for damages based on said defect. If the customer opts for compensation for damages after subsequent performance has failed, the goods shall remain with the customer, provided that this is reasonable for the customer. The compensation for damages shall be limited to the difference between the purchase price and the value of the defective goods. This shall not apply, however, if the infringement of the contractual agreement has been caused in a malicious manner.

6.4 The warranty obligation shall be one (1) year after delivery of the goods, unless the usual useful life is shorter due to the quality of the goods.

6.5 As a general rule, the agreed quality of the goods shall only be deemed to include the product description provided by the manufacturer. In addition thereto, public statements, recommendations or advertising of the manufacturer shall not constitute any quality of the goods in accordance with the agreement.

6.6 Guarantees within the legal sense shall not be granted to the customer by us. Guarantees offered by the manufacturer shall remain unaffected by this.

6.7 In the event that the customer receives defective assembly instructions, we shall only be obliged to deliver assembly instructions free of defects, with said obligation existing only in the case that the defect in the assembly instructions precludes proper assembly.

6.8 Our warranty shall only cover the goods delivered by us and shall not apply to subsequent costs resulting therefrom.

#### **Section 7 Limitations of Liability**

7.1 In the case of slightly negligent breaches of duty, our liability shall be limited to the foreseeable, contract-typical, direct average damage depending on the nature of the goods. The same shall also apply in the case of slightly negligent breaches of duty on the part of our representatives or auxiliary agents. We shall not be liable in the event of any slightly negligent violation of non-essential contractual obligations.

7.2 The aforementioned limitations of liability shall not apply to claims of the customer from product liability. Furthermore, the limitations of liability shall not apply to any damage to body and health which is attributable to us or in the case of the loss of life of the customer.

7.3 Claims for damages on the part of the customer due to any defect shall become time-barred one (1) year after delivery of the goods. This shall not apply if accusations of fraudulent intent can be made against us.

#### **Section 8 Final Provisions**

8.1 These General Terms and Conditions of Sale shall be governed by the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

8.2 If the customer is a merchant, the exclusive place of jurisdiction for all legal disputes arising from this agreement shall be our company headquarters. The same shall also apply if the customer does not have a general place of jurisdiction in Germany or if the customer's place of residence or habitual abode is not known at the time any action is filed.

8.3 Unless provided for otherwise in the order confirmation, our company headquarters shall be the place of fulfilment.

8.4 Any ineffectiveness of individual contractual provisions shall not affect the effectiveness of the remaining provisions.