

General Terms and Conditions (AGB) – Xaver Bullinger GmbH + Co KG - in dealing with non-consumers (2016-07)

General delivery and payment conditions (ALZ) in business transactions with people who are not users/customers

I. Scope

1. Unless otherwise expressly agreed upon, these "General Delivery and Payment Conditions" (ALZ) apply to all contracts, deliveries and other services - including consultancy services rendered in the process, that do not form part of an independent consultancy contract - in the course of business transactions with people who are not users/customers as per § 310 I BGB.
2. We hereby object to any conditions that are different, particularly purchasing conditions of the buyer, except in individual cases when we have expressly agreed.
3. The ALZ will also form a part of the contract within the scope of a current business relationship between business people or additions or amendments if the seller has not expressly referred to their inclusion in individual cases.

II. Products offered and contract finalization

4. The products offered in the catalogues and sales materials of the seller as well as those offered on the Internet (unless they are expressly described as binding) are always subject to change, i.e. only to be understood as a request for submitting a quote.
5. Orders count as accepted either when they have been confirmed in writing by the seller or have been executed immediately after receipt of the order. The invoice then counts as the order confirmation.
6. If the seller gets to know of certain facts, after finalizing the contract, that indicate delays in payment with respect to previous deliveries, and which, based on the best business judgement, lead one to conclude that the purchase price claim is at risk due to the inability of the buyer to pay, the seller is entitled to demand payment bit by bit from the buyer within a set period or to demand appropriate guarantees and in case of refusal to withdraw from the contract, in which case the invoices for part deliveries that have already taken place immediately become due.
7. The buyer is hereby informed that the seller will process the personal data acquired within the scope of the business relationship in accordance with the terms of the Federal Data Protection Act.

III. Delivery, transfer of risk and delay

8. Once the goods have been made available by the seller at the delivery destination agreed on, risk is transferred to the buyer.
9. An acceptable amount of part deliveries is allowed.
10. Delivery times agreed on only apply as fixed deadlines if they have been expressly agreed on as such.
11. The delivery date can be extended, even within the period of delay, in cases of force majeure and all unforeseeable hindrances occurring after contract finalization, for which the seller is not responsible (particularly operational interruptions, strikes, shut-downs or blockage of transportation routes), in as far as it can be proven that such hindrances have a considerable influence on the delivery of the sold object. This also applies if these circumstances occur with the seller's suppliers and their subcontractors. The seller must inform the buyer as soon as possible of the start and end of such hindrances. Buyers can demand explanations from sellers as to whether they want to withdraw or deliver within an appropriate period. If the seller does not take a stand immediately, the buyer can withdraw. Claims for compensation for damages are out of the question in this case. The aforementioned regulations correspondingly apply to the buyer, if the aforementioned hindrances occur on the buyer's side.
12. As far as timely delivery is concerned, sellers are only liable for their own negligence and that of their assistants. They are not responsible for the negligence of their pre-suppliers since they are not their assistants. However, sellers are obliged, on request, to transfer any possible claims they are entitled to towards the pre-supplier, to the buyer.
13. In case of a delay in delivery, buyers are obliged, if sellers request, to declare, within an appropriate period, whether they still insist on the delivery or withdraw from the contract due to delay and/or demand compensation for damages instead of payment.

IV. Payment

14. Unless otherwise agreed on, the purchase price is due immediately on receipt of the goods without deductions. No specific reminders are required for this purpose, i.e. the buyer has automatically delayed payment 30 days after receipt of the invoice and due date.
15. Payment by bank draft is only possible after specific agreement. Bank drafts and cheques are always accepted for the sake of payment and not instead of payment. In cases of a protest against payment by cheque or bank draft, the seller can demand immediate cash payment bit by bit after the cheque or bank draft has been returned.
16. The law applies if payment is delayed. Any possible discounts agreed on will not be granted if the buyer delays payment of previous deliveries.
17. If buyers delay payment after reminders (§ 286 Abs. 1 BGB) or do not cash a bank draft when it is due, the seller is entitled, as per the prior reminder, to take back the goods, and enter the business premises of the buyer if necessary to take the goods. The seller can also refuse to dispose of the delivered goods. Taking back the goods does not mean withdrawal from the contract.
18. Refusal to pay or retention of payment is out of the question if buyers were aware of a defect or any other reason for objection at the time of finalizing the contract. This also applies if it has remained unknown to them as a result of gross negligence unless the seller has not told them about the defect or other reason for objection with malicious intent or has taken a guarantee for the acquisition of the object. For the rest, only an appropriate amount of the payment can be withheld due to defects or other objections. Experts named by the Chamber of Commerce and Industry of the buyer will decide on the amount. These experts should also decide on the distribution of costs for their services based on their equitable discretion.
19. Setting-off is only possible with payments recognized or legally determined by the seller.

VI. Properties of wood

20. Wood is a natural product. Its natural properties, deviations and characteristics must therefore always be observed. The buyer must particularly take its biological, physical and chemical properties into consideration.
21. The wide range of natural colours, structures and other differences within a type of wood are part of the properties of the natural product, wood, and do not represent any reason for complaints or liabilities.
22. The buyer must obtain specialist advice if necessary.

VII. Notification of defects, guarantees and liabilities

23. The buyer is liable for defects as per § 434 BGB as follows: The buyer must examine the received goods immediately for quantity and condition. Obvious defects must be reported to the seller within 14 days in writing. In the case of mutual trade between business people § 377 HGB remains unaffected.
24. If buyers find defects in the goods, they cannot claim ownership over them, i.e. the goods cannot be sold further or processed further until an agreement is made on the implementation of a complaint or proceedings for the preservation of evidence have taken place by an expert assigned by the Chamber of Commerce at the buyer's headquarters. In consequence of an infringement the buyer possibly shall be excluding with its claims.
25. If complaints are justified, the seller is entitled to determine the type of subsequent action (replacement, improvement), taking the type of defect as well as the justified interests of the buyer into consideration.
26. The buyer must inform the seller almost immediately about cases of guarantee on the part of the user.
27. Claims on material defects expire in 12 months. This does not apply if the law prescribes longer periods in accordance with § 438, paragraph 1, No.2 (buildings and objects for buildings), § 479, paragraph 1 (contribution claim) and § 634a, paragraph 1, No.2 (building defects) BGB.
28. Section XIII applies to claims for compensation for damages (General Limitation of Liability).

VIII. General Limitation of Liability

29. Claims for damages and expenditure on the part of the buyer (hereafter referred to as claims for compensation for damages) for whatever legal reasons but particularly for violation of obligations arising out of a contractual obligation and out of impermissible actions, are out of the question. This does not apply in cases when a guarantee or an acquisition risk have been granted. It also does not apply if liability has been undertaken on a compulsory basis, e.g. in accordance with the product liability law, in cases of gross and intentional negligence, due to injury to life, physical injury or risks to health. An amendment to the burden of proof to the disadvantage of the buyer is not connected to this.
30. This rule applies to the seller accordingly.

IX. Reservation of ownership rights

31. The sellers reserve the right to ownership of the goods until full payment of the purchase price has been made. In the case of goods buyers acquire from them within the scope of a continuous business relationship, the seller reserves the right to ownership until all claims towards the buyer arising out of the business relationship, including, claims accruing in future, as well as those arising out of contracts finalized at the same time or later, have been paid. This also applies if individual or all claims by the seller have been included in a current invoice and the balance has been drawn and acknowledged. If there is reason for liability on the part of the seller based on a bank draft connected to the payment of the purchase price by the buyer, the reservation of ownership rights does not expire before the bank draft has been cashed by the buyer as the payer. If the buyer delays payment, the seller is entitled to take back the goods after issuing a reminder and the buyer is obliged to hand them over.
32. If the goods owned by the seller are processed by the buyer into a new movable object, processing takes place for sellers without their being obliged and the new object becomes the property of the seller. If goods that do not belong to the seller are processed with the goods that do, the seller acquires co-ownership of the new object based on the status towards the other goods at the time of processing. If the owned goods are not connected to goods owned by the seller in accordance with §§ 947, 948 BGB, mixed or added to these goods, the seller becomes co-owner of these goods in accordance with the laws. If the buyer acquires sole ownership through binding, mixing or adding, he already transfers co-ownership to the seller based on the status of valuation of the owned goods compared to the other goods at the time of binding, mixing or adding. In such cases, the buyer must store the object owned or co-owned by the seller, which are also valid under the aforementioned conditions, free of cost.
33. If owned goods are sold individually or together with goods not belonging to the seller, the buyer already withdraws from the claims ensuing out of the further sale amounting to the value of the owned goods including all additional rights and precedence before the rest. The seller accepts the withdrawal. The value of the owned goods is the amount invoiced by the seller, which, however, is not included as long as the rights of third parties are opposed to it. If the owned goods that have been sold on are co-owned by the seller, the transfer of claims extends to the amount that corresponds to the seller's share in the co-owned goods.
34. If the owned goods are installed as an important part in a property, ship, ship construction or aircraft belonging to the buyer or to a third party, the buyer has already transferred the claims to payment amounting to the value of the owned goods with all additional rights including that for granting of a collateral mortgage with precedence before the rest arising out of this sale or towards third parties or those whom it concerns. The seller accepts the transfer. Paragraph 33, clauses 2 and 3 apply accordingly.
35. The buyer is only entitled to further sale and use of or installation of the owned goods in the course of normal business and only under the condition that the claims per Paragraphs 33 and 34 are, in fact, transferred to the seller. The Buyer is not entitled to dispose of the owned goods in other ways, particularly pawning or transfer by way of security.
36. The seller authorizes the buyer, reserving the right to revocation, to recover the claims transferred as per paragraphs 33 and 34. Sellers will not make use of their own rights to recover the claims as long as buyers fulfil their payment obligations towards third parties as well. On the seller's request, the buyer must name the debtor of the transferred claims and report the transfer to them. Sellers are authorized to report the transfer to debtors themselves.
37. The buyer must inform the seller immediately of the documents necessary for foreclosure measures of third parties concerning the owned goods or the transferred claims.
38. Once payment has been stopped and/or an application for opening bankruptcy proceedings has been made, the right to further sale, use or installation of the owned goods or the authorization for recovery of the transferred claims expires. In the case of protests against a cheque or bank draft the authorization for recovery also expires. This does not only apply to the rights of the bankruptcy administrator.
39. If the value of the securities granted exceeds the claims (if necessary reduced by way of advance payment and part payment) by more than 20%, the seller is obliged to re-transfer or release, as he wishes. Once all the seller's claims arising out of the business relationship have been re-paid, ownership of goods and the transferred claims are transferred to the buyer.

X. Installation services

40. The German Construction Contract Procedures (VOB, Parts B and C) apply to all installation services including assembly, in the valid version at the time of contract finalization, as long as the order has been issued by a contract partner working in the construction trade.

XI. Jurisdiction and applicable law

41. Place of execution and jurisdiction for services and payments (including payment by cheque and bank draft) as well as all disputes occurring between the parties, as long as the buyer is a business person, legal entity in public law or special fund under public law, is the headquarters of the seller. However the seller is entitled to sue the buyer at his headquarters as well.
42. Relations between the contract parties are regulated exclusively under the laws applicable to the Federal Republic of Germany under exclusion of the Uniform Law on the Sale of International Goods.
43. If one or several of these terms should violate a legal ban or be legally ineffective for other reasons or if legal loopholes are found as a result of them, the validity of the remaining terms remains unaffected. In such cases, the contract partners are obliged to agree on a substitute regulation that comes closest to the economic purpose of the ineffective term or regulation.
44. In addition, the terms of the BGB and the HGB also apply as long as the present ALZ do not include any regulations that differ.

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