

---

# General Terms and Conditions of Business of Armaturen Proksch GmbH

Status: September 2015

---

## **Contents**

§ 1	General, scope, place of jurisdiction and data protection .....	2
§ 2	Entering into a contract, awarding contracts .....	2
§ 3	Delivery time, shipping, passing of risk and acceptance .....	2
§ 4	Reservation of title .....	4
§ 5	Remuneration, compensatory damages .....	5
§ 6	Liability for defects .....	5
§ 7	Overall liability.....	6
§ 8	Terms and conditions of purchase .....	6

## **§ 1 General, scope, place of jurisdiction and data protection**

- (1) These General Terms and Conditions of Business apply to all current and future business relations with entrepreneurs. Entrepreneurs within the meaning of the General Terms and Conditions of Business are natural or legal persons or partnerships having legal personality with whom a business relationship is entered into and who act by way of performing a commercial or self-employed professional activity.
- (2) General Terms and Conditions of Business to the contrary of or which vary from or supplement our General Terms and Conditions of Business shall not become an integral part of the contract, including if we are aware of such terms and conditions unless express, written consent is given regarding the validity of such terms and conditions.
- (3) The laws of the Federal Republic of Germany shall apply to this contract. The provisions of the UN Convention on Contracts for the International Sale of Goods do not apply to sales by us.
- (4) If the contracting party is a merchant, legal entity under public law or special public funds, in the absence of provisions to the contrary in the order confirmation, our registered office is deemed the place of performance and jurisdiction. However, we are also entitled to bring legal action against our contracting parties at their place of jurisdiction.
- (5) The contracting party consents to the fact that we may process data within the meaning of the German Federal Data Protection Act obtained in conjunction with the business relationship irrespective of whether or not such data originate from the contracting party itself or from third parties.

## **§ 2 Entering into a contract, awarding contracts**

- (1) Our offers are subject to change without notice. Technical alterations as well as alterations in terms of form, colour and/or weight are reserved as part of action that is acceptable – in particular in the case of new constructions and special designs. We are entitled to award sub-contracts.
- (2) By way of placing an order for goods/a work, the Customer states with binding force the intention to acquire the ordered goods/to award the contract. We are entitled to accept the contractual offer set out in the order within two weeks following receipt by us. Acceptance shall be made on the basis of a written order confirmation. Verbal incidental agreements in the case of entering into a contract and amending the contract are subject to our written confirmation in order to be deemed valid.
- (3) The contract is entered into on condition of accurate and timely self-delivery by our own suppliers. This only applies in the event that the lacking delivery is not our responsibility, in particular in the case of entering into a congruent hedging transaction.
- (4) We reserve ownership and copyright to information, in particular diagrams, drawings, calculations and other documents that are forwarded to customers or suppliers. These may not be made available to third parties. This applies in particular to any written documents and information described as “confidential”; the Customer/Supplier is to obtain our express written consent before these documents can be passed on to third parties.

## **§ 3 Delivery time, shipping, passing of risk and acceptance**

- (1) The delivery time is stated in the respective agreements. The stated delivery date is not binding provided nothing to the contrary is agreed upon. Adherence to these on our part is conditional on the fact that all commercial and technical matters between the contracting parties have been clarified, and the Customer has honoured all obligations incumbent upon the Customer such as providing all the necessary certificates or licenses or making an advance payment. If this is not the case, the delivery time shall be extended accordingly.

This does not apply insofar as we are responsible for the delay. In the absence of provisions to the contrary in the order confirmation, deliveries shall be agreed upon as "ex works".

- (2) The packaging shall be provided in accordance with professional viewpoints that are customary in the trade. Crates and other packaging or loading material shall be charged at cost price. No liability shall be assumed for the most cost-effective carriage of goods or transportation period provided we are not responsible.
- (3) Consignments shall be insured against loss and breakage – at the Buyer's cost. Insurance cover that extends beyond this shall be subject to a written agreement.
- (4) The delivery period shall be deemed honoured if the subject matter of contract has left the factory or location/storage location up until expiry of the delivery period. Insofar as acceptance applies, the acceptance date shall be authoritative – apart from cases of justified refusal to accept.
- (5) Risk shall pass to the Customer – including in the case of sample deliveries – as soon as the goods have left the factory or the warehouse location/location including if partial deliveries are made or we have assumed other services such as the shipping costs or delivery. Insofar as acceptance has been agreed upon, it shall be authoritative for the passing of risk. It must be carried out without delay on the acceptance date, alternatively following notification by the Supplier of the readiness for acceptance. The Customer may not refuse acceptance on the grounds of an insignificant defect.
- (6) If the shipping or acceptance of the subject matter of contract are delayed for reasons that are the Customer's responsibility or if the Customer culpably violates other collaboration obligations, we shall be entitled to request compensation for the damage we insofar sustain, including potential additional costs. In this case, the risk of accidental loss of or accidental deterioration in the item also passes to the Customer at the time at which the Customer defaults in acceptance.
- (7) If we are prevented from honouring the contract in good time as a result of procurement, manufacturing or delivery disruptions that affect us or our suppliers/sub-contractors (e.g. energy shortage, traffic disruptions, strikes, lock-outs or force majeure etc.), the delivery time shall be extended accordingly.
- (8) We shall be liable in the event of default in delivery in accordance with the statutory provisions insofar as the contract of purchase that is taken as a basis is a fixed business transaction within the meaning of Section 286, sub-section 2, no. 4, of BGB (German Civil Code) or Section 376 of HGB (German Commercial Code). We shall also be liable in accordance with the statutory provisions insofar as the Customer is entitled, as a result of a default in delivery that is our responsibility, to assert its interest in the continued execution of the contract in the event of cessation. We shall furthermore be liable in accordance with the statutory provisions insofar as the default in delivery is based on an intentional or gross negligent breach of contract for which we are responsible. Culpability of our representatives or vicarious agents is to be attributed to us. Insofar as the default in delivery is attributable to gross negligent breach of contract that is our responsibility, our liability for damages shall be limited to foreseeable, typical cases of damage. We shall also be liable in accordance with the statutory provisions insofar as the default in delivery for which we are responsible is based on culpable violation of a key contractual obligation. However, in such a case the liability for damages shall be limited to foreseeable, typical damage.
- (9) In other respects we shall be liable for damages, in the event of default in delivery for each full week in which the delay continues as part of flat-rate compensation, in the sum of 0.5 % of the delivery value, at most however not more than 5 % of the delivery value.
- (10) The Customer is reserved the right to assert additional statutory claims and rights.
- (11) We are entitled to provide partial deliveries that are deemed acceptable.

#### § 4 Reservation of title

- (12) Up until payment in full of all claims against the Customer resulting from the business association, or claims which have yet to arise – irrespective of the kind of claims and legal grounds on which they are based – we reserve ownership of the delivered goods and rendered services. In the event of conduct in breach of contract on the part of the Customer, in particular default in payment, we shall be entitled to exercise our statutory rights and take back the goods. If we take back the goods, this is not equated with a withdrawal from contract unless we have expressly stated such in writing. After taking back the goods, we may utilise these and count the proceeds towards the Customer's liabilities. Attachment of the object of sale by us shall at all times involve withdrawal from the contract.
- (13) The processing or refashioning of the object of sale by the Customer shall at all times be carried out on our behalf. If the reserved goods are processed using other items that we do not own, we shall acquire co-ownership of the new item in proportion of the value of the goods delivered by us to that of the other processed items at the time of processing. The Customer shall store the new item gratuitously on our behalf. The Customer assigns to us at this point in time its ownership or co-ownership rights to the processed item. The same applies in the event of mixing on condition that the Customer assigns to us proportionate co-ownership if the mixing occurs in a manner that means the Customer's item is to be regarded as the principal item.
- (14) The Customer may process and sell the reserved goods during the ordinary course of business as long as it is not in default of payment. Extraordinary disposals such as pledging, ownership transfer by way of security and any assignment are not permitted.
- (15) In the event of seizure or other intervention by third parties, the Customer shall be required to inform us in writing without delay. In the event of legal action within the meaning of Section 771 ZPO (German Code of Civil Procedure), the Customer is to reimburse us for the court and out-of-court costs provided these are not reimbursed by third parties.
- (16) The Customer hereby assigns to us as security receivables resulting from the resale or for any other legal reason (insurance/unlawful acts). The Customer is irrevocably authorised to collect in its own name the claims assigned to us. This does not affect our authority to collect the claims. The authorisation to collect shall only be revoked if the Customer has defaulted in payment, an application is filed for the institution of insolvency proceeding or payments have been discontinued. On request, the Customer is to notify its contracting party in writing of the assignment, make available and hand over to us all requested information and documents and surrender to us bills of exchange. In addition, the Customer is to grant us access to the reserved goods that remain in its possession and forward to us a precise list of the goods and sort out/surrender the goods.
- (17) The Customer shall also assign to us, as security for our claims against the Customer, the claims against a third party that arise as a result of the link between goods supplied by us and a plot of land.
- (18) If the realisable value of the retained securities exceeds the claim to be secured by more than 10 %, at the Customer's request we shall release securities at our discretion. The burden of proof with regard to retained securities exceeding the 10 % lies with the Customer. Selecting the securities to be released is incumbent upon us.
- (19) The Customer is to maintain the delivery item in an orderly condition during the reservation of title and make arrangements to have all the necessary or proposed maintenance and repair work performed without undue delay. The Customer undertake to adequately insure the object of sale at replacement value, at its own cost, against damage caused by fire, water and insure it against theft.

## **§ 5 Remuneration, compensatory damages**

- (20) The offered purchase price has binding force. Price details are to be understood plus turnover tax and apply ex works without packaging and without transport insurance. If taxes, customs duties, freight, charges or disbursements are increased or newly introduced or reduced or abolished between the time at which the contract is entered into and executing the contract, we shall be entitled to increase or reduce the purchase price accordingly. The prices apply from the day on which the contract is entered into for one month provided a fixed price is not agreed upon. In the case of agreeing on a delivery period in excess of four months or in the case of recurring obligations that last for longer than 4 months, we shall be entitled to pass on to the Customer cost increases that have been applied in the meantime for the procurement/delivery, including those as a result of legal amendments (e.g. increasing the turnover tax) by way of appropriate price increases.
- (21) We are entitled to request a reasonable payment on account or advance payment insofar as the Buyer's assets deteriorate significantly after entering into a contract, or if we only gain knowledge of such circumstances after placing an order. In the event of subsequent knowledge of inadequate ability to pay on the part of the Buyer, we shall also be entitled to withdraw from the contract if our payment claims appears to be jeopardised.
- (22) The respective terms and conditions of payment are specified in the offer. In the absence of a separate agreement, the Customer undertakes in the event of an ongoing business association within 30 days from the invoice date. Payments made within 10 days shall be subject to a 2 % cash discount. We are also entitled to request advance payment. Partial deliveries and assembly costs are normally charged immediately.
- (23) The Customer shall only be entitled to set off if its counter-claims have become res judicata or have been acknowledged buy us or are undisputed. The Customer may only exercise a right of retention if its counter-claim is based on the same contractual relationship.
- (24) If the Customer defaults in payment, we shall be entitled to exclude the Customer from further deliveries, including if corresponding delivery contracts have already been entered into.
- (25) If the Buyer is in default with regard to the acceptance, honouring its payment obligations or the provision of an agreed security, we shall be entitled after setting a reasonable subsequent period to request claims for damages regarding non-performance and/or withdraw from the contract. Irrespective of the option of actual greater damage, we shall be entitled without furnishing proof, to assert a claim for damages in the sum of 20 % of the sales price. However, the contracting party is expressly granted the option of furnishing proof that either no damage was caused or the damage was considerably lower in terms of money than the flat rate.

## **§ 6 Liability for defects**

- (26) The Customer's claims regarding defects are conditional on the fact that the contracting party has properly honoured its obligations to inspect and provide notification of defects in accordance with Section 377 HGB.
- (27) Insofar as the item of purchase is faulty, the Customer shall, at its own discretion, be entitled to subsequent performance in the form of remedying defects or delivery of a new, fault-free item. In the event of the rectification of a defect or a replacement delivery, we undertake to carry all expenses required for the purpose of providing subsequent performance, in particular transport, transportation, work and material costs, insofar as these are not increased because the object of sale was brought to a location other than the place of performance.
- (28) We shall be liable in accordance with the statutory provisions provided the Customer asserts claims for damages that are based on intent or gross negligence. Insofar as blame for intentional breach of contract is not apportioned to us, liability for compensatory damages shall be limited to foreseeable, typical damage.

- (29) We shall be liable in accordance with the statutory provisions insofar as we culpably violate a key contractual obligation. However, in such a case the liability for damages shall also be limited to the foreseeable, typical damage. A key contractual obligation shall apply if the violation of an obligation refers to an obligation that the Customer had trusted will be honoured and which the Customer could expect to be honoured.
- (30) Insofar as the Customer is entitled in other respects to assert a claim for compensatory damages instead of the performance because of negligent violation of an obligation, our liability shall be limited to compensation for foreseeable, typical damage.
- (31) This shall not affect the liability due to culpable loss of life, physical injury or detrimental effects on health. This also applies to compulsory liability in accordance with the German Product Liability Act.
- (32) Liability is excluded in the absence of provisions to the contrary stated above.
- (33) The period of limitation for warranty claims is 12 months from the passing of risk. This does not apply if the item of purchase is normally used for a building structure and causes the defect. This does not affect the period of limitations in the event of supplier recourse in accordance with Sections 478, 479 BGB.

## **§ 7 Overall liability**

- (34) Further-reaching liability to provide compensation for damages than that specified in Section is excluded. This applies, in particular, to claims for damages resulting from culpability in the case of entering into a contract, regarding other violations of obligations or regarding tortious claims for compensation resulting from material damage in accordance with Section 823 BGB. This also applies insofar as the Customer requests compensation for expenses incurred in vain in the place of a claim for damages instead of performance.
- (35) Insofar as liability for damages in dealings with us is excluded or limited, this shall also apply in view of the personal liability for damages on the part of our salaried staff, employees, workers, representatives and vicarious agents.

## **§ 8 Terms and conditions of purchase**

- (1) The Supplier undertakes to accept our order within a period of 2 weeks. The UN Convention on Contracts for the International Sale of Goods applies.
- (2) We reserve property rights and copyright to diagrams, drawings, calculations and other documents. These may not be made available to third parties without our express, written approval. They are to be used exclusively for the manufacture as a result of our order. Once the order has been processed, they are to be returned to us without request. They must be kept secret from third parties.
- (3) The price stated in the order has binding force. Unless otherwise agreed in writing, prices shall include "free delivery", including packing. Returning packaging shall be subject to a special agreement. The statutory turnover tax is included in the price provided nothing to the contrary has been expressly agreed upon or stated.
- (4) In the absence of written agreements to the contrary, we shall pay the purchase price within 14 days calculated from delivery and receipt of invoice at a 3 % trade discount or within 30 days following receipt of invoice without any deductions.
- (5) The delivery deadline specified in our order has binding force.
- (6) In the absence of agreements to the contrary, items are to be delivered free domicile.
- (7) We undertake to check the goods within a reasonable period as regards quality or quantity variations. Notification shall be deemed given in good time provided it is received by the Supplier within a period of five

workdays calculated from the receipt of goods or in the event of hidden defects when such defects are identified.

- (8) We are entitled to the statutory warranty claims without restrictions. In any case, we are entitled to request that the Supplier rectifies defects or delivers a new item at our discretion. We expressly reserve the right to compensatory damages, in particular claims for damages instead of performance.
- (9) We are entitled to rectify defects at the Supplier's cost if the Supplier is in default.
- (10) The period of limitations is 36 months calculated from the passing of risk provided the compulsory provisions of Sections 478, and 479 BGB do not apply.
- (11) Insofar as the Supplier is responsible for product damage, the Supplier undertakes to render us exempt from third party claims for damages at the first request insofar as the cause lies in its sphere of dominance and organisation, and it is liable in dealings with outside parties.
- (12) As part of its liability for cases of damage within the meaning of sub-section 11, the Supplier also undertakes to reimburse us for potential expenses in accordance with Sections 683, 670 BGB in conjunction with a re-call campaign conducted by us. This does not affect other statutory claims.
- (13) The Supplier undertakes to maintain a product liability insurance with an amount covered of EUR 10 million for each case of personal/material damage – on a flat-rate basis. This shall not be affected if we are entitled to further-reaching claims for damages.
- (14) The Supplier guarantees that no third party (property rights shall be infringed in connection with his delivery in the Federal Republic of Germany. If legal action is taken against by a third party based on an infringement of a property rights, the Supplier undertakes to render us exempt from such claims at the first written request. The Supplier's obligation to render us exempt applies to all expenses that we incur as a result of or in conjunction with the action brought by a third party.
- (15) Insofar as we order parts from the Supplier, we shall retain ownership to such parts. Any processing or transformation thereof by the Supplier shall be deemed to have been performed on our behalf. If our reserved goods are processed with other items that we do not own, we shall acquire co-ownership of the new item in proportion of the value of our item (purchase price plus value added tax) to that of the other processed items at the time of processing. The same applies in the event of mixing on condition that we are assigned proportionate co-ownership if the mixing is performed such that the Supplier's item is to be regarded as the principal item. The Supplier shall store the (solely-owned) property gratuitously on our behalf.
- (16) We reserve ownership to provided tools. The Supplier undertakes to use the tools exclusively for manufacturing the goods we have ordered. The Supplier undertakes to insure, at its own cost, the tools that we own at replacement value with cover for fire damage, water damage and damage caused by theft. At the same time, the Supplier assigns at this point in time to us all compensation claims resulting from such insurance. We hereby accept the assignment.
- (17) Insofar as the security rights to which we are entitled in accordance with sub-sections 15 and 16 exceed the purchase price of all our reserved goods, which are yet to be paid for, by more than 10 %, we undertake at the Supplier's request to release the security rights at our discretion.