

GENERAL TERMS AND CONDITIONS

CRACO GmbH . Naubergstr. 6 . 57629 Atzelnig . T. +49 (0) 26 62 . 95 52-0 . F. +49 (0) 26 62 . 95 52-549 . E.info@craco.de . www.craco.de

1. General Terms

(1) Contracts are entered into subject to the exclusive application of our General Terms and Conditions; we shall not accept General Terms and Conditions of the Customer, unless we have expressly given our written consent to its application. Our General Terms and Conditions shall also apply exclusively if we fulfil our contractual obligations without reservation in the knowledge of the General Terms and Conditions of the Customer.

(2) Our General Terms and Conditions shall only apply to an entrepreneur (Sect. 310 I, 14 German Civil Code (BGB)), a legal entity under public law or a special fund under public law; they shall apply in such cases in which our offer has been submitted in the context of an invitation to tender pursuant to German Construction Tendering and Contract Regulations, Part A (VOB/A) or other public tender procedure, only subordinated for the Terms of Tender. In the event of contradictions between the Terms of Tender and our General Terms and Conditions, only the Terms of Tender shall apply to the points in question.

(3) Our General Terms and Conditions shall likewise apply to all future business transactions with the Customer.

(4) The exclusive place of jurisdiction shall be our registered office; however, we shall be entitled to take action against the Customer at the place of his legal domicile if we so choose.

(5) Unless otherwise specified in the order confirmation, the place of fulfilment shall be our registered office.

(8) This Agreement shall be subject to the substantive law of the Federal Republic of Germany, under exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

2. Offer – Disclaimer of opinion for law of agency

(1) Our offer shall be non-binding until accepted by the Customer. Prior sales and self-supply shall be reserved.

(2) All documents submitted prior to the offer such as advertising brochures, etc. as well as documents pertaining to the offer such as illustrations, drawings, weight and dimension specifications shall be subordinated to the description of service according to our offer unless and to the extent they are explicitly specified as binding and prevailing. In the event of contradictions between the description of service and the aforementioned documents, the description of service shall take precedence.

(3) In the event the order is qualified as offer pursuant to Sect. 145 BGB, we shall accept such within 3 weeks, unless a shorter or longer commitment period has been agreed in text form (Sect. 126b BGB). The Agreement shall only be entered into by our declared acceptance at least in text form (Sect. 126b BGB). In the event we commence with the performance of the Agreement without declaration, this shall be viewed as our acceptance.

(4) In respect of cost estimates, drawings and other documents, we reserve title and copyright; access to such shall not be granted to third parties without our prior approval. This shall in particular apply to such documents which are designated as “confidential”; prior to disclosure to third parties, the Customer shall require our explicit approval at least in text form (§ 126b BGB). We shall be obliged to only disclose to third parties plans designated as confidential by the Customer with his prior consent.

(5) In the event the Agreement is arranged or concluded by one of our representatives who is not the legal representative or authorised signatory (“Prokurist”), its effectiveness shall depend on our confirmation at least in text form (§ 126b BGB); said confirmation shall be decisive for the content of the Agreement.

3. Prices – Terms of Payment – Price Adjustment

(1) Unless otherwise specified in the order confirmation, our prices shall be “ex works” (EXW Incoterms clause in the currently applicable version 2020), except packaging and transport; such shall be paid separately. Our prices are excluding statutory VAT; the statutory amount on the date of invoicing must be shown separately in the invoice.

(2) Unless otherwise specified in the order confirmation or invoice, the purchase price shall be due without deduction, including the price for ancillary services and advanced costs, 30 days after handover of the object, however no later than 30 days after receipt of the notification that the goods are ready for dispatch (in case of agreed collection by the Customer at the plant) or after sending the invoice following handover.

(3) Discount deductions shall only be possible when agreed separately.

(4) Cheques shall only be deemed as payment after final credit to our account.

(5) The Customer shall be only entitled to set-off rights, if his counterclaims have been established as final and absolute by a court or if they are undisputed or acknowledged by us or if they are to be offset against claims, which are in reciprocal relation with our claims such as warranty claims. He shall only be authorised to exercise a right of retention to the extent that his counterclaim is based on the same contractual relationship.

4. Claims for Damages due to unjustified Non-Acceptance – Transfer of Risk

(1) In the event the Customer rescinds the contract without justification or does not accept the goods or our works within the agreed period or otherwise within any reasonable period set in the dispatch/completion notification, we shall be entitled to rescind the contract and claim damages in the event of culpable conduct of the Customer.

(2) In this case, the risk of accidental loss or accidental deterioration of the goods shall pass to the Customer at the time he is in default of acceptance.

(3) The Customer owes 30 % of the net invoice amount as damage claim; if we are able to prove the occurrence of higher damage, said damage shall be owed. The Customer shall be at liberty to prove that we have incurred none or less damage.

5. Delivery Date – Default

(1) Unless binding delivery dates have been explicitly agreed, the delivery time commences with the receipt of the order confirmation by the Customer. The commencement of the delivery time specified by us shall require clarification of all technical questions, insofar as notices and declarations on the part of the Customer are necessary.

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(2) Compliance with our obligation to supply shall require timely and due performance of the Customer's duty to cooperate.

(3) The delivery time shall be extended accordingly in the event we are affected by measures in the context of labour disputes, especially strikes and lockouts, including late delivery of parts required for the manufacture of the goods on the part of a supplier due to the aforementioned measures. This shall likewise apply to unforeseeable extraordinary events which are beyond our control such as significant business and production interruptions caused by third parties at our premises or at the premises of a supplier of required components.

(4) In the event we are in default, for which we are liable, any compensation claim for default damages including any loss of profit shall be limited to a maximum of 10% of the net delivery value. If the default results from wilful intent or gross negligence or is a breach of an essential duty, it shall remain subject to the statutory liability; this shall also apply to injury to life, limb or health. In individual cases, the Customer may assert a higher claim if he is able to prove the occurrence of higher damage. We shall reserve the right to provide evidence that none or less damage has occurred.

(5) In the event we are in default and the Customer sets an appropriate period of grace for performance or subsequent performance, he shall be entitled to rescind the contract after unsuccessful expiry of this period of grace; the Customer shall only be entitled to claims for damage limited to the foreseeable damage instead of performance if the default results from wilful intent or gross negligence or is a breach of an essential duty or applies to injury to life, limb or health.

(6) In the event the Customer is in default or infringes any other duty to cooperate, we shall be entitled to rescind the contract after an appropriate and unsuccessful period of grace. We may also demand compensation for the damage incurred including any additional expenses. The Customer owes 30% of the net invoice amount as damage claim. In individual cases, we may assert a higher damage claim if we are able to prove the occurrence of higher damage. The Customer shall reserve the right to provide evidence that none or less damage has occurred.

(7) Partial deliveries shall also be possible prior to the agreed delivery time after notification, unless the Customer objects to the delivery forthwith following receipt of the notification of partial delivery.

6. Delivery on call

(1) If delivery on call is agreed, the Agreement shall be concluded as a contract for delivery in instalments. The product to be supplied, the amount and the price shall be bindingly agreed; only the performance time has not been stipulated on the conclusion of the contract. The following specific provisions for delivery on call shall apply.

(2) The provision on commencement of the delivery time set forth in Article 5 para. (1) sentence 1 of these General Terms and Conditions shall not apply. Instead, the delivery time shall commence as soon as and to the extent we receive calls from the Customer within the agreed on-call period, however, no later than with expiry of the on-call period. Therefore, the delivery time for the goods which the Customer has not called on within the on-call period, shall commence with expiry of the on-call period. The provision

set forth in Article 5 para. (1) sentence 2 of these General Terms and Conditions shall not be affected.

(3) Acceptance of goods (transfer of possession to the Customer) shall be a primary obligation of the Customer. To the extent that the Customer is in arrears with his acceptance commitment as well as in default of acceptance with his delivery claim, we shall be entitled yet not obliged to return the goods uninsured to the Customer's delivery address as specified in the order confirmation, abandon the possession of the goods and demand reimbursement of the ordinary and appropriate costs for dispatch from the Customer (hereinafter collectively referred to as: "the Consignment Right"). Moreover, the Consignment Right requires that we explicitly informed the Customer in text form (§ 126b BGB) of the Consignment Right including the right pertaining thereto to abandon possession after the occurrence of default of his acceptance commitment and the default of acceptance with his delivery claim, and that we have set a period of grace for acceptance of the goods by the Customer of at least one week.

(4) In the event the Consignment Right exists and we exercise such and if the Customer confirms to us in text form (§ 126b BGB) that he has accepted the goods delivered to him, our statutory damage claims and the compensation for additional expenses or storage costs arisen by that point of time shall remain unaffected.

(5) In the event the Consignment Right exists and we exercise such, the partial purchase price for the goods concerned shall be due in deviation from Article 3 para. (2) of these General Terms and Conditions after expiry of 30 days since dispatch of the goods to the Customer.

(6) A reversal of the burden of proof to the detriment of the Customer shall not be associated with the above paragraphs.

7. Transfer of Risk

Unless otherwise specified in the order confirmation, delivery "ex works" (EXW Incoterms clause in the currently applicable version 2020) shall be agreed. On request of the Customer, we shall take out a transport insurance for the delivery; any incurring costs shall be borne by the Customer. In the event we promise "free domicile" delivery, this shall not affect the transfer of risk pursuant to Sentence 1.

8. Reservation of title

(1) We shall reserve title to goods until all payments under the supply agreement have been received. In the event of any behaviour of the customer that is contrary to Agreement, in particular payment default, we shall be entitled to take back the goods. If we take back the goods this does not imply any rescission of contract, unless we have explicitly declared such at least in text form (§ 126b BGB). Rescinding the contract shall always be said to exist if we pledge the goods. After taking back the goods we shall be entitled to dispose of the goods (realisation). After deduction of an appropriate amount for the costs of realisation, the revenue from realisation shall be offset pursuant to Sect. 366 f et seq. German Civil Code (BGB) against the amounts owed to us by the Customer.

(2) The Customer shall treat the goods with care and insure them adequately at replacement value against fire, water and theft damage at his own expense. The Customer shall implement necessary maintenance and inspection works at his own expense in a duly and timely manner.

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(3) In the event of pledges or other interventions by third parties, the Customer shall notify us forthwith in writing so that we may file action pursuant to Sect. 771 German Code of Civil Procedure (ZPO). To the extent that the third party is unable to reimburse us for the judicial and extra-judicial costs incurred for the action pursuant to Sect. 771 German Code of Civil Procedure (ZPO), the Customer shall be liable for the loss incurred to the extent to which he has negligently contributed to it.

(4) The Customer shall be entitled to sell the goods in the ordinary course of business. However, he shall already here and now assign to us all claims in the final invoice amount agreed with us (including VAT), which incur through resale to his customers, i.e. irrespective of whether the goods have been sold either without or after processing. The Customer shall be entitled to the collection of the claim even after assignment. Our empowerment to collect the claim ourselves shall not be affected. However, we shall not collect the claim as long as the Customer fulfils his payment obligations, is not in arrears of payment and there is no request for the opening of insolvency proceedings or cessation of payment. In such a case, we may, however, demand that the Customer informs us about the assigned claims and its debtors, provide all information necessary for collection, hands over the documents pertaining thereto and notifies the debtor (third party) of the assignment.

(5) At the request of the Customer, we undertake to release the securities accruing to us to the extent that the value thereof exceeds the sums to be secured by more than 10 % or the nominal amount exceeds more than 50 %; we shall be at liberty to select the securities to be released in this case.

(6) Processing or conversion of the goods by the Customer shall under all circumstances be made for us. The Customer's expectancy right shall continue in the transformed item. Should the goods to which we reserve title be processed together with other goods which are not our property, we shall acquire joint title to the new object in the ratio of the value of our goods to the other processed goods at the time of processing. The same provisions shall apply to the goods resulting from processing as to the goods subject to reservations.

(7) Should the goods to which we reserve title be inseparably combined or processed together with other goods which are not our property, we shall acquire joint title to the new object in the ratio of the value of our goods to the other processed goods at the time of processing. It shall not apply if the new object is legally assessed as main object or essential component. Should the items be combined or binding in such manner as to allow the Customer's goods to be regarded as the main object, it shall be considered to be agreed that the Customer shall assign to us joint ownership on a pro rata basis. The Customer shall safeguard sole or joint ownership on behalf of us.

(8) The Customer shall assign to us all claims for securing our receivables against him, which incur by combining the goods with a land plot against third parties. Article 8 para. (5) of these General Terms and Conditions shall apply *mutatis mutandis*.

9. Warranty

(1) Wear and tear that neither result from production, material or construction defects but are the consequence of the intended use of the delivered goods shall not constitute any defects.

(2) Only the service description set forth in the order confirmation or the Agreement shall be decisive for the definition of the contractually agreed properties of the goods. We shall only assume a guarantee if this is explicitly confirmed in writing and the assurance is referred to as "guarantee".

(3) The warranty claims of the Customer who is a businessman within the meaning of Sect. 1–6 German Commercial Code (HGB) or acts as a businessman *vis-à-vis* us, shall require that he has complied with his duty to inspect and notify defects pursuant to Sect. 377 German Commercial Code (HGB). Recognisable defects, incorrect deliveries, missing or additional quantities shall be notified in writing within 7 working days from acceptance (for contracts for works and services) or handover (for purchase contracts); the date of notification receipt at our premises shall be decisive. If the hidden defect has been detected retrospectively, it shall be notified in writing within 7 working days from its detection, the date of notification receipt at our premises shall be decisive.

(4) Insofar as the goods are defective, we shall be entitled to rectify (at our discretion: rectification of the defect or delivery of an item that is free from defects). For the rectification of defects, we shall bear all expenses necessary for rectification of the defect, to the extent that these does not increase because the goods have been transferred to another venue than the original place of delivery or the destination set forth in the Agreement.

(5) In the event the rectification of the defect/delivery of an item that is free from defects fails or is refused by us, the Customer shall be entitled to rescind the contract at his discretion or demand a reduction of the purchase price/work wages (reduction).

(6) Unless otherwise specified hereinafter (Para. 7), further claims of the Customer – for whatever legal reason – shall be excluded. We shall not be liable for damages that do not occur on the delivery item itself. Moreover, in the event of a contract for works and services, we shall not be liable for damages occurring on objects on which we have carried out works. In particular, we shall not be liable for loss of profit or other losses of assets of the Customer.

(7) Should the damages result from wilful intent or gross negligence, our liability shall be as provided for by law. In the event of a culpable breach of essential contractual obligations by us, liability shall be limited to damage typical for the type of contract. The following obligations shall be deemed essential to the contract: duty to timely delivery and installation of the delivery item, the absence of defects in title and of such material defects that significantly impair its functionality or fitness for purpose as well as the duty of consultation, care and custody intended to enable the Customer to use the delivery item in accordance with the Agreement or the purpose of which is the protection of limb and life of the Customer's employees or the protection of the Customer's property against significant damage. Liability for intentional or grossly negligent breach of our vicarious agents shall be excluded, to the extent that there are no injuries to life, limb or health.

(8) The warranty claims against us shall become statute-barred 6 months after transfer of risk. This shall not apply to delivery that has been used for its intended purpose in a building structure and has caused said building structure to be defective.

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10. Recourse against our Suppliers

(1) The limitation of recourse rights pursuant to Sect. 445a et seq. German Civil Code (BGB) of our Suppliers on our account shall be excluded.

(2) Exclusion or limitation of our warranty claims against our Suppliers shall not be possible.

(3) In the context of claims against the Supplier, the latter shall fully reimburse us for working hours incurred, including any dismantling and installation costs (Sect. 439 (3) German Civil Code (BGB)) as well as the costs for transportation, travel, contract and material.

11. Impossibility

To the extent delivery is impossible due to reasons, for which we are liable, the Customer may demand irrespective of his right to rescind the contract compensation limited to 20 % of the net price of the parts which have become impossible to deliver; said limitation shall, however, not apply to wilful intent, gross negligence or injury to life, limb or health. In individual cases, the Customer may assert a higher damage claim if he is able to prove the occurrence of higher damage. We shall reserve the right to provide evidence that none or less damage has occurred.

12. Other damage claims

(1) Any claims to damages and reimbursement of expenditure of the Customer, irrespective of on what legal grounds, especially infringement of duties from the contractual relationship which do not constitute warranty claims shall not exist.

(2) This shall not apply to the extent that liability is based on mandatory provisions, in particular according to the German Product Liability Act [ProdHaftG], in case of wilful intent or gross negligence, or injury to life, limb or health, or the breach of essential contractual obligations. In the event of a breach of essential contractual obligations, the damage claim shall be limited to foreseeable damage typical for the type of contract, unless there is wilful intent or gross negligence or injury to life, limb or health.

13. Severability clause

(1) In the event of a provision of this Agreement being or becoming null and void, this shall not affect the validity of the remaining terms.

(2) To the extent that an individual negotiated provision being null and void, the contracting parties shall undertake to replace the invalid provision with a valid provision which most closely approaches the intent of the omitted provision. This shall likewise apply if the individually agreed part of the Contract proves to contain a gap.

14. Language versions

To the extent this Agreement is executed in the German and English languages, the German version shall prevail in the event of any inconsistencies.