

**Terms and conditions of sales, delivery and payment**  
**applicable for all deliveries from 31.05.2018**  
**- hereinafter referred to as „AVB“ -**

These general sales conditions (AVB) are only applicable for companies in terms of the German Commercial Code (BGB) § 14, legal person under public law or a separate estate under public law.

**1 Scope of the terms and conditions of delivery**

All our offers and agreements are exclusively based on the following general sales conditions (AVB); any deviating terms and conditions of the customer, which are not explicitly accepted in writing, shall not be binding. The customer accepts our terms and conditions with the placing of the order or with the acceptance of our goods without objection, at the latest.

Our general sales conditions (AVB) shall apply regardless of whether we manufacture the goods ourselves or buy them from suppliers.

In their most recent version, they shall also apply for all follow-up transactions without their having to be explicitly mentioned or arranged for the conclusion of the transaction.

If, in individual cases, we should have made individual agreements with our customer (including ancillary agreements, supplementations or modifications), these take priority over these general sales conditions (AVB). Subject to evidence to the contrary, a written contract and our written confirmation is mandatory for the contents of this kind of agreement.

Legally relevant declarations and/or notifications of the customer with regard to the contract (e. g. deadlines, notices of defects, withdrawals or reduction) must be submitted in written form, this means in written or text form (e. g. letter, e-mail, fax).

Legal formalities and further evidence, in particular in case of doubt concerning the legitimation of the person making the declaration remain unaffected.

**2 Offers and confirmation of order**

2.1 Our offers are non-binding as long as no other terms have been arranged in writing. This shall also apply if we have sent or handed out catalogues, technical documentation (e. g. drawings, plans, calculations, references to DIN standards), miscellaneous product descriptions or documents - also in electronic form to the customer, for which we reserve all our property rights or copyrights.

2.2 All agreements will only become binding with our written confirmation. The same shall apply to supplementations, modifications and ancillary agreements, in particular to verbal agreements and assurances.

2.3 Our confirmations of order must be checked for correctness on receipt by the customer. Any discrepancies must be reported without delay.

2.4 The customer is responsible for the correctness of his ordering information or the ordering documents he has sent.

2.5 Samples are fundamentally only delivered at a charge.

**3 Delivery dates**

3.1 Delivery dates, which can be arranged to be binding or non-binding, must be stated in writing.

3.2 The confirmed delivery dates must be adhered to by means of punctual shipment i. e. despatch - ex factory or distribution centre. They shall also be regarded as adhered to with the announcement of readiness for shipment if the goods cannot be despatched or installed in due time through no fault of

ours. We will not assume any obligation for punctual transportation. Delivery dates will likewise be postponed if preliminary services on building sites are not provided in due time.

3.3 If we have not yet agreed with the customer on all terms and conditions and details of the contract, or if the customer has not yet provided the necessary national and/or foreign official documents, the confirmed delivery dates will be extended until these prerequisites have been fulfilled. They will correspondingly be postponed. The same shall apply in case of later modifications of the contract by the customer, which influence the delivery date, or in case documents and drawings from the customer necessary for the execution of the order have not yet been submitted.

3.4 In case of force majeure and other unforeseeably extraordinary and involuntary circumstances – e. g. in case of material procurement difficulties, omitted self-delivery in spite of insured cover transaction, operational disturbance, telecommunication and IT failure, fire, strikes, lockout, lack of transportation means, traffic blocks, official intervention, machinery failure, import and export prohibitions, difficulties with energy supply, mobilisation, war, blockades etc. - also when they occur on supplier premises - the delivery deadline will be extended to a reasonable extent if these obstacles mean that we are prevented from fulfilling our obligations in due time.

3.5 If due to circumstances defined in Section 3.4. our delivery is impossible or unreasonable, we shall be entitled to withdraw from the contract. If the delay in delivery lasts longer than two months, the customer shall be entitled to withdraw from the contract.

3.6 If the delivery date is postponed according to Section 3.4. or if we are released from the obligation to deliver according to Section 3.5 the customer is unable to derive any claim for compensation from this. We can only refer to the defined circumstances if we notify the customer

without delay of the beginning and end of such obstacles.

3.7 If unforeseeable events defined in Section 3.4 should change the commercial significance or the content of the contractual performance or if these events should have a considerable effect on our operations, the contract can be extended accordingly. The directives of § 313 German Civil Code (BGB) remain unaffected.

3.8 If we are in default, the customer can set a reasonable period of grace. After the expiry of this period of grace, the customer can withdraw from the contract with regard to the contractual performance that has not yet been provided. If he has a justified interest in the rejection of partial deliveries, he can withdraw from the entire contract.

3.9 Excluded from this are all other further claims of the customer resulting from breaches of duty, namely claims of damage, insofar that the damage has not been caused by deliberate or grave negligent action. Our liability in case of grave negligence is, however, limited to contract-typical foreseeable damage, insofar as this is not a legally designated unavoidable liability.

We shall retain the right to prove that the customer has not incurred any damage or only significantly less damage.

#### **4 Delivery, shipment, transfer of risk, re-storage**

4.1 We fundamentally reserve the right to choose the type of shipment. The goods are despatched ex factory or from the distribution centre.

4.2 Partial deliveries are permissible as long as they are not unreasonable for the customer.

4.3 The risk for the loss of the goods is transferred to the customer as soon as the shipment has been handed over to the freight carrier or forwarder, but on leaving the factory or distribution centre, at the latest. If the goods are ready for despatch and the handover to the freight carrier or forwarder is delayed for reasons for which we are not

responsible, the risk is transferred to the customer with the announcement of the readiness for shipment. The loss of the goods is equivalent to their seizure.

4.4 If shipment or delivery is postponed, on request of the customer, by more than 2 weeks following announcement of readiness for shipment, the customer can be charged warehousing fees of 0.5 % of the price for the object of the delivery for every commenced month, however, this is restricted to a total of 5 %. The contractual parties are at liberty to demonstrate the evidence of higher or lower storage costs. This shall also apply in the case that goods must be returned for reasons for which the customer is responsible.

## **5 Prices and packaging**

5.1 Our prices are understood to be in EURO.

5.2 For domestic deliveries and deliveries abroad, which are subject to value added tax, the prices are understood to be plus the corresponding VAT.

5.3 In case of sales shipment, the customer shall bear the transport costs ex warehouse as well as the costs for any transport insurance he may desire. The customer shall pay any customs duties, fees, taxes and other official fees.

5.4 SIEGENIA returnable packaging (surr.timber frames, small load carriers and pertinent cover plates) are generally charged and credited in case of freight-free return.

## **6 Payment**

6.1 Our invoices are payable EUR within 30 days from the date of the invoice without deduction. As long as the customer has not paid, he will come into default without any further declaration by us on 31. day after invoicing, at the latest.

6.2 Payments must be paid only to the company SIEGENIA-AUBI KG in cash or to one of the company's bank accounts. Our employees are not authorised to collect debts unless they have been explicitly authorised to do so in writing.

6.3 We accept bills of change, acceptances or comparables only when they have previously been arranged in a separate agreement and the duration of three months is not exceeded, however, only with the reservation that we will be able to submit these to our banks. Moreover, both cheques and rediscountable bills of exchange will be only be accepted as a conditional payment. We assume no warranty for proper presentation and protest. Discount charges and charges for bills of exchange as well as for letters of credit shall be borne by the customer and are immediately payable.

6.4 In case of payment default, we shall be entitled to charge interest amounting to 9 percentage points over the basic interest rate in accordance to § 247 BGB German Civil Code. We reserve the right to claim for further damage due to default. The customer must provide proof of lower damages due to default.

6.5 In case of protest of a bill of exchange or a cheque, financial collapse of the customer or in case of asset or business disposal of the customer, all of his existing liabilities towards us will become immediately payable.

6.6 The customer can only offset our claims with undisputed or legally binding receivables. If the customer is a merchant in the sense of the German Commercial Code § 1 (HGB), the same shall also apply for the assertion of retention rights resulting from the mutual commercial transaction.

6.7 If, after the conclusion of the contract, circumstances become known which are destined have a lasting effect on the credit rating of the customer, we shall be entitled to make our delivery dependent on the advance payment of the purchase price or to withdraw from the contract if the customer does not agree to this. Circumstances impairing the credit rating of the customer are given in particular if he stops his payment, if insolvency proceedings are initiated against his assets or if resulting from other circumstances, e.g. enforcement measures, bill of exchange protest or similar measures

result in the fact that the customer no longer meets his due obligations.

## **7 Retention of ownership, security assignment**

7.1 We reserve the right to ownership of the delivered goods until the fulfillment of all outstanding claims from the business relationship with the customer. If the customer hands over cheques or bills of exchange in fulfilment, the retention of title shall persist until the redemption thereof and the final crediting.

7.2 The customer shall be entitled to sell the delivered goods in the course of ordinary business transactions insofar that he has fulfilled his obligations from the business relationship with us in good time. He shall neither pledge the reserved goods nor assign them as security. He shall agree to secure our rights in the resale of the reserved goods on credit.

7.3 In case of violation of obligation in case of default of payment in particular, we shall be entitled, also without setting a deadline, to demand the surrender of the delivered goods and/or to withdraw from the contract; The purchaser shall agree to the surrender. There is no declaration of rescission in a demand for surrender unless this is explicitly declared by us .

7.4 The Purchaser shall transfer all claims and rights concerning the sale of the reserved goods to us as security without delay. We herewith accept this assignment. On request, the customer shall agree to disclose to us the name of the debtor of the assigned claims and to notify the debtors of the assignment. If the customer should receive payments or other assets from his debtors prior to our complete gratification, this acceptance shall be regarded as held in trust for us.

7.5 The purchaser shall perform any processing or modification on the reserved property for us in every case. If the retained goods are processed or irreversibly combined with other objects that do not belong to us,

we shall acquire joint ownership of the new object in relationship to that of the retained goods to the other processed or combined goods at the time of the processing or combination. If our retained goods are combined or irreversibly combined with other movable objects to form a uniform object and the other object is to be regarded as the main object, it shall be regarded as agreed that the customer will transfer co-ownership proportionally to us insofar as the main object belongs to him. Moreover, the same shall apply to the object created by processing, combination or mixing as for the retained goods.

7.6 The purchaser shall agree to segregated storage of the retained goods and of the objects created by the combination.

7.7 The customer must notify us immediately of enforcement measures by third parties with regard to the retention goods or with regard to claims or other securities assigned to us including handover of the documents necessary for an intervention; this shall also apply for the other kinds of impairment. The costs and damages shall be borne by the customer.

7.8 On the request of the customer, we shall release the existing securities at our discretion insofar that the total value of the securities exceeds the claims to be secured by more than 20 %.

## **8 Notices of defects and claims**

8.1 Notices of defects become time-barred in 12 months. This shall not apply if the law in accordance with §§ 43 8 Provision 1 No. 2, 479 Provision 1 and 634 a Provision 1 No. 2 German Civil Code prescribes longer deadlines or in cases of injury to life, limb or health in event of an intentional or grossly negligent violation of obligation by us or in event of fraudulent concealment of a defect. The statutory regulations concerning expiry suspension, suspension and new beginning of the deadlines shall remain unaffected.

A limitation period of maximum two years applies for electrical / electronic or

components insofar that a shorter deadline has not been arranged or if the law specified longer deadlines.

8.2 Obvious deficiencies in mutual commercial transactions must be reported in writing by the customer within 8 days of receiving the goods; hidden defects must be reported in writing within the warranty period without delay in accordance with 8.1. In case of a delayed complaint, the customer may not assert a material defect claim on account of the relevant deficiency. The same shall apply for complaints concerning the quantity or if goods are delivered other than specified in the contract.

8.3 Material defect claims shall not persist for merely insignificant deviations from the agreed quality, in case of merely insignificant impairment of the usability, in case of natural wearing or damage, which occurs following the transfer of risk as a consequence of improper or negligent handling, lack of maintenance, excessive strain, deficient construction work, unsuitable building ground or which occur as a consequence of special, external influences, which are not presupposed according to the contract, as well as for non-reproducible software errors. If inappropriate modifications or service work are undertaken by the customer or by a third party, this will not lead to any claims for material damage.

8.4 In case of justified and timely notification of defects or complaints, we will take back the deficient goods and replace them with faultless goods, or we could choose to rectify the defective goods. If the repeated reworking or the repeated replacement delivery should be unsuccessful and the same defect should persist, the customer can either cancel the contract or demand a reduction of the purchase price.

8.5 The customer must allow us the necessary time and opportunity to carry out the rework and replacement deliveries, otherwise we shall be released from the liability for material defect.

8.6 Claims by the customer for the purpose of subsequently fulfilling necessary expenses in particular transportation, routing, labour and material costs, are excluded insofar as this is legally permissible and/or the expenses are increased because the object of the delivery has been subsequently transferred to another location as the place of business of the customer unless the transfer complies with its intended use.

8.7 If the object of delivery continues to be used in spite of the detected defect, we will only assume liability for the original defect, but not for damage caused by further use of the original defective object.

8.8 We assume the same warranty for the replacement deliveries and the rework as for the original object of delivery. The warranty ends, however, at the latest with the end of the warranty period stipulated for the original object of delivery unless the legal warranty period for the replacement delivery or rework would not have expired; the warranty then expires with the expiry of this deadline. We are not responsible for material defects in a delivery that which we receive from third parties and forward unchanged to the customer; The responsibility in case of intent or grave negligence shall remain unaffected.

8.9 Claims for recourse by the customer against the supplier in accordance with. § 439 Provision 3 German Civil Code or § 478 German Civil Code (respectively legal writings with the same contents in other judicial systems) only prevail as long as the customer together with his buyer have not made any agreements exceeding the agreements of the statutory deficiency claims. The regulations specified in Section 8.6 shall also apply.

8.10 Any further claims asserted by the customer, in particular damages and reimbursement of expenses claim resulting from the deficiency of the object of delivery as well as other violations of obligations from the contractual obligation and tort are excluded. This does not apply insofar as there is mandatory liability, e.g. in event of

intent or grave negligence, injury to life, limb or health on account of the violation of significant contractual obligations or e.g. in accordance with the German Product Liability Act. The claim for damages for the violation of significant contractual obligations is, however, limited to foreseeable damage typical for this type of contract unless raised in cases of intent or grave negligence and that it does not involve liability for injury to life, limb or health. The above regulations are not associated with a change in the burden of proof to the detriment of the customer. Insofar as the customer is entitled to claims for damages or reimbursement of expenses in accordance with this provision, these will be time-barred with the expiry of the limitation period in accordance with the aforementioned regulation in 8.1. The legal periods of limitation shall apply for claims for damages from the German Product Liability Act.

## **9 Guidelines/advice on the product and on liability**

9.1 Furthermore, further components of the contract can be seen in the relevant current version of "Notes/Specification on the product and liability", in the Internet at <http://downloads.siegenia.com/de/00001/index.html?section=2>.

9.2 Declarations to the customer in conjunction with a conclusion of contract (e.g. descriptions of performance, reference to DIN standards etc.) do not include the assumption of warranty in cases of doubt. In case of doubt, only explicitly written declarations of SIEGENIA-AUBI KG concerning the assumption of liability are relevant.

9.3 Furthermore, insofar as there is nothing to the contrary specified in this AVB including any deviating provisions in the individual contracts, we shall assume liability in case of violations of contractual and non-contractual obligations in accordance with the statutory regulations.

We are liable for damage compensation - regardless of the legal basis - in the scope of

liability for faults in case of intention and grave negligence. In case of simple negligence, we only assume liability with the reservation of a more lenient sale of liability in accordance with the statutory regulations (e. g. for . B. for diligence we exercise in our own affairs):

- a. for damages incurred by injury to life, limb or health
- b. for damages resulting from a not inconsiderable violation of a significant contract obligation (obligation, the fulfilment of which enables the orderly execution of the contract in the first place and the observation of which the customer regularly trusts and is entitled to expect); in this case, however, our liability is limited to the replacement of the foreseeable, typically occurring damage.

The aforementioned regulated liability limitations shall likewise apply for violation of obligations by or in favour of persons whose culpability we are responsible for according to the statutory directives. However, they do not apply if we have fraudulently concealed a defect or have assumed warranty for the quality of the goods and for the claims of the customer in accordance with the product liability act.

The customer can only withdraw from or terminate the contract because of a violation of an obligation, which is not a defect, if we are responsible for the violation of the obligation. An unrestricted right of termination of the customer (in particular in accordance with §§ 650, 648 BGB) is excluded. Moreover, the legal prerequisites and legal consequences shall apply.

## **10 Technical changes**

We reserve the right to make technical changes that serve the improvement or the further development of our products at any time and these changes do not justify the assertion of any claims.

We reserve property rights and copyright usage rights unrestrictedly on any software we have sold as well as on cost estimates,

drawings and other documents (hereinafter referred to only as "documents". The documents may only be made accessible to third parties after our previous, written consent. The customer does not possess the exclusive right to the usage of our software with the arranged performance features in an unmodified form on the devices agreed upon. The customer is entitled to create a backup copy without explicit agreement. The customer has no claim to the transfer of the source program/source code.

#### **11 Place of jurisdiction, place of performance, applicable law**

11.1 Unless otherwise explicitly agreed upon in writing, German law shall apply exclusively, ruling out international uniform law, in particular the UN sales law.

11.2 Insofar as the customer is a merchant in terms of German Commercial Law § 1 HGB, a legal person under public law or a separate estate under public law, the place of jurisdiction is Siegen.

In all cases, we are, however, also entitled to take legal action at the place of performance of the delivery obligation in accordance with this AVB or to file a priority individual agreement or in the general place of jurisdiction of the customer. Priority statutory regulation, in particular, exclusive jurisdiction, remain unaffected by this rule.

11.3 Place of performance for all rights and obligations concerning delivery and performance in contracts with merchants is the shipment centre we have specified (factory or distribution centre).