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## General Terms of Business and

### Sale of TEPRO Garten GmbH (commercial transactions)

#### § 1 General

- (1) The following Terms of Sale and Delivery exclusively apply for all deliveries and other performances; they apply only with regard to merchants in the meaning of § 310 section 1 BGB (*German Civil Code*).
- (2) Deviating conditions of the Buyer not explicitly acknowledged by the Seller do not apply even if the Seller does not explicitly contradict them.
- (3) The inclusion and interpretation of these Terms of Sale and Delivery, as well as the conclusion and interpretation of legal transactions with the Buyer himself, are governed exclusively by the laws of the Federal Republic of Germany. The uniform law on the conclusion of contracts or movable items and the United Nations Convention on Contracts for the International Sale of goods do not apply.
- (4) If individual provisions of this contract or its components should be invalid, this shall not impair the validity of the other regulations. The contract partners are obligated to undertake whatever is reasonable for them in good faith to replace an invalid provision with an effective regulation approximating as closely as possible in its economic result to that intended by the invalid provision, but with the proviso that this does not cause any significant change in the contract contents; the same applies if a significant matter requiring regulation is not explicitly regulated.
- (5) The registered domicile of the Seller is the place of fulfilment for all obligations, including the payment obligation arising directly or indirectly from this contractual relationship.
- (6) The competent courts at the registered domicile of the Seller are the place of jurisdiction. The Seller is also entitled to bring legal action before a court responsible for the registered domicile or a branch establishment of the Buyer.

#### § 2 Proposals, performance scope and contract conclusion

- (1) Contract proposals of the Seller are non-committal.
- (2) The order confirmation of the Seller alone is decisive for stipulating the scope of the contractually owed performance.
- (3) The Seller reserves the right to change the construction, materials selected, specification and construction type, even after an order confirmation has been sent, if these changes do not conflict with the order confirmation or the specification of the Buyer. The Buyer will, moreover, declare himself agreed with further-reaching changes suggested by the Seller if these changes can be reasonably accepted by the Buyer.
- (4) Partial deliveries are admissible.
- (5) Documents such as illustrations, drawings, statements of dimensions and weights are, as a rule, to be understood as only approximate values, unless they are explicitly designated as binding.

### § 3 Prices and conditions of payment

(1) Prices are ex-works exclusive packaging and other shipment and transportation costs. Packaging will be charged at cost and only accepted back if overriding statutory regulations obligate the Seller to do so.

(2) In the event that more than 4 months lapse between contract conclusion and delivery and the Seller is not answerable for the delayed delivery, then the Seller shall be entitled to increase the price appropriately in view of increased costs of materials, wages and other incidental costs the Seller must bear. The Buyer is entitled to rescind the contract if the purchase price increases by more than 40%.

(3) Additional costs incurred because the Seller gives consideration to changes wished for by the Buyer shall be charged to the Buyer.

(4) Without prejudicing the right to assert further-reaching claims, interest of 2% above the respectively applicable discount rate of the Deutsche Bundesbank will be demanded if the due date for payment is culpably overrun.

### § 4 Offsetting and retention

The Buyer is only entitled to offset if his counter-claims are established with lawful finality, uncontested or acknowledged by us. The Buyer is only entitled to exercise a right of retention if his counter-claim is founded in the same contractual relationship.

### § 5 Delivery period

A delivery time is stated according to best estimate and prolongs appropriately if the Buyer on his part delays or neglects necessary or agreed acts of cooperation. The same applies in the event of measures within the context of labour disputes, especially strikes and lockout, or if unforeseen hindrances occur which are outside the influence of the Seller, e.g. delayed deliveries from a sub-supplier, traffic and operational disruptions, shortage of materials or energy, etc. Changes made to the delivered goods at the instigation of the Buyer also cause the delivery period to prolong appropriately.

### § 6 Passage of risk

Unless stated otherwise in the order confirmation, delivery is agreed as "ex-works".

### § 7 Retention of title

(1) The Seller reserves ownership of the purchase item until all payments from the delivery contract have been received. We are entitled to recover possession of the purchase item in the event of conduct by the Customer contrary to contract, especially default with payment. Recovery of the purchase item by us constitutes withdrawal from the contract. We are entitled to realise the purchase item after we recover possession of it and whereby the realisation proceeds must be credited to the liabilities of the Buyer, less appropriate realisation costs.

(2) The Buyer is obligated to treat the purchase item with care and is especially obligated to sufficiently insure the purchase item at his own cost to its value as new against damage caused by fire, water and theft. If maintenance and inspection work should be necessary, then the Buyer must carry out this work in good time and at his own cost.

(3) The Buyer must notify us immediately in writing of any attachments or interventions by third parties so that we can raise complaint pursuant to § 771 ZPO (*Code of Civil Procedure*). The Buyer is liable for losses we incur because the third party in question is unable to reimburse us for the costs arising in and outside a court of law for lodging a complaint pursuant to § 771 ZPO.

(4) The Buyer is entitled to resell the purchase item in usual business dealings, but the Buyer herewith assigns to us to the amount of the final invoice amount (inclusive VAT) of our claim all claims he has against his buyers or third parties arising for him from the resale to his buyers, and this irrespective of whether the purchase item was resold without or after processing. The Buyer remains entitled to collect this claim even after the assignment. This does not prejudice our entitlement to collect the claim ourselves. However, we obligate ourselves to not collect the claim for as long as the Buyer complies with his payment obligations from the collected revenues, does not default with payment and especially for as long as no application has been filed for composition or bankruptcy proceedings or payments have been discontinued. If such is the case, we can demand that the Buyer notifies the assigned receivables to us and names their debtors, makes all statements necessary for collection, surrenders the pertaining documents and notifies the assignment to the debtors (third parties).

(5) The Buyer invariably processes or reworks the purchase item for us. If the purchase item is processed with other items not belonging to us, then we acquire co-ownership of the new item in the ratio of the purchase item value (final invoice amount inclusive VAT) to the value of the other processed items at the time of processing. The item created from processing is subject to the same regulations as agreed for the purchase item delivered under retention of title.

(6) If the purchase item is inseparably comingled with other items not belonging to us, then we acquire co-ownership of the new item in the ratio of the purchase item value (final invoice amount inclusive VAT) to the value of the other comingled items at the time of comingling. If the comingling is such that the item of the Buyer must be regarded as the main item, then it is agreed that the Buyer transfers pro rata co-ownership to us. The Buyer keeps the sole ownership or co-ownership that has so come into being in custody for us.

(7) In order to secure our claims against him, the Buyer also assigns to us the claims arising for him against a third party due to the conjoining of the purchase item with a real estate property.

(8) We commit ourselves such that, on demand by the Buyer, we shall release collateral to which we are entitled inasmuch as the realisable value of our security exceeds the worth of the collateralised claims by more than 10%; we select the collateral we release at our own due discretion.

## § 8 Liability for defects

(1) The Buyer will only have claims for defects if he has properly observed and fulfilled the duties of inspection and complaint incumbent on him pursuant to § 377 HGB (*German Commercial Code*).

(2) If the purchase item is defective, then the Seller is entitled as he chooses to subsequently fulfil by way of defect remedy or delivery of a new item free from defects. In cases of remedying defects or replacement delivery, we are obligated to assume all expenses, especially transportation, travel, labour and material costs, for the purpose of undertaking this subsequent fulfilment, unless these costs increase because the purchase item has been brought to a place other than the place of fulfilment.

(3) If the subsequent fulfilment fails, then the Buyer shall be entitled as he chooses to either rescind the contract or demand reduction.

(4) We are liable according to the statutory provisions if the Buyer asserts damage compensation claims founded in wilful conduct or gross negligence, including wilful conduct or gross negligence on the part of our representatives or vicarious agents. Unless we are charged with wilful breach of contract, our damage compensation liability is limited to foreseeable, typically occurring damages.

(5) We are liable according to the statutory provisions inasmuch as we culpably breach an essential contract duty; but even in this case, our damage compensation liability is limited to foreseeable, typically occurring damages.

(6) Liability for culpably caused injury to life, limb or health remains unaffected; this applies also for mandatory liability under the Produkthaftungsgesetz (*Product Liability Act*).

(7) Liability is excluded unless regulated otherwise above.

### § 9 Liability

The Buyer has no claims for damage compensation. This does not apply for cases of wilful conduct, gross negligence, breach of essential contract obligations of the Seller or the lack of characteristics vouched for in writing.