English translation for information purposes only. The German version is binding.

TERMS AND CONDITIONS OF SALE, DELIVERY AND PAYMENT 01/2025

BUILDING TRUST

I. General – Scope of application

1. These Terms and Conditions of Sale, Delivery and Payment apply to all business relationships with our customers providing that the customer is an entrepreneur (section 14 German Civil Code (BGB)), a legal person under public law or a special fund under public law.
2. Unless otherwise agreed, the Terms and Conditions of Sale, Delivery and Payment also apply to similar future agreements in the version applicable at the time the customer places its order.
3. Our Terms and Conditions of Sale, Delivery and Payment apply exclusively in relation to our customers. Deviating, opposing or supplementary terms and conditions of the customer will only become components of the contract if we have expressly consented to their application. This consent requirement always applies, especially also in cases where we perform a contract in awareness of the terms and conditions of the customer without expressing a reservation.
4. Individual agreements concluded with the customer in the individual case (including collateral agreements, additions and amendments) will always take precedence over these Terms and Conditions of Sale, Delivery and Payment. A written agreement or written confirmation will be decisive for determining the content of such agreements unless there is counter-evidence.
5. Declarations and notices which must be submitted to us by the customer after conclusion of the contract (e.g. deadlines, notices of defects, rescission declarations or price reductions) must be in text or written form to be valid.
6. References to the application of statutory provisions are for clarification only. The statutory provisions therefore also apply even where there is no such clarifying reference providing they have not been modified or expressly excluded in these Terms and Conditions.

II. Offers and conclusion of the contract, content of the service

1. Our offers are non-binding. Orders will be deemed to be binding offers. Orders will be accepted within four weeks by way of sending order confirmation or by making the deliveries ordered without reservation.
2. The technical data and descriptions in the respective product information or advertising material are not guarantees of quality or durability of the goods to be delivered by us. However, they must be observed with when the goods are processed.
3. In the case of sales on the basis of prototypes or samples, these merely describe professional compliance with the prototypes/samples but do not constitute a guarantee for the goods to be delivered by us.
4. We will only be bound by collateral agreements to the purchase contract, especially oral agreements, information, recommendations, suggestions and other agreements with our employees if they have been confirmed in writing or by way of a standard form; they do not constitute a consulting agreement unless such an agreement is expressly agreed in writing.

III. Prices, terms of payment, default with payment

1. The prices stated at the time when the respective contract is concluded, especially those quoted in the order confirmation or the prices as per our price list, apply. The respective applicable amount of value added tax applicable on the day of delivery as well as the costs for proper postage, the costs of shipment from our office or our warehouse, the freight charges and, where agreed, the costs for the shipping insurance are due on top of these prices. In the case of deliveries abroad, country-specific levies may also be due.
2. We reserve the right to adjust the agreed prices in proportion to changes of the costs of raw materials, transport and energy.
3. Our invoices are due for payment within 30 days net. After expiry of the date stated on the invoice, the customer will automatically fall into default without the need for a further reminder.
4. The customer is only entitled to rights to offset and rights of retention if its counterclaims have been determined by a court of law or we have acknowledged them in writing. Furthermore, the right of retention only applies if the counterclaim asserted arises from the same contractual relationship as our claim.
5. If the customer does not pay invoices which are due, misses a payment deadline or the financial situation of the customer deteriorates, we have the right to demand payment of the entire outstanding debt of the customer and, by modifying the agreements made, request advance payments or security or, once delivery has been made, immediate payment of all of our claims arising from the same legal relationship.

IV. Delivery period and time of performance, delayed performance

1. Agreed delivery dates are only approximations unless otherwise expressly agreed in writing. If delivery dates are not observed for reasons for which we are responsible, the customer can rescind the contract after fruitless expiry of a reasonable subsequent deadline it sets.
2. We will only fall into default on expiry of a reasonable subsequent deadline set by the customer. In the case of force majeure and other unforeseeable circumstances for which we are not responsible, such as, e.g. operational disruptions, production system outages, overstepping of deadlines or our suppliers failing to supply as well as operational interruptions owing to a lack of raw materials, energy or workers, strike, lockout, difficulties with procuring means of transport, traffic disruptions, interventions by the authorities, we will have the right to postpone the delivery or performance for the duration of the impairment plus a reasonable start-up period. If the delivery or performance is delayed by more than one month as a result of this, both we and the customer will have a right to rescind the contract in writing excluding any compensation claims subject to the preconditions set out under section VIII of these Terms and Conditions of Sale with respect to the quantity affected by the delivery disruption.
3. In all cases of default our duty to pay compensation is limited in accordance with the provisions in section VIII.
4. We have a right to make reasonable part-deliveries and to provide part-performance within the agreed delivery periods.
5. We reserve the right to assert the defence of non-performance of the contract.

V. Passage of risk, costs of shipping and packaging

1. Unless otherwise expressly agreed in writing, the delivery is ex our works or warehouse and must be collected from there by the customer at its own risk. In this case the risk of accidental loss and accidental deterioration after it has been prepared for collection will pass to the customer at the time when the customer receives notification that it is ready for collection. In all other cases the risk of accidental loss and accidental deterioration of the delivery items will pass to the customer when they are handed over to the freight carrier.
2. Borrowed containers and borrowed packaging must be returned within 60 days empty and carriage paid by the customer; any loss of or damage to the borrowed containers and borrowed packaging must be borne by the customer. Borrowed packaging (containers) may not be used for other purposes or for other products. They are exclusively intended for the shipment of the delivered goods.

Markings may not be removed. We will not take back single use packaging. Instead we will notify the customer of a third party which will take back the packaging in accordance with the German Packaging Regulation (*Verpackungsverordnung*).

VI. Duties of the customer/safeguarding retention of title

1. The delivered goods will remain our property until full payment of the purchase price plus all open invoices. Including the purchase price claim against the customer in a current account and the recognition of a balance does not affect our retention of title.
2. The customer must treat the purchased item with due care; in particular, it must sufficiently insure it at its new value at its own cost against loss, damage and destruction. The customer hereby assigns its claims arising from insurance policies to us now in advance. We hereby accept this assignment.
3. The customer may neither pledge the goods which are our property nor assign them as security. However, it does have a right to sell on and process the delivered goods in the framework of ordinary business practice. This right does not exist if the customer has assigned a claim arising from the onward sale or processing of the goods to a third party in advance or has agreed a prohibition on assignment with it.
4. The customer hereby assigns, for the purpose of securing all of our claims arising from the legal relationships with it, all claims, including those which arise in the future, arising from any onward sale/processing of the goods delivered by us together with all ancillary rights up to a total of 110 % gross of the value of the delivered goods with a rank higher than the remaining part of its claims. We hereby accept this assignment and have the right to disclose this assignment at any time.
5. While and providing that the customer complies with its payment obligations towards us, it has the right to collect the claims against its customers which have been assigned to us. In these cases the customer has a duty to directly forward to us the amounts collected or, where this is not possible, to keep these safe in trust for us separately. The right to collect the claims will lapse if the customer defaults for more than 14 days on more than 25 % of all of its payment obligations.
6. On request by us the customer must inform its debtors of the assignment and instruct them to make payments, up to the amount of our claims against the customer, to us. We have the right, at any time, to also inform the customer's debtors ourselves and to collect the claims. We will not make use of this right while the customer fulfils its payment obligations without delay. In the event that the customer should fall into default, the customer must inform us on request of the claims it has assigned and their debtors, provide us with all information necessary for us to collect the claim and hand over to us the documents necessary to collect the claims.
7. In the case of pledges or other interference by third parties, the customer must inform us in writing without undue delay.
8. The processing, working or transformation of goods delivered subject to retention of title will always be for us without this leading to any liabilities for us. If the goods delivered subject to retention of title are processed, combined or attached to other goods which do not belong to us, we will acquire shared ownership of the new item whereby our share will be calculated on the basis of the ratio between the value of the goods delivered by us and the other items. The customer will keep the resulting sole ownership or shared ownership safe for us. The customer hereby assigns the claims which arise from the sale of these new products in which we have rights of title to us now in advance as far as our shared ownership in the sold goods is concerned for the purpose of security. If the customer joins or combines the delivered goods with a main item, it hereby assigns its claims against the third party up to the value of our goods to us now in advance. We hereby accept this assignment.
9. We undertake to release the securities provided for us at our discretion on request by the customer to the extent that the recoverable value of our securities exceeds our claims against the customer to be secured by more than 20 %.
10. In the case of conduct by the customer in breach of contract, especially in the case of default with payment of more than 10 % of the invoice amount for more than 14 days as well as for the event that an application for insolvency proceedings is filed, we have the right – irrespective of any further (compensation) claims to which we may be entitled – to rescind the contract and to request return of the goods we have delivered. In this case the request for return of the goods will also contain the declaration of rescission.

VII. Customer's rights in the event of defects

1. The customer must notify us in writing without undue delay, and within seven days of receipt of the goods by the customer at the latest, of obvious defects, incorrect deliveries and deviations in terms of quantity; otherwise the goods will be deemed to have been accepted. Concealed defects must be notified to us in writing without undue delay and at the latest seven days after they are discovered. The customer has the duty to check, where necessary by way of test processing, whether the delivered goods are free from defects and suitable for the intended use. This also applies if components are added which were not purchased from us. If defects are only determined during processing, the work must immediately cease and the not yet processed, unopened packages secured. These must be provided to us for inspection on request.

After three months from the passage of risk to the customer in accordance with section V. 1 notifications of concealed defects are excluded and will be regarded as late to the extent that the customer can reasonably be expected to have recognised them. In the case of a late notification of defects the customer will lose its rights for defects set out under section VIII unless we maliciously concealed the defect.

2. In the event of defects in goods delivered by us we have a duty to either, at our discretion, provide subsequent improvement or to deliver goods which are free from defects (subsequent performance) providing that we are not responsible for intent or gross negligence. If we are not prepared or not in a position to provide subsequent performance, especially where this is delayed beyond a reasonable period for reasons for which we are responsible or if the subsequent performance fails, the customer will have the right to either, at its discretion, rescind the contract or reduce the purchase price. Subsequent improvement will be deemed to have failed after the third attempt.

VIII. Rights and duties of our company

1. Our company will only be liable for damage or futile expenses, irrespective of the legal basis for this, if the damage or the futile expenses:

a) was/were caused by us or one of our vicarious agents through culpable breach of an essential contractual duty or

b) was/were caused by gross negligence or an intentional breach of duty by us or one of our vicarious agents. Pursuant to section VIII. 1 a) and b), we will only be liable for damage or futile expenses caused by advice or information for which separate remuneration is not payable where there is an intentional or grossly negligent breach of duty unless this breach of duty constitutes a material defect within the meaning of section 434 German Civil Code in the goods delivered by us.

2. Pursuant to section VIII. 1 a), we will only be liable for the breach of an essential contractual duty if there is no gross negligence or intent. Our liability for compensation is limited in this connection to damage which is foreseeable and typical. In such cases we will especially not be liable for lost profit of the customer and unforeseeable consequential damage. The above limitations of liability pursuant to sentences 1 and 2 apply in the same way to damage caused as a result of gross negligence or intent by our employees or parties commissioned by us. We will not be liable for indirect damage of the customer which it suffers as a result of third parties asserting contractual penalty claims.

3. If we are liable pursuant to section VIII. 1 b) for the breach of an essential contractual duty, our liability is limited in terms of amount, where there is no instance of gross negligence or intent, to the amount covered by a corresponding insurance policy.

4. The limitations of liability set out in section VIII. 1 to 3 do not apply if our liability is strict as a result of the provisions of the German Product Liability Act (*Produkthaftungsgesetz*) or if claims are being made against us on the basis of an injury to life, body or health. If the goods delivered by us are missing a warranted characteristic, we will only be liable for such damage, the lack of which was the subject of the warranty.

5. Further-reaching liability for compensation in addition to what is set out in section VIII. 1 to 4 is excluded. This especially applies to compensation claims resulting from fault at the time of conclusion of the contract in accordance with section 311(3) German Civil Code, positive breach of contract pursuant to section 280 German Civil Code or claims under section 823 German Civil Code.

6. To the extent that this liability for compensation is excluded or limited in accordance with section VIII. 1 to 5, this also applies in respect of the personal liability for compensation of our employees, workers, staff, representatives and vicarious agents.

IX. Limitation of claims

1. Claims of the customer on grounds of defects or services provided in breach of contract – including compensation claims and claims for reimbursement of futile expenses – will lapse within one year from the commencement of the statutory limitation period unless section IX. 2 to 5 below provides otherwise.

2. If the customer is an entrepreneur and if it or another purchaser in the supply chain has fulfilled claims of the consumer as entrepreneur as a result of defects in newly manufactured goods delivered by us which were also supplied as newly manufactured goods to a consumer, the limitation of claims of the customer against us will commence two months after the time when the customer or the other purchaser in the supply chain fulfilled the claims of the consumer as entrepreneur unless the customer was able to successfully invoke the defence of the statute of limitations against its customer/contracting partner. The claims of the customer against us on grounds of defective goods delivered by us will definitely become statute barred to the extent that the claims of the customer/contacting partner of the customer on grounds of defects in the goods delivered by us to the customer against the customer have become statute barred and, in the case of construction materials, five years at the latest after the time when we delivered the respective goods to our customer and, in the case of other materials, one year after this point in time.

3. In the case of newly manufactured goods delivered by us which have been used in accordance with their customary designated purpose for a building and which have caused it to become defective, the claims of the customer will become statute barred five years from commencement of the statutory limitation period. Deviating from sentence 1, a limitation period of four years applies to buildings and two years for other works, the success of which consists in the manufacturing, maintenance or modification of an item, providing that the customer has used the item delivered by us to perform contracts in which Part B of the *Verdingungsordnung für Bauleistungen* (official terms for the awarding of construction contracts) has been included in full. The statute of limitations pursuant to sentence 2 above will commence at the earliest two months after the time when the customer has fulfilled the claims arising from the defective nature of the building caused by the item delivered by us as against its contracting partner unless the customer could have successfully invoked the defence of the statute of limitations against its customer/contracting partner. The claims of the customer against us on grounds of defective goods delivered by us will definitely become statute barred as soon as the claims of the customer/contacting partner of the customer for defects in the goods delivered by us to the customer against the customer have become statute barred and at the latest one year after the time when we delivered the respective goods to our customer.

4. If we have provided advice and/or information not remunerated separately in breach of duty without having delivered goods in connection with the information or the advice or without the advice or information in breach of duty constituting a material defect within the meaning of section 434 German Civil Code in the goods delivered by us, the claims based on this will become statute barred within one year of when the statutory limitation period commences. Claims of the customer against us arising from the breach of contractual, pre-contractual or statutory obligations which do not constitute material defects within the meaning of section 434 German Civil Code in the goods to be delivered or already delivered by us also become statute barred within one year of when the statutory limitation period commences. Where the aforementioned breaches of duty constitute a material defect within the meaning of section 434 German Civil Code in the goods delivered by us in connection with the advice or information, the provisions provided for under 1 to 3 and 5 will apply to the limitation of the claims based thereon.

5. The provisions set out under 1 to 4 do not apply to the limitation of claims arising from injury to life, body or health or to the limitation of claims under the German Product Liability Act and legal defects in the goods delivered by us; they also do not apply to the limitation of claims of our customer which are based on us maliciously concealing defects in the goods we have delivered or if we have breached a duty intentionally or with gross negligence. In the cases set out in this section IX. 5 the statutory limitation periods apply to the limitation of these claims.

X. Returns

Goods delivered by us which are not defective cannot be returned to us.

XI. Prohibition of assignment

Without our express written consent rights and claims against us, especially those arising from defects in the goods delivered by us or from breaches of duty by us, may not be assigned in whole or in part to third parties or pledged to third parties; section 354 a German Commercial Code (HGB) remains unaffected.

XII. Place of performance, place of jurisdiction, applicable law, commercial clauses

1. Place of performance and exclusive place of jurisdiction for all claims between us and entrepreneurs or legal persons under public law or special funds under public law is the place where the company has its registered office unless mandatory statutory provisions oppose this.

2. The law of the Federal Republic of Germany applies exclusively to the legal relationship between us and the customer. The application of the provisions on the international sale of goods and German Private International law, especially the United Nations Convention on Contracts for the International Sale of Goods (CISG), is expressly excluded.

3. Where commercial clauses under the International Commercial Terms (INCOTERMS) are agreed, the INCOTERMS 2020 apply, as amended.

XIII. Final provisions

1. Should one or more of the above provisions be invalid, partially invalid or excluded by way of a separate contract, this will not affect the validity of the other provisions.

2. We process personal data especially in accordance with the EU General Data Protection Regulation and the Federal Data Protection Act (BDSG). All information is set out in the data privacy policy which can be found at www.sika.de.

3. Our delivery address is:

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Managing Director: Dipl.-Ing. Daniela Schmiedle
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