

General Standard Terms and Conditions of J. Foeldeak GmbH

§ 1, Validity of Terms

- (1) Our offers, goods delivered and services rendered are based exclusively on these General Standard Terms and Conditions. They are thus valid moreover for all future business relationships, even if they are not expressly agreed upon again. These Terms and Conditions shall be accepted no later than at the reception of the goods. Counter-confirmations made by you with reference to your own General Standard Terms and Conditions are hereby waived.
- (2) Any and all agreements reached by our firm and you relating to the execution of this contract shall be made in writing.

§ 2, Offer and Conclusion of Contract

- (1) Our offers – including packaging and freight charges – are without engagement and subject to change without notice. Declarations of acceptance and all orders have to be confirmed in writing by us to be legally valid.
- (2) Any drawings, pictures, dimensions, weights or other performance data are only valid if expressly agreed upon in writing.
- (3) We reserve the right to make changes in the goods ordered in the due course of technical progress as long as such changes are reasonable for you and to your advantage.
- (4) Our employees are not allowed to reach oral understandings or to give oral promises that go beyond the contents of the written contract.

§ 3, Pricing

- (1) Unless otherwise provided herein, the prices quoted in our offers are maintained 30 days as of their date. Apart from that, the prices quoted in our order confirmation shall prevail, plus the relevant legally applicable sales tax. Additional supplies and services are charged separately.
- (2) Unless otherwise agreed herein, prices are to be understood ex works incl. standard packaging.
- (3) Should you wish the goods to be dispatched – at your cost –, we will choose the most favorable and fastest type of transportation, as long as there is no express agreement regarding another type of shipment.

§ 4, Schedule of Goods Delivered and Services Performed

- (1) Delivery periods have to be made in writing and are approximate. In the case of non-compliance you have the right to request delivery within a reasonable period of time.
- (2) We shall not be considered in default for delays in deliveries and/or in performing services due to force majeure and due to events – which, in particular, include strike, lockout, administrative directives, etc., even if they occur at our suppliers and/or their subcontractors –, that substantially prevent or delay the supply, and not only temporarily, even in the event of delivery periods and dates bindingly agreed upon. In any such case we have the right to postpone the delivery and/or the service as long as the obstruction exists, plus a reasonable start-up time, or to withdraw from the contract wholly or in part in respect of the part not yet fulfilled.
- (3) If the obstruction lasts more than three months, you have the right, after a reasonable extension of delay, to withdraw from the contract in respect of the part not yet fulfilled. In the event of a prolongation of the delivery period, or if we are released from our obligations hereunder, you shall not have any claims for damages. We have only the right to rely on the corresponding circumstances if we notify you immediately.

§ 5, Passage of Risk

Risk shall be transferred to you as soon as the shipment was handed over to the person performing transport, or has left our storage premises to be delivered. If forwarding is delayed by your request, risk is transferred to you with the notification that the goods are ready for shipment.

§ 6, Warranty for Defects

- (1) We warrant on a world-wide basis for a period of 3 years commencing with delivery and pursuant to the following terms and conditions, that the sport mats and training dummies produced by us are free from material defects (warranty of service life). We point out that the durability of our sport mats and training dummies depends on a constant and adequate care. If no proper care was performed or if the sport mat or training dummy was subsequently processed or stored inadequately, exposed to mechanical loads not in

accordance with the intended use, you shall have no warranty claim. Moreover, you shall have no claim for damages in the event of normal wear and tear. In the event of a warranty, our warranty shall be limited to making good the material defect or, at our discretion, to exchanging the sport mat and/or training dummy for another equivalent or similar product. The transport costs necessary in the event of an exchange are not subject to this warranty.

Claims for damages derived from this warranty can only be made if the date of purchase is proven by submitting an invoice, and if we are notified of the damage immediately after its discovery, and if this notification is sent to us in writing within the warranty period.

This warranty of service life does in no event limit your rights pursuant to the following terms and conditions, neither does it limit any permanent compulsory legal rights in the event of damages when delivering the goods.

- (2) The above warranty of service life notwithstanding, you have legal claims for defects under the following provisions:
 - a) Statutory period of limitation shall be one year as of delivery of the goods.
 - b) If our instructions for operation and/or care are not observed, or if changes in the goods have been performed, any claims for damages shall lapse if you are not able to refute a corresponding substantiated allegation that it was one of these circumstances that led to the defect.
 - c) You shall inform us about any defects immediately and in writing at the latest, however, within one week after receipt of the goods. Defects that, even after careful inspection, could not be discovered within said period of time have to be reported to us immediately after their discovery in writing.
 - d) In the case of a notification sent by you that the goods are defective, we have the right, at our discretion:
 - (1) to repair the defect;
 - (2) to supply goods free of defects instead of the defective goods.
 - e) If rework or re-performance proves to be unsuccessful within a reasonable period of time, you can, at your discretion, demand a price reduction or, if the defect is more than immaterial, rescind this contract.
- (3) Only the immediate buyer shall have claims for defects against our firm, which claims are not transferable to other parties.

§ 7, Reservation of Ownership

- (1) Until all claims (incl. all liabilities on current account) of which we are entitled by any principle of law now or in future are satisfied, the following securities are provided to us, which we will waive at our sole discretion upon request, as long as their value permanently exceeds the claims by more than 20 %.
- (2) The goods remain our sole property. Processing or modification is invariably performed for us as manufacturer, however without any obligation for us. Should our (co-)ownership terminate by combination, it shall already at this instance be agreed that your (co-)ownership in the undivided object shall be transferred to us proratedly (value of invoice). You shall preserve our (co-)owned goods (conditional commodity) free of charge.
- (3) You shall have the right to process and to sell the conditional commodity during due business operations given the fact that you are not in default. Pledging and assignment as security shall be inadmissible. Starting now, you shall assign to us by way of security all claims in their full extent resulting from resale or any other principle of law (insurance, unlawful act) regarding the conditional commodity (incl. any and all liabilities on current account). You are hereby revocably authorized to collect all outstanding accounts assigned to us for our account in your own name. This debit authorization may only be revoked if you do not meet your payment obligations in a proper manner.
- (4) In the event third parties have access to the conditional commodity, especially in the case of attachments, you shall draw their attention to our ownership and notify us immediately, so that we are in a position to enforce our rights in this regard. Should said third parties not be able to reimburse our judicial and extra-judicial expenses incurred in this connection, you shall be held liable therefor.

§ 8, Payment

- (1) Unless otherwise provided herein, our invoices shall become due and payable within ten days after the date of the invoice minus 2 % cash discount, otherwise within 30 days after date of invoice net without discount.
- (2) We reserve the right to credit any payments made by you first against earlier debts, even in the event of provisions to the contrary expressed by you, and we shall inform you about the type of setting off performed. If costs and interest have already incurred, we reserve the right to credit the payment first against the costs, then against interest and finally against the principal service performed.
- (3) Should you be in default with the payment of an invoice, all outstanding invoices, even invoices with a subsequent date, shall become due and payable.
- (4) If you are in default, we shall have the right to demand interest on arrears in an amount of 8 % over the base rate pursuant to § 247 German Civil Code. The additional possibility to claim damages shall remain unaffected thereby.
- (5) You have only a right of setoff, retention, or reduction – even if formal complaints have been lodged or compensating claims have been pleaded –, if these compensating claims are legally effective or undisputed. However, you shall have a right of retention due to compensating claims under the same contractual relationship without the prerequisites of sentence 1.

§ 9, Liability

- (1) Claims for damages are hereby excluded, irrespective of the type of violation of duties and including any tortious act, as long as there is no intentional or grossly negligent act.
- (2) In the event of any essential breach of contract, we shall be liable for every negligence, however, only up to the amount of the foreseeable, direct, average damage typical to a contract. Claims out of lost profits and unsuccessful expenses, claims for damages by third parties, as well as claims out of consequential and subsequent damages can only be raised if a characteristic of state guaranteed by us is expressly intended to protect you against such damages.
- (3) The limitations and exclusions of liability set forth in paras. 1 and 2 shall not be applicable in the case of claims originating in malicious acts on our part, as well as in the case of a liability for guaranteed characteristics of state, for claims pursuant to the law on product liability, as well as for damages resulting from the violation of life, body, and/or health.
- (4) To the extent our liability is excluded or limited, this shall also apply to our legal representatives and agents. To the extent you are a merchant, legal entity or separate property under public law, our liability shall be excluded even for grossly negligent acts of our simple agents unless this refers to a breach of essential contractual obligations.

§ 10, Applicable Law, Venue of Court, Partial Invalidity

- (1) These Standard Terms and Conditions as well as the entire business relationship between you and our firm shall be governed by the laws of the Federal Republic of Germany, with the exception of conflict laws and UN Purchase Law.
- (2) To the extent you are a merchant, legal entity or separate property under public law, Wolfratshausen, Germany, shall be exclusive venue of court regarding all disputes arising directly or indirectly from this contractual relationship. In this case, Geretsried, Germany, shall be lieu of fulfillment unless otherwise provided herein.
- (3) Should any provision of these Standard Terms and Conditions or a provision within the context of other agreements be or become null and void, the validity of the remaining provisions or agreements shall not be affected thereby.

Status: January 2007

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