

Terms and Conditions of Sale

Update: 06/2007

I. In general

1. These Terms and Conditions apply exclusively and only for companies, legal entities under public law or public special funds as defined by Section 310 (1) BGB (*Bürgerliches Gesetzbuch – German Civil Code*). Contradictory or differing customer's terms will only be accepted upon prior explicit agreement in writing by us.
2. These Terms and Conditions are an integral part of all contacts with the contractual partner, hereinafter referred to as "Customer".
3. Customer general terms and conditions shall not become part of the contract either even if we do not reject acceptance thereof explicitly upon receipt.
Our Terms and Conditions are deemed to have been accepted by the Customer upon receipt of the goods supplied by us to the Customer.
4. Verbal agreements, subsidiary agreements etc. which deviate from our Terms and Conditions shall only apply if they have been agreed in writing between us and the Customer. Any waiver of this written form requirement must also be in writing.
5. Any changes in the handling of a transaction do not represent a change to Terms and Conditions.
6. We would like to point out explicitly that our employees are not authorised to meet any verbal or subsidiary agreements in excess of the content of the written agreement without the explicit written approval of the Management.

II. Offer and agreement

1. Our offers are subject to confirmation and do not represent a binding commitment.
2. Declarations of acceptance and any orders are only legally valid if they have been confirmed by us in writing. The same applies for supplements, amendments and subsidiary agreements.
3. Offers do not include special services. These must be explicitly specified in writing and confirmed by us in writing in order to become an integral part of the agreement.
4. Drawings, illustrations, dimensions, weights and any other performance data shall only be binding if these have been confirmed explicitly by us in writing. Public declarations, promotions or advertisements also do not represent any binding statement of the properties of the goods.

III. Provided documents

We reserve the right of ownership and copyright of all documents such as drawings, calculations etc. placed at the Customer's disposal in connection with the placement of an order. These documents may not be made available to third parties unless we have given the customer our explicit written permission in this respect.

IV. Deliveries, deadlines, cancellation compensation

1. Details of delivery periods and/or delivery deadlines are non-binding and do not give cause to any claims, in particular claims for compensation. Binding deadlines that could give cause to such claims must be declared explicitly by us in writing beforehand.
2. We shall not be held responsible for delivery and performance delays as a result of force majeure or events such as strikes, lock-outs, official instructions etc., which make it difficult or impossible for us to make a delivery, even if such circumstances occur at our suppliers or companies appointed by us to fulfil such obligations. These circumstances entitle us to delay our delivery or performance for the duration of the obstruction plus an appropriate start-up time or to withdraw from the contract in part or full due to the non-fulfilled section thereof.
3. Delivery deadlines and obligations shall be suspended if the Customer is in default in respect of liabilities from another contractual relationship within the business relationship or there is just cause to doubt the solvency of the Customer. Just cause for doubt exists in particular if a credit rating company rates the Customer worse than "satisfactory" (or equivalent) and/or a credit insurance company reduces or cancels a credit limit taken over for the customer. Under these circumstances, we are entitled to make further deliveries dependent upon provision of security.
4. If a non-binding delivery deadline or a non-binding delivery period has been exceeded by six weeks, the Customer can demand in writing that we make such delivery within a further period of six weeks. Sections IV.2 and IV.3 of these Terms are to be taken into account for the calculation thereof. At the end of the further six weeks we are deemed to be in default, inasmuch as we had been called upon beforehand to make delivery. Once again, sections IV.2 and/or IV.3 of these Terms are to be taken into account for the calculation thereof.
5. If the delivery period is extended, we are exempted from our obligations under the provisions of IV.3 of these Terms or if we are in default, the Customer shall not be entitled to claim for damages insofar as the damages are not the result of grossly negligent violation of duties on our part or grossly negligent violation of duties on the part of our legal representatives or our vicarious agents.
6. We are entitled to provide part-deliveries and part-performances at any time.
7. If the Customer withdraws with our consent from an order which has been confirmed by us in writing prior to delivery of the goods, we are entitled to claim a loss of profits amounting to 30 % of the order value. The Customer has the right to provide proof that no damages have been incurred at all or that they are significantly lower than the lump-sum.

V. Transfer of risk

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1. The risk of loss or damage is transferred to the Customer upon receipt of notification of readiness for despatch.
2. If no notification is provided, in the case of transport by us the transfer of risk occurs as soon as the goods leave our works site. In the case of transport by others, the transfer of risk occurs as soon as the goods are handed over to the person(s) undertaking transport.
3. The Customer is responsible for transport insurance and other insurance for the goods supplied by us.
4. If despatch has been delayed at the request of the Customer, we shall charge the Customer storage fees amounting to 1 % of the invoice amount for each commenced month from the moment of the originally agreed readiness for despatch. The Customer is permitted to provide proof that no damages have been incurred at all or that they are significantly lower than the lump-sum.
5. We reserve the right to choose method and route for despatch.
6. We are not under obligation to provide storage. If storage is provided, this is done at the Customer's risk and expense. In the event of any damage or loss, the Customer shall not be entitled to claim for damages insofar as the damages are not the result of grossly negligent violation of duties on our part or grossly negligent violation of duties on the part of our legal representatives or our vicarious agents.
7. If the goods are taken back by us for reasons which are not our responsibility, all risks shall be borne by the Customer until receipt of the goods by us.

VI. Guarantee and complaints / Claims and Manufacturer's rights of recourse

1. Drawings, illustrations, dimensions, weights and other performance specifications are only binding if they have been explicitly agreed by us in writing.
2. All Customer guarantee rights are based on the assumption that the Customer has fulfilled its inspection and complaint duties in a due and proper manner pursuant to Section 377 HGB.
The inspection and complaint duties due according to Section 377 HGB also explicitly apply to small merchants.
3. Claims for compensation expire 12 months after the completed delivery of the goods supplied by us to the Customer. The aforementioned terms do not apply insofar as legislation prescribes mandatory longer periods pursuant to Section 438 (1) no. 2 BGB (Buildings and things for buildings), Section 479 (1) BGB (Right of recourse) and Section 634a (1) BGB (Building faults). Our approval must be obtained for any return shipment of goods.
4. Notification of apparent faults is to be made within two weeks of delivery. Guarantee entitlements shall be void if the Customer omits to make such complaint.

If, despite all care and attention, the supplied goods nevertheless contain a fault which already existed at the time of transfer of risk, we will either replace or repair the goods at our discretion – subject to the Customer having made an appropriate complaint in good time. We are always to be given suitable opportunity for reparation within an appropriate period.
Rights of recourse remain unaffected without restriction by the aforementioned provisions.
5. If reparation is without success, the Customer can withdraw from the agreement or reduce remuneration.
6. Guarantee rights do not arise in the event of only insignificant deviation from agreed properties, insignificant restriction to usability, natural wear and tear or in the case of damage which occurs after the transfer of risk as a result of incorrect or negligent use, excessive use, unsuitable operating materials, faulty work or as a result of particular external influences which have not been assumed under the terms of the agreement.
No guarantee is provided for any incorrect maintenance and repair work or changes carried out by the Customer or a third party or for any consequents as a result thereof.

Claims by the Customer for costs of the purpose of reparation, in particular transport, travel, work and materials costs, are excluded insofar as the increase in costs is a result of the goods supplied by us subsequently being transported to another location than the Customer's branch, unless the change in location is a part of the designated contractual use.
7. Rights of recourse to us by the Customer only exist inasmuch as the orderer has not reached any agreements with its customers above and beyond the legally prescribed rights to claim damages. Section 6 also applies accordingly for the extent of the Customer's right of recourse.
8. Any other Customer claims, with the exception of claims resulting from injuries to health, life and limb, are excluded insofar as the claims are not the result of our gross negligence or premeditated or grossly negligent violation of duties by one of our legal representatives or vicarious agents.

VII. Prices

1. Unless otherwise agreed, our prices are ex works excluding packaging and plus value-added tax (VAT) at the current rate on the date of the tax debt being incurred. Costs for packaging will be charged separately.
2. Insofar as no fixed price agreement has been reached, we reserve the right to undertake appropriate price changes as a result of changes in wage, material and sales costs for deliveries that take place three months or later after the agreement being reached.

VIII. Terms of payment

1. Unless otherwise agreed, the price is due for payment without any deductions immediately upon receipt of the invoice. In particular, the deduction of discount is only permitted by separate written agreement.

Deduction of discount must be agreed separately for each invoice.
Granting discount in the past does not constitute any obligation to grant discount on any future invoices.

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The Customer only has the right to offset an amount due if the respective counter-claim is legally enforceable or is undisputed by us. The Customer is only entitled to exert a right of retention inasmuch as the counterclaim is based on the same contractual relationship.

2. Non-assignment clause:
The Customer may neither assign nor pledge any claims against us.
The terms of Section 345a HGB remain unaffected in this respect.

IX. Reservation of ownership

1. We reserve the right of ownership of the supplied goods until full payment of all amounts due from the existing business relationship including subsidiary claims, claims for damages and cashing of cheques and bills.
This also applies for all future deliveries, even if we do not explicitly refer to this clause.
2. The reservation of ownership continues to exist even if individual claims of ours are included in a current invoice and the balance drawn and accepted.
3. In the course of ordinary business operations, the Customer is entitled to re-sell goods subject to reservation of ownership (conditional commodities). The Customer, however, already assigns to us herewith the amount receivable from the re-sale of the conditional commodities to the extent of the invoice amount agreed with us (including value-added tax). This assignment applies irrespective of whether the purchased goods are re-sold without or after re-processing.

The Customer remains authorised to collect the receivable even after assignment.
Our authorisation to collect the receivable ourselves remains unaffected by this.
Nevertheless, we will not collect the receivable as long as the Customer continues to meet its payment obligations from the consideration collected, is not in default of payment and, in particular, has not applied for insolvency proceedings or ceased payments.

4. Processing, reworking or conversion of the purchased article by the Customer is carried out at all times in our name and on our instruction. Insofar as a purchased article is combined with other articles which do not belong to us, we shall acquire co-ownership of the new product in the proportion of the objective value of our purchased product to that of the other processed items at the time of processing. The same applies in the event of mixing. Insofar as mixing occurs in such a manner that the Customer's item is to be regarded as main item, it is agreed that the Customer shall convey to us the proportionate co-ownership and shall hold in safekeeping for us the sole or co-ownership acquired in this way. As security for our claims against the Customer, the Customer also assigns to us any such claims against third parties that arise as a result of the combination of the conditional commodities with a plot of land; we already accept such assignment herewith.
5. We agree with the Customer's permission to release any security we are entitled to upon demand by the Customer or any third party being infringed upon by our excess security insofar as the value of said security exceeds the claim being secured by more than 20 %.

The Customer is under obligation to treat the purchased items with care insofar as ownership has not yet been transferred to the Customer. Insofar as ownership has not yet been transferred, the Customer shall notify us immediately in writing if the supplied goods are pledged or otherwise subject to interference by third parties. Insofar as the third party is not in a position to compensate us for court and out-of-court costs arising from court action pursuant to Section 771 ZPO (*Zivilprozessordnung – Code of Civil Procedure*), the Customer shall be liable for any loss suffered by us.

6. Pledging or assignment as security of conditional commodities or assigned claims is prohibited. We are to be notified immediately of any attempts at attachment together with the details of the pledgee.

In the event of conditional commodities being taken back, a withdrawal from the contract on our part only exists if this has been specifically declared by us in writing.
The conditional commodities taken back may be sold by us in the course of direct sale.

X. Liability

1. Any other Customer claims, with the exception of claims resulting from injuries to health, life and limb, are excluded insofar as they are not the result of our gross negligence or premeditated or grossly negligent violation of duties by one of our legal representatives or vicarious agents.
2. Any other claims for damages are explicitly excluded irrespective of legal grounds.

XI. Place of fulfilment and court of jurisdiction

1. These terms of business and the complete legal relationship with the Customer are subject to the laws of the Federal Republic of Germany under exclusion of the UN purchasing laws (CISG).
This also applies to legal relationships with customers whose domicile is located outside of the Federal Republic of Germany.
2. The place of fulfilment for the payment of the purchase price and any other performances which are to be provided by the purchaser shall be the location of our head office at Burgwindheim.

The court of jurisdiction for all disputes arising from the legal relationship shall be the location of our head office, currently Burgwindheim.

XII. Miscellaneous

In the event of a provision of these terms of business or a provision as part of any other agreements being or becoming invalid, it shall have no effect on the validity of the remaining provisions or agreements.