

# General Terms and Conditions of Payment and Delivery

## § 1 General information - Scope of application

- Our Terms and Conditions of Payment and Delivery apply exclusively; we do not acknowledge the customer's conflicting terms or terms that deviate from our Terms and Conditions of Payment and Delivery unless we have explicitly accepted their validity in writing. Our Terms and Conditions of Payment and Delivery shall also apply if we execute the delivery to the customer without reservation and are aware that the customer's terms deviate from our Terms and Conditions of Payment and Delivery.
- All agreements made between us and the customer for the purpose of executing this contract are recorded in this contract.
- Our Terms and Conditions of Payment and Delivery shall apply to entrepreneurs within the meaning of § 310(1) BGB [Civil Code].

## § 2 Offer - Offer documents

- If the order can be classified as an offer according to § 145 BGB, we can accept it within 2 weeks.
- We reserve proprietary rights and copyrights that we have in images, drawings, calculations and other documents. This also applies to written documents referred to as "confidential". It is necessary for the customer to obtain our explicit written consent before disclosing them to third parties.
- A packaging unit (PU) is the smallest quantity delivered per article no. Our products are shipped at the buyer's risk in any event. Returns will not be accepted without our prior approval.
- Oral information, recommendations and suggestions on our part or information issued by us in catalogues, brochures, instructions for use, newsletters, advertisements as well as images on dimensions, performances and suitability for use and the like shall not rate as properties unless explicitly and separately confirmed in writing.
- The customer shall not be entitled to complain about minor deviations of the goods delivered in dimension, weight or colour which are customary in the trade. The same applies to colour changes in our products as the result of a normal aging process.

## § 3 Prices - Payment terms

- Unless otherwise stipulated in the order confirmation, our prices are "ex works", not including packaging which is invoiced separately.
- Our prices are exclusive of statutory value-added tax; VAT is shown in the invoice at the current legal rate on the billing date.
- The term of payment is 2 % discount is paid within 14 days from date of invoice or 30 days net without deductions. No discount can be applied to new invoices as long as older due invoices remain unpaid.
- Legal regulations on the consequences of late payment apply.
- The customer shall be entitled to the right of set-off only if his counterclaims have been declared legally effective or if they are uncontested or have been recognised by us. In addition, the customer is entitled to exercise his right of retention if and when his counterclaim is based on the same contractual relationship.
- In case of default of payment, we shall be entitled to charge default interest at 5 % in excess of the base rate in each case in accordance with § 1 of the Discount Rate Transition Law, subject to proving a higher damage caused by delay. We shall be entitled to refuse delivery until the agreed payment has been made or until the agreed collateral, such as advance payment, has been provided if we become aware that the customer is considerably in arrears with payments to his creditors when the contract is concluded or if we do not become aware of his poor financial situation until after the contract is concluded, or if his financial situation worsens after the contract is concluded. The customer shall be entitled to prove to us that the losses suffered by us were less than the losses claimed according to § 3(6) sentence 1 of these Terms and Conditions of Payment and Delivery.
- We shall charge a flat fee of € 5.00 for each reminder (statement of account).
- In case of default of payment, we shall be entitled to make all receivables due and payable immediately.
- If the buyer requests another proof of delivery before paying our invoice, we shall be entitled to charge a flat fee of € 85.00 to cover our associated costs; further rights shall remain reserved.
- We shall be entitled to make excess or short deliveries by up to 10 % for special productions. In this case, we shall adjust our invoices based on the unit price agreed upon in the order.
- Any sales returns require our approval. If approval for sales return is granted, we shall deduct 30 % from the credit note as a flat-rate processing fee.

## § 4 Delivery time

- A precondition for the start of the delivery time quoted by us is that all technical and commercial issues have been clarified.
- Compliance with our obligation to deliver furthermore requires that the customer has fulfilled his obligations properly and in a timely manner. We reserve the right to claim breach of contract.
- If the customer is in default of acceptance or if he culpably violates any other obligations to participate, we shall be entitled to demand compensation for the losses incurred by us in this respect including any additional expenses. Further claims and rights shall remain reserved.
- If the conditions of par. 3. are met, the risk of accidental destruction or accidental deterioration of the object of the sale shall pass to the customer as at the time the customer defaults on acceptance or debts.
- We shall be liable in accordance with statutory regulations if the underlying purchase agreement is a short sale transaction within the meaning of § 286(2) no. 4 BGB or § 376 HGB [Commercial Code]. We shall also be liable in accordance with statutory regulations if, as a result of delayed delivery for which we are responsible, the customer is entitled to claim that his interest in the continued fulfilment of contract has ended.
- We shall furthermore also be liable in accordance with statutory regulations if the default in delivery was caused by a deliberate or grossly negligent violation of contract that we are responsible for; we shall not be held responsible or liable for any fault of our agents or subcontractors. If the default in delivery was caused by a grossly negligent breach of contract that we are responsible for, our liability for damages shall be limited to the foreseeable typical damage.
- We shall also be liable in accordance with statutory regulations if the delayed delivery that we are responsible for was caused by the culpable violation of an essential contractual obligation; in this case, however, our liability for damages shall be limited to the foreseeable typical damage.
- Circumstances that prevent or hamper manufacture or shipping - e.g. force majeure, war, industrial action, riot, regulatory measures, shortage of energy or raw materials, malfunctions, failure by our suppliers to make deliveries - shall exempt us from our delivery obligation for as long as these circumstances persist. If these circumstances persist for more than one month after the agreed delivery date, we shall be entitled to disengage from our delivery obligation. In that case, the buyer shall also be entitled to withdraw from the contract.
- Any further legal claims and rights of the customer shall remain reserved.

## § 5 Transfer of risk - Packaging costs

- Delivery "ex works" is agreed unless otherwise stipulated in the order confirmation.
- Packaging is invoiced at cost. Invoiced, reusable materials that are returned carriage paid shall be credited.
- At the customer's request, we will take out transport insurance, at the customer's expense.

## § 6 Liability for defects

- The validity of any claims for defects on the part of the customer shall be contingent on the customer's having duly fulfilled his obligations to inspect and to give notice of defects in accordance with § 377 HGB.
- If the item being sold is defective, we shall be entitled to repair or replace the defective item at our option. If we choose to remove the defect, we shall be obligated to pay all expenses required to remove the defect, in particular the costs of transportation, infrastructure, labour and material unless these are increased because the object of the sale was transported to a location other than the place of delivery. If the defect cannot be repaired within a reasonable period of time or if the amendment or the replacement is to be considered failed for other reasons, the buyer shall have the option of demanding a price mark-down (reduction) or of cancelling the contract. Amendment may only be deemed to have failed if we were granted sufficient opportunity for amendment or replacement without achieving the desired success, if amendment or replacement is impossible, if we refuse, or unacceptably delay amendment or replacement, if there is reasonable doubt as regards the chances for success or if amendment or replacement is unacceptable for any other reasons.
- We shall be liable in accordance with statutory regulations if the customer asserts claims for damages based on intent or culpable negligence including intent or culpable negligence by our representatives or agents. Our liability shall be limited to foreseeable typical damage unless we are charged with intentional breach of contract.
- We shall be liable in accordance with statutory regulations if we culpably violate an essential contractual obligation; even in this case, however, our liability shall be limited to foreseeable typical damage.
- If the customer is entitled to compensation of loss instead of performance, our liability shall be limited to foreseeable typical damage even within the scope of paragraph 3.
- Liability in cases of culpable damage to life, limb or health shall remain unaffected; this also holds true for mandatory liability pursuant to the Product Liability Law.
- Liability is excluded unless otherwise stipulated above.
- The limitation period for claims for defects is 12 months from the transfer of risk.
- The limitation period in case of delivery recourse according to §§ 478, 479 BGB shall remain unaffected; it is five years from the time the defective goods are delivered.

## § 7 Joint liability

- Any liability for damages that exceeds the limits provided for in § 6 - irrespective of the legal nature of the claim submitted - shall be excluded. This holds true in particular for damages claimed as *culpa in contrahendo*, for other breaches of duty or for delictual claims for compensation of material damage according to § 823 BGB.
- The limitation according to par. 1 shall also apply if instead of a claim for damages the customer requests compensation for useless expenses instead of performance.
- Where claims for damages against us are limited or excluded, the same also applies with respect to the personal liability of our staff, employees, associates, representatives and agents.

## § 8 Title retention

- We reserve all rights of ownership in the object of the sale until we have received all payments under this delivery contract. If the customer acts contrary to the terms of the contract, in particular in case of default of payment, we shall be authorised to take the purchased goods back. This recall of purchased goods by us constitutes a withdrawal from the contract. We are entitled to utilise the recalled purchased goods, and the proceeds from the disposal shall be credited to the customer's debts, minus appropriate utilisation costs.
- The customer shall be obligated to treat the object of purchase with care; in particular, the customer shall be obligated to insure it adequately at his own expense against damage by fire, water and theft at its reinstatement value. If maintenance and inspection work is required, the customer is to have it done in a timely manner and at his own expense. The buyer hereby assigns his claims for compensation resulting from damage as stated above that he is entitled to against insurance companies or other parties liable to pay compensation to the seller in the amount of the invoiced amount of the goods. The seller accepts the assignment. The goods subject to retention of title shall be stored for the seller by the buyer and free of charge for us.
- The customer shall notify us promptly and in writing in the event of attachments or any other third-party interventions so that we can take legal action according to § 771 ZPO [Code of Civil Procedure]. In the event the third party is unable to reimburse us for the judicial and extrajudicial costs of legal action according to § 771 ZPO, the customer shall be liable for the loss incurred by us.
- The customer shall be entitled to sell the object of sale in the ordinary and proper course of business; he shall, however, already now assign to us all receivables which arise against his buyers or third parties in the amount of the final invoice amount (including VAT) of our receivable, irrespective of whether the object of sale was resold unprocessed or processed. The customer shall be authorised to collect this receivable even after the assignment. Our authority to collect this receivable ourselves shall remain unaffected. However, we undertake not to collect the receivable as long as the customer meets his payment obligations from the revenues collected and as long as he is not in default of payment and in particular as long as a request for opening arbitration or insolvency proceedings has not been filed or if he is bankrupt. If this is the case, however, we shall be entitled to request that the customer informs us of the assigned receivables and their debtors and that he provides all information required for collection, hands over the associated documents and informs the debtors (third parties) of the assignment.
- Any processing or alteration of the object of sale by the customer shall be done for us at all times. If the object of sale is processed with other objects not belonging to us, we shall acquire joint ownership in the new object according to the ratio between the value of the object of sale (final invoice amount, including VAT) and the other processed objects at the time of processing. The same applies to the object resulting from the processing as to the object of sale delivered under reservation of title.
- If the object of sale is inseparably mixed with other objects not belonging to us, we shall acquire joint ownership in the new object according to the ratio between the value of the object of sale (final invoice amount, including VAT) and the other mixed objects at the time of mixing. If mixing occurs in such a way that the customer's object is to be considered the main object, then it is understood that the customer transfers joint ownership to us on a pro rata basis. The customer shall keep safe the resulting sole property or joint property on our behalf.
- The customer shall also assign to us as collateral the receivable that is created by combining the object of sale with real estate property against a third party.
- We undertake to release the securities we are entitled to at the customer's request if and when the realisable value of our securities exceeds the receivables to be secured by more than 10 %; we shall be responsible for selecting which securities are to be released.
- Factoring shall be permitted with our consent only.

## § 9 Place of jurisdiction - Place of fulfilment

- The place of jurisdiction shall be Essen if the customer is a merchant; however, we shall be entitled to institute proceedings against the customer at the court at his place of residence as well.
- These terms are governed by the law of the Federal Republic of Germany; the application of the UN Convention on Contracts for the Sale of Goods is excluded.
- Unless otherwise stipulated in the order confirmation, the place of dispatch is the place of fulfilment for the delivery and the place of fulfilment for payment is Nohra.