

I. General Scope – Area of Application

1. Our Terms and Conditions of Delivery shall apply exclusively; we do not recognize other, contradictory terms or terms of the customer which deviate from our Terms and Conditions, unless we have expressly agreed to those terms in writing. Our Terms and Conditions of Delivery shall even apply in the event that we have delivered the goods to the customer without any reservations while knowing that the customer's terms of delivery deviate from ours.
2. Our Terms and Conditions of Delivery shall only apply vis-à-vis customers which are entrepreneurs as defined in § 310 I BGB [German Civil Code].
3. Our Terms and Conditions of Delivery shall also apply for all future business transactions with the customer.

II. Estimates of Costs – Documents for Quotations – Models and Production Facilities

1. All estimates of costs, illustrations, drawings, calculations and other documents shall remain our property and we shall retain the copyright to such documentation. The customer must obtain our prior agreement in writing before passing on any such documentation to a third party or persons.
2. All models and production facilities shall remain our property

III. Prices – Terms of Payment

1. Unless otherwise agreed upon in our order confirmation, our prices shall be "net ex works", excluding packaging costs. The packaging costs shall be invoiced separately.
2. The statutory value-added tax is not included in our prices; the full sum of the statutory value-added tax is entered separately on the invoice on the day on which the invoice is made out.
3. The customer shall only be entitled to set off any claims against us if these claims have become *res judicata*, or if the claims are undisputed, or we have acknowledged the claims. The customer is only entitled to refuse performance until counter-performance is effected, if his counterclaim is derived from the same contractual relationship.

IV. Delivery Period

1. All technical questions must have been settled prior to the commencement of the delivery period given by us.
2. We shall only be obliged to comply with our obligation to deliver if the customer has, for his part, duly and punctually fulfilled all his obligations. We shall reserve the right to assert the defence of lack of performance.
3. If the customer should be in default of acceptance or if he otherwise culpably violates his obligations to cooperate, then we shall be entitled to demand restitution for any damages accruing to us thereof, including any additional ensuing costs. We shall reserve the right to claim for further damages accruing.
4. If the conditions given in item 3 above are fulfilled, then the risk of accidental loss, destruction or deterioration of the goods shall pass to the customer at the moment in which the customer is in default of acceptance or is in debtor's delay.
5. We shall only be liable in accordance with statutory provisions if the contractual relationship is a transaction for delivery by a fixed date as defined in § 286 subparagraph 2 No. 2 BGB [German Civil Code] or in § 376 HGB [German Commercial Code]. We shall also be liable in accordance with the statutory regulations if – due to a delay in delivery on our part – the customer is entitled to assert that he is no longer interested in fulfilment of the contract.
6. We shall additionally be liable in accordance with statutory provisions, if the delay in delivery is due to an intentional or grossly negligent violation of the contract on our part; such a violation by a representative or agent of ours shall likewise be attributed to us. If the delay in delivery is not due to an intentional or grossly negligent violation of the contract on our part, then our liability for damages shall be limited to foreseeable, standard losses.
7. We shall also be liable in accordance with statutory provisions, if the delay in delivery is due to a culpable violation of a material contractual obligation; in this case, however, our liability shall be limited to foreseeable, standard losses.
8. Additional lawful claims and rights of the customer shall be reserved.

V. Passing of Risk – Packaging Costs

1. The Incoterms in their currently valid version shall apply. Unless the confirmation order expressly mentions a different clause of the Incoterms, delivery shall be in accordance with the clause "EXW, ex works".
2. With the exception of pallets we shall not take back any transport packaging and any other packaging subject to the Regulations Governing Packaging.
4. If the customer so desires, we shall provide a transportation insurance for the delivery; the insurance costs shall be borne by the customer.

VI. Risk of Procurement – Guarantees – Liability for Defects

1. We shall not assume any risk of procurement nor any guarantees to that effect, unless we have concluded an agreement with the customer to this effect. Insofar as we shall issue a guarantee concerning the nature of an article, we shall only be liable in accordance with the statutory regulations.
2. Claims of the customer based on defects shall only be enforceable if the customer has duly performed his obligations to examine the goods delivered and his requirement to make a complaint in respect of a defect immediately on receipt of the goods in accordance with § 377 HGB [German Commercial Code].
3. In the event that the delivered goods are defective, we shall be entitled to choose whether to remedy the defect by removal of the defects or by replacing the defective goods with a new article free of defects. Should we choose to remove the defects, then we shall only bear any ensuing costs amounting to the price of the article delivered.
4. In the event that our attempts to remedy the defective goods should be ineffective, then the customer shall be entitled to terminate the contract or to demand a reduction of the purchase price.
5. We shall be liable in accordance with statutory regulations if the customer asserts claims for damages which are due to intent or gross negligence, including intent or gross negligence by a representative or agent of ours. If no intent to violate the contract can be laid at our door, then our liability for damages shall be limited to foreseeable, standard damages.
6. We shall be liable in accordance with statutory regulations if we culpably violate a material contractual obligation; in this case, however, our liability for damages shall be limited to foreseeable, standard damages.
7. In the event that the customer is entitled to be indemnified for damages accruing rather than receiving due performance of the obligations, then our liability for damages within the scope of sub-paragraph (4) shall be limited to the reparation of foreseeable, standard damages.

8. Our liability for culpable injuries to life, limb or health of the customer shall remain unaffected; this also applies to our statutory liability as defined by the Product Liability Act.
9. Unless otherwise regulated in the foregoing provisions any further liability on our part is precluded.
10. The statute of limitation for claims for damages shall be 12 months; the period of limitation shall begin to run from the date of the passing of risk to the customer.
11. 8. The statute of limitation for a delivery recourse as defined in §§ 478, 479 BGB [German Civil Code] shall be unaffected; the statute of limitation for this shall be 5 years, calculated from the date of delivery of the defective article.

VII. Joint Liability

1. Any further liability for damages going beyond the liability as stated in item VI. above shall be precluded – irrespective of the legal nature of the claim put forward. This shall apply in particular to any claims for damages arising out of culpa in contrahendo, or other breaches of duty, or claims in tort for reparation of material damages in accordance with § 823 BGB [German Civil Code]. This limitation shall also apply if the customer – instead of asserting a claim for damages – demands restitution of expenses incurred rather than fulfillment of obligations.
2. Insofar as our liability for damages is precluded or restricted, this shall also apply to our liability for damages caused by our employees, workers, representatives and agents.

VIII. Retention of Title

1. We shall retain title to all deliveries until all our claims against the customer based on the existing business relationship between us up to the current date have been settled. Insofar as we have agreed upon a checking account with the customer, our retention of title shall pertain to the relevant balance of account agreed upon. This shall also apply in the event that no balance has been agreed upon, but a "causal" balance has been agreed upon instead – for example if the customer become insolvent.
2. In the event of conduct on the part of the customer contrary to the terms of the agreement, in particular if the customer should default in payment, we shall be entitled to take back the article(s) delivered. After taking back the article(s), we shall further be entitled to sell them or otherwise utilize them; the realization proceeds of the goods shall be set-off against the customer's accounts payable – less reasonable realization costs.
3. The customer is obliged to take good care of the goods delivered; in particular he must sufficiently insure these goods for their value as new against losses caused by fire, water or theft. Insofar as the goods require maintenance or regular servicing, the customer must ensure that this is carried out in due time and at his own expense.
4. In the event of any seizure of property or other interventions by a third party the customer must inform us without delay in writing so that we will be able to institute legal proceedings in accordance with § 771 ZPO [German Code of Civil Procedure]. Should the third party not be in a position to reimburse us for the legal and extrajudicial costs of a legal action in accordance with § 771 ZPO [German Code of Civil Procedure], then the customer shall be liable for the losses accruing to us therefrom.
5. The customer is entitled to resell the goods delivered in the course of his regular business operations; however, the customer shall already transfer to us in advance all claims accruing from the resale of the goods against their buyer or third parties up to the sum of the final invoiced amount (including VAT) of our claim against the customer, irrespective of whether the goods were processed prior to their resale or not. The claims which the customer shall assign to us in advance shall pertain to the acknowledged balance of account as well as, in the event of an insolvency on the part of the customer, to the then existing "causal" balance. The customer shall retain the right of recovery of the debt even after he has assigned the claim to us. Our entitlement to recover the debt ourselves shall remain unaffected. We shall, however, undertake not to take steps to recover the debt ourselves provided the customer shall fulfil his financial obligations out of the proceeds of the resale, that he does not fail to pay on due date and, in particular, that he has not filed a petition for institution of composition or insolvency proceedings or suspended payment. If this, however, should be the case, then we shall be entitled to demand that the customer shall make known to us the assigned claims together with the names of the debtors, that he provides us with all information necessary to enable us to recover the debt, that the customer shall surrender to us all appropriate and relevant documents and that he shall inform the third party debtor of the assignment of the claim.
6. The processing or remodelling of the goods delivered by the customer shall always be carried out on our behalf. If the goods delivered shall be processed and thereby mixed with other goods to which we have no title, then we shall become joint proprietors of the new article in proportion to the value of the goods delivered by us (final invoice amount including VAT) to the other processed goods forming part of the new article at the time of processing. Otherwise, the same shall apply with respect to the newly created processed article as to the goods delivered by us to which we retained title.
7. If the goods delivered shall be processed and thereby mixed with other goods to which we have no title, then we shall become joint proprietors of the new article in proportion to the value of the goods delivered by us (final invoice amount including VAT) to the other processed goods forming part of the new article at the time of processing. If the processing and mixing shall be effected such that the goods of the customer shall be considered as the main article, then the customer shall assign to us the joint ownership to the goods in proportion to the value of the goods delivered by us. The customer shall keep the resulting title to sole ownership or joint ownership on our behalf.
8. The customer shall also assign to us any claims securing our claims if the goods delivered by us are combined with a piece of real estate of a third party.
9. We shall undertake to release the securities due to us on request of the customer insofar as the realizable value of our securities shall exceed our secured claims against the customer by more than 10%; the choice of which securities we shall release shall be ours.

IX. Place of Jurisdiction – Place of Performance

1. If the customer is a businessman, then place of jurisdiction shall be our principle place of business; we are, however, also entitled to bring an action against the customer at the court having jurisdiction over the customer's place of residence.
2. The law of the Federal Republic of Germany shall apply; any application of the UN Sales Convention shall be excluded.
3. Unless otherwise agreed upon in our confirmation of order, place of performance shall be our principle place of business.