

TERMS AND CONDITIONS OF SALE AND DELIVERY



Section 1 - Scope of application of the Terms and Conditions

1. The Seller or Supplier (hereinafter referred to as "Supplier") concludes contracts exclusively under the following Terms and Conditions of Sale and Delivery (hereinafter referred to as "Conditions"). They shall also apply for all future business relationships, even if they have not been expressly agreed each time. Any conflicting or deviating Conditions of the Buyer or Purchaser (hereinafter referred to as "Purchaser") shall only apply where the Supplier has confirmed such in writing. Terms and Conditions of Business of the Purchaser which the Supplier has not acknowledged in writing shall be non-binding for the Supplier, even if the Supplier has not expressly objected to such. This shall also apply in the event that the Supplier provides the service without reservation in awareness of the conflicting or deviating Conditions of the Purchaser.
2. Alterations to these Conditions shall be deemed approved where the Purchaser fails to object to such in writing. The Purchaser must submit its objection to the Supplier within one month of receiving notification of the alterations.
3. These Conditions shall apply only to undertakings within the meaning of Section 310 (1) BGB [German Civil Code].
4. All and any commissions and other agreements, including verbal ancillary agreements, between the Supplier and the Purchaser shall not be valid unless made in writing. The same shall apply for the waiver of the written form requirement itself. Any amendments or alterations to the contract shall be recorded in a document to be marked as an addendum to the contract, which must be signed by both contract partners.

Section 2 - Offers, Scope of delivery

1. Offers submitted by the Supplier are non-binding. Any orders placed shall only be binding where confirmed in writing (including invoice or delivery note) by the Supplier. The Purchaser shall be bound to the order for four weeks, or where delivery items are already in stock, for two weeks.
2. The Purchaser shall require the written consent of the Supplier to assign claims.
3. The Supplier's written order confirmation shall be decisive for the scope of the delivery.
4. Details about weights, performance, usage, operating costs, illustrations, drawings, colour, application technology, dimensions, etc., are only approximate, unless expressly termed as binding, and do not offer any guarantee for the existence of a particular property. Only such properties that have been expressly stipulated in writing as guaranteed shall be deemed guaranteed.
5. For the term of the delivery period pursuant to Section 5, the Supplier shall reserve the right to modify the design and change the shape of the delivery item, provided that no fundamental changes are made to the delivery item and such changes are reasonable for the Purchaser.
6. Partial delivery and - with regard to items that have been specially manufactured or imported for the Purchaser - reasonable deviations from the order volume are permissible.

Section 3 - Prices and price changes

1. Unless agreed otherwise, all prices are ex Supplier's premises.
2. The statutory VAT is not included in the Supplier's prices; this shall be stated separately on the invoice at the rate applicable on the date on which the invoice is issued.
3. The deduction of a cash discount shall only be permissible upon separate written agreement.
4. The Supplier's prices valid on the date of delivery, in particular for long-term supply contracts (contracts for the performance of continuing obligations), shall be charged.
5. The determination of weight which is decisive for invoicing shall be carried out at the Supplier's shipping point.
6. Where it is agreed that the Supplier shall bear the customs and import duties of the country of destination, any increase in such duties that comes into force between submission of the order confirmation and delivery of the goods shall be borne by the Purchaser. All other charges, taxes and costs relating to the contract shall also be borne by the Purchaser.
7. The Supplier reserves the right to change its prices appropriately in the event of cost reductions or cost increases, in particular due to tariff agreements, increases in material prices or changes in currency parities, after the contract is concluded. The Supplier shall provide the Purchaser with evidence of such upon request.

Section 4 - Terms of payment

1. Unless specified otherwise in the order confirmation, the purchase price shall be due for payment net (without deduction) within 30 days of the invoice date.
2. Cheques shall only be accepted in fulfilment upon separate agreement and subject to their eligibility for discount. The value date shall be the date on which the equivalent value is available.
3. Should the Purchaser be culpably in default of payment, fail to meet its payment obligation or, in particular, cease payment altogether, the Supplier shall be entitled to advance the maturity of the entire residual debt. Furthermore, the Supplier reserves its statutory rights.
4. Where there is reasonable doubt regarding the Purchaser's creditworthiness and ability to pay, the Supplier may refuse performance of the service incumbent upon it and set the Purchaser a deadline by which it must make payment concurrently with delivery, provide a security or make an advance payment. Upon fruitless expiration of the deadline, the Supplier shall, at its own discretion, be entitled to withdraw from the contract and demand compensation in place of performance without the Purchaser being able to derive any claims from this. It shall not be necessary to set a deadline where the Purchaser seriously and definitively refuses to make payment or where special circumstances exist which would, under due consideration of the interests of both parties, warrant the Supplier's immediate withdrawal from the contract.
5. The Purchaser shall only be entitled to set off costs where its counterclaims have been established by a court of law, are undisputed or have been acknowledged in writing by the Supplier. Further, the Purchaser shall only be entitled to exercise a right of retention to the extent

that its counterclaim is based on the same contractual relationship.

Section 5 - Delivery period

1. The delivery period shall commence on the date on which the Supplier confirms the purchase contract in writing. Compliance with the delivery deadline shall require the due and timely receipt of all documents to be provided by the Purchaser as well as compliance with the payment terms and other obligations. The delivery deadline shall be deemed to have been met where the delivery item has left the Supplier's premises or the manufacturer's works before expiry of said deadline or has been made available for delivery by means of collection or shipment. In the event that delivery is delayed for reasons for which the Purchaser is responsible, the deadline shall be deemed to have been met upon notification of shipment, completion or readiness for dispatch. Fixed deadlines shall be excluded unless agreed otherwise in writing.
2. The delivery deadline shall be appropriately extended in the event of industrial action (strikes and lock-outs) and upon the occurrence of any unforeseen events (disruptions in operation, interventions by authorities, unavoidable shortages of raw materials or other materials, etc.), which the Supplier was unable to prevent despite exercising reasonable care according to the circumstances of the case, irrespective of whether such events occur at the Supplier's premises or at the manufacturer's works, where performance of the service would be possible.
3. To the extent that the Supplier is unable to perform the service for the reasons specified in paragraph 2 above, it shall be released from its obligation to deliver. Where performance is considerably hindered, the Supplier shall be entitled to withdraw from the contract. The Supplier may only plead the aforementioned circumstances if it informs the Purchaser of such without delay.
4. Where the delivery period is extended by more than one month in the cases specified in paragraph 2 above, the Purchaser shall be entitled to withdraw from the contract. It shall not be entitled to assert any claims for compensation. Where the aforementioned circumstances occur at the Purchaser's premises, the same legal consequences shall also apply with regard to its acceptance obligation.
5. Where the Supplier is in default of delivery for reasons for which it is responsible, the Supplier shall only be liable in the amount of the foreseeable damage insofar as said damage and/or default is due to intent or gross negligent. The Supplier shall not be liable for minor negligence or consequential damages. The exemption from liability shall also apply where the damage would have occurred even if delivery had been made on time.
6. The limitations of liability under paragraph 5 above shall not apply where a commercial transaction for delivery by a fixed date has been agreed; the same shall apply where the Purchaser can claim that it is no longer interested in the fulfilment of the contract as a result of the delay for which the Supplier is responsible.
7. If the Purchaser delays acceptance of the delivery or is in breach of other cooperation obligations, the Supplier shall be entitled to demand compensation for the damage incurred as a result, including any additional expenses. In such a case, the risk of accidental loss or accidental deterioration of the purchased item shall transfer to the Purchaser at the moment from which the latter is late in accepting said item or in making due payments. In the event of late acceptance, the Supplier may demand 25% of the agreed purchase price as compensation without specific proof, unless the Purchaser can provide evidence that no, or considerably less, damage was incurred. The right to assert further claims remains reserved.
8. Where dispatch is delayed at the request of the Purchaser, the Supplier may charge a warehousing fee in the amount of 0.5 % of the net invoice amount for each month or part thereof, beginning one month after notification of completion or availability for dispatch. The warehousing fee shall be limited to 5 % of the net invoice amount, unless the Supplier is able to prove higher costs.

Section 6 - Transfer of risk and shipping

1. Unless otherwise agreed, delivery shall be ex Supplier's premises or the manufacturer's works, either by means of collection or shipment. The risk shall be transferred to the Purchaser upon handover of the delivery item to the forwarding agent, freight carrier or collector or upon leaving the Supplier's or the manufacturer's warehouse for transportation. If shipment is delayed for reasons that lie within the sphere of influence of the Purchaser or its vicarious agents, the risk shall be transferred on the date of notification of readiness for dispatch.
2. Transport packaging and all other packaging in accordance with packaging regulations will not be taken back; this does not include pallets and returnable packaging (dry, clean and in good condition). In this respect, the Purchaser shall bear the risk of damage. It shall be obliged to dispose of or return the packaging at its own expense.

Section 7 - Guarantee of retention of title

1. The delivered goods shall remain our property until such time as the agreed price has been paid in full, including any and all receivables due from the business relationship, and until such time as any cheques have been cashed.
2. The retention of title shall also remain in force where individual receivables due to the Supplier have been included on a current invoice and the balance has been drawn and accepted.
3. The Purchaser shall be obligated to store the retained goods in a safe place for the Supplier, and to service, repair and insure them against loss and damage, in particular against fire, water and theft, at its own expense at an amount sufficient to cover the replacement value and to the extent that can be required of a prudent businessman. It shall thereby assign its claims from the insurance contracts in advance to the Supplier.
4. In the event of conduct on the part of the Purchaser that is contrary to the terms of the contract, in particular default of payment, the Supplier shall be entitled to repossess the goods. Repossession of the goods by the Supplier shall not constitute a withdrawal from the contract, unless the Supplier has expressly declared such in writing. After repossessing the goods, the Supplier shall be authorised to dispose of them, provided it has informed the Purchaser of this with an appropriate period of notice. The proceeds from this resale shall be set off against the Purchaser's liability, minus reasonable exploitation costs.
5. Should the Supplier withdraw from the contract, it may demand compensation for the duration of the provision of the used goods, the amount of which shall be assessed in accordance with Section 13 (2) of the Consumer Credit Act. In addition, the Supplier may demand that the delivered goods be returned or that the Purchaser's claims against third parties for the return of goods be assigned to it.
6. The retained goods shall be handled and processed on behalf of the Supplier as the manufacturer within the meaning of Section 950 BGB [German Civil Code] without the Purchaser being entitled to assert claims of any kind whatsoever against the Supplier on grounds of said handling or processing. Where the retained goods are processed together with goods that are owned by third parties, or where the retained goods are mixed or combined with goods that are owned by third parties, the Supplier shall acquire joint ownership of the resulting products in the ratio of the invoice value of the retained goods to the goods owned by third parties at the time of processing, mixing or combining. If the goods are combined or mixed with a main item of the Purchaser, the Purchaser shall already assign its ownership rights to the new

item to the Supplier at this stage.

7. The Purchaser shall be entitled to redispense of the retained goods in the regular course of business; this shall, however, not apply if and to the extent that a prohibition of assignment has been agreed between the Purchaser and its customers in respect of the purchase price claim. The Purchaser shall not be authorised to pledge the goods, assign them by way of security or otherwise encumber them. Upon reselling the goods, the Purchaser shall make transfer of ownership conditional upon payment of the goods in full by its customers.

8. The Purchaser hereby assigns in advance to the Supplier all claims arising from the resale of the retained goods plus all ancillary rights and security interests, including cheques, in order to secure all claims against the Purchaser in favour of the Supplier arising from the business relationship. Should the Purchaser incorporate its claim into a current account relationship with its customers, it shall also hereby assign to the Supplier the current account claim that is established at the end of the accounting period likewise for the purpose of securing all claims against the Purchaser in favour of the Supplier arising from the business relationship. If the retained goods are sold together with other items for an overall price, the assignment shall be limited to the proportionate amount of the Supplier's invoice that refers to the retained goods sold together with the other items. If goods are sold in which the Supplier has a joint ownership share pursuant to paragraph 6 above, the assignment shall be limited to that part of the claim that is equivalent to the joint ownership share. Where the Purchaser uses the retained goods to refine items belonging to a third party against payment, it shall hereby assign in advance its claim for remuneration against the third party to the Supplier for the aforementioned security purpose.

9. As long as the Purchaser meets its payment obligations on time, it shall be entitled to collect the receivables from a resale or a refinement. The authority of the Supplier to collect the receivables shall remain unaffected by this. The Supplier shall be obligated, however, not to collect the receivables as long as the Purchaser meets its payment obligations from the collected proceeds and is not in default of payment and, in particular, no application has been submitted for insolvency or composition proceedings to be opened and the Purchaser has not suspended payments. Is this the case, however, or if the Supplier believes the enforcement of its claims to be at risk, the Supplier may demand that the Purchaser inform it of the assigned receivables and their debtors, provide all information necessary for collection, hand over the corresponding documents and inform the debtors (third parties) of the assignment. Further, the Supplier shall be entitled to revoke the Purchaser's right to collect said receivables.

10. In the event of attachment or any other form of third-party intervention, the Purchaser must inform the Supplier of this in writing without delay, enclosing a copy of the attachment record. If the third party is unable to reimburse the Supplier for the court and out-of-court costs of a lawsuit under Article 771 ZPO [German Code of Civil Procedure], the Purchaser shall be liable for the financial loss incurred by the Supplier.

11. The Supplier shall be obligated, at the Purchaser's request, to release any securities that have been granted to it insofar as the realisable value of these securities exceeds the receivables to be secured by more than 20%; the Supplier shall choose which securities are to be released.

Section 8 - Warranty for defects

1. The warranty rights of the Purchaser shall be subject to the condition that it has properly fulfilled its obligations to inspect and notify defects under Articles 377 and 378 HGB [German Commercial Code].

2. Where notification of defects is justified, the Supplier shall be entitled to repair or replace the item at its own discretion within a reasonable period of at least 14 days. In the event that the Supplier opts to remedy the defect, it shall be obligated to bear the expenses necessary for such, in particular transport, travel, labour and material costs, insofar as said expenses do not increase due to the fact that the goods are taken to a location other than the place of fulfilment, unless such relocation is consistent with the intended use of the goods or was agreed with the Supplier upon concluding the contract. Where the Supplier delivers a non-defective item for the purpose of rectification, it may demand that the Purchaser return the defective item pursuant to Sections 346 and 348 BGB [German Civil Code].

3. No liability shall be assumed for damages due to natural wear and tear.

4. No liability shall be assumed for damages incurred on the following grounds:

- unsuitable and/or improper use
- incorrect or careless handling of the delivery item
- excessive use
- where the Purchaser fails to report or record a defect
- where the Purchaser has not immediately granted the Supplier the opportunity to provide subsequent performance despite being requested to do so.

5. In consultation with the Supplier, the Purchaser must give the Supplier the necessary time and opportunity to perform all of the repairs and provide all of the replacement parts deemed necessary by the Supplier at its reasonable discretion; the Supplier shall otherwise be exempt from its obligation to provide subsequent performance. Only in urgent cases where there is a risk to operational safety, of which the Supplier must be informed immediately, or where the Supplier is in default of providing subsequent performance, shall the Purchaser be entitled to remedy the defect itself, or have it remedied by third parties, and to demand a reasonable amount of reimbursement for its expenses from the Supplier.

6. The replacement goods and the repair shall only be under the same guarantee as the delivery item. The period of limitation for claims on account of defects in the delivery item shall be extended by the period for which business is interrupted for the provision of rectification.

7. Liability shall be excluded for the consequences of any alterations made improperly by the Purchaser or third parties without the prior approval of the Supplier.

8. Where the Supplier is either unwilling or unable to provide rectification, in particular where it fails to do so within a reasonable period of time for reasons for which the Supplier is responsible, or where subsequent performance otherwise fails, the Purchaser shall be entitled at its discretion to either withdraw from the contract or reduce the purchase price accordingly.

9. Unless otherwise provided for in the following, further claims on the part of the Purchaser - irrespective of the legal basis - are excluded. The Supplier shall therefore not be liable, in particular, for damages that have not been incurred to the delivery item itself; the Supplier shall not be liable, in particular, for loss of profits or other financial losses suffered by the Purchaser.

10. The aforementioned disclaimer of liability shall not apply for bodily harm resulting from a breach of obligation, for which the Supplier, a legal representative or a vicarious agent is responsible, or where the damage is due to wilful intent or gross negligence. Nor shall it apply where the Supplier has maliciously concealed the defect or has offered a guarantee for the existence of a certain property. In all cases, liability to pay damages shall be limited to the foreseeable damage.

11. Where the Supplier is in breach of an essential contractual obligation on grounds of negligence, its liability to pay damages shall, in all cases, also be limited to the foreseeable damage that is typical for this type of contract.

12. Used delivery items shall be sold as seen to the exclusion of warranties of any type whatsoever.

13. If the goods are resold to an end consumer, the Purchaser may only enforce statutory recourse claims against the Supplier to the extent that it has not made any arrangements with its customer above and beyond the statutory mandatory claims for defects.

Section 9 - Joint and several liability

1. Where liability for damages on the part of the Supplier is excluded or limited pursuant to Section 8 above, this shall also apply for all other claims, irrespective of the legal nature of the claim asserted, in particular however for claims arising from culpa in contrahendo, breach of ancillary duties, in particular for claims under producer's liability in accordance with Section 823 BGB.

2. The provision under paragraph 1 above shall not apply for mandatory liability under the German Product Liability Act or for all cases of incapability or impossibility of performance.

3. Insofar as liability for damages is excluded or limited, this shall also apply for the personal liability of office clerks, employees, staff, representatives and vicarious agents of the Supplier.

Section 10 - Technical advice, use and processing

Technical advice, either in verbal or written form or by way of tests, with regard to the application of the delivered products shall be provided by the Supplier to the best of its knowledge; this shall serve only as non-binding information, also in respect of intellectual property rights of third parties, where applicable, and shall not release the Purchaser from its obligation to inspect the goods delivered by the Supplier for their suitability for the processes and purposes for which they are intended. The Supplier is unable to control the manner in which the goods are applied, used and processed; as such, this shall be at the sole responsibility of the Purchaser.

Section 11 - Place of fulfilment - Place of jurisdiction - Applicable law –

1. Unless specified otherwise in the order confirmation, the place of fulfilment for all obligations arising from the contractual relationship is Haltern am See.

2. The Parties agree on Haltern am See as the exclusive place of jurisdiction for all and any disputes arising from the business relationship. The Supplier shall, however, be at liberty to appeal to the competent court at the Purchaser's registered place of business.

3. German law shall apply exclusively to the exclusion of the UN Convention on the International Sale of Goods (CISG).

Section 12 - Contract documents, confidentiality and data protection

1. All documents made available to the Purchaser, in particular cost proposals and drawings, shall remain the property of the Supplier. These must be treated as strictly confidential and their contents may not be disclosed to third parties.

2. Pursuant to Section 28 BDSG [German Federal Data Protection Act], the Supplier shall be entitled to collect, store, alter, and disclose personal data relating to the Purchaser or to use such as a means of fulfilling its own business purposes. The Purchaser shall be informed of this accordingly pursuant to Section 33 BDSG.