

General Terms and Conditions of Sale

§ 1 Application, General Information

- (1) These terms and conditions of sale shall apply exclusively. Differing or contrary terms shall not apply except if expressly agreed by us in writing.
- (2) Unless otherwise agreed, these GTCS apply in the version valid at the time the purchaser placed its order or in any case in the version most recently disclosed to him in text form.
- (3) These terms and conditions of sale shall also govern all future transactions between the parties and shall also apply if we perform delivery without reservation despite our knowledge of differing or contrary terms.
- (4) These terms and conditions of sale shall only apply vis-à-vis entrepreneurs, governmental entities, or special governmental estates within the meaning of sec. 310 para. 1 BGB (German Civil Code).
- (5) Legally relevant declarations and notifications, which are to be submitted to us by the purchaser after conclusion of the contract (e.g. setting of deadlines, notifications of defects, declaration of withdrawal or of reduction of price), require the written form in order to be valid.
- (5) Any references to the application of statutory provisions are made for the purposes of clarification only. Therefore, the statutory regulations shall also apply without such a clarification insofar as they are not directly altered or are explicitly excluded in these GTCS.

§ 2 Offer, Acceptance

- (1) Our offers are non-obligatory and non-binding. This also applies if we have handed over catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents – also in an electronic form – to the purchaser.
- (2) Insofar as the purchaser's order constitutes an offer in terms of sec. 145 BGB we are entitled to accept the offer within two weeks. The acceptance can either be declared in text form (e.g. by order confirmation) or by delivery of the goods to the purchaser.

§ 3 Prices, Payment

- (1) Prices are ex works, exclusive of the respective statutory VAT and exclusive of costs for packaging, except as otherwise expressly agreed upon.
- (2) In the case of sale by dispatch the Customer shall bear the actual cost of transport ex warehouse and the cost of any transport insurance requested by the Customer. Any customs duties, fees, taxes and any other public levies shall be borne by the purchaser.
- (3) Prices are exclusive working and travel hours, except as otherwise expressly agreed upon.
- (4) Prices are in any case exclusive of all travel costs (hotel, taxi, train, flights, ...).
- (5) The purchase price is due and payable net cash within 30 days from the date of the invoice. From the due date default interest in the amount of 8% above the respective base interest rate p. a. shall accrue. We reserve all rights to claim further damages for delay.
- (6) If after conclusion of the contract it becomes apparent that our claim for payment of the purchase price is jeopardized by the Customer's inability to pay (e.g. an application for commencement of insolvency proceedings) we are entitled to withhold performance in accordance with the statutory provisions of law and – if necessary after fixing a time limit – to withdraw from the contract (sec. 321 BGB). In the case of contracts for the manufacture of non-fungible goods (individual constructions) we are entitled to withdraw from the contract immediately; this shall not affect the statutory provisions concerning the dispensability of fixing a time limit.

§ 4 Offset, Right of Retention

The purchaser shall be entitled to offset only insofar as the purchaser's counterclaim is acknowledged, undisputed or assessed in a legally binding judgment. The purchaser is entitled to a right of retention only to the extent such rights are based on the same transaction.

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§ 5 Delivery Deadline and Default in Delivery

(1) The delivery deadline shall be agreed individually or stated by us with the acceptance of the order. If this is not the case, the delivery period is approximately 14 to 16 weeks from conclusion of contract.

(2) Individually agreed delivery deadlines shall begin with the receipt of our order confirmation by the purchaser, but in any event not before clarification of all details for the execution and the provision of necessary certificates by the purchaser. Any changes or modifications to the to-be-delivered goods that are agreed after the start of the delivery deadline lead to a restart of the delivery deadline. The delivery deadline shall be deemed observed on the day we advise the purchaser that the delivery is ready for dispatch.

(3) If we are unable to meet firm delivery deadlines for reasons beyond our control (non-availability of performance) we will inform the Customer without delay, at the same time indicating the expected new delivery period. If the performance is still not available within the new delivery period we shall be entitled to withdraw wholly or partly from the contract; any consideration already paid by the purchaser will be reimbursed without delay. A particular instance of non-availability of performance in this respect is late delivery to us by our suppliers if we have concluded a congruent covering transaction, neither we nor our suppliers are at fault or we are not obliged to procurement in that individual case.

(4) The occurrence of default in delivery shall be determined by statutory provisions of law. However, a reminder by the purchaser shall be required in all cases. If we are in default of delivery the Customer may demand lump-sum compensation for the loss he has thus suffered. The lump-sum compensation shall be 0.5% of the net price (delivery value) per complete calendar week's default, subject to a maximum of 5% of the delivery value of the goods delivered late. We reserve the right to prove that the purchaser has suffered no loss at all or only a substantially smaller loss than the above lump sum.

(5) The rights of the purchaser according to § 9 of the GTCS and our statutory rights, in particular the exclusion of the obligation to perform (e.g. impossibility of service and/or supplementary performance or if these are deemed unreasonable) remain unaffected.

§ 6 Delivery, Passage of Risk, Shipment

(1) The delivery is carried out ex works Langenberg, Germany, which is also the place of performance and the place of any potential supplementary performance. At the request and costs of the purchaser the goods will be shipped to another destination (sale by dispatch), without any effect on the place of performance. Insofar as not otherwise agreed we are entitled to determine the type of shipment (in particular transport company, shipment route, packaging) at our discretion.

(2) Delivery is conditioned upon timely and proper performance of all duties of the purchaser. Defenses based on non-performance of the contract are reserved.

(3) In case of default in acceptance or other breach of duties to cooperate by the purchaser we are entitled to claim any resulting damage including but not limited to additional expenses, if any. In this respect we are entitled to charge a lump sum compensation equal to 2‰ (two per mil) of the value of the goods per calendar day, beginning with the delivery deadline or – in the absence of a delivery deadline – with the notification that the goods are ready for shipment. The proof of higher damages and our statutory claims (in particular reimbursement of additional expenses, reasonable compensation, withdrawal, termination) remain unaffected; the lump sum compensation is however to be offset against further monetary claims. The purchaser remains entitled to prove that we did not suffer any damages at all or only substantially less damages than the aforementioned lump sum. In this case, the risk of loss or deterioration of the goods passes to the purchaser at the time of default in acceptance or breach of duty to cooperate.

(4) In case of a sale by dispatch of the goods the risk of loss or deterioration of the goods passes to the purchaser at the time of dispatch.

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§ 7 Retention of Title

(1) We retain title to the sold goods until the full payment of all of our current and future claims due from the purchase contract and from a current business relationship (secured claims).

(2) The purchaser shall handle the goods with due care, maintain suitable insurance for the goods and, to the extent necessary, service and maintain the goods.

(3) The goods subject to retention of title may neither be pledged to third parties, nor assigned as collateral before the full payment of the secured claims. As long as the purchase price has not been completely paid, the purchaser shall immediately inform us in writing if the goods become subject to rights of third persons or other encumbrances.

(4) In case of a conduct of the purchaser which is in breach of the contract, in particular non-payment of the due purchase price, we are entitled to withdraw from the contract according to the statutory regulations and/or to demand that the goods are handed over to us owing to the retention of title. Any demand for the return of the goods shall not be deemed to include a simultaneous declaration of withdrawal; rather, we shall be entitled to demand only the return of the goods subject to retention of title and to reserve the right to withdraw from the contract. If the purchaser does not pay the due purchase price we may however only assert these rights if we have unsuccessfully set the purchaser a reasonable deadline for payment or if setting such deadline is expendable under statutory provisions.

(5) The purchaser is entitled until further notice pursuant to subpara.

(c) below to resell the goods subject to the above retention of title in the regular course of business. In this case, the following terms shall apply in addition:

(a) The retention of title covers the products which are produced by processing, mixing or combination of our goods at their full value, whereby we are deemed the manufacturer. If the right of ownership of third parties continues to exist despite the processing, mixing or combination with goods of third parties, then we shall acquire coownership in the ratio of the invoice values of the processed, mixed or combined goods. Apart from that the same provisions that govern the goods delivered under retention of shall also apply to the newly created product.

(b) The purchaser hereby assigns to us the future claims against third parties, which arise from the resale of the goods or of the newly created product in total or in the amount of our co-ownership share, if any, as collateral according to the afore-mentioned paragraph. We hereby accept the assignment. The obligations of the purchaser stated in para. 2 and 3 shall also apply in respect of the assigned claims.

(c) Notwithstanding our right to claim direct payment the purchaser shall remain authorized to collect the claim on the assigned claims. To this end, we agree to not demand payment on the assigned claims to the extent the purchaser meets its payment obligations, is not in default of payment, no application has been filed for the opening of insolvency

proceedings and we have not exercised our rights pursuant to para. 3 to invoke the retention of title. However, if this is the case we are entitled to request that the purchaser informs us of the assigned claims and their debtors, provides all information which is necessary for the collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. In this event we shall also be entitled to revoke the right of the purchaser to resell or process the goods that are subject to our retention of title.

(6) Insofar as the above securities exceed the secured claim by more than 10%, we are obligated, at our choice, to release such securities upon the purchaser's request.

(7) If our retention of title ceases to be valid in the event of deliveries to foreign countries or for other reasons, the Customer must immediately provide to us collateral over the delivered goods or another form of security for our claims which is effective pursuant to the law of the country concerned and which is as close as possible to retention of title under German law.

§ 8 Warranty

(1) The basis for our warranty is the properties of the goods that are agreed in writing with the purchaser. All product specifications, which are binding subject of the particular contract, are deemed agreed properties. If there is no agreement on properties, statutory provisions shall apply in determining whether a good is defective or not.

(2) Only such features of the goods are considered guaranteed features of the goods that are explicitly designated as such. This applies in particular to agreements on certifications of the goods or of our company, for which we do not assume an implied or conclusive warranty.

(3) Precondition for any warranty claim of the purchaser is the purchaser's full compliance with all requirements regarding inspection and objection established by sec. 377 HGB (German Commercial Code). If a defect is determined during the inspection or subsequently, then this is to be reported to us immediately in writing. Irrespective of this obligation for inspection and reporting of defects the purchaser must report obvious defects (including false and shortfall in delivery) within two weeks from delivery in writing.

(4) Warranty claims shall be time-barred after 12 months of the delivery.

(5) In case of non-conformity of the goods we have the choice whether the supplementary performance is to be effected by remedying the defect (rectification) or by delivering an item which is free of defects (replacement). Our right to refuse the chosen type of supplementary performance under the statutory prerequisites remains unaffected. If the supplementary performance has failed, the purchaser is entitled to reduce the purchase price or to withdraw from the contract. However, in case of an insignificant defect the purchaser shall not have a right to withdraw from the contract.

(6) We are entitled to make the owed supplementary performance dependent on the purchaser's payment of the due purchase price. The purchaser is, however, entitled to retain a part of the purchase price which is appropriate relative to the defect.

(7) If the installation of the delivered goods was not originally our contractual obligation, then our supplementary performance does not include the deinstallation of the defective good nor its reinstallation.

(8) The expenses which are necessary for the purpose of inspection and supplementary performance, in particular transport, work and material costs (excluding costs for deinstallation and reinstallation) shall be borne by us if there is actually a defect. However, if it is determined that a request for remedy of a defect by the purchaser is unjustified then we are entitled to claim reimbursement of the costs incurred hereby (in particular cost of inspection and transport costs) from the purchaser, unless the absence of a defect was not recognizable for the purchaser.

(9) If the purchaser moves the goods to a place other than the place of performance, then the purchaser shall bear the additional costs resulting therefrom.

(10) In case of a defect, claims of the purchaser for damages or reimbursement of fruitless expenses shall be limited according to § 9. Further claims are excluded.

§ 9 Liability

(1) In case of intent or gross negligence on our part or by our agents or assistants in performance we are liable according to the provisions of applicable law; the same applies in case of breach of fundamental contract obligations. To the extent the breach of contract is not intentional our liability for damages shall be limited to the typically predictable damage.

(2) Our liability for culpable damage to life, body or health as well as our liability under the Product Liability Act shall remain unaffected.

(3) Any liability not expressly provided for above shall be disclaimed.

(4) The purchaser can only withdraw from the contract due to abreach of an obligation not constituted by a defect in the goods, if we are in culpable breach. A free right of termination of the purchaser (in particular according to §§ 651, 649 BGB) is excluded. Aside from that, the statutory preconditions and legal consequences are applicable.

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§ 10 Export and Import Control

It is exclusively the purchaser's duty to observe the applicable import and export control regulations. It is incumbent exclusively on the purchaser to assess whether a product requires an import or export license and is subject to export control provisions. The purchaser must obtain all the required approvals in due time, at his own cost and responsibility and submit such approvals to us unrequested.

§ 11 Applicable Law, Jurisdiction, Language

(1) These GTCS and the contractual relationship between us and the purchaser are solely governed by the substantive laws of the Federal Republic of Germany (excluding the Convention on Contracts for the International Sale of Goods).

(2) Place of performance and exclusive place of jurisdiction for all disputes arising out of or in connection with the contractual relationship between us and the purchaser shall be Troisdorf, Germany. We are however also entitled to file an action at the place of general jurisdiction of the purchaser. Mandatory statutory regulations, in particular regarding exclusive jurisdictions, remain unaffected.

(3) This text shall be construed in accordance with the laws of Germany. The list of terms attached as the annex entitled „List of Terms“ forms part of this text and shall have the same full force and effect as if expressly set out in the operative part of this text. If the meaning of any English term contained in the list of terms or in this text differs from the meaning of the respective German term, the meaning of the German term shall prevail.

List of terms

Place of acceptance
(general) terms and conditions of sale
default in acceptance
offset
base interest rate
retention of title
defence based on non-performance of the contract
assistant in performance
place of performance
due and payable
passage of risk
counterclaim
statutory VAT
warranty
governmental entity
merchants
commercial interest after due date
termination
delivery deadline
default in delivery
reminder
remedy of defect
reduction of price
duty/obligation to cooperate
supplementary performance
(course of) normal business
special governmental estate
Product Liability Act
withdrawal
collateral
Convention on Contracts for the International Sale of Goods (CISG)
Entrepreneur
requirements regarding inspection and objection
sale by dispatch
default interest
stay of payments
right of retention

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