

General Terms of Sale

§ 1

General – Scope of application

- (1) Our General Terms of Sale apply to all sales and other related contracts in any form whatsoever concluded. They will replace our previous General Terms of Sale. Any deviating general terms and conditions of the other contracting party shall only be binding for us if expressly accepted by us in writing, and will not be included in the contract even if a contract is accepted or goods are received.
- (2) Our General Terms of Sale shall only be valid for entrepreneurs in the sense of Section 310 Para. 1 *BGB* [German Civil Code].
- (3) Our Terms of Sale shall also apply to all future business with the customer, even if no express reference has been made to them and they have not been attached to a concrete order or request.
- (4) Any changes and supplements to the contract as well as its annulment shall require a written confirmation to become effective.

§ 2

Order – order documents

- (1) If the order is deemed an offer pursuant to Section 145 *BGB*, we may accept such offer within two weeks.
- (2) We reserve all property rights and copyrights in illustrations, drawings, calculations and any other documents. This shall also apply to written documents designated as “confidential”. Such documents shall only be disclosed by the customer with our prior express consent in writing.

§ 3

Terms of payment / invoices / reservation of title

- (1) Unless otherwise provided for in the order confirmation, our prices shall apply “ex work” (EXW, Incoterms 2010) plus packaging; the latter will be invoiced separately.
- (2) Our prices are plus legal VAT; it is stated separately in the invoice at the statutory rate on the invoice date.
- (3) The deduction of any discount shall require an express written agreement.
- (4) Unless stated otherwise in the order confirmation, the net purchase price (without deduction) shall be due for payment within 30 days from the date of the invoice. The legal provisions concerning the consequences of a delay in payment shall apply.
- (5) The customer shall only be entitled to set off amounts if their counter-claims have been recognised by declaratory judgement, have not been contested or have been recognised by us. Furthermore, the customer shall be entitled to exercise a right of retention only if their counter-claim is based on the same contractual relationship.

§ 4

Delivery time

- (1) The delivery time stated by us shall only commence if all technical issues have been clarified.
- (2) Moreover, compliance with our delivery commitment shall be subject to the timely and proper fulfilment of the customer's obligations. Defence of non-performance of the contract shall be reserved.
- (3) If the customer has failed to accept delivery or culpably violates any other obligation to co-operate, we shall be entitled to claim compensation of the damage incurred by us including any additional expenditure. Any further claims or rights shall remain unaffected.
- (4) If the requirements set out in Para. (3) are fulfilled, the risk of accidental loss or accidental deterioration of the goods sold shall pass to the customer the moment they have failed to accept delivery or are in debtor's delay.
- (5) We shall be liable in accordance with the statutory provisions provided that the underlying purchase agreement is a transaction for delivery by a fixed date in the sense of Section 286 Para. 2 No. 4 *BGB* or Section 376 *HGB* [German Commercial Code]. We shall also be liable in accordance with the statutory provisions if as a consequence of a delay in delivery caused by us the customer is entitled to assert that their interest in the further fulfilment of the contract has ceased to exist.
- (6) Furthermore, we shall be liable in accordance with the legal provisions if such delay in delivery is due to a wilful or grossly negligent breach of contract attributable to us; the fault of our representatives or vicarious agents shall be attributable to us. If the delay in delivery is due to a grossly negligent breach of contract attributable to us, our liability for damages shall be limited to the typical foreseeable damage.
- (7) We shall also be liable in accordance with the statutory provisions if the delay in delivery attributable to us is due to the culpable breach of a material contractual obligation; in such case, however, our liability for damages shall be limited to the typical foreseeable damage.
- (8) For the rest, we shall be liable for a delay in delivery with a lump-sum compensation amounting to 3% of the value of goods delivered for each completed week of delay, however, with no more than 15% of the value of goods delivered.
- (9) Further statutory claims and rights of the customer shall remain unaffected.

§ 5

Passing of risk – packaging cost

- (1) Unless otherwise provided for in the order confirmation, delivery shall be made “ex work”.
- (2) Separate arrangements shall apply to the taking back of packaging material.
- (3) If desired by the customer, we will take out a transport insurance for the delivery; the costs arising will be borne by the customer.

§ 6

Notification of defects / defects in quality

- (1) The customer shall only be entitled to claims based on defects if they have properly fulfilled their duties to examine and to make a complaint in respect of a defect owed in accordance with Section 377 *HGB*.
- (2) To the extent the goods sold are defective, the customer, at their own discretion, shall be entitled to supplementary performance in the form of the removal of defects or to the delivery of a new item free of defects. In the event of the removal of defects or a replacement delivery, we shall be under obligation to bear any expenditure necessary for the purpose of supplementary performance, in particular transport, infrastructure, labour, and materials cost, unless such cost is increased by the fact that the goods sold have been brought to a place other than the place of performance.
- (3) If the supplementary performance fails, the customer, at their own discretion, shall be entitled to demand withdrawal or the reduction of the purchase price.
- (4) We shall be liable in accordance with the legal provisions if the customer asserts claims for damages based on intention or gross negligence, including the intention or gross negligence of our representatives or vicarious agents. To the extent we are not held liable for intentional breach of contract, our liability for damages shall be limited to the typical foreseeable damage.
- (5) We shall be liable in accordance with the statutory provisions if we culpably breach a material contractual obligation; however, also in this case our liability for damages shall be limited to the typical foreseeable damage.
- (6) If the customer is entitled to damages in lieu of performance, our liability, also within the scope of Para. (3), shall be limited to the typical foreseeable damage.
- (7) Liability for culpable damage to life, limb or health shall remain unaffected; this shall also apply to the compulsory liability under the German Product Liability Act.
- (8) Unless otherwise provided for above, liability shall be excluded.
- (9) The limitation period for claims based on defects shall be 1 year and shall commence with the passing of risk.
- (10) In the event of a delivery recourse in accordance with Section 478, 479 *BGB*, the limitation period shall remain unaffected; it shall be five years commencing upon delivery of the defective goods.

§ 7

Total liability

- (1) Any liability for damages beyond that provided for under § 6 shall be excluded irrespective of the legal nature of the claim asserted. This shall in particular apply to claims for damages resulting from culpa in contrahendo, from other breaches of duty or for tortious claims for compensation of property damage in accordance with Section 823 *BGB*.
- (2) The limitation set out under Para. (1) shall also apply if instead of a claim for damages the customer demands reimbursement of useless expenditure instead of performance.
- (3) To the extent liability for damages on our part is excluded, this shall also apply to the personal liability for damages of our employees, workers, collaborators, representatives, and vicarious agents.

§ 8**Retention of title**

- (1) We reserve the title to the goods sold until receipt of all payments from the business relationship with the customer. If the customer is in breach of the contract, in particular in case of a delay in payment, we shall be entitled to take back the goods sold. The taking back of the goods sold on our part shall be deemed a withdrawal from the contract. After taking back the goods sold we are entitled to make use of them; the proceeds of such utilisation will be set off against the customer's liabilities less appropriate utilisation costs.
- (2) The customer is under obligation to treat the goods sold with due care; they shall in particular be obliged to take out adequate insurance against damage due to fire, water, and theft on the goods at their replacement value. Should maintenance and inspection work be necessary, the customer shall have it performed in good time at their own expense.
- (3) In the event of attachments or any other intervention by third parties the customer shall inform us immediately in writing to enable us to take action in accordance with Section 771 ZPO [German Code of Civil Procedure]. To the extent that any such third party is not able to compensate us for the judicial and extra-judicial costs of an action pursuant to Section 771 ZPO, the customer shall be liable for the loss incurred by us.
- (4) The customer is entitled to resell the goods sold within the proper course of business; however, the customer already now assigns to us all receivables of our claim to the amount of the final invoice amount (including VAT), arising to them from the resale against their customers or third parties, regardless of whether the sold goods were resold with or without further processing. The customer shall remain entitled to assert such claim even after the assignment. Our right to assert such claim ourselves shall not be affected thereof. However, we undertake to not assert the claim as long as the customer fulfils their payment obligations from the proceeds collected, does not get into arrears and, in particular, no petition to commence composition or insolvency proceedings is filed or payments are suspended. Should this be the case, however, we may demand that the customer discloses the claims assigned and their respective debtors, provides all information required for the collection, hands over all related documents and informs the debtors (third parties) of the assignment.
- (5) The processing or modification of the goods sold by the customer will always be carried out on our behalf. If the goods sold are processed with other items that are not our property, we shall acquire co-ownership in the new item in proportion of the value of the goods sold (final invoice amount including VAT) to the other processed items at the time of processing. For the rest, for the item resulting from such processing the same shall apply as for the goods sold delivered under retention of title.
- (6) If the goods sold are inseparably mixed with other items that are not our property, we shall acquire co-ownership in the new item in proportion of the value of the goods sold (final invoice amount including VAT) to the other mixed items at the time of mixing. If the goods are mixed in such a way that the item of the customer must be regarded as the main item, it is agreed that the customer shall transfer the proportionate co-ownership to us. The customer shall then hold the exclusive property or co-ownership in safe custody for us.
- (7) The customer will also assign to us the claims which support the protection of our claims against the customer, which accrue against a third party as a result of the combination of the goods sold with real property.
- (8) We shall acquire ownership, alternatively a right of pledge, in materials and any other substances provided by the customer until receipt of all payments from the business relationship with the customer.
- (9) We undertake to release the securities to which we are entitled at the customer's request insofar as the realisable value of our securities exceeds the claims to be secured by more than 10%; the selection of the securities to be released is our sole discretion.

§ 9**Precious metals**

Please note that the invoiced weight of precious metals may deviate from the weight separated and / or delivered. A lump-sum weight of precious metals per unit will be invoiced in accordance with the offer, which also takes process losses during separation and processing into account.

§ 10**Venue – place of performance**

- (1) The place of performance and venue for all obligations from the contractual relationship, also with regard to bills of exchange and cheques, shall be Pforzheim; however, we shall be entitled to file suit against the supplier also before the competent courts at their place of business.
- (2) The law of the Federal Republic of Germany shall apply in its currently applicable version to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).