

General Terms and Conditions

§ 1 General – Applicability

1. Only our terms and conditions apply; we do not recognize Customer's conditions which conflict with, or differ from our terms and conditions, unless we have expressly consented, in writing, to their application. The regulations dealing with direct sales to consumers do not apply in any way, also not by implication, to the business dealings with companies. Our terms and conditions also apply if, knowing that the Customer's terms and conditions conflict with, or differ from our terms and conditions, we carry out the delivery to the Customer unconditionally.
2. All agreements reached between ourselves and the Customer for the purpose of implementing this contract, are incorporated in this contract, in writing.
3. Our terms and conditions only apply with respect to companies within the meaning of § 310.1 of the German Civil Code ("BGB").
4. We are entitled to assign the claims arising from our business relationship.
5. Should individual provisions be or become ineffective, then the remaining provisions hereof will be unaffected.

§ 2 Offer – Offer Documents

1. If the order is to be defined as an offer in accordance with §145 BGB, then we have 6 weeks to accept it.
2. Our offers are non-binding, and subject to our receipt of supplies, insofar as we are receiving finished components from third parties. Delivery times and delivery dates, as well as details of quantities, dimensions, weight and quality are agreed to be only approximations. Normal trade differences are permissible.
3. We retain the ownership of, and copyright in, all images, drawings, calculations and other documentation. This also applies to such written documents which are designated as „confidential“. For passing them on to third parties, the Customer requires our express written consent.

§ 3 Prices and Conditions of Payment

1. Insofar as nothing to the contrary appears in the order confirmation, our "ex works" prices apply from the depot of our choice, and exclude installation, training or other ancillary services. Included in the prices is the normal, standard, trade packaging of the goods delivered goods, but not shipping and ancillary costs, such as postage, freight, delivery charges, etc; these costs will be invoiced separately.
2. The statutory VAT is not included in our prices; it will be separately shown at the statutory rate ruling at the invoice date.
3. Insofar as nothing to the contrary appears in the order confirmation, the sale price is payable net (without deductions) within 30 days of the invoice date. In the case of payments within 14 days of the invoice date, we allow 2 % discount. The statutory regulations apply in cases of late payment.
4. The Customer only has rights of set-off if his counterclaims are legally established, undisputed, or recognized by us. Furthermore, the Customer is only entitled to exercise a lien, insofar as his counterclaim arises from the same contractual relationship.
5. The Customer may not assign claims from the business relationship to third parties.
6. The minimum purchase value per order is EUR 500.
7. Cheques or Promissory Notes/Bills of Exchange will only be accepted following prior written agreement, and only accepted provisionally; i.e. subject to clearance/payment. All related costs are for the Customer's account.

§ 4 Delivery Time

1. Delivery terms run from the receipt of all documents necessary for carrying out the order, the deposit, and the timely material orders, insofar as these were agreed. The delivery terms are deemed complied with, upon notification of the readiness for dispatch, or if the dispatch is delayed for reasons for which we are not answerable, or is impossible. The unfulfilled contract plea remains reserved.
2. If agreed delivery terms are not complied with for reasons for which we are answerable, then the Customer is, in any case, obliged to set a reasonable period of grace.
3. Partial deliveries are permissible, insofar as reasonable.
4. If a Customer's acceptance is delayed, or if he culpably breaches other cooperation obligations, then we have the right to demand reimbursement for resultant damage, including any additional expenses. Further claims are reserved.
5. Insofar as the conditions of § 4(4) exist, the risk of an accidental ruining or accidental deterioration of the purchased goods, is transferred to the Customer at that point in time at which the delay in acceptance or debt settlement occurred.
6. We accept liability in accordance with the statutory provisions, insofar as the underlying sales contract is a "Fixgeschäft" (a contract with an absolute delivery date) as defined in § 286 2.4 BGB, or § 376 of the German Commercial Code ("HGB"). We also accept liability in accordance with the statutory provisions, insofar as, the Customer has the right to hold us responsible if the result of a delivery delay for which we are answerable, is that his interest in the continued fulfilment of the contract has terminated.
7. We additionally accept liability in accordance with the statutory provisions, insofar as the delivery delay is the result of our deliberate or grossly negligent breach of contract; and blame on the part of our representative or agent is for our account. Insofar as the delivery delay is not the result of a deliberate breach of by us, then our liability for compensation is limited to the foreseeable, typically occurring damage.
8. We also accept liability in accordance with the statutory provisions, insofar as the delivery delay for which we are answerable is due to a breach of a material contractual obligation; in this case, however, our liability for compensation is limited to the foreseeable, typically occurring damage.
9. Force majeure occurrences give us the right to postpone the delivery for the duration of the hindrance, plus a reasonable start-up time, or to partially or entirely withdraw from the still unfulfilled part of the contract. Strikes, lock-outs or unforeseeable, unavoidable circumstances; e.g. blameless operational disruptions, or transport delays, or disruptions, blameless shortage of raw materials or energy are equivalent to force majeure, which, despite reasonable efforts, make it impossible for us to deliver. This also applies if the aforementioned hindrances occur during a delay or at a sub-supplier. The Customer can demand that we declare, within two weeks, whether we wish to withdraw, or to deliver within a reasonable grace period. If we do not so declare, then the Customer may withdraw from the unfulfilled portion of the contract.
10. We will notify the Customer, without delay, if an event of force majeure per § 9 occurs. We must, as far as possible, keep any disruption to the Customer to a minimum.
11. Furthermore, in the case of the delivery delay, we accept liability, for a lump sum of 1% of the value of the delivery, for every complete week's delay, by way of liquidated damages, limited, however, to a maximum of 5% the value of the delivery.
12. Further statutory claims and rights of the Customer remain reserved.

§ 5 Transfer of Risk – Packing Costs

1. Insofar as nothing to the contrary appears in the order confirmation, delivery from the depot is agreed.
2. Unless otherwise agreed, we choose the packing/packaging, shipping mode and route. We have the right assign (the delivery to) one of our usual shippers, in accordance with these conditions
3. In the case of free-of-charge delivery also, the risk is transferred to the Customer when the goods leave the factory/depot. In the event of dispatch delays for which the Customer is answerable, the risk is transferred with notification of readiness to dispatch.
4. In cases of acceptance delays by the Customer, we have the right to store the goods at the Customer's expense. Insofar as we store the goods ourselves, we are entitled to charge 0,5% of the invoice value of the stored good for each commenced calendar week. This claim for higher storage costs, subject to verification, remains reserved.
5. Separate agreements apply to the taking back of packing materials.

§ 6 General Limitation of Liability

1. Defect claims by the Customer require that the inspection and complaint obligations required by § 377 HGB have been properly complied with.
2. We only accept liability for compensation or reimbursement insofar as our executives or agents are guilty of malice, gross negligence, or damage to life, limb or health.
3. Liabilities pursuant to the Product Liability Act, as well as for the fulfilment of a quality guarantee, which are unrelated to culpability, remain unaffected.
4. Also the liability for the culpable breach of material contractual obligations remains unaffected; other than in cases under § 1, the liability is limited to foreseeable, typically occurring damage. Material contractual obligations are understood as the basic, elementary obligations arising from the contractual relationship, which are especially significant for the proper implementation or fulfilment of the contract, or fundamentally influence the mutual trust existing between the parties, in particular the fulfilment of supply and notification obligations.

5. Insofar as there is a defect in the goods purchased, the Customer has the right to choose the form of cure, between elimination of the defect, or a new, defect free delivery. In the case of elimination of the defect, we are obliged to bear all the expenses necessary to eliminate the defect, in particular transport, routing, labour and material costs, insofar as these are not increased due to the purchased goods having been brought to a location other than the place of performance.
6. If the cure does not succeed, then the Customer has the right to choose between demanding withdrawal and (price) reduction.
7. We accept liability in accordance with the statutory provisions, insofar as we culpably breach a material contractual obligation; in such a case, however, the compensation liability is limited to foreseeable, typically occurring damage.
8. Insofar as the Customer is entitled to compensation for damages instead of performance, then our liability in accordance with § 6.6 is also limited to foreseeable, typically occurring damage.
9. A change in the balance of proof to the disadvantage of the Customer is not associated with the aforementioned regulations.
10. The time limit for defect claims is 12 months, calculated from the (date of) transfer of risk.
11. The limitation period in the case of a delivery regress per §§ 478, 479 BGB remains unaffected; it is five years, calculated from delivery of the defect free goods purchased.

§ 7 Total Liability

1. A further liability for compensation, other than foreseen in § 6 – regardless of the legal nature of the alleged claim – is debarred. This applies, in particular, to compensation claims arising from faults when concluding the contract, to other breaches of duty, or to tortious claims for compensation for physical damage in accordance with § 823 BGB.
2. The limitation pursuant to § 7.1 also applies insofar as the Customer, instead of a claim for compensation for the damage, or for the performance, demands compensation for useless expenses. Insofar as our liability for compensation is debarred or limited, this also applies with respect to the personal liability for compensation of our employees, staff, employees, associates, representatives and agents.

§ 8 Liens

1. We reserve our ownership of the goods purchased until all payments in respect of the supply contract have been received. In case of the Customer's breach of contract, in particular of payment default, we have the right to take back the purchased goods. Our taking back the purchased goods implies withdrawal from the contract. After taking back the purchased goods, we are entitled to dispose of them; the disposal proceeds are to be set off against the Customer's obligations – subject to deduction of reasonable disposal costs. The Customer is obligated to handle the purchased goods with care; in particular, he is obliged to adequately insure them, at his own cost, at replacement value, against fire damage, water damage, and theft.
2. The Customer must notify us, without delay, in writing, of distraints or other third party interventions, so that we may institute a third party action in accordance with § 771 of the Civil Procedure Code ("ZPO"). If the third party is not in a position to reimburse us for the court, or out-of-court, costs of a third party action in accordance with § 771 ZPO, then the Customer is liable for our loss.
3. The Customer has the right to sell on the purchased goods in the normal course of business; however, he now assigns to us all claims up to the final amount (including VAT) billed to his customer, or to third parties, and that, regardless of whether the purchased goods are sold on as is, or after processing. The Customer remains authorized to collect this debt, even following the assignment. Our authority to collect the debt ourselves remains unaffected thereby. However, we obligate ourselves not to collect the debt as long as the Customer complies with his obligation to pass on the income received, is not in default with his payments, and, in particular, that no application has been made for the opening of settlement or insolvency proceedings, nor payments suspended. If this is the case, then we may demand that the Customer informs us of the assigned debts and their debtors, provides all necessary details necessary for collection, hands over all the related documentation, and informs the debtors (third parties) of the assignment.
4. The processing or alteration of the purchased goods by the Customer will always be undertaken for us. If the purchased goods are processed with other items, not belonging to us, then we acquire joint ownership of the new item in the ratio of the value of the purchased goods (final invoiced amount, plus VAT) to the other processed items at the time of the processing. Furthermore, the same applies to the item newly created by the processing as to the conditionally delivered purchased goods.

§ 9 Drafts/Plates/Documentation

1. We retain the sole execution rights and copyright to all the drafts/blueprints, data, images, drawings, and other documents. Insofar as the Customer presents drafts and ideas, we acquire the joint copyright to the extent that the drafts/designs/were designed by us.
2. Should no order materialize, the Customer is obliged to immediately return to us all the documentation completely destroyed.
3. In making models and ideas available, the Customer holds us free and clear in respect of third parties' rights claims.
4. Drafts/Blueprints, artwork, masters and similar items prepared by us, remain our property, even if the Customer is charged for the production costs.

§ 10 Industrial Property Rights and Title Defects

1. If we are obliged to also deliver drawings, models, patterns or use parts provided by the Customer, then the Customer accepts responsibility for a third party's trademark rights in the country for which the goods are destined not being damaged hereby. We will point out known rights to the Customer, are not, however, ourselves obliged to research. The Customer must release us from third party claims at the first demand, and to compensate for the resulting damage. If a third party refuses to manufacture for, or supply to us, on the grounds that a trademark belongs to him, then we have the right – without checking the legal position – to suspend the work until clarification of the legal position by the Customer and by third parties. Should, due to the delay, the continuation of the contract no longer be reasonable, then we have the right to withdraw.
2. Drawings and patterns provided to us, which have not resulted in an order, will be sent back upon request; otherwise, we have the right to destroy those three months following the submission of the offers. This obligation applies to the Customer accordingly. He, who has the right of destruction, must notify the contractual partner, in advance, in good time, of his destruction intentions.
3. We are entitled to the proprietary rights, copyright, and, if appropriate, industrial property rights, in particular all user and exploitation rights to models, moulds and devices, drafts/blueprints and drawings designed by us or by third parties, on his behalf. Upon demand the Customer must immediately return to us the data, documents, moulds, patterns or models, including, for example, all duplicates.
4. Should there be any other title defects, § 6 applies to these accordingly.

§ 11 Food Safety and Recycling Materials

1. Insofar as a product is to be used in contact with food, the suitability of the materials for use with food is to be checked by the Customer on his own responsibility.
2. Recycling raw materials will be carefully extracted by us. Reclaimed plastics may, however, be subject to greater variations in surface quality/texture, colour, purity, smell and physical or chemical properties from "Charge to Charge"; this does not give the Customer the right of complaint to us.

§ 12 Jurisdiction – Place of Performance

1. Insofar as the Customer is a businessman, jurisdiction is governed by the location of our registered office. We have the right, however, also to sue the Customer at the court of his domicile.
2. The law of the Federal Republic of Germany applies, but the application of the United Nations Convention on Contracts for the International Sale of Goods ("CISG") is debarred.
3. Unless the order confirmation provides for something different, our registered office is the place of performance for delivery and payment.