



Terms and Conditions of Sale and Delivery

I. Exclusive validity of our Terms and Conditions of Sale and Delivery

The present Terms and Conditions of Sale and Delivery (hereinafter referred to as GTC) apply exclusively. The General Terms and Conditions of Business of the orderer constitute no obligation for us, even if we do not explicitly contradict them again after receipt of order. This means that if our GTC collide in any way with the General Terms and Conditions of the Orderer our GTC shall apply exclusively. For this reason any additional or more extensive regulations contained in the General Terms and Conditions of Business of the Orderer, which are not contained in the present GTC, shall not be part of the content of the contract.

II. Conclusion of contract and prices

1. Our offers are always subject to change, whilst our rights of title and copyright and/or the rights of our suppliers to offers, drawings and other documents are retained. These may not be made accessible to third parties and must be returned to us immediately upon request.
2. When a customer places an order, the order is binding for 3 weeks. This period begins when the order reaches us. The contract is not finalised until we give written confirmation that the order is accepted within this 3-week period, or have executed delivery in that time.
3. All agreements must be recorded in writing. This also applies to ancillary agreements and assurances as well as to subsequent changes in the contract.
4. Our prices are strictly net ex-warehouse or the manufacturing plant. The statutory VAT, packaging, loading and freight costs as well as the costs of setting-up and commissioning the object of delivery will therefore be charged additionally.
5. Slight deviations from our dimensional, weight and performance data that are normal for the trade or caused by technical improvements are permitted.
6. We shall assume warranties only by special agreement. Agreements of this nature require the written form. References to DIN standards serve only to describe the object of performance and do not therefore constitute a guarantee.

III. Payment, delays in payment and credit report

1. Payments must be made immediately without any deduction. Discounts are only granted if they have been assured by us in writing.
2. If we have agreed on payment by instalments with the orderer, the entire residual debt, including interest as agreed for the period up to the due date, shall fall due immediately if

a. The orderer falls into arrears with at least 2 consecutive instalments in whole or in part and the amount in arrears is at least 10%, in the case of instalments over a period of more than 3 years, 5% of the overall price of the instalments, and

b. Having set a 2-week period for payment of the amount in arrears in vain, in conjunction with a statement that if payment is not forthcoming within this period, we shall demand the entire residual debt.
- Furthermore, the entire residual debt falls due if the orderer generally ceases payments or if insolvency proceedings are initiated against his assets.
3. We are entitled to carry out outstanding deliveries and performance against advance payment or collateral only if, after the contract is concluded, we discover that our claim to payment is jeopardised by the orderer's inability to meet his payments.
4. Payment transfers, cheques and bills of exchange will always only be accepted by special agreement - taking into account all encashment and discount charges - as conditional payment.
5. Interest on arrears is calculated at 8 percent above the base interest rate in compliance with § 288, Section 2, German Civil Code.
6. The orderer shall authorise us to obtain reports on his creditworthiness and solvency from banks for all transactions in which the purchase price is not to be paid in cash at the time of handover.

IV. Set off and the right to retention

1. The orderer may only set off counter-demands against our claims if the former are undisputed or have been legally finalised.
2. The orderer may not plead a right of retention.

V. Delivery and delivery delays

1. Delivery dates and delivery periods, which may be agreed to be binding or non-binding, must be submitted in writing.
2. Delivery periods shall begin when the contract is concluded, but not before all technical and commercial details have been settled with the orderer.
3. If non-binding delivery dates or delivery periods have been agreed, we may only be pulled into default by means of a reminder 4 weeks after the due delivery date or delivery period expires (c.f. § 286, Section 1 German civil Code).
4. In the case of industrial disputes, the occurrence of obstacles beyond our responsibility or obstacles for which the manufacturing plant is responsible, the delivery date or delivery period is extended by the period of the delay in delivery caused by these circumstances. This applies analogously if the obstacles occur during a delay in delivery that has already arisen.
5. The claim of the orderer for compensation for loss due to delay in delivery (§ 280, Section 1, Section 2 German Civil Code in conjunction with § 286 German civil code) is limited to a maximum of 5% of the agreed (net) purchase price in cases of slight negligence. All further claims for compensation for loss on the part of the orderer for delayed delivery in cases of slight negligence are excluded. In cases of slight negligence the orderer may not, in particular, demand compensation in lieu of performance (§ 280 Sections 1 + 3 German Civil Code in conjunction with § 281 German Civil Code).

VI. Transfer of risk, dispatch and receipt of the object of delivery as well as insurance of the goods.

1. The risk transfers to the orderer when the object of delivery is handed over to the forwarder, carrier or collector and at the latest when it leaves our business premises or the manufacturing plant. This also applies if we carry out the transport of the object of delivery. The object of delivery will be insured by us at the expense of the orderer against all hazards in compliance with the standard terms of German forwarders' freight insurance of 1973 in the 1984 version; insofar as the orderer does not prohibit this in writing at the time the contract is concluded.
2. If dispatch of the object of delivery is delayed due to circumstances beyond our control, the risk transfers to the orderer on the day it is ready for dispatch. If the orderer so wishes, the object of delivery will be insured against damage at his expense. The costs for insurance are borne by the orderer.
3. We are under no obligation to select the cheapest method of dispatch. Claims for compensation on the part of the orderer for incorrect dispatch or faulty packaging are excluded in cases of slight negligence.
4. Without prejudice to his rights in compliance with Section X of the present GTC, the orderer is under obligation to take receipt of the delivered objects, even if they have minor defects.

VII. Acceptance

1. The orderer must accept the object of delivery within 8 days after we have notified him in writing of the date on which the goods are ready at our business premises. If the orderer fails to accept the goods we may exercise our statutory rights.
2. If we demand compensation instead of performance, this amounts to 10% of the agreed (net) purchase price. The amount of damage may be set higher or lower if we prove that the damage is higher or the orderer proves it to be lower.

VIII. Retention of title, realisation and release of security

1. The object of delivery remains our property until the purchase price, including statutory VAT, has been paid in full. We also retain the title until all other debts due to us under the sales contract have been paid in full. Retention of title also covers all other debts to us arising from our business connection with the orderer. In the case of open accounts the title is retained by us as security for our receivables.

2. If the object of delivery subject to retention of title is processed with or connected to other objects that are the sole property of the orderer and if your ownership of the goods subject to retention of title lapses (§§ 947, 948 German Civil Code), it is agreed that any new property is assigned to us at the time it is created as security for our open accounts and the object is kept by the orderer free of charge and without any right to return it. If the object of delivery subject to retention of title is processed with or connected to objects of third parties that are subject to retention of title or ownership by way of security of third parties and if your ownership of the goods subject to retention of title (§§ 947, 948 German Civil Code) lapses, we agree that we shall become co-owners of the new object that has been created through processing or connection proportionate to the value of our goods subject to retention of title compared to the value of the objects previously subject to retention of title or ownership by way of security belonging to third parties.
3. The orderer shall insure the goods subject to retention of title against theft, broken machinery, and damage caused by water or fire at his expense, provided that we are entitled to the rights ensuing from the insurance policies.
4. As long as we retain the title the object of purchase may only be sold, pledged, assigned by way of security, hired out or surrendered or change in any way that may prejudice our security with our prior written consent.
5. If the orderer sells or hires out the object of delivery owned by us without our written consent, he hereby assigns to us all debts owed to him with all ancillary rights arising therefrom. This also applies proportionately to the value of our co-owned property if the object of delivery has been processed into other objects or has been connected to other objects.
6. In the case of access by third parties to the objects owned by us in whole or in part, particularly for the purpose of garnishments, the orderer must inform us immediately in writing and immediately draw the attention of the third party to our retention of title. The orderer must bear the costs of third-party claims proceedings as well as all other costs that are necessary in order to cancel access and to recover our goods.
7. If the orderer delays payments, we are entitled to demand surrender to us of the object of delivery owned by us. The orderer may not take recourse to a right of retention if we demand surrender. If the orderer does not surrender the object of delivery which we own to us within two weeks after we have demanded that he surrender, we are entitled to retrieve it. The orderer acknowledges that our actions in this connection serve the purpose of attaining direct possession of our object of delivery do not represent an infringement of domestic authority nor a prohibited arbitrary act. Assertion of our retention of title to the object of delivery and its recovery by us do not constitute cancellation of the contract. We may dispose of the object of delivery which we have demanded back from the orderer or which we have recovered at our discretion 2 weeks after warning the orderer. We will set off the proceeds from sale against the agreed price. We undertake the obligation to sell the object of delivery recovered by us at the best possible price. The costs of selling must be borne by the orderer. The same applies to the costs of recovering the object of delivery. The costs of sale amount to 15% of the proceeds from the sale. They must be set higher or lower if we can prove that the costs of the sale were higher or if the orderer can prove that they were lower.
8. The orderer is obligated to keep the object of delivery in proper condition for the period of retention of title at his own expense. He must also carry out all maintenance work as stipulated by the manufacturer and all necessary repairs - except in cases of emergency - at his expense, either by us or a workshop recognised by the manufacturer for the care of the object of delivery.
9. We are under obligation to release securities at our discretion on demand, insofar as the realisable value of all our security exceeds the total amount of all our receivables by more than 20%. When selecting the security to be released by us, we shall give consideration to the justified concerns of the orderer.

IX. Duty of the orderer to inspect the goods and report complaints

1. The orderer must inspect the object of delivery immediately after receipt, insofar as this is expedient in the course of normal business and, if a defect is evident, he shall inform us immediately thereof in writing. If the orderer omits to make this written report, the object of delivery is considered approved, unless the defect is such that it was not detectable on inspection.
2. If a defect becomes evident thereafter, the orderer must report this defect immediately after discovery in writing; otherwise the object of delivery is considered approved despite this defect.

X. Material defects

1. When selling used objects of delivery to entrepreneurs, statutory bodies or public law funds, all liability for material defects and thus any kind of warranty is excluded. If used objects of delivery are sold to consumers, all claims arising from material defects or warranty claims of the orderer shall lapse one year after the object of delivery has been delivered. Section X fig. 1 sentences 1 and 2 of the present GTC do not apply in case of gross negligence or injury to life, body or health. Equally, Section X fig. 1 sentences 1 and 2 of the present GTC do not apply if we have concealed a defect guiltfully or have assumed a guarantee for the quality of the object of delivery.
2. When selling new objects of delivery to entrepreneurs, statutory bodies or public law funds, all claims for material defects and thus under warranty on the part of the orderer lapse one year from the date of delivery of the object of delivery. If new objects of delivery are sold to consumers, all material defects and/or claims under warranty on the part of the orderer shall lapse two years after the date of delivery of the object of delivery. Section X fig. 1 sentences 1 and 2 of the present GTC do not apply in cases of gross negligence or injury to life, body or health. Equally, Section X fig. 1 sentences 1 and 2 of the present GTC do not apply if we have concealed a defect guiltfully or have assumed a guarantee for the quality of the object of delivery.
3. No warranty is assumed for natural wear and tear, use under unusual conditions, faulty or negligent treatment, nor if the object of delivery is used for a purpose other than the intended one. This applies particularly if the orderer uses the wrong operating materials or does not observe the maintenance intervals stipulated by the manufacturer.
4. The orderer may not assert claims based on material defects if - except in emergencies - a person other than us repairs or changes the object of delivery or replaces individual parts thereof.

XI. Liability

1. We assume liability for damage caused by a material defect to the object of delivery, but which is not caused in the object of delivery itself, only in the case of

Gross negligence,  
Injury to body, life or health,  
Culpable infringement of important contract obligations regarding the typically foreseeable damage at the time the contract was concluded,  
Liability in compliance with the Product Liability Act and for personal or material damage to privately used objects arising from defects in objects of delivery,  
The lack of explicitly assured properties of the object of delivery if the assurance had been given for the specific purpose of safeguarding the orderer against damage occurring that does not affect the object of delivery itself, as well as if  
Defects are concealed maliciously or a warranty for the quality of the object of delivery is assumed.

Other exclusions from our liability on our part:

1. Section XI, Fig. 1 of the present GTC apply accordingly for damage or losses on the part of the orderer not caused by a material defect in the object of delivery itself.
2. Our liability for damage or loss caused to the orderer by delay in delivery is specified in Section V of the present GTC.
3. Section XI fig. 1 and fig. 2 of the present GTC apply accordingly to claims for compensation made upon our legal representatives as well as our vicarious agents.

XII. Place of performance, legal venue, applicable law and saving clause

1. The place of performance for delivery of the object of delivery is Laichingen.
2. The legal venue for all claims under the respective contract is Ulm/Osnabrue. We are also authorised to bring action against the orderer at the court with jurisdiction for the orderer.
3. German law shall apply exclusively (under exclusion of the UN convention on sales contracts).
4. If a provision of the present GTC is or becomes ineffective, this is without prejudice to the legal effectiveness of the remaining provisions. An effective provision to replace the ineffective one that comes closest to the economic purpose of the ineffective provision is considered agreed.