

GENERAL TERMS AND CONDITIONS OF SALE

Version: February 2020

§ 1 Scope

1. Our General Terms and Conditions of Sale apply to all – including future – contractual relationships between the parties.
2. Deviating or additional terms and conditions of the contracting party – hereinafter referred to as Purchaser – shall not apply – even if we do not object in individual cases – unless we expressly accept such terms. In such case, the terms of the Purchaser apply only for the particular contract.
3. Our General Terms and Conditions only apply towards entrepreneurs [Unternehmer] as defined in § 14 BGB [German Civil Code].
4. Should any provision contained in our General Terms and Conditions of Sale prove to be or become invalid the validity of all remaining provisions shall not be affected thereby.

§ 2 Offer and offering documentation

1. We can accept orders within a period of 10 working days. The said period commences upon receipt of order.
2. The scope of our delivery or services is specified in our written order confirmation. Warranties regarding characteristics, amendments or ancillary agreements must be in text form to take legal effect.
3. We retain title and intellectual property rights to all documentation. Prior to transmission thereof to third parties the Purchaser requires our explicit written approval.
4. In the custom made production we reserve the right to an over or under-delivery rate of 10%. The over or under-delivery shall be invoiced accordingly.
5. We are entitled to make partial deliveries if this may be considered reasonable for the Purchaser.

§ 3 Prices and terms of payment

1. Prices and terms of payment arise out of our offer.
2. The Purchaser may only set-off against a claim which is undisputed or recognized by a declaratory judgement. This exclusion of set-off does not apply regarding counterclaim that arise from a defect which is based on the same contractual relationship. The Purchaser is only so far entitled to exercise a right of retention as such counterclaim is based on the same contractual relationship.

§ 4 Product information and product modifications

1. The Purchaser undertakes to provide us with a comprehensive description of every aspect and detail of the conditions under which the goods supplied shall be used.
2. We reserve the right to introduce product modifications in the interests of technical progress provided the latter do not involve any changes in the function of the goods.

§ 5 Delivery period

1. Information regarding delivery periods is unbinding unless the delivery date has been exceptionally agreed as „binding“.
2. The delivery period shall commence with the date of the order confirmation but not however prior to provision of items required to be provided by the Purchaser i.e. supporting documentation, approvals and releases as well as receipt of any agreed payment, opening of any letter of credit required or evidence of arrangement of any collateral agreed.
3. The delivery period shall be deemed met if the goods have left the warehouse facility within the delivery period.
4. Should any unforeseen impediments outside our control arise which despite the requisite care required given the particular circumstances of the case we are not in a position to avert – irrespective of whether the said impediments occur with us or at subcontractors – including force majeure (e.g. war or natural catastrophe) or delays in the supply of essential raw materials, externally caused IT-problems or other circumstances for which we are not responsible – we are entitled to withdraw from the supply contract either wholly or in part or alternatively to extend the delivery period by the duration of the impediment. We shall be entitled to the same rights in the event of strikes and lockouts at our premises or those of our upstream suppliers. We shall immediately notify our customers of any such circumstances.
5. In the event of delay in delivery the Purchaser may, following the expiry of an appropriate grace period to no effect, withdraw from the contract; in the event of the practical impossibility of performance on our part he is also entitled to do so without notice. A period of 14 days shall be deemed appropriate and in the case of special custom-made products this shall be a minimum of 1 month. Delayed delivery shall equate to impossibility if delivery does not follow after 1 month or 6 weeks in the case of special custom-made products. Claims for damages (including any consequential loss) shall be excluded irrespective of Section 6; the same shall apply in the case of reimbursement of expenses.
6. The liability disclaimer provision under Section 5 shall not apply if any exclusion or restriction of liability is agreed in respect of injury to life, physical injury or damage to health which is due to intentional or negligent dereliction of duty on the part of the user or intentional or negligent dereliction of duty on the part of any legal representative or vicarious agent of the user; nor shall it apply if any exclusion or limitation of liability is agreed for other forms of damage caused by any intentional [vorsätzlichen] or grossly negligent [grob fahrlässigen] dereliction of duty on the part of any legal representative or vicarious agent of the user. If we through ordinary negligence [leichte Fahrlässigkeit] infringe any essential contractual obligation or any cardinal obligation liability shall not be excluded but shall be limited to typical foreseeable contractual damage. A cardinal obligation [Kardinalspflicht] represents an obligation whose implementation is required for the appropriate execution of the contract and to its adherence the contractual partner may continuously rely on. In the event of reimbursement of expenses the above shall apply accordingly.
7. In the case of call-off orders calls shall be notified to us in a timely manner to enable orderly manufacture and supply and at least 6 weeks prior to the desired delivery date. Call orders must be called forward within 12 months from the date of order if no other fixed deadlines have been agreed. If call does not follow or not completely within 12 months from the date of order or on the agreed call terms the Purchaser shall be deemed in default of acceptance.
8. Should the Purchaser fall into acceptance arrears or infringe duties of cooperation we are entitled to claim compensation for loss incurred by us including any additional expenses. In such event risk of accidental destruction or loss or accidental deterioration of the item of purchase shall transfer to the Purchaser if the latter is in default of acceptance.

§ 6 Transfer of risk, packaging costs and insurance

1. Upon handover to the forwarding agent or carrier and at the latest upon leaving our premises risk of accidental destruction or loss and accidental deterioration transfers to the Purchaser. Incoterms 2020 „ex works/ab Werk“ Clause (German version) applies, unless agreed upon differently in writing.
2. Should handover be delayed due to any circumstance for which the Purchaser is responsible or as a consequence of the latter's instructions risk shall transfer to the Purchaser with effect from the date of notification of readiness for dispatch. At the request of the Purchaser, which has to be given in text form, we undertake to insure goods stored with us at the Purchaser's cost. This also applies in those cases where a delivery period has not been expressly agreed with the proviso that risk transfers to the Purchaser 7 calendar days following notification of readiness for dispatch.
3. Transportation and all other packaging according to the German Packaging Ordinance [Verpackungsverordnung] shall not be returned. Pallets are excluded. The Purchaser undertakes to arrange disposal of packaging materials at his own cost.
4. Delivered goods shall be received and accepted by the Purchaser even if they display minor imperfections irrespective of his rights under the terms of §§ 433 ff. BGB [German Civil Code].

§ 7 Reservation of title

1. Up to the full settlement of the purchase price including all subsidiary claims and prior to settlement of all other claims arising from the business association goods delivered shall remain our property. Up until that point the Purchaser is not entitled to pledge the goods to third parties or to assign them as security. The Purchaser shall store the reserved title goods for us at no charge.
2. In the event of processing and combination of reserved title goods with other goods by the Purchaser we shall acquire joint title to the new item in the ratio of the invoiced value of the reserved title goods to the combined material entity. The joint title rights accordingly ensuing shall be considered as reserved title goods as defined in Section 1.

3. The Purchaser is entitled to sell the reserved title goods in the due process of sale provided he is not in payment arrears in respect of our purchase price claims.
4. The Purchaser hereby assigns to us at this point in time all claims accruing to him as a result of resale of the reserved title goods vis-à-vis third parties. If the reserved title goods are sold following processing, combination or amalgamation assignment of the claim arising from resale shall apply only up to the extent of the value of the reserved title goods invoiced to the Purchaser by us. This shall also apply if the reserved title goods are resold together with other goods which similarly do not belong to us
5. The Purchaser is also authorised to collect the claim even following assignment. We may restrict the said collection authorisation on the basis of justifiable interest or revoke the same on due cause found, in particular in the event of payment arrears. We may require that the Purchaser shall notify us of the claims assigned to him and of related debtors plus all information necessary for collection and surrender to us all associated documentation and disclose the said assignment to his debtors.
6. We undertake to release the securities due to us on the basis of the above provisions at our discretion upon the Purchaser's request to the extent that their realisable value exceeds the claim secured by 10% or more.
7. The Purchaser hereby declares his consent that the persons authorised by us in connection with assignment of the reserved title goods may enter the property or building on or in which the items are situated in order to take possession of the reserved title goods.
8. The Purchaser shall immediately inform us in respect of any confiscation, compulsory enforcement or other third-party intervention adversely affecting our rights of ownership. The Purchaser shall bear the costs of measures to remedy third party interference in particular of any possible intervention procedures.

§ 8 Guarantee and liability

1. Should there be any defect for which we are responsible we are entitled to decide between rectification and replacement at our own discretion. A precondition in such an event is that the defect is not immaterial. In the event of rectification we undertake to bear the costs of transportation, labour and materials provided these are not increased due to the fact that the goods supplied have not been moved to a location other than the place of performance. Cost of dismantling and installation shall be only borne by us if it can be proven that the occurrence of the defect was our fault. Should one of or both forms of remedy prove impossible or disproportionate we are entitled to refuse it. We may refuse to effect a remedy for as long as the Purchaser fails to meet his payment obligations towards us to an extent equating to the fault-free portion of the goods or services.
2. Should rectification or replacement fail to be made within an appropriate period – with due consideration of our supply options – or if rectification and and/or replacement should fail the Purchaser may demand a reduction of remuneration (abatement) or withdraw from the contract or claim damages.
3. The Purchaser's rights in the event of defect assume that the latter has met his obligation under § 377 HGB [German Commercial Code] to inspect and submit complaints upon receipt of the goods in a timely manner but at the latest within 7 working days from delivery.
4. If nothing to the contrary emerges under Section 6 below further claims on the part of the Purchaser, irrespective of legal grounds (in particular claims arising from infringement of main and ancillary contractual obligations, reimbursement of expenses with the exception of those defined in § 439 II BGB [German Civil Code], impermissible act and any other tortious liability) are excluded; this applies in particular to damage not occurring to the item supplied itself including compensation claims for lost profit; also included are claims which do not result from the faulty nature of the purchased item.
5. The above provisions also apply in the case of delivery of another item or a lesser quantity.
6. The liability disclaimer provision under Section 4 shall not apply if any exclusion or restriction of liability agreed for injury to life, physical injury or damage to health is due to intentional or negligent dereliction of duty on the part of the user or intentional or negligent dereliction of duty on the part of any legal representative or vicarious agent of the user; nor shall it apply if any exclusion or limitation of liability is agreed for other forms of damage caused by any intentional [vorsätzlichen] or grossly negligent [grob fahrlässigen] dereliction of duty on the part of any legal representative or vicarious agent of the user. If we through ordinary negligence [leichte Fahrlässigkeit] infringe any essential contractual obligation or any „cardinal“ obligation liability shall not be excluded but shall be limited to typical foreseeable contractual damage whose occurrence we had to anticipate on conclusion of the contract based on the circumstances that were known to us; in other respects it is excluded under Section 4. A cardinal obligation [Kardinalspflicht] represents an obligation whose implementation is required for the appropriate execution of the contract and to its adherence the contractual partner may continuously rely on. The exclusion of liability does as well not apply in those cases where under product liability legislation in the event of defects in the goods supplied there is liability in the case of personal injury or damage to property relating to privately used items. Nor does it apply in the case of assumption of a guarantee and assurance of a characteristic feature if a defect covered thereby activates our liability. In the event of reimbursement of expenses the above shall apply accordingly.
7. No warranty is assumed in the event of damages attributable to inappropriate use, faulty assembly by the Purchaser or third parties, natural wear and tear, incorrect or negligent treatment, improper modifications carried out without our prior consent or servicing work by the Purchaser or third parties.
8. Claims for defects, which are not claims for recourse in accordance with § 445a BGB [German Civil Code], shall be time-barred in the case of § 438 I no. 3 BGB in one year from the commencement of the statutory limitation period. This does not apply to any item used in accordance with its customary purpose for a building and has caused faultiness in the latter in which case time-barring is after 5 years. Claims for reduction of purchase price and exercise of any right of withdrawal are excluded if the claim for remedy is time-barred. In the event of operation of Sentence 3 however the Purchaser may only refuse payment of the purchase price to the extent that he would be entitled to do so as a consequence of withdrawal or abatement; in the event of withdrawal exclusion and subsequent payment refusal we are entitled to withdraw from the contract.
9. For claims arising from the product liability law [ProdHaftG] the statutory periods of limitation apply.

§ 9 Withdrawal by the Purchaser and other liabilities on our part

1. The following provisions shall apply in the event of infringements over and above liability for defect and shall neither exclude nor limit statutory right of withdrawal. Similarly, statutory or contractual claims due to us shall be neither excluded nor limited.
2. The Purchaser may withdraw from the contract if the overall performance is definitively impractical, the same applying to incapacity. The Purchaser may also withdraw from the entire contract if in the event of an order for similar items implementation of part of the supply is impossible in terms of numerical quantity due to our representation obligation and if the Purchaser has no interest in partial supply; if this is not the case the Purchaser may abate the consideration accordingly; the right of withdrawal shall not apply in the case of immaterial infringement of obligation.
3. Should there be any delay in performance and provided the Purchaser grants us an appropriate period to complete performance following justification of the delay and should the said period fail to be observed the Purchaser shall be entitled to withdraw. In the event of partial delay in performance Section 1 Sentence 2 shall apply accordingly. If prior to delivery the Purchaser requires in any aspect alternative execution of the item supplied the delivery period shall be interrupted until the date of agreement regarding execution and if necessary extended by the time necessary for alternative execution.
4. Withdrawal shall be excluded if the Purchaser is solely or to a large extent predominantly responsible for the circumstance entitling him to withdrawal or if the circumstance for which we are responsible occurs at the point in time of default in acceptance on the part of the Purchaser. In the event of impracticality, we retain in the above cases our claim to consideration as defined in § 326 Section 2 BGB [German Civil Code].
5. Further claims on the part of the Purchaser, irrespective of legal grounds (in particular claims arising from default at the point of conclusion of the Contract, infringement of main and ancillary contractual obligations, reimbursement of expenses, impermissible act and any other tortious liability) § 8 Sections 4, 6 and 8 shall apply accordingly.

§ 10 Place of performance and jurisdiction

1. Place of performance for the obligations of both parts arising from all legal relationships is Stuttgart.
2. In respect of the legal relationship between the Purchaser and us the laws of the Federal Republic of Germany apply. UN Sale of Goods legislation (CISG) is expressly excluded.
3. If the Purchaser is a merchant [Kaufmann], legal venue for all disputes arising from the contractual relationship is our domicile or at our own choice the domicile of the Purchaser.