

General Terms of Sale

§ 1 Scope

These general Terms of Sale apply exclusively to businesses, corporate bodies under public law and special funds under public law in accordance with Sect. 310 para. 1 of the BGB [German Civil Code]. We do not accept any of the Buyer's conditions which are contrary to or deviate from our Terms of Sale unless we have expressly agreed in writing to the application of the Buyer's terms and conditions.

1. These Terms of Sale also apply to all future business transactions with the Buyer if such transactions are legal transactions of a similar nature.
2. Individual agreements concluded with the Buyer in specific cases (including collateral agreements, amendments and modifications) will always take priority over these Terms of Sale. As regards the contents of such individual agreements, a written contract or our written confirmation is decisive, subject to proof of the contrary.

§ 2 Offer and Conclusion of Contract, Collateral Agreements

1. Our offers are non-binding and without obligation unless otherwise specified in the confirmation of order.
2. An order is regarded as an offer in accordance with Sect. 145 of the BGB [German Civil Code]; we have two weeks in which we can accept this offer. Orders are only binding for us if we confirm them or we fulfil the order by dispatching the goods to you.
3. Collateral agreements pertaining to the order or amendments to these Terms of Sale must be made in writing to be effective.

§ 3 Documents Provided

We retain ownership and the proprietary rights and copyright to all documents – including all rights to documents provided in electronic form – provided by us to the Buyer in connection with the placing of the order, such as calculations, drawings, etc. These documents must not be disclosed or made available to any third party or person unless we give the Buyer our express written consent to such a disclosure. If we do not accept the Buyer's offer, then these documents must be returned to us without delay.

§ 4 Rights to Items Provided by the Buyer

The Buyer declares that he owns all the necessary rights (in particular, the rights of ownership, copyright, etc.) to the appliances, parts, drawings, plans and layouts ("Items") which he asks us to process or adapt, and he must therefore be held solely responsible for any possible violations of the rights of any third party or persons. The Buyer shall indemnify us against any claims by a third party or person arising from the infringement of their rights in connection with Items provided by the Buyer.

§ 5 Prices and Payment

1. Unless otherwise agreed in writing, our prices are CPT (carriage paid to named place of destination, Incoterms 2010) plus postal charges and value-added tax at the legally applicable rate. The costs of packaging will be invoiced separately.
2. Payment of the purchase price must be made only into our business account. Deduction of a discount is only permissible following a separate written agreement.
3. Unless otherwise agreed, the purchase price is due within 30 days of delivery. Default interest is calculated as 8% above the base rate per annum. We reserve the right to claim higher damages for default.
4. In the absence of an agreed fixed price, we reserve the right to make appropriate price adjustments due to changes in the cost of wages, materials and distribution for any goods delivered 3 months or later after conclusion of the contract.

§ 6 Buyer's Right of Retention

The Buyer is only entitled to exercise a right of retention if his counterclaim is based on the same contractual relationship.

§ 7 Delivery Times, Partial Delivery and Default of Acceptance

1. The start of the stated delivery time given by us is non-binding and requires the punctual and proper fulfilment by the Buyer of his obligations. We reserve the right to raise the objection of non-fulfilment of contract.
2. In the absence of any special agreement we are entitled to make partial deliveries.
3. If the Buyer is in default of acceptance or if he culpably violates other obligations to cooperate, then we are entitled to demand compensation for damages thereby incurred by us, including all additional costs incurred. We reserve the right to make further claims. If the aforementioned conditions are present, then the risk of accidental loss or accidental degradation of the purchased goods passes to the Buyer at the time when the Buyer is in default of acceptance or in default of payment.

§ 8 Intended Purpose of the Goods – Obligations of the Buyer – Liability

If we promise delivery of certain products and this promise depends on the intended purpose of the products, then the Buyer is liable for any disadvantages incurred by us because of incorrect information. In addition, the Buyer must ensure that the necessary protective circuits are in place when using our products.

§ 9 Return of Goods

Any return of goods requires our express prior consent, and goods may only be returned if they are accompanied by a statement by the Buyer describing which substances came into contact with the returned goods (contamination statement).

§ 10 Framework Agreements, Call-off Orders

Call-off orders oblige the Buyer to take acceptance of the entire quantity of the call-off order. If the Buyer calls for more than the quantity agreed upon in the framework agreement or the call-off order, then we are entitled to either only supply the original quantity ordered or to invoice the additional quantity at the currently valid standard prices. With framework agreements, we are entitled to procure the materials needed to fulfil the entire order and to produce the entire quantity ordered immediately.

Unless no fixed call-off dates were agreed for the call-off order, the entire quantity must be called within 12 months from conclusion of the agreement. If the Buyer does not comply with the call-off dates, then we are entitled to deliver and invoice the total volume of the order four weeks after sending a written notice pointing out the consequences of the Buyer's failure to call for the next delivery.

If a call-off order is delivered by special agreement at a later date after the end of the agreed delivery period, then we reserve the right to adjust the price.

Call-off orders may not be reduced or cancelled without our express written consent.

§ 11 Passing of Risk During Shipment

The risk of accidental destruction or accidental deterioration of the goods passes to the Buyer once the goods have been dispatched to the Buyer, at the latest when the goods leave the factory/warehouse. This applies irrespective of whether the goods are dispatched from the place of performance and irrespective of who bears the freight costs.

§ 12 Retention of Title

1. We retain title to all the goods supplied by us until we have received full payment of all claims arising from the delivery contract. This also applies to all future deliveries, even if we do not always make explicit reference to this fact. We are entitled to take back the purchased items if the Buyer acts in violation of contract.
2. As long as the title has not passed to the Buyer, the Buyer must treat the purchased items with care. In particular, the Buyer must insure the purchased items at his own expense against theft, fire and water damage and take out insurance to cover the original price when new. If servicing and inspection work is necessary, then the Buyer must ensure that this is carried out at his own expense in good time. As long as the title has not passed to the Buyer, the Buyer must inform us without delay in writing if the supplied items have been distrained or otherwise seized or made subject to an intervention by a third party or person. If the third party or person is not able to reimburse us for the judicial and extrajudicial costs of an action pursuant to Sect. 771 of the ZPO [German Code of Civil Procedure], then Buyer will be liable for the losses incurred by us.
3. The Buyer is entitled to sell on the goods to which we retain title in the ordinary course of business. The Buyer assigns all claims against the purchaser which arise from the selling of the goods to which we retain title already now to us up to the amount of the final invoice total (including value-added tax). The assignment of the accounts receivable to us applies irrespective of whether the purchased item was sold on after further processing or without further processing. The Buyer retains the right to collect the accounts receivable even after having assigned the claim to us. This does not affect our right to collect the outstanding accounts receivable ourselves. However, we will not collect outstanding accounts receivable ourselves as long as the Buyer complies with his payment obligations out of the proceeds collected, is not in default of payment and, in particular, has not filed an application to open insolvency procedures or ceases to make payments.
4. The machining, processing or reworking of the purchased item by the Buyer is always done in our name and on our behalf. In this case, the Buyer's expectant right to the purchased item is transferred to the reworked item. If the purchased items are processed together with other goods which do not belong to us, then we acquire co-ownership of the newly created item in proportion to the real value of the item purchased from us to the other processed items at the time of processing or machining. The same applies to any commingled items. If the commingling of the items is carried out in such a manner that the item of the Buyer must be regarded as the main item, then it is agreed that the Buyer will transfer proportionate co-ownership to us and will keep the thereby created sole or co-ownership for us. To secure our claims against the Buyer, the Buyer will assign to us the claims against a third party accruing to the Buyer arising from the combination of the goods to which we retain title with a property; we hereby accept this assignment of claims.
5. We undertake to release the securities to which we are entitled at the Buyer's request if the value of these securities exceeds the claims to be secured by more than 20%.

§ 13 Warranty and Notice of Defects and Recourse/Right of Recourse Against the Manufacturer

1. The Buyer's rights under warranty require the Buyer to have complied with his obligations to examine the purchased goods and give notice of any defects pursuant to Sect. 377 of the HGB [German Commercial Code] in due form.
2. Claims for material defects become time-barred one year after delivery of the goods supplied by us to the Buyer. The legal statute of limitations applies to claims for damages arising from intent or gross negligence and to claims for injury to life, limb and health based on intentional or grossly negligent breach of duty on the part of the user.
3. Should, in spite of all due care, the supplied goods contain defects which were already present at the time of passing of risk, then we will either repair the goods or replace them, provided the notice of defects was given in due time; it will be our choice whether we repair or replace the items. We must always be given the opportunity and a sufficient period of time to fulfil our obligations to remedy the defect. Any rights of recourse will be completely unaffected by the preceding provision.
4. If the attempt to remedy the defect fails, then the Buyer is entitled – irrespective of any claims for damages – to withdraw from the contract or to reduce the remuneration.
5. The Buyer is not entitled to claim for defects in the event of a minor deviation from the agreed quality or an insignificant diminution of usability or following natural wear and tear or for damages which occurred after the passing of risk as a result of incorrect or negligent handling, excessive use, the use of unsuitable substances or operating equipment, defective construction work, an unsuitable building site or because of special external conditions not provided for in the contract. If the Buyer or a third party carries out unprofessional repair work or modifications, then the Buyer cannot claim for defects for such work or for any consequences arising therefrom.
6. Claims of the Buyer for necessary expenses needed to remedy the defect, in particular any costs of transportation, or for traveling, work and materials, are excluded, if the costs are higher because the supplied goods were subsequently transferred to a place other than the Buyer's premises unless the transfer is consistent with the intended use of the goods.
7. Claims of recourse by the Buyer against us apply only to the extent that the Buyer has not entered into any agreements with his own customers which go beyond the statutory mandatory claims for defects. The provisions of subsection 6 above apply analogously to the extent of the Buyer's claim for recourse against the supplier.

§ 14 Miscellaneous

1. This agreement and all legal relationships between the parties are subject to the laws of the Federal Republic of Germany to the exclusion of the UN Convention on the International Sale of Goods (CISG).
2. Place of performance and exclusive venue for all disputes arising from this agreement are our registered offices unless otherwise agreed upon in the confirmation of order.

§ 15 Severability Clause

In the event that one of the provisions of these Terms of Sale is invalid, this will not affect the validity of the remaining provisions. In such a case, all parties undertake to find an effective provision which most closely approximates the original invalid provision.