

General Terms and Conditions of Business (GTC)

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§ 1 Scope

1. These General Terms and Conditions of Business apply exclusively and only to business operators within the meaning of § 14 BGB. Terms or conditions of the Customer that conflict with or are at variance with these GTC are recognised by us only if we have expressly agreed to their applicability in writing.
2. These GTC apply also to all such future transactions with the Customer as are legal transactions of a related type.

§ 2 Offers and entry into contract

1. If a purchase order is to be regarded as an offer according to § 145 BGB, we may accept that order within two weeks if the Customer has not specified a shorter time limit for acceptance.
2. Unless it is expressly stated that they are binding, our offers are subject to change without notice and are made with the proviso of proper and timely self-delivery.

§ 3 Provided documents

1. We retain ownership of and copyrights in all documents such as, for example, calculations, drawings, etc. that the Customer is provided with upon placing an order. These documents may not be made available to third parties unless we give the Customer our express written permission to do so.

§ 4 Prices and payment

1. Unless otherwise agreed in writing, our prices apply ex works Hamburg, exclusive of the legally owed value-added tax, and include packaging.
2. Payment of the purchase price must be made only to the account specified on the invoice. Early payment discounts may be deducted only by special written agreement.
3. The date of performance for payments is deemed to be the date on which the amount to be paid is effectively at our disposal.
4. Unless otherwise agreed, the purchase price is due and payable within 14 calendar days after delivery. The Customer will be in default if it does not perform on our invoice within 14 calendar days; that notwithstanding, the Customer will be in default at the latest if it does not pay our invoice within thirty days after the invoice becomes due and payable. In the event of default, we are entitled to demand default interest of 9 percentage points above the base interest rate and a flat default charge in the amount of EUR 40.00. We reserve the right to assert greater damage caused by default.
5. We reserve the right to make reasonable price adjustments in response to changes in labour, material, or distribution costs for deliveries that are to be made four (4) months or later after entry into contract.

§ 5 Set-off and retention rights

1. Set-off and retention rights vest in the Customer only if and to the extent that the Customer's counter-claims either are related on a basis of reciprocity to the claims asserted by us (§ 320 BGB) or have been recognised by declaratory judgement, are not in dispute, or have been acknowledged by us. The Customer is authorised to exercise a right of retention only if the Customer's counter-claim is based on the same contractual relationship.

§ 6 Delivery time

1. The beginning of our stated delivery period is dependent upon clarification between the Parties in regard to all technical questions and upon timely and proper performance of the Customer's obligations. We reserve the defence of lack of performance.
2. If the Customer is in default of acceptance or culpably breaches other duties of cooperation, then we are entitled to demand compensation for the damage caused to us as a result thereof, including any additional expenses. We reserve the right to assert further claims. In the event that the Customer is in default of acceptance, the risk of accidental perishing or accidental deterioration of the purchased item passes to the Customer at the time at which the Customer goes into default of acceptance.

§ 7 Passing of risk and bearing of costs when goods are shipped

1. The goods will be delivered ex works Hamburg. At the Customer's request they may also be shipped to another location. Providing a delivery address during the ordering process also is deemed a shipping request.
2. If the goods are shipped to the Customer or to third parties at the Customer's request, then the risk of accidental perishing or accidental deterioration of the goods passes to the Customer upon dispatch to the Customer or third party, but no later than when the goods leave the factory/warehouse (§ 447 BGB). This applies irrespective of whether the goods are dispatched from the place of performance or who bears the freight charges.
3. The Customer must bear the shipping costs in addition to the purchase price. Shipment will be made to the delivery address provided by the Customer. If the Customer has provided an incorrect, incomplete, or unclear delivery address, then the Customer must bear all costs arising therefrom. We are not obliged to verify the delivery address.
4. The choice of packaging type is subject to our discretion; it must be of a sort that is customary in the industry.

§ 8 Retention of ownership

1. We retain ownership of the delivered item until all outstanding accounts arising from the business connection, including later ones, are paid in full. This applies also to all future deliveries, even if we do not always expressly point this out.
2. The Customer is obliged to treat the purchased item with care for as long as ownership thereof has not passed to the Customer. As long as ownership thereof has not yet passed, the Customer must promptly notify us in writing if the delivered item is attached or exposed to other third-party actions. If the third party is beyond reach or unable to reimburse us for the judicial or extra-judicial costs of a legal action in accordance with § 771 ZPO, then the Customer is liable to us for the loss.

3. The Customer is entitled to resell in the normal course of business reserved goods of which we retain sole or joint ownership. The Customer is not permitted to pledge the goods, transfer ownership thereof as security, or assign them for security purposes.
4. The Customer hereby and in advance assigns to us its receivables from the resale of the reserved goods along with all accessory claims. In the event that the reserved goods are sold by the Customer along with other goods that do not belong to us for one overall price, then the assignment hereby made is made only in the amount that we have charged the Customer for the reserved goods included in the sale. In the event that the Customer's receivables from the resale are received into a current account, the Customer hereby assigns also its receivable from its own customer from the current account (closing balance), and does so in the amount we have charged the Customer for the reserved goods that were resold. We hereby accept the assignments in this section.
5. The Customer remains authorised to collect the receivable even after the assignment. Our right to collect the receivable ourselves remains unaffected thereby. We will not collect the receivable, however, as long as the Customer honours its payment obligations from the collected proceeds, is not in arrears of payment and, in particular, has not filed an application to open insolvency proceedings and no insolvency is present.
6. Processing or treatment of the reserved goods by the Customer is performed always on our behalf and gives rise to no obligations on our part. Ownership of the new items in their resulting state of treatment or processing vests in us. If our reserved goods are processed, treated, jumbled, mixed, or combined with other products that are not owned by us, then joint ownership of the new item vests in us in proportion to the ratio between the invoice price of the reserved goods and the invoice price of the other products.
7. The Customer must insure the reserved goods adequately, especially against fire and theft. Claims against the insurer in the event of damage to the reserved goods are hereby assigned to us. We accept the assignment. The Customer must notify the insurance company of the assignment of claim.
8. We agree to release at the Customer's request the collateral to which we are entitled if its value exceeds by more than 10% the receivables to be secured.
9. At our request the Customer is obliged to give us the information necessary for assertion of the Customer's rights against its buyers and to hand over to us the necessary documents.
10. If the Customer meets the objective conditions for the duty to file an insolvency application, then the Customer, without need of a demand to that effect, must refrain from any disposition of the reserved goods, regardless of the manner of such disposition. The Customer is obliged to inform us promptly of its inventory of reserved goods. We are further entitled in such a case to rescind the contract and demand the return of the reserved goods. If the reserved goods have been processed, treated, jumbled, mixed or combined with other products, we are entitled to demand their surrender to a trustee; the Customer is obliged to disclose all co-owners of the reserved goods along with their names or company names, their addresses, and the portion of the goods that is jointly owned. The same applies analogously to receivables that have been assigned to us in accordance with the preceding paragraphs; in addition, the Customer must give us unbidden the names and addresses of all debtors along with copies of the documents substantiating the receivables from them.

§ 9 Warranties and notices of defects

1. The Customer must confirm to its satisfaction, by means of its own inspection, that the goods are suitable for the purpose for which the Customer intends them.
2. The Customer's warranty rights are conditional upon the Customer properly complying with its obligations pursuant to § 377 HGB to inspect and give notice of defects. Should complaints arise despite the most careful attention, then, as provided by § 377 HGB, obvious defects must be asserted promptly upon receipt of the goods, hidden defects promptly upon their discovery. "Promptly" is defined as three business days (Mondays to Fridays with the exception of legal holidays at the delivery location). Breaches of this obligation constitute approval of the goods according to § 377 HGB. If, in regard to delivered products, there arises a suspicion of a not merely trivial defect, then the Customer is obliged to inform us promptly of the existing facts giving rise to that suspicion, even if further inspections must be performed to verify the defect. A breach of this duty will subject the Customer to liability for damages unless the Customer is not responsible for that breach of duty.
3. The warranty period is one year from delivery. The time limitation periods in the case of recourse claims against suppliers according to §§ 445b, 478 BGB and claims for damages of any type (including those for default of our obligation to remedy defects) remain unaffected by this provision. We must be contacted in advance if goods are ever returned to us.
4. If the delivered goods should have a defect that was already present at the time of the passing of risk, then, provided that notice of the defect was timely given, we will, at our option, rectify the defect or deliver replacement goods.
5. The Customer is entitled to reduce the purchase price or to rescind the contract only if the legal conditions for doing so are present.
6. Claims of the Customer for the expenses necessary for the purpose of rectification, in particular transport, road, labour, and material costs, are excluded if the expenses increase because the goods delivered by us have been subsequently conveyed to a location other than the Customer's business establishment, unless that conveyance is in accordance with the intended use of the goods.
7. Small variances in respect of quality, weight, quantity, presentation or colour that are usual in the industry or technology- or raw material-related do not constitute defects.

§ 10 General liability

1. Claims for damages of any kind against us or our legal representatives or performing agents are excluded unless wilful misconduct, gross negligence, or breach of a material contractual duty is present.
2. By "material contractual duty" in this sense is meant any duty whose performance makes proper performance of the contract possible in the first place and which the Customer may ordinarily trust will be observed.
3. Liability is limited, however, to typical contractual, foreseeable damages unless wilful misconduct is present.
4. The preceding limitations and exclusions of liability do not apply to liability under product liability law or to cases of injury to life, limb or health.
5. Claims of the Customer for expenses according to § 284 BGB are waived to the extent that claims for damages in lieu of performance are excluded according to the provisions above.

6. The onus of proof according to law is not changed by the provisions of this contract clause.

§ 11 Other provisions

1. This Agreement and all legal relations between the Parties are subject to the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. The place of performance for deliveries and for fulfilment of warranty claims is Hamburg, Germany.
3. The exclusive place of jurisdiction for all disputes arising from this Agreement is Hamburg if the Customer is domiciled in the EU, the European Economic Area, or Switzerland and is in addition a businessman, a legal entity under public law, or a legal segregated asset trust or has no place of general jurisdiction in Germany.
4. If, on the other hand, the Customer is domiciled outside the EU, the European Economic Area, and Switzerland, then the arbitral tribunal of the Hamburg Chamber of Commerce is competent for all disputes arising from or in connection with the contracts made to which these General Terms and Conditions of Business apply and will render final and absolute decisions to the exclusion of recourse to the ordinary courts of law. The defendant is entitled to bring a counter-claim before the arbitral tribunal. The place of arbitration is Hamburg; the language of the proceedings is German. The proceedings, in particular the taking of evidence, will be conducted pursuant to the Rules of the Court of Arbitration of the Hamburg Chamber of Commerce and the rules of Book 10 of the German Code of Civil Procedure (Zivilprozessordnung). Common-law procedural rules such as, in particular, document production or cross-examination are not directly or analogously applicable. The taking of evidence is to be based on the rules and conventions of proceedings before state courts in Germany. The arbitral tribunal is to strive for cost-efficient proceedings. If, in connection with the arbitral proceedings, one party must pay the other party's legal costs, then such costs are limited to the costs that may be charged according to the German Lawyers' Compensation Act (Rechtsanwaltsvergütungsgesetz (RVG)).
5. Amendments and additions to this Agreement must be in writing. This applies also to amendments of this requirement of written form. No oral collateral agreements have been made.
6. Should individual provisions of this Agreement be or become invalid or contain a gap, then the rest of the provisions will remain unaffected thereby. The Parties agree to make in lieu of the invalid provision a legally permissible provision that comes closest to the economic purpose of the invalid provision or fills the gap.