

General Delivery and Payment Conditions

§ 1

General Terms – Scope of application

- (1) Our Delivery and Payment Conditions apply exclusively; we shall not recognise any of the Customer's terms deviating from these Delivery and Payment Conditions, unless we have expressly consented to their application in writing. Our Delivery and Payment Conditions shall also apply even if we unconditionally perform delivery in spite of knowledge that they are at variance with those of the Customer's conditions.
- (2) All agreements made between us and the Customer for the purpose of the execution of this contract are contained in writing in this contract.
- (3) Our Delivery and Payment Conditions only apply to companies as defined in Section § 310(1) of the German Civil Code (BGB)
- (4) We do not participate in consumer protection procedures under the Consumer Dispute Settlement Act. However, disputes concerning this Agreement and its performance can be negotiated at the mediation service of the Chamber of Crafts of Brunswick-Lüneburg-Stade (*Handwerkskammer Braunschweig-Lüneburg-Stade*) Friedenstr. 6, 21335 Lüneburg (<https://www.hwk-bls.de/de/service-center/schieds-und-schlichtungsstelle>).

§ 2

Offer / Offer Documents

- (1) If the order is an offer within the meaning of Section 145 of the German Civil Code (*BGB*), we take accept it within 2 weeks.
- (2) If we make an offer to the Customer, it shall be non-binding, unless otherwise stated in the offer.
- (3) We reserve title and copyright in all illustrations, drawings, computations, and other documents. This also applies for written supporting documents marked as "confidential". Before passing them to third parties, the Customer must obtain our express written consent.

§ 3

Prices - Payment Terms and Conditions

- (1) Unless otherwise stated in the Order Confirmation or our offer, the prices are ex-works, excluding packaging, which will be invoiced separately.
- (2) If, following the conclusion of the Agreement, costs have sunk or increased, we reserve the right to alter our prices accordingly, in particular on the basis of collective wage agreements or increases in the prices of materials. We shall provide evidence of this to the buyer on demand.
- (3) Any applicable value added tax is not included in our prices; it will be added separately as a separate item at the rate in force on the day of issue of the invoice.
- (4) Unless otherwise stated in our order confirmation or our offer, the purchase price is payable net (without deduction) within 30 days from the invoice date. The statutory provisions governing the consequences of late payment shall apply.
- (5) We shall grant a 2% discount for payments by cash on delivery or in cash; the same applies to bank transfers within 10 days from the invoice date. In all other cases, the deduction of a discount shall require a separate written agreement.
- (6) The Customer is only entitled to set-off when his counter-claims have been legally established, are undisputed, or have been recognised by us. The Customer is, furthermore, authorised to exercise his right of retention insofar as his counter-claim is based on one and the same contractual relationship.

§ 4

Delivery Schedule

- (1) The beginning of the time of delivery specified by us implies that all technical questions have been clarified.
- (2) In addition, compliance with our delivery obligation presupposes the timely and proper performance of the Customer's obligations. The right to invoke non-performance of the Contract shall remain unaffected.
- (3) If the purchaser does not fulfil his acceptance obligation, or if he culpably breaches other cooperation obligations, then we shall be entitled to demand compensation for damages incurred, including any related additional expenditures. We reserve the right to further claims.

- (4) Insofar as the preconditions under (3) exist, the risk of an accidental loss or the accidental deterioration of the purchase object shall pass to the Customer at the moment when he fails to fulfil his acceptance obligations.
- (5) We shall be liable in accordance with statutory provisions insofar as the underlying purchase agreement is a transaction at a fixed date as defined by Section 286 (2, No 4) BGB or S 376 of the German Commercial Code (*HGB*). We shall also be liable in accordance with the statutory provisions insofar as the Customer is entitled to claim that he is no longer interested in the further fulfilment of the contract in consequence of a delay in delivery, for which we are responsible.
- (6) Furthermore, we shall accept liability in accordance with the statutory provisions insofar as the delayed delivery is based on an intentional or grossly negligent breach of contract for which we are responsible; the fault of our representatives or vicarious agents shall be attributed to us. Insofar as the delayed delivery is based on an intentional or grossly negligent breach of contract for which we are responsible, our liability for damages shall be limited to the foreseeable typically occurring damage.
- (7) We shall also be liable in accordance with the statutory provisions insofar as the delay in delivery that was due to us was caused by culpable breach of a material contractual obligation; in such a case, however, our liability for damages shall be limited to the foreseeable typically occurring damages.
- (8) If we are prevented from performing our contractual obligations on time – be it due to our suppliers failing to fulfil their obligations because of energy shortages, traffic disturbance, industrial action, the delivery time will be delayed commensurately.
- (9) Other statutory claims and rights of the Customer shall remain unaffected.

§ 5

Transfer of Risk - Packaging Cost

- (1) Unless otherwise stated in the acceptance of order, the delivery is "ex-works".
- (2) Special agreements shall apply for the return of packaging.
- (3) Insofar as the Customer desires, we shall take out transport insurance for the shipment; the Customer shall pay the costs accruing for this.

§ 6

Liability for Defects

- (1) Claims for defects by the Customer presuppose that the latter has duly complied with his obligations to inspect and give notice of defects pursuant to Section 377 of the German Commercial Code.
- (2) Insofar as the purchase object has a defect, we shall be entitled at our option to subsequent performance in the form of eliminating the defect or delivering a new item free of defects. In case of the elimination of the defect or a substitute delivery, we shall be obliged to pay expenses required for the subsequent performance, in particular, the costs of transport, freight, labour and materials insofar as these are not increased by the purchase object having been brought to a location other than the place of performance.
- (3) If the subsequent performance is unsuccessful, the Customer shall be entitled to demand rescission or a price reduction at his option.
- (4) We shall be liable in accordance with the statutory provisions insofar as the Customer claims damages based on intentionality or gross negligence, including intentionality or gross negligence on the part of our representatives or vicarious agents. Insofar as we are not accused of an intentional breach of contract, liability for damages shall be limited to the foreseeable typically occurring damage.
- (5) We shall be liable in accordance with the statutory provisions, insofar as we culpably breach a material term of the contract, which would have rendered the performance of the contract possible (essential contractual obligation); in such a case as well, liability for damages shall be limited to the foreseeable typically occurring damage.
- (6) Insofar as the Customer is entitled to compensation for the damage instead of performance, our liability is also limited to the foreseeable, typically occurring damage within the scope of (3).
- (7) This shall not affect liability for culpable injury to life and limb or health; this shall also apply to mandatory liability pursuant to the Product Liability Act.
- (8) Liability is excluded except where regulated otherwise above.
- (9) The period of limitation for claims for defects shall be 12 months calculated from the transfer of risk.
- (10) The period of limitation in case of claims asserting a right of recourse for deliveries pursuant to SS 478, 479 BGB shall remain unaffected; it shall not exceed live years, calculated from the date of delivery of the defective item.

§ 7

Joint Liability

- (1) Liability for damages further than provided for under § 6 above is excluded irrespective of the legal nature of the claim submitted. This shall apply in particular for claims for damages for negligence in contracting, for other breaches of obligations or for claims in tort for compensation for material damage pursuant to §823 German Civil Code (BGB).
- (2) The limitation in accordance with (1) above shall also apply insofar as the Customer demands reimbursement of useless expenditures in place of a claim for compensation for the damage.
- (3) Insofar as claims against us for damages are excluded or limited, this shall apply with regard to the personal liability for damages of our employees, associates, representatives and vicarious agents.

§ 8

Reservation of Title

- (1) We reserve title to the purchase object until receipt of all payments under the contractual relationship with the Customer. In the event of behaviour of the Customer in breach of contract, in particular default of payment, we shall be entitled to take the purchase object back. If we take the purchase object back, this shall be deemed to be a rescission of contract. After taking the purchase object back, we shall have the right to sell it and set off the proceeds against the purchaser's liabilities – after deducting the appropriate realisation costs.
- (2) The Customer shall be obliged to take care of the purchase object; in particular, he is obliged to insure it at a sufficient replacement value at his own expense against damage by fire, water and theft. Insofar as maintenance and inspection work is necessary, the Customer must carry this out in good time at his own expense.
- (3) The Customer shall inform us in writing immediately of seizures or other interventions by third parties so that we can institute proceedings pursuant to Section of the 771 of the German Code of Civil Procedure (*ZPO*). Insofar as the third party is unable to reimburse us the judicial and extra-judicial costs of an action as defined by Section 771 of the German Code of Civil Procedure, the Customer shall be liable for the loss incurred to us.
- (4) The Customer shall be entitled to sell the purchase object in the course of his ordinary business; the Customer hereby assigns to us all claims against his buyers or third parties that accrue to him under the resale in the amount of the final invoice amount (including VAT) of our claim, irrespective of whether the purchase object was sold with or without processing. The Customer shall retain the right of recovery of the debt even after he has assigned the claim to us. Our right to collect the payment ourselves remains unaffected hereof; nevertheless, we commit ourselves not to collect these receivables as long as the ordering party fulfils his obligation to pay appropriately, is not in default of payment and, in particular, no application for the initiation of insolvency or arbitration proceedings has been submitted and payments have not been suspended. Should this, however, be the case, we would be entitled to demand that the ordering party inform us of all assigned receivables and the debtors hereof, that he make all indications required for collection, hand out the necessary documentation and inform the debtors of the assignment.
- (5) The processing or modification of the purchase object by the customer will always be carried out on our behalf. In case the purchase object is used to manufacture other goods that are not in our possession, we shall acquire ownership of the new objects in the ratio of the value of the purchase object (final invoice amount, including VAT) to the other processed objects at the time of processing. The provisions that apply to objects of sale supplied under reservation of title shall also apply to objects created by processing.
- (6) If the purchase object is inextricably mixed with other objects that do not belong to us, we shall acquire co-ownership of the new object in the ratio of the value of the purchase object (final amount of the invoice including VAT) to the other mixed objects at the time of mixing. If mixing is carried out in such a way that the Customer's object is recognisable as the main object, it is deemed to be agreed that the Customer assigns pro rate co-ownership to us. The Customer shall hold the co-ownership created in this way in safe custody for us.
- (7) To secure our claims against him, the Customer shall also assign all claims against a third party that accrue to him through the connection of the purchase object to property.
- (8) We shall be obliged on demand by the Customer to release the security to which we are entitled insofar as the realisable value of our security exceeds the value of the debts to be secured by more than 10%; we shall be entitled to select the security that is to be released.

§ 9

Legal Venue – Place of Performance

- (1) Winsen/Luhe is the legal venue if the Customer is a tradesman; however, we shall also be entitled to sue the Customer in the jurisdiction of his residence.
- (2) The law of the Federal Republic of Germany shall apply; this excludes the Terms under the UN Convention governing contracts on the international purchase of goods.
- (3) Unless otherwise stated in the acceptance of order, the place of performance shall be our registered office.

§ 10

Severability

If any individual provision of these Conditions was or became unenforceable, this shall not affect the effectiveness of any of the remaining provisions. In such a case, the following rule shall apply: the unenforceable shall be replaced by a provision, which comes as close as possible to its economic intent.