

# General Conditions of Sale and Delivery

## § 1 Area and form of validity

1. These General Conditions of Sale and Delivery (“AVBs”) apply exclusively to companies, legal entities under public law or special funds under public law according to Art. 310 (1) BGB (German Civil Code).
2. These AVBs shall apply especially to contracts regarding sale and/or delivery of moveable items (“goods”), irrespective of whether we manufacture the goods ourselves or purchase them from suppliers (§§ 433, 650 BGB). If not otherwise agreed, the AVB shall also apply in the version valid at the time of ordering by the Purchaser or, at any event, in the version communicated to them in text form as a framework agreement to similar future contracts, without us having to refer to them again in each individual case.
3. Our AVBs shall apply exclusively. Deviating, conflicting or additional General Terms and Conditions of Business on the part of the Purchaser shall only be a component of the contract to the extent that we have expressly consented to their validity. This requirement of consent shall apply in all forms, for example, if the Purchaser refers to their own AGBs during the ordering process and we do not expressly object to this.
4. Individual agreements (framework supply agreements, quality control agreements etc.) and information in our order confirmation take priority over the AVBs. In cases of doubt, trading clauses are to be interpreted according to **Incoterms® 2010** published by the International Chamber of Commerce in Paris (ICC).
5. Legally relevant declarations and notifications by the Purchaser regarding the contract (e.g. setting of deadlines, notification of defects, withdrawal or reduction), are to be given in writing. The written form, according to these AVBs, includes written and text form (e.g. letter, email, fax). Legal formal requirements and further evidence, in particular, in cases of doubt about the legitimacy of the declarant shall remain unaffected.
6. References to the validity of statutory provisions have only a clarifying significance. Thus, these statutory provisions also apply without this kind of clarification, to the extent that they are not directly amended in these AVBs or expressly excluded.

## § 2 Conclusion of contract

1. Our offers are subject to change and non-binding. This also applies if we have supplied the Purchaser with catalogues, technical documentation (e.g. drawings, plans, calculations, cost estimates, references to DIN standards), other product descriptions or documents – also in electronic form – to which we reserve ownership rights and copyrights.

2. The ordering of goods by the Purchaser shall be considered as a binding contract offer. Unless otherwise stated in the order, we are entitled to accept this contract offer within 5 days of receipt by us.
3. Acceptance shall be made in writing (e.g. by confirmation of order).

### **§ 3 Delivery period and delay in delivery**

1. The delivery period shall be agreed individually or specified by us on acceptance of the order. If this is not the case, we have 3 weeks to specify a corresponding delivery date to you. If it is not possible for us to specify a delivery date within this time frame, the Purchaser can withdraw from the contract. In this event, the Purchaser shall not be entitled to any compensation claims.
2. The start of the delivery period specified by us presupposes the timely and proper fulfilment of the Purchaser's obligations. The defence of non-performance of the contract remains reserved.
3. If we are unable to comply with the binding delivery dates for reasons which we do not have to specify, (unavailability of service), we shall promptly inform the Purchaser of this and, at the same time, inform them of the assumed new delivery period. If the service is also not available within the new period, both parties are entitled to withdraw wholly or partially from the contract; we shall immediately refund any consideration already paid by the Purchaser. Non-availability of the service shall be deemed to exist, for example, in the event of non-timely delivery to us by our supplier, if we have concluded a congruent covering transaction, in the event of other disruptions to the supply chain due to force majeure or if we are not obliged to procure in the individual case.
4. Occurrence of our delay in delivery shall be determined according to legal provisions. However, in each case a reminder by the Purchaser is required. If we are in default of delivery, the Purchaser can demand lump sum compensation for the damage caused by the delay. Lump sum compensation shall amount to 0.5% of the net price (delivery value) for each complete calendar week of the delay, however a total of no more than 5% of the delivery value of the delayed goods. We reserve the right to provide evidence that no damage at all has occurred to the Purchaser or only substantially less damage than the above lump sum has been incurred.

### **§ 4 Delivery, transfer of risk, acceptance, default of acceptance**

1. If nothing else has been agreed, we deliver ex works (EXW **Incoterms® 2010**), where the place of performance for the delivery and any subsequent performance is also located. On request from and at the expense of the Purchaser, the goods are despatched to another determined location (mail order purchase). If nothing else has been agreed, we are entitled to determine ourselves the nature of despatch (specifically carrier, route of despatch, packaging).
2. Delivery shall be made in accordance with the customary forms of contract of the International Chamber of Commerce in Paris (ICC) published in **Incoterms® 2010**, unless expressly agreed otherwise.

3. The risk of accidental loss and accidental deterioration of the goods is transferred to the Purchaser at the latest on handover. For mail order purchases, however, the risk of accidental loss and accidental deterioration of the goods and also the risk of delay is already transferred on despatch of the goods to the carrier, the haulage contractor or to the person or institution determined to carry out despatch. Insofar as acceptance is agreed, this is appropriate for the transfer of risk. Moreover, for agreed acceptance the statutory provisions of the law on contracts for works and services shall apply correspondingly. Handover or acceptance shall be deemed equivalent if the Purchaser is in default of acceptance.
4. Additional or short deliveries up to 10% of the order quantity are permissible.
5. If the Purchaser is in default of acceptance, fails to cooperate or delays our delivery for other reasons represented by the Purchaser, we are entitled to demand compensation for damages thereby incurred including additional expenses (e.g. storage costs). We calculate lump sum compensation as 1% of the value of the goods per calendar day, at the most, however, 5% of the value of the ordered goods, starting with the delivery deadline or, if there is no delivery deadline – with notification of readiness for despatch of the goods. In the event of final culpable non-acceptance, the Purchaser shall pay 10% of the order value.
6. Evidence of greater damage and our statutory claims (especially compensation for additional expenses, appropriate compensation, cancellation, loss of profit, wasted expenses) remains unaffected; the lump sum, however, is to be credited against further monetary claims. The Purchaser shall be permitted to provide evidence that no damage or only significantly lesser damage than this lump sum has occurred.
7. The damage eligible for compensation can, thus, amount to 100% of the order value, according to Paragraph 6.

## **§ 5 Prices and payment**

1. At the time of conclusion of the contract, the current prices for goods are specified, ex stock, plus statutory sales tax. However, these are not guaranteed fixed prices. The total price specified by us is specifically determined by the purchase price to be paid by us for materials which we require for production. The development of the procurement prices to be borne by us is difficult for us to predict, as we are only able to procure our goods for production at current daily prices, for which the date of acceptance of goods by our suppliers is authoritative. Thus, there may be significant price increases in the period between ordering and acceptance of goods with our suppliers. For this reason, we reserve the right to adjust our prices in accordance with the increases in the purchase prices applicable to us. A condition of adjustment is that our purchase prices are 5% higher for us from our suppliers with whom we made these calculations on conclusion of the contract and acceptance of goods by our suppliers occurs at least 4 months after conclusion of the contract.
2. If the final price increases by 30% due to the regulation according to Paragraph 1, the Purchaser has the right to terminate the contract.
3. The costs of packaging are invoiced separately.
4. Payment must be made in the agreed currency. If prices are specified in foreign currency, they are based on the exchange rate between the euro and the agreed foreign currency

on the date of order confirmation. The purchase price varies in the proportion that the official mean rate of exchange of the agreed foreign currency in euros determined in Frankfurt (Main) varies from the time of order confirmation until receipt of the payment.

5. All payments are to be made to the head office of our company or to the factor.
6. The purchase price is due and to be paid within 30 days of invoicing and delivery or acceptance of the goods. We are, however, in the context of an ongoing business relationship entitled at any time, to make a whole or partial delivery only against advance payment. We declare a corresponding reservation at the latest with the order confirmation.
7. The Purchaser shall be in default on expiry of the above payment deadline. Interest shall be due on the purchase price during default at a rate of 8% above the respective base rate. We reserve the right to assert further damage caused by the delay. Our entitlement to the commercial interest on the due date with respect to merchants (Art. 353 HGB (German Commercial Code)) remains unaffected.
8. The Purchaser is only entitled to the right of set-off to the extent that their claim is legally established or undisputed. The exercise of right of retention is excluded with regard to invoice amounts already due.
9. If, after conclusion of the contract, it becomes apparent (e.g. by an application to open insolvency proceedings), that our entitlement to the purchase price is at risk due to the Purchaser's inability to fulfil their side of the contract, we are entitled according to the statutory provisions for refusal of performance and – where required, after setting a deadline - to withdraw from the contract (Art. 321 BGB). In the case of contracts for the production of non-substitutable goods (custom-made products), we can declare our withdrawal immediately; the statutory regulations regarding the dispensability of setting a time limit remain unaffected.

## **§ 6 Reservation of proprietary rights**

1. Until full payment of all our present and future claims from the purchase contract and an ongoing business relationship (secured claims), we reserve the right to ownership of the goods sold.
2. The goods under retention of title may not be pledged to third parties before full payment of secured claims nor may they be assigned as security. The Purchaser must inform us promptly in writing if an application to open insolvency proceedings is made or insofar as third parties (e.g. seizures) have access to the goods belonging to us.
3. In the event of behaviour on the part of the Purchaser in breach of the contract, especially in the event of non-payment of the due purchase price, we are entitled to withdraw from the contract according to the statutory provisions and/or to demand the goods due to retention of title. The demand for surrender does not include the declaration of withdrawal at the same time; rather we are entitled to merely demand the goods and reserve the right to withdrawal. If the Purchaser does not pay the price due, we may only assert these rights

if we have previously set the Purchaser an appropriate deadline for payment, without success or setting such a deadline is dispensable according to statutory provisions.

4. The Purchaser is authorised until revoked according to c) below, to continue to dispose of and to handle the goods under retention of title in the proper course of business. In this event, the following stipulations shall apply in addition:

a) Retention of title extends to the products resulting from the processing, mixing or combining of our goods at their full value, where we are considered the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, the latter's right of ownership shall remain in force, we shall acquire co-ownership in the ratio of the invoice values of the processed, mixed or combined goods. Moreover, the same shall apply to the resulting product as to the goods supplied under retention of title.

b) The Purchaser shall assign to us as security the claims arising from the continuing sale of the goods or product against third parties in their entirety or in the amount of our co-ownership share according to the previous paragraph. We shall accept this assignment. The duties of the Purchaser specified in Paragraph 2 shall also apply in respect of the assigned claims.

c) The Purchaser remains authorised to collect the claim in addition to us. We shall undertake not to collect the claim, if the Purchaser fulfils their payment obligations to us, there is no deficiency in their ability to fulfil the contract and we do not assert retention of title by exercising a right according to Paragraph 3. If, however, this is the case, we can demand that the Purchaser inform us of the assigned claims and their debtors, provide all the information required for collection, surrender the relevant documents and notify the debtors (third parties) of the assignment. Moreover, in this event we are entitled to revoke the authority of the Purchaser for further disposal and handling of the goods under retention of title.

d) If the realisable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice on request of the Purchaser.

## **§ 7 Transfer of rights and licences to intellectual property**

In so far as we create works for the fulfilment of the contract which fulfil the conditions for copyright for our part, no implied rights of use shall be granted to the Purchaser. Rights of use for the Purchaser must be settled in a separate contract.

## **§ 8 Claims for defects by the Purchaser**

1. The statutory provisions shall apply to the rights of the Purchaser for material defects and defects of title (including incorrect and short delivery and improper assembly/installation or inadequate instructions), unless otherwise specified below. In all cases, the statutory special provisions for compensation of expenses for final delivery of the newly manufactured works to the consumer remain unaffected (recourse against suppliers according to Arts. 478, 445a, 445b BGB), in so far as no equivalent compensation has been agreed e.g., within the context of a quality control agreement.

2. We do not make any agreements regarding quality. If a defect exists, this should be evaluated according to statutory regulations (Art. 434 (3) BGB). Public statements made by the manufacturer or made in their order, especially via advertising or on the label of the goods take precedence over statements by other third parties.
3. We do not provide any guarantees that the products sold by us are suitable for a specific purpose. We can only provide guarantees for a specific purpose if we confirm an expressly desired additional specification on the part of the Purchaser.
4. Typical and technically unavoidable deviations of goods relating to quality, width, length, design, colour, equipment, percentage of material composition and weight or from the sales pattern do not constitute defects. Exclusivity of articles or design is only granted by special written agreement. This shall generally only apply for one season.
5. We shall not generally be liable for defects of which the Purchaser is aware on conclusion of the contract or of which they are unaware due to gross negligence (Art. 442 BGB). Furthermore, claims for defects made by the Purchaser assume that they have complied with their statutory duties of inspection and notification (Arts. 377, 381 HGB). In the case of goods intended for installation or for further processing, an inspection must be carried out immediately before processing. If, on delivery, during the inspection or at any later date a defect become apparent, we must be notified of this in writing without delay. In each case, obvious defects should be indicated in writing within 10 working days of delivery and defects not apparent on inspection within the same period on discovery. If the Purchaser does not carry out the correct inspection and/or notification of defects, our liability for the defect which has not been indicated, or not promptly or correctly indicated is excluded according to statutory provisions. In the case of goods made for fitting, mounting or installation, this shall also apply if the defect as a result of the breach of one of these obligations only becomes apparent after the relevant processing; in this event, no special claims exist by the Purchaser to compensation of relevant costs ("removal and installation costs").
6. If the delivered item is defective, we can initially choose whether we provide subsequent fulfilment of performance by rectifying the defect (repair) or by supplying a defect-free item (replacement). If the type of subsequent performance is unacceptable to the Purchaser in individual cases, they may reject it. Our right to refuse subsequent performance under the statutory conditions remains unaffected.
7. We are entitled to carry out the supplementary performance owed dependent on the Purchaser paying the purchase price due. The Purchaser is, however, entitled, to retain an appropriate proportion of the purchase price in proportion to the defect.
8. The Purchaser must give us the required time and opportunity to carry out the owed subsequent performance, especially to hand over the rejected goods for inspection purposes. In the case of replacement, the Purchaser must return to us the defective item on our request according to statutory provisions; the Purchaser does not, however, have a right of return. The subsequent performance does not include fitting, mounting or installation of a defective item if we had not originally undertaken to provide these services; claims by the Purchaser for compensation of relevant costs ("removal and installation costs") remain unaffected.

9. Claims by the Purchaser to compensation for damage or compensation for wasted expenditure also only exist for defects in accordance with Art. 9 of the AVB and are, moreover, excluded.

## **§ 9 Other liability**

1. We are only liable for compensation for damages – for whatever legal reason – within the scope of fault-based liability – in the event of intent and gross negligence. We are only liable for simple negligence, subject to statutory liability restrictions (e.g. diligence in our own affairs; minor breach of duty),
  - a) For damages resulting from injury to life, limb or health,
  - b) For damages resulting from breach of an essential contractual obligation (obligation the fulfilment of which enables the proper performance of the contract in the first place and compliance with which the contracting partner regularly relies and may rely); in this event, our liability is restricted to compensation for the foreseeable, typically occurring damage.
2. The liability restrictions resulting from Paragraph 1 shall also apply in respect of third parties and also in the event of breaches of obligation by persons (also in their favour), for which we are responsible in accordance with statutory provisions. They shall not apply if a defect was fraudulently concealed or a guarantee for the quality of the goods was given and for claims of the Purchaser according to product liability law.
3. In the event of a breach of obligation which does not constitute a defect, the Purchaser can only withdraw or cancel if we are responsible for the breach of obligation. Any free right of cancellation on the part of the Purchaser (specifically according to Arts. 650, 648 BGB) is excluded. Moreover, the statutory provisions and legal consequences shall apply.
4. With regards to offsetting against any claims of the Purchaser, Art. 5 (7) of the AVB shall apply correspondingly.

## **§ 10 Obligations of the Purchaser**

It is the responsibility of the Purchaser to provide all necessary import licences and/or letters of credit. If they are required, the production and delivery shall depend on receipt of these documents. If the Purchaser fails to provide the required documents, they are not entitled to withdraw from the contract.

## **§ 11 Assignment prohibition**

The assignment of rights and/or the transfer of obligations of the Purchaser from the purchase contract is not permissible without written consent of the seller.

## **§ 12 Choice of law and place of jurisdiction**

1. For these AVBs and the contractual relationship between us and the Purchaser, the law of the Federal Republic of Germany shall apply, excluding international uniform law, especially the UN Sales Convention.
2. If the Purchaser is a merchant according to the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive – and also international jurisdiction for all disputes arising directly or indirectly from this contractual relationship is

our head office in 47608 Geldern-Walbeck. The same shall apply correspondingly, if the Purchaser is an entrepreneur according to Art. 14 BGB. We are, however, in all cases entitled to file a complaint at the place of performance of the delivery obligation according to these AVBs or a prior individual agreement or at the general place of jurisdiction of the Purchaser. Prior statutory provisions, especially regarding exclusive responsibilities, remain unaffected.