

General Terms of Sale, Delivery and Payment

I. General

1. All deliveries, services and quotations, including all incidental services, shall be governed exclusively by these terms of business. These shall apply to any future business relations as well, even if this is not explicitly agreed. These terms shall be deemed to have been accepted no later than the receipt of the goods delivered or service rendered. Any counterconfirmation by the Customer with reference to its terms of business or terms of purchase is hereby refuted.
2. Any agreements, subsidiary agreements, amendments, additions and assurances made prior to and upon acceptance of the order shall be effective only if recorded in writing.
3. Any drawings, illustrations, dimensions, weights or other specifications shall be binding only if this is explicitly agreed in writing. We reserve the right to make minor alterations in design and execution.

II. Prices and terms of payment

1. The prices in our price lists are without engagement and are quoted ex works plus freight. Value-added tax at the prevailing rate shall be invoiced separately, unless the price lists explicitly quote gross prices.
2. For cash deductions, please refer to the individual invoices.
3. Employees of the firm are not entitled to accept payments. Payments exempting the Customer from its liabilities can be remitted only to the managing director of the firm or transferred to an account specified by the firm.
4. In the event of default, we are entitled to charge interest at a rate which is 4% higher than the prevailing discount rate of the Deutsche Bundesbank, without having to provide any further evidence. We reserve the right to enforce claims for damages going beyond this.
5. Cheques and bills shall be accepted by way of payment only. Credits for bills and cheques shall be subject to their receipt, minus expenses, their value date being that date upon which we are able to dispose of the sum in question.

III. Delivery and performance times

1. Any delivery or performance deadlines or periods, whether binding or without engagement, must be specified in writing.
2. Delivery and performance periods shall commence on the date of our order confirmation, but not before all the details of the order have been completely clarified.
3. If a binding delivery or performance deadline has been exceeded by four weeks, the Customer can submit to the Contractor a written demand for delivery or performance within an appropriate grace period.
4. The Contractor shall not be answerable for delays in delivery and performance owing to acts of God and events which severely impair or preclude the Contractor's ability to deliver or perform – in particular strikes, lockouts, official directives etc., including any such events which occur at the Contractor's suppliers or their subcontractors -, even if the deadline or period agreed was binding. Such events shall entitle the Contractor to postpone delivery or performance for the duration of the obstacle plus an appropriate run-in time or to rescind that part of the contract which has not been performed either in part or in its entirety.
5. If the obstacle lasts for longer than three months, the Customer, after imposing an appropriate grace period, shall be entitled to rescind that part of the contract which has not been performed. If the delivery period is extended or the Contractor is released from its obligation to perform, the Buyer cannot derive any claims for damages from this. The Contractor can plead such circumstances only if it notifies the Customer of this without delay.
6. If the Contractor is in default, the Customer can rescind contract, but only if it has first imposed a grace period of six weeks, commencing upon the receipt by the Contractor of the notice to that end.
7. To the extent the Contractor is answerable for its non-adherence to binding periods and deadlines or is in default, the Customer is entitled to compensation in the amount of ½% for every full week of the delay but for no more than a total of 5% of the invoice value of the deliveries and services on which the Contractor has defaulted. There shall be no claims going beyond this, unless the default is attributable at least to gross negligence on the part of the Contractor.
8. The Contractor is entitled to effect partial deliveries or render services in part at any time.

IV. Transfer of risks

All risks shall transfer to the Customer as soon as the shipment has been handed over to the forwarder or has left the Contractor's warehouse in preparation for despatch. If despatch proves impossible for reasons for which the Contractor is not responsible, all risks shall transfer to the Customer as soon as the Customer has been notified that the shipment is ready for dispatch.

V. Right of rescission

1. In the event of a deterioration in the Customer's financial circumstances subsequent to the signing of contract, such as an application for the initiation of bankruptcy proceedings or court composition proceedings or the request for and implementation of an out-of-court settlement, fruitless execution or the protesting of cheques or bills or other events of this nature affecting the Customer, we are entitled to rescind all those parts of the contract which have not yet been performed.
2. In the aforementioned cases, we are entitled to take back any goods which, under the reservation of title agreed in VI, are still our property, pending the settlement in full of all outstanding claims.

VI. Reservation of title

1. The Vendor/Contractor reserves its title to the objects delivered (reserved goods) pending the settlement of all claims (including all claims ensuing from the current-account balance) accruing to the Vendor/Contractor on the Buyer/Customer now or in the future, irrespective of the legal basis for the said claims.

2. The goods can be processed or modified for the Vendor/Contractor as the manufacturer of the goods, but without obligation for it. If the Vendor's (co-) ownership of the goods is extinguished by their combination, it is hereby agreed that the Vendor/Contractor's (co-)ownership of the combined product shall be made over to the Vendor/Contractor as a proportion of the invoice value of the said product. The Buyer/Customer shall preserve the Vendor/Contractor's (joint) property at no cost to the latter.
3. The Buyer/Customer is entitled to process and sell the reserved goods in the course of its ordinary business activities as long as it is not in default. The mortgaging of the goods or transfer of title as collateral are inadmissible. The Buyer/Customer hereby assigns in full to the Vendor/Contractor all claims (including all claims ensuing from a current-account balance) accrued from the resale of the reserved goods or on any other legal basis (insurance, unlawful acts). The Buyer/Customer is empowered, subject to revocation, to collect in its own name the claims assigned to the Vendor/Contractor for its account. These powers of collection can be revoked only if the Buyer/Customer fails to honour its payment obligations.
4. The Buyer/Customer is entitled to assign the claims - including the sale of the said claims to factoring banks - only with the written consent of the Vendor/Contractor. In the event of default and if so requested with just cause, the Buyer/Customer shall provide the Vendor/Contractor with the names of the third parties or assignees in question as well as providing the information required for collection and the necessary documents.
5. If the reserved goods are seized by third parties, the Buyer/Customer shall plead the Vendor/Contractor's title to the same and notify the Vendor/Contractor forthwith.
6. In the event of a breach of contract by the Buyer/Customer - especially default on payment - the Vendor/Contractor is entitled to take back the reserved goods or, if necessary, to demand their assignment by or enforce the claims for restoration of the Buyer/Customer on third parties. The taking back or pledging of the reserved goods by the Vendor/Contractor shall not - to the extent that the hire purchase act is not brought to bear - constitute a rescission of contract.
7. To the extent that the value of the collateral provided consistently exceeds the claims secured by more than 10%, the Vendor/Contractor shall release the collateral of its choice if so requested by the Buyer/Customer.

VI. Warranty

1. Any obvious faults shall be reported in writing without delay but no later than within one week of the receipt of the goods.
2. The warranty shall be confined to correction work. The Vendor/Contractor can elect to effect a replacement delivery instead of performing the said correction work.
3. If neither correction work nor a replacement delivery is possible or if these fail or are refused, the right to a reduction of the purchase price or a rescission of contract can be enforced.
4. There shall be no claims going beyond these. The right to damages for the absence of promised features, however, shall remain unaffected.

VII. Limitation of liability

There shall be no claims to damages for impossibility of performance culpa in contrahendo, the violation of subsidiary contractual obligations and unlawful acts either on the Vendor/Contractor or on its vicarious agents, unless these are attributable to intent or gross negligence. Claims of this nature shall lapse after ½ year.

VIII. Works contracts

1. Works contracts for non-representative goods (customized goods)
2. If the contract is terminated for reasons for which the Contractor is answerable the Contractor shall be entitled to remuneration only for the performance rendered prior to the date of termination.
3. In all other cases, the Contractor reserves its claim to the agreed remuneration, but subject to the deduction of the expenses saved. Unless the Customer provides evidence to the contrary, the Contractor is entitled to claim 20% of the agreed remuneration or the compensation of the losses actually incurred without having to provide evidence of the same.

IX. Counterclaims, right of retention

1. Counterclaims cannot be set off unless the counterclaim in question is undisputed or legally enforceable.
2. There shall be no right of retention based on other contractual relations.

X. Applicable law, jurisdiction and final provisions

1. These terms of business and all the legal relations between the Vendor/Contractor and Buyer/Customer shall be governed by the laws of the Federal Republic of Germany. The terms of the Hague Convention on the International Sale of Goods shall not apply.
2. To the extent that the Buyer/Customer is a merchant, judicial person under public law or a bearer of public funds, any disputes ensuing directly or indirectly from this contract shall be settled in Neumarkt i.d.OPf. only.
3. If any of the above terms or parts thereof are or become null and void or cease to be an integral part of this contract, the remaining terms shall not be affected. The invalid terms shall be replaced by such terms as best approximate the intended purpose in a legally acceptable manner.