

**§ 1 - Scope**

- (1) The following Sales Terms and Delivery Conditions shall apply exclusively; contradicting or deviating conditions of the customer will not be accepted by us. To the extent that our conditions do not include any specific provisions, the statutory provisions shall be applicable regardless of possible commercial practices. Our conditions shall also apply when we perform the delivery being aware of contradicting or deviating conditions of the customer.
- (2) Amendments or changes to the contract require the written form to be valid.
- (3) Our General Sales Terms and Delivery Conditions are applicable only towards entrepreneurs in terms of § 14 BGB (German Civil Code), legal entities under public law or specialised entities under public law.
- (4) Our Sales Terms and Delivery Conditions shall also apply to all future transactions with the customer.

**§ 2 - Delivery / Delivery time**

- (1) Scope and content of the delivery owed is based on our offer and the referring order of the customer.
- (2) The stated time for delivery starts after clarification of all technical and organisational issues. Adherence to our delivery obligation furthermore requires the performance of the customer's obligations in due time and proper form. Defence of lack of performance of the contract shall be reserved.
- (3) Force majeure and similar events, including war, civil commotion, legal industrial action and illegal strikes, instructions of higher authority, lack of energy and commodities, traffic holdups and inevitable business disruptions as well as fire - also on the premises of our suppliers - shall release us from the obligation for delivery and service. In case of unforeseeable length, however not before 30 days as of their occurrence, the circumstances in terms of sentence 1 of this clause shall entitle us to withdraw from the contract in whole or in part without the customer being entitled to damages; the same shall apply if the circumstances mentioned make the performance of the contract sustainably impractical and for us, an adherence to the contract is unreasonable. We will inform the customer about an event of force majeure or similar events as soon as possible.
- (4) The events listed above shall apply accordingly as elements for release from performance on the part of the customer, provided that they occur on the customer's premises or within the customer's domain and organisational area.
- (5) Deliveries will be made ex works, INCOTERMS 2010, if not otherwise agreed. The risk of accidental perishing or accidental degradation of the delivery shall transfer to the customer ex works. This shall also apply if we deliver or have the delivery made to the customer's place of business or to another place on request. Provided that the customer wishes a special transport insurance or other insurance, the customer shall order this in writing and reimburse possible extra costs.

**§ 3 - Delay in delivery / Default of acceptance**

- (1) In the event that the underlying sales contract includes a settlement deal in terms of § 286 Clause 2 No. 4 BGB or § 376 HGB (German Commercial Code), our liability in case of delay in delivery shall be based on the statutory provisions. The same shall be applicable if due to delay in delivery, for which we are responsible, the customer is entitled to claim that he is no longer interested in the continuance of the contract. However, the liability for damages the cases mentioned above shall be limited to the foreseeable damage which may typically occur.
- (2) Furthermore, we shall be liable according to the statutory provisions if the delay in delivery is based on intentional or grossly negligent breach of contract for which we are responsible; any fault of our representatives or vicarious agents shall be attributed to us.
- (3) If the delay in delivery for which we are responsible is based on the breach of an obligation essential to the contract, the performance of which is required to achieve the aim of the contract, we shall also be liable under the statutory provisions.
- (4) In the aforementioned cases of clause (1) to (3), our liability shall be limited to the foreseeable damage which may typically occur.
- (5) (Incidentally, in case of delay in delivery we shall be liable for each complete week only in the scope of a standard compensation for delay to the amount of 1 % of the delivery value, however not more than 5 % of the net delivery value (max.).
- (6) Further statutory claims and rights of the customer which do not refer to the damage caused by delay and are not otherwise settled in these conditions shall remain reserved.
- (7) If the customer is in default of acceptance (e.g. less than the ordered quantity was delivered at the end of contract) or if the customer is culpably in breach of other obligations to cooperate, we shall be entitled to demand compensation for the damage incurred to us in so far, including possible additional expenditures. Further claims or rights shall be reserved.
- (8) Provided that the requirements of clause (7) exist, the risk of accidental perishing or accidental degradation of the delivery shall transfer to the customer at the time when the customer is in default of acceptance or payment; we are however obligated to appropriately store the delivery at the customer's expense.

**§ 4 - Prices / Terms of payment**

- (1) Unless otherwise agreed, the particular prices shall apply ex works net plus statutory VAT as applicable.
- (2) Unless otherwise agreed, all invoice amounts shall be due net cash without any deductions within 14 days of the date of the invoice. The statutory regulations regarding default in payment shall apply. The deduction of cash discount requires special agreement.
- (3) We only accept bills of exchange when this is specifically agreed in writing. In this case the customer shall pay the discount charges. The payment is deemed to be made only when the amount owed is irrevocably credited to us.
- (4) The customer is only entitled to offsetting if the counterclaim is judged by final decision, undisputed or accepted by us. However, the customer is entitled to exercise the right of retention concerning counterclaims under the same contractual relationship.
- (5) If the customer falls behind with payment, we shall be entitled to demand interest for the outstanding amount due of 9 (in words: nine) percentage points above the basic interest rate p.a. stated as appropriate in § 247 BGB as damage caused by delay. We reserve the right to claim a higher interest rate and/or higher damage caused by delay.
- (6) The supplier (contractor) may adjust the prices to be paid by the customer on the basis of this agreement at its reasonable discretion in the event of a change in the limitation of the EEG apportionment applicable to it (sections 63 No. 1, 64 EEG), in the event of a discontinuation of the limitation of the EEG apportionment or of a complete discontinuation of the EEG apportionment. A price increase as well as a price reduction may be considered if changes in the legal situation with regard to the EEG surcharge occur and lead to a changed cost situation. Increases in one type of cost may only be used for a price increase to the extent that they are not offset by any declining costs in other areas.

**§ 5 - Customer's delay in payment**

- (1) The time for payment of the invoice amounts within 14 days after invoice date according to § 4 clause (2) or any agreement deviating hereof is conditioned upon the customer meeting his payment obligations according to contract and the fact that the customer's economic capacity does not significantly change to the worse.
- (2) If the customer falls behind with two undisputed payment obligations under the contract we shall be entitled to demand immediate payment for all bills outstanding, even if they are not yet due for payment. We will immediately inform the customer in text form (in writing, via fax or e-mail) on the demand for immediate payment of all bills outstanding.

**§ 6 - Credit rating / provision of a security**

- (1) With our delivery to the customer we advance the funds. For checking and hedging the payment risk involved we shall be entitled to continuously check the customer's credit rating during the contract period. The customer agrees that for checking the creditworthiness we will exchange data with third parties, in particular with our commercial credit insurer and with credit agencies; the provisions of the German Data Protection Act will be observed in this process.
- (2) If owing to the circumstances of the individual case it is to be assumed that the customer will not meet contractual payment obligations in whole or in part or not in due time, we shall be entitled to effect our delivery only versus payment of the delivery to hedge our delivery risk. Instead of delivery versus payment, the customer has the option to furnish a security to an appropriate amount, however not less than the average amount of payments to be made for two deliveries.
- (3) The assumption according to clause (2) is in particular applicable and justified, if
  - a) the customer is late with two undisputed payment obligations under the contract, or
  - b) according to the assessment of "Verband der Vereine Creditreform e.V." or other generally accepted credit agencies queried by us, the customer's credit rating index is classified worse than "good credit rating" (Creditreform: 250 or higher), or
  - c) the commercial credit insurer queried by us does not grant the credit hedging for the customer by indicating lack of the customer's creditworthiness or cancels the existing credit hedging, or
  - d) the customer has concluded an affiliation agreement in terms of §§ 291ff. AktG (German Stock Companies Act) as a dependent company and this affiliation agreement is cancelled, withdrawn, not acknowledged, revoked or declined in whole or in part, or if the effectiveness of such an affiliation agreement is contested or obligations under this affiliation agreement are not met in any other way, or
  - e) a security in favour of the customer, in particular a binding letter of comfort, a loan guarantee or a letter of subordination is revoked.
- (4) The customer is free to render the security according to § 6 clause (2) in the form of a cash security or in the form of an unconditional, irrevocable joint and several guarantee of a German bank. The guaranteeing bank needs to have a rating in the range of "A" by Standard & Poors or an equivalent rating from another comparable rating agency.
- (5) We will realise the security only to the extent required for the fulfilment of the outstanding payment obligations as well as to cover the charges payable for default resulting from non-payment (including interest on late payments and other damage for delay).
- (6) We shall be obligated to return the securities mentioned in clause (4) in whole or in part, provided that the requirements for providing the securities according to clause (2) cease to apply.
- (7) We will notify the customer in writing on the realisation of all securities mentioned above by fixing a term of ten bank working days, unless it is to be assumed that settlement from the securities would be too late otherwise.
- (8) The customer can demonstrate within a term of ten bank working days as of notification on the realisation according to clause (7) that the damage we actually suffered is less than the amount compensated by the realisation of the securities.

**§ 7 - Interruption / termination of delivery**

- (1) Notwithstanding our other rights we shall be entitled to interrupt or terminate delivery to the customer when the customer's economic capacity according to § 6 clause (3) has changed to the worse and the customer, despite of our request by stating a deadline, did not pay in return for delivery versus payment and also did not furnish a security. This right shall continue to exist until receipt of payment in return for delivery or the owed security.
- (2) We will announce to the customer the intended interruption or termination of delivery at least 3 working days prior to the planned interruption or termination of delivery, provided that the customer does not order at an earlier date.

**§ 8 - Liability for defects**

- (1) The customer is obligated to immediately inspect the deliveries according to § 377 HGB and to claim possible notices of defects.
- (2) Clause (1) shall also apply to excess delivery or short delivery as well as to wrong delivery.
- (3) Provided that a defect exists and was complained in due time we shall be entitled at our discretion to supplementary performance in the form of removal of defects or delivery of an item free of defects. We will bear the expenses required for the purpose of supplementary performance. Should the supplementary performance fail, the customer is entitled to rescission of the contract, provided that a serious violation of obligations exists, or to demand reduction of the remuneration. In addition, the customer can also demand damages instead of performance, provided that our limitation of liability of § 8 clause (5) to (8) does not apply.
- (4) (The statutory period of limitation shall be one year for newly manufactured items and starts by delivery of the item to the customer or to the carrier appointed by the customer. Liability for defects shall be excluded for used items being offered. The statutory period of limitation in case of delivery recourse according to §§ 478, 479 BGB shall remain unaffected. The regulation of § 8 clause (5) to (8) shall apply accordingly to the limitation of our liability.)
- (5) Provided that nothing else results from the following provisions in § 8 clause (6) to (8), our liability for damages shall be excluded.
- (6) In the event of intentional or grossly negligent damage, including intent and/or gross negligence of our representatives or vicarious agents we shall be liable according to the statutory provisions. This shall also apply in case of culpable violation of contract, provided that this refers to an essential contractual obligation, the performance of which is required to achieve the objective of the contract. Furthermore, the statutory provisions shall be applicable to liability for damages instead of performance in case of significant breach of duty. However, in all cases mentioned before (except in case of our willful intent), the liability shall be limited to the extent of the particular foreseeable damage which may typically occur.
- (7) The statutory liability under the Product Liability Act due to damage arising out of death, injury to body or health or due to warranty for the appearance and workmanship of the goods shall remain unaffected.
- (8) Provided that the liability is limited according to the provisions mentioned above, this shall also apply to the personal liability of our employees, salary earners, representatives and vicarious agents.

**§ 9 - Other liability**

- (1) The limitations of liability under § 8 clause (5) to (8) shall also be applicable to all other claims, irrespective of the cause in law taken as a basis for the claims towards us.
- (2) Provided that tortious claims are asserted against us, the statutory period of limitation shall remain unaffected; The customer however shall be obligated to take legal action for possible tortious claims for damages (except those which are caused by defect in delivery) towards us within a preclusion period of 18 months after being aware of all requirements which constitute the claim.

**§ 10 - Retention of title**

- (1) We reserve title in all deliveries until settlement of any and all outstanding debts which already resulted between the customer and us due to the business relationship existing between us up until the time of the particular contract conclusion. Provided that a current account relationship is agreed between the customer and us, the retention of title shall also refer to the particular accepted balance. The same shall apply if a balance is not acknowledged, but a "causal" balance is determined, e.g. because the customer is adjudged bankrupt or put into liquidation. In the event of conduct contrary to the terms of contract, in particular in the event of delay in payment, we shall be entitled to withdraw the goods. Our withdrawal of the goods shall constitute a rescission of the contract. After withdrawal of the goods we shall be entitled to their realisation; the proceeds of sale shall be credited against the customer's liabilities, minus reasonable costs of realisation.
- (2) The customer shall be entitled to sell on the goods delivered subject to retention of title to third parties in the ordinary course of his business. Already now, the customer shall assign to us any claims he may be entitled to from resale towards his purchasers or third parties, irrespective of whether the goods were sold on without subsequent processing or after subsequent processing. The claim assigned to us by the customer also relates to the acknowledged and/or a "causal" balance. The assignment is limited to the amount of the claim agreed as invoiced final (gross) amount between the customer and us. We accept the assignment. The customer shall be entitled to collect this account as long as he is not delayed with payments. If this should happen, we shall be entitled to revoke the collection authorisation; in this case the customer shall be obligated to provide to us all information required for collection and to deliver the appropriate documents to enable us to collect the account towards the purchasers on our own. In case of cancellation of the collection authorization, the customer shall inform the debtors on the assignment. We shall be entitled to cancel the authorisation for resale and the collection authorisation even if the customer is in significant financial difficulties or insolvency proceedings have been filed.
- (3) If the customer should process or remodel any goods subject to retention of title, this always is done for us. Provided that the customer processes such goods subject to retention of title with objects which are not our property, we shall acquire joint ownership in the new goods in proportion of the value (invoiced gross final amount) of our goods subject to retention of title vs. the value of the other processed goods at the time of processing. The customer shall keep the joint ownership in custody for us. Incidentally, for the goods created by processing, the same shall apply as for the goods delivered subject to retention of title.
- (4) Provided that the goods delivered by us subject to retention of title is inextricably combined with other goods/items not owned by us, we shall acquire joint ownership in the new goods in proportion of the value (invoiced gross final amount) of the sales items vs. the other combined goods at the time of combination. If the combination is made in a way that the customer's item is to be considered as the main item it shall be deemed agreed that the customer assigns joint ownership to us on a pro-rata basis. The customer shall keep the created joint ownership in custody for us.
- (5) The customer shall be obligated to handle the delivered goods as well as goods in joint ownership with care; the customer is in particular obligated to have them sufficiently insured for their replacement value at his own expense against damage arising from fire, water and theft. Provided that measures for conservation and safeguarding are required, the customer has to perform them at his own expense in due time.
- (6) If the liquidable value of the securities we are entitled to should exceed the nominal value of our accounts receivable by more than 10%, we shall be obligated to release the corresponding securities on request of the customer; it shall be for us to select the securities to be released.
- (7) In the event of garnishment or other thirdparty interventions the customer shall immediately inform us in writing, in particular to enable us to take action according to § 771 ZPO (German Code of Civil Procedure). If the third party should not be able to reimburse to us the court and out-of-court expenses of an action according to § 771 ZPO, the customer shall be liable for the default incurred by us.

**§ 11 - Pallet exchange, compensation for lost value**

- (1) In the event of delivery on pallets, the customer will receive the goods on pallets corresponding by size, type and condition (jointly: quality) for euro-pallets at least to class "B" according to GS1 standard; for delivery on other pallets these will correspond at least to a quality equal to class "B" according to GS1 standard..
- (2) The customer is obligated to deliver to us in exchange (performance upon counter-performance) the same number of empty pallets (exchange pallets), which furthermore have to correspond with regard to their quality at least to such pallets on which the goods are delivered.
- (3) If exchange pallets are not delivered to us in due time or in a sufficient number we shall be entitled to demand liquidated damages to the amount of € 10.00 per pallet. Furthermore, we shall be entitled to refuse exchange pallets of the customer with lower quality than defined in clause 1 and to demand liquidated damages to the amount of € 10.00 per refused pallet. For each of the events mentioned we reserve the right to claim a higher value for replacement and/or higher costs of replacement.

**§ 12 - Place of jurisdiction / Miscellaneous**

- (1) The registered office of our company (place of business) shall be the exclusive place of jurisdiction for all disputes resulting from or in connection with possible tortious claims ; however, we shall be entitled to sue the customer also at his place of business. Sentence 1 shall be applicable only towards merchants, legal entities under public law or specialised entities under public law.
- (2) The law of Germany shall be deemed agreed for all contracts; the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
- (3) Place of performance for all obligations resulting under the contract, including payment obligations of the customer, shall be our place of business. Sentence 1 shall be applicable only towards merchants, legal entities under public law or specialised entities under public law.