

# Terms and Conditions of Sale and Delivery

## §1 General – Scope

1. These general terms and conditions of sale and delivery apply to all existing and future agreements on deliveries with consumers, companies, legal entities under public law and public-law special funds. At the latest with the receipt of our goods, these terms and conditions are deemed accepted. Terms and conditions of the buyer do not obligate us even if we do not expressly contradict them again. Individual agreements concluded with the customer on a case-by-case basis (including side agreements, supplements and amendments) take priority over the general terms and conditions of sale and delivery in any case. The content of such agreements shall be subjected to a contract or our confirmation in writing. Amended from time to time, these terms and conditions will also apply to contracts to be concluded with the same customer on the sale and/or delivery of goods, without the need for additional notification in each case.
2. Consumers within the meaning of these terms and conditions are natural persons, with whom business relations are entered into, without any commercial or independent professional activity being attributed to them. Entrepreneurs within the meaning of these terms and conditions are natural persons or legal entities or partnerships with legal capacity, with whom business relationships that are related to the exercise of a commercial or independent professional activity are entered into. Customer within the meaning of these terms and conditions refers to both consumers and entrepreneurs.

## §2 Conclusion of the contract

1. Our offers are non-binding. Technical changes and changes in shape, colour and/or weight are reserved within reasonable limits.
2. With the order of a commodity, the customer makes a binding declaration on his intent to purchase the ordered commodity. We are entitled to accept the contract offer in the order within two weeks after receipt. The acceptance can be declared either in writing or by delivery of the goods to the customer.
3. The contract is concluded subject to the proper and timely delivery by our suppliers. This applies only if we are not responsible for the non-delivery, especially when concluding a congruent hedging transaction with our supplier. The customer is informed immediately about the unavailability of the service. The consideration will be refunded immediately.

## §3 Retention of title

1. We reserve the ownership of the goods until full payment of the purchase price. We reserve the ownership of goods, bought by the customer from us as part of an ongoing business relationship, until settlement of all of our claims, arising from the business relationship, including claims arising in the future – also from contracts concluded simultaneously or later. This also applies if individual or all claims have been accepted by us in a current account, and the balance is struck and recognised. In case of payment default, the customer is obliged to return the goods and we are entitled to take back the same. We are entitled to recycle the goods returned, and the recycling proceeds shall be credited against the customer's liabilities, less reasonable recycling costs. The treatment and processing of the goods – subject to retention of title – shall always be done for us, without giving rise to any obligations for us. If our ownership of the goods expires due to their combination, mixing or processing, the customer assigns his property rights to the new object to us at the time of the conclusion of the contract to the extent of the invoice value of the goods subject to retention of title, and stores them for us free of charge. The same applies to the property rights arising thereafter as for the goods delivered under retention of title.
2. The customer is entitled to sell the goods in the ordinary course of business. The claims of the customer from the resale of the goods subject to retention of title, including any rights under the Builder Protection Act, shall be assigned to us now. We accept this assignment. They serve as security to the same extent as the goods subject to retention of title. The same applies to the claim for granting a legal mortgage pursuant to Section 648 BGB (German Civil Code). If the goods subject to retention of title are sold by the customer together with other goods that are not delivered by us, the claim from the resale is assigned in the ratio of the invoice value of our goods to the other sold goods. When selling goods, in which we have co-ownership shares, a part corresponding to our ownership is assigned to us.
3. The customer is entitled to collect claims from the resale, unless we cancel the direct debit authorisation. At our request, he is obliged to inform his customers immediately of the assignment to us, unless we do this ourselves, and to provide us with the information and documents necessary for collection, which may include the names and addresses of debtors and construction sites. The customer is not entitled to any further assignment of the claim. The customer is allowed to assign by means of real factoring only under the condition that this is indicated by disclosure of the factoring bank and the customer's accounts held there, and that the factoring proceeds exceed the value of our secured claim. Our claim becomes due once the factoring proceeds are credited.
4. The customer is required to handle the product with care. The customer must inform us immediately about any access by third parties to the goods subject to retention of title, and the assigned claims.
5. At the request of the customer, we undertake to release the collateral to which we are entitled insofar as their realisable value exceeds the claims to be secured by 20%.

## §4 Remuneration

1. The offered purchase price is binding. All prices are net plus VAT. In case of sale by dispatch, the purchase price is plus the flat delivery fee of 10% of the net value, but at least € 150.00 net. We are entitled to charge the freight costs for orders with a net invoice amount below € 750.00. If we have paid freight costs, we do not assume the transport risk at the same time (Section 5 of these conditions remains unaffected).
2. Our invoices shall be payable 30 days after the date of invoice in cash without any deduction. We shall only accept eligible bills or checks subject to express agreement, only without guarantee for protest and only for the purpose of payment. Discount charges, bank charges and bill of exchange tax shall be borne by the Orderer. Bills and checks shall only be considered as payment after their redemption. No payments shall be deemed to have been made unless the paid amount is available to us in cash or has been credited to one of our accounts without reservation. If the Orderer is in default of payment, he shall pay from the due date interest in the amount of the credit cost to be paid by us but no less than 8 percentage points above the base rate, unless the Orderer submits evidence of a lower damage caused by default in payment. The right to assert more extensive damages shall be reserved. If after the conclusion of the agreement we become aware of circumstances which could essentially reduce the credit standing of the Orderer, we shall be entitled to carry out any outstanding deliveries from this or other transactions only against advance payment. As far as goods already delivered but not yet paid are concerned, the Orderer shall furnish sufficient collateral on request at any time. If the Orderer fails to make an advance payment or furnish collateral, we shall be entitled, after an appropriate subsequent period, to rescind the agreement or demand damages instead of performance. These provisions shall not only apply to circumstances which occur after the conclusion of the agree-

ment but also to those which existed prior to the conclusion of the agreement, unless they were known or detectable for us on conclusion of the agreement.

3. The customer has the right to offset only if his counterclaims have been legally established or recognised by us. The customer can exercise a right of retention only if his counterclaim is based on the same contractual relationship.

## §5 Transfer of risk

1. The risk of accidental loss and accidental deterioration of the goods shall pass to the buyer upon dispatch, in the case of sale by dispatch – already upon delivery of the goods to the carrier, the freight forwarder or the person or institution otherwise responsible for delivery of the shipment.
2. It is equivalent of the transfer if the buyer is in default of acceptance.
3. The customer is solely responsible for unloading the delivery vehicle and providing suitable unloading equipment and the required personnel. If the unloading process exceeds a reasonable deadline depending on the circumstances of the case, a reasonable compensation (demurrage) may be demanded, amounting to at least the demurrage charged by the carrier.

## §6 Warranty

1. The customer is obliged to immediate inspection of the goods. All obvious and/or detected defects, shortages and wrong deliveries must be reported immediately in writing. Further obligations of the merchant pursuant to Section 377 HGB remain unaffected.
2. If the customer detects defects of the goods, based on which he wishes to assert rights, he may not dispose of the goods, i.e. they may not be shared, passed on, resold or further processed until an agreement has been reached on the handling of the claim. The customer is also obliged to give us the opportunity to determine the notified defect on the spot or, at our request, to provide the defective object or sample claimed.
3. The customer bears the full burden of proof for all conditions of the claim, in particular for the defect itself, for the time of the detection of the defect and for the timeliness of the notice of defects.
4. If the customer is an entrepreneur, the condition of the goods is basically only our product description as agreed. Public statements, suggestions or advertising do not constitute a contractual indication of the quality of the goods. The customer does not receive any legal guarantees from us.
5. If the customer receives faulty instructions for use, we are only obliged to deliver correct instructions for use.
6. Liability for damage resulting from unsuitable or improper use, incorrect assembly, alteration of the goods, incorrect or negligent handling or natural wear and tear is excluded.
7. In the presence of a defect, we will initially provide warranty for defects in the goods at our discretion through repair or replacement delivery. In case of failure of the remedy (subsequent performance) in the form of repair or replacement delivery, the customer is generally free to demand reduction in the remuneration or cancellation of the contract. The customer has no right of cancellation in the event of a minor breach of contract, in particular, only minor defects.
8. If the customer chooses to cancel the contract because of a legal and material defect after failed subsequent performance, he is not entitled to any claim for damages due to the defect. If the customer chooses compensation for damages after failed subsequent performance, the goods remain with the customer, if this is reasonable for him. The compensation is limited to the difference between the purchase price and the value of the defective item. This does not apply if we have fraudulently caused the breach of contract.
9. Claims for defects expire after 1 year. This does not apply if longer periods are mandatory under the legislation pursuant to Section 438 subsection 1 no. 2 (buildings and construction items), Section 445b (right of recourse) and Section 634a subsection 1 no. 2 (construction defects) BGB or other regulations.
10. Recourse claims of the customer pursuant to Section 445a BGB exist only if the claimed defect already existed when the risk was transferred to the customer. The customer must observe the existing obligations to inspection and notice of defects pursuant to Section 377 HGB (German Commercial Code). If the customer violates the existing obligations to inspection and notice of defects, we are not obliged to replace the asserted claim for recourse pursuant to Section 445a subsection 4 BGB. The customer shall bear the costs of our unauthorised recourse in this case.

## §7 Limitation of liability

1. We are liable for intent and gross negligence of our executive bodies and executives as well as in case of injury to life, limb or health. The liability for the violation of essential contractual duties is limited to the contractually foreseeable damage. An essential contractual liability is an obligation, whose fulfilment is a prerequisite for proper execution of the contract and compliance will be assured to the contractual partner at all times.
2. Any liability for normal and slight negligence of the executive bodies and executives is excluded.
3. We are unconditionally liable if our vicarious agents act intentionally or cause injury to life, limb or health within the meaning of Section 278 BGB. The liability is limited to the contractually foreseeable damage in the event of gross negligence or violation of essential contractual duties within the meaning of subsection 1 by vicarious agents pursuant to Section 278 BGB. Any liability for vicarious agents is excluded.
4. The provisions of the Product Liability Act remain unaffected by the above provisions.
5. If the customer is responsible for a product damage, he is obliged to indemnify us from third-party claims for damages on first request, insofar as the cause is within his scope of control and organisation and he is liable in the external relationship by himself.
6. As part of his liability for claims within the meaning of subsection 5, the customer is also obliged to reimburse any expenses incurred from a recall action carried out by us. We will inform the customer as far as possible and reasonable about the content and scope of the recall measures to be carried out and give him the opportunity to make his statement. This does not affect any other statutory claims.

## §8 Final provisions

1. In the case of disputes arising from the contractual relationship, the place of jurisdiction is Borgholzhausen, insofar as the buyer is a commercial customer in the form of a registered trader. If the buyer is a consumer, the legal regulations apply to the place of jurisdiction.
2. The law of the Federal Republic of Germany applies to the legal relations of the contracting parties. The provisions of the UN Sales Convention do not apply.
3. Any individual provisions of these terms of sale and delivery that are or become invalid shall not affect the validity of the remaining provisions. The ineffective provision shall then be replaced by a valid provision, which comes as close as possible to the intended purpose and the presumed will of the contracting parties.

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