

# General Terms and Conditions of Sale (GT&Cs)

**As of: September 2024**

## **I. Scope of applicability**

1. These General Terms and Conditions of Sale shall apply to all our business relationships with our customers ("Buyers"). The General Terms and Conditions of Sale shall only apply if the Buyer is a trader (Section 14 of the German Civil Code [*Bürgerliches Gesetzbuch*, BGB]), a legal person under public law or a special fund under public law within the meaning of Section 310(1) BGB.
2. Our General Terms and Conditions of Sale shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Buyer shall only become part of the contract if and insofar as we have expressly consented to their applicability. This consent requirement shall also apply if, in the context of a purchase order, the Buyer refers to their General Terms and Conditions (GT&Cs) and we have not expressly objected to the GT&Cs.
3. These General Terms and Conditions of Sale shall apply to contracts for the sale and/or supply of movable items and/or services ("Goods"). It shall not matter whether we manufacture the goods ourselves or purchase them from suppliers (Sections 433, 650 BGB). Unless otherwise agreed, the General Terms and Conditions of Sale in the version valid at the time of the Buyer's order or in the version last communicated to them in text form shall also apply as a framework agreement for similar future contracts, without us as the seller having to refer to them again on a case-by-case basis.
4. Individual agreements made with the Buyer on a case-by-case basis (including collateral agreements, modifications and amendments) and information in our order confirmation shall take precedence over these General Terms and Conditions of Sale. In the absence of evidence to the contrary, a written contract or our written confirmation shall be decisive for the contents of any such agreements.
5. Legally relevant declarations and notifications by the Buyer with regard to the contract (e.g., notification of defects, setting deadlines, revocation or reduction) shall be made in writing, i.e. in written and text form (e.g., letter, e-mail, fax). Further legal formalities and additional proofs (if necessary, in case of doubt about the legitimacy of the party making a declaration) shall remain unaffected.
6. If references are made to the applicability of statutory provisions, it should be noted that these are for clarification purposes only. The statutory provisions shall apply - even if no corresponding clarification has been made - to the extent that they have not been amended or excluded by the General Terms and Conditions of Sale.

## **II. Offer and conclusion of contract**

1. Our offers are subject to change and not binding. This shall also apply if we have provided the Buyer with catalogues, technical documentation (e.g., drawings, plans, calculations, costings, references to DIN standards) and other product descriptions or documents (including in electronic form). We shall reserve proprietary rights and copyrights in respect of all the documents provided to the Buyer relating to the placement of an order. These documents may not be made accessible to third parties, unless we have given the Buyer our express written consent for this purpose.
2. When the buyer places an order for goods this shall constitute a non-binding offer to enter into an agreement pursuant to Section 145 BGB. In the event that nothing to the contrary arises from the order, we shall be entitled to accept this offer to enter into an agreement within two weeks after our receipt thereof.
3. Acceptance of the Buyer's offer to enter into an agreement can be declared either in writing (e.g., via an order confirmation) or via the delivery of the goods to the Buyer. In the event that we, as the seller, do not accept the Buyer's offer within the period specified in section II.(2.), any documents that were sent to the Buyer shall be returned to us immediately.

## **III. Prices and payment arrangements**

1. Unless otherwise agreed in writing for individual cases, our prices ex warehouse current at the time of the conclusion of the contract shall apply, plus statutory value added tax. The cost of packaging will be charged separately. If no fixed price agreement has been made, we reserve the right to make reasonable price adjustments due to changes in the cost of wages, materials and distribution for deliveries that take place 2 months or more after the conclusion of the contract.
2. In the context of a sale involving the carriage of goods, the Buyer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the Buyer. In the event that we do not invoice the transport costs incurred in the individual case, we shall charge a flat-rate transport fee (excluding transport insurance) of EURO 250.00. Any customs duties, fees, taxes and other public charges shall be borne by the Buyer.
3. Payment of the purchase price shall be made solely to the account specified on the invoice. The deduction of a cash discount is only permitted where there is a special written agreement.
4. Unless otherwise agreed, the purchase price shall be due and payable within fourteen days of the invoice issue date and delivery or acceptance of the goods. However, even within the framework of an ongoing business relationship, we are entitled at any time to make a delivery, either wholly or in part, solely against advance payment. We shall declare a corresponding reservation, at the latest, with the confirmation of the order.

5. The Buyer shall be deemed to be in default once the above payment term has expired. During the period of default, interest shall be charged on the purchase price at the respective current statutory rate of default interest pursuant to Section 288(2) BGB in the amount of nine percentage points above the respective basic rate of interest. We reserve the right to claim additional compensation for damage caused by the default. Our entitlement to the interest rate on arrears in commercial transactions between traders, accruing as from the due date pursuant to Section 353 of the German Commercial Code (*Handelsgesetzbuch*, HGB), shall remain unaffected.
6. If, after the conclusion of the contract, it is foreseeable that our entitlement to payment of the purchase price is jeopardised due to the Buyer's inability to perform (e.g. as a result of filing a petition for the opening of insolvency proceedings) then, under the statutory provisions (Section 321 BGB), we would be entitled to refuse performance and, where applicable after setting a deadline, revoke the contract. Contracts where we have undertaken to manufacture non-fungible items (customised products) may be revoked by us immediately. The statutory provisions on the dispensability of the setting of a time limit shall remain unaffected in this respect.

#### **IV. Rights of retention**

The Buyer shall be entitled to a right of set-off or have the right of retention solely in the case where their claim has been legally established or is undisputed and their counterclaim is based on the same contractual relationship. In the event that defects occur within the scope of the delivery, the Buyer's opposing rights, in particular in accordance with IX.(6.) sentence 2 of these General Terms and Conditions of Sale, shall remain unaffected.

#### **V. Delivery time and delay in delivery**

1. The delivery time shall be agreed individually or specified by us upon acceptance of the order. If this is not the case, the delivery shall be approx. 2 weeks from the time of the conclusion of the contract.
2. In the event that we are unable to meet contractually agreed delivery times for reasons for which we are not responsible, we must inform the Buyer of this circumstance without delay and, in parallel, communicate to them the expected or new delivery time. If a delayed delivery cannot be made due to non-availability of performance even within the newly announced delivery time, we shall be entitled to revoke the contract wholly or in part; we must immediately reimburse any consideration already provided by the Buyer (in the form of payment of the purchase price). An example of non-availability of performance is where our supplier has not delivered to us on time, where we have concluded a congruent hedging transaction, where there are other disruptions in the supply chain (for instance, due to force majeure) or where we are not obliged to source in individual cases.

3. Whether or not we, as the seller, are responsible for the delay in delivery shall be determined in accordance with the statutory provisions. However, the prerequisite for a delay in delivery by us, as the seller, is a reminder from the Buyer. In the event that there is a delay in delivery, the Buyer may claim liquidated damages to compensate for the delay. The amount of liquidated damages shall be 0.5% of the net price (delivery value) for each completed calendar week of delay, it shall however not exceed 5% of the delivery value of the goods that are delivered late. We reserve the right to provide the respective proof that the Buyer has suffered no damage or only less damage than the above-mentioned amount of liquidated damages.
4. The Buyer's rights under X. of these General Terms and Conditions of Sale and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g., due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

## **VI. Delivery, transfer of risk, acceptance, default of acceptance**

1. Delivery shall be ex warehouse. The warehouse is also the place of performance for the delivery and the place for any subsequent performance. In the event that the buyer wishes to have the goods sent to another destination (sale involving the carriage of goods), they shall bear the forwarding costs. In the event that nothing has been contractually agreed, we may ourselves determine the type of forwarding (packaging, transport route, transport company).
2. The risk of accidental loss and accidental deterioration shall pass to the Buyer when the goods are handed over to the Buyer. In the case of a sale involving the carriage of goods, the risk of accidental loss of the goods, accidental deterioration of the goods and the risk of delay shall pass to the forwarding agent or carrier upon delivery of the goods. In the event that acceptance of the goods is contractually agreed, this shall be decisive for the transfer of risk. Further statutory provisions of the law on contracts for work and services (*Werkvertragsrecht*) shall remain unaffected. Where the Buyer is in default of acceptance, the delivery or acceptance of the goods shall be deemed to have taken place.
3. In the event that the Buyer is in default of acceptance or our delivery is delayed for other reasons for which the buyer is responsible, we shall be entitled to claim compensation from the claimant for the damage incurred, including additional expenses (e.g. storage costs). If this is the case, we shall charge the Buyer lump-sum compensation in the amount of EUR 50.00 per calendar day (starting with the delivery time or, if no delivery time is specified, as of the notification that the goods are ready for dispatch). Legal claims on our part (reimbursement of additional expenses, reasonable compensation, termination) and providing evidence of higher damages shall remain unaffected.
4. Providing evidence of higher damages and our statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination) shall remain unaffected; however, the lump sum shall be offset against further monetary claims. However, the Buyer reserves the right to provide evidence that we have suffered no damages at all or only significantly lower damages than represented by the above lump sum.

## VII. Retention of title

1. We shall retain title to the delivered goods until full payment of all our current and future claims arising from the sales contract and from the ongoing business relationship (secured claims).
2. Until the secured claims have been paid in full, the goods subject to retention of title may neither be pledged to third parties nor assigned as a collateral security. The Buyer must inform us immediately in writing if a petition for the opening of insolvency proceedings is filed or if third parties have access (e.g., via attachment orders)

to the goods belonging to us. If the third party is not in a position to reimburse us for the judicial and extrajudicial costs of an action pursuant to Section 771 of the Civil Procedure Code (*Zivilprozeßordnung, ZPO*) then the Buyer shall be liable for the loss incurred by us.

3. In the event of a breach of contract by the Buyer, in particular in the event of non-payment of the purchase price that is due, we shall be entitled to revoke the contract in accordance with the statutory provisions and/or to demand the return of the goods by reason of the retention of title. The demand for the return of the goods shall not, at the same time, include a revocation declaration; rather, we are entitled to demand only the return of the goods and to reserve the right to revoke the contract. Before exercising these rights, in the event that the Buyer does not pay the purchase price that is due, we must have set the buyer a reasonable deadline for payment and not had a result. This shall only apply if setting such a deadline is not dispensable under the statutory provisions.
4. Until revocation in accordance with VII.(4.)(c), the Buyer shall be authorised to resell and/or process, in the ordinary course of business, the goods that are subject to retention of title. In this case, the following provisions shall apply in addition:
  - a. The products that result from the combining, mixing or processing with our goods shall be subject to retention of title at their full value, whereby we shall be deemed to be the manufacturer. Where combining, mixing or processing with the goods of third parties means that the ownership rights of these third parties continue to exist then we shall acquire co-ownership in proportion to the invoice values of the combined, mixed or processed goods. Furthermore, the same shall apply to the resulting product as does to the goods delivered that are subject to the retention of title. The Buyer shall also assign to us, to serve as security, such claims that accrue to them against a third party by combining the goods subject to the retention of title with real property. In this case, we shall accept the assignment.
  - b. The Buyer shall assign to us already at this point in time, to serve as security, in total or in the amount of our possible co-ownership share pursuant to VII.(4.)(a), the claims against third parties arising from the resale of the goods or the product in the amount of the final invoice amount agreed with us (including value added tax). We shall accept the assignment. The obligations of the Buyer listed in VII.(2.) shall also apply with regard to the assigned claims.

- c. The Buyer shall remain authorised to collect the claim in addition to us. As long as the Buyer fulfils their payment obligations to us - it shall be deemed that there is no deficiency in the buyer's ability to perform and we shall not assert the retention of title by exercising a right in accordance with VII.(3) -, we undertake not to collect the amount receivable. If we exercise a right under VII.(3.), we may demand that the Buyer discloses the assigned claims and their debtors and that the Buyer provides all information necessary for collection, that they hand over the corresponding documents and inform the debtors (third parties) of the assignment. In addition, we shall be entitled to revoke the Buyer's authorisation to resell and process the goods that are subject to the retention of title.
  - d. In the event that the realisable value of the securities exceeds our claims by more than 10% then, at the Buyer's request, we shall release securities of our choice.
5. The Buyer is obliged to handle the purchased item with care until ownership has been transferred to them. In particular, they are obliged to insure the item adequately, at their own expense and at replacement value, against theft, fire and water damage. If maintenance and servicing has to be carried out, the customer must carry these out in good time at their own expense.

### **VIII. Buyer's claims for defects**

1. Unless otherwise specified below, the statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title (including wrong delivery and a shortfall in the delivery, as well as improper assembly/installation or inadequate instructions). This shall not affect the statutory provisions relating to the purchase of consumer goods (Sections 474 et seq. BGB) and the Buyer's rights arising from separately issued guarantees, in particular on the part of the manufacturer.
2. Agreements that we have made with Buyers with respect to the quality and presumed use of the goods (also including accessories and instructions) normally form the basis of our liability for defects under the warranty. A quality agreement includes all product descriptions and manufacturer's specifications that are the subject of the individual contract or that were made public by us (in particular, in catalogues or on our website homepage) at the time the contract was concluded. If there is no quality agreement, an assessment shall be made, under the provisions of Section 434 (3) BGB, as to whether or not there are defects. Against this background, it should be noted that public statements made by the manufacturer in the context of advertising or on the labelling of the product shall take precedence over statements made by other third parties.
3. For goods with digital elements or other digital content, it should be noted that we are only obliged to provide and update the digital content insofar as this derives expressly from a quality agreement in accordance with IX.(2.). We accept no liability for public statements made by the manufacturer or other third parties.
4. Pursuant to Section 442 BGB, we shall not be liable for defects that the Buyer had knowledge of when the contract was concluded or, at that time, had no knowledge of due to gross negligence.

5. Claims for defects on the part of the Buyer shall only be recognised where the Buyer has complied with their statutory inspection and notification obligations (Sections 377, 381 HGB). If the goods are intended for further processing, an inspection shall be carried out immediately prior to processing. We must be notified in writing without delay if a defect is discovered within the scope of the delivery, inspection or subsequently. Obvious defects shall be reported in writing within 5 working days as of delivery and hidden defects within the same period of time from their discovery. In the event that the Buyer neglects or does not fulfil their obligation to properly inspect the goods and/or report any defects, we shall not be liable for the defects that were not reported, or not on time, or not reported properly in accordance with the statutory provisions. If the goods were intended for assembly, mounting or installation, this shall also apply if the defect only became apparent after the respective processing as a result of non-compliance with these obligations or a breach of one of them. In this case, the Buyer would not be entitled to any claims for compensation for the "assembly and disassembly costs".
6. If the delivered goods are defective, we as the seller shall be entitled to choose whether we provide subsequent performance by remedying the defect (subsequent improvement) or by supplying a defect-free item (subsequent delivery). In the event that the type of subsequent performance selected by us is unreasonable for the Buyer in a particular case, they may refuse it. However, we reserve the right to refuse subsequent performance under the statutory conditions. In addition, we are entitled to make the subsequent performance to be provided by us dependent on the Buyer paying the purchase price that is due. However, the Buyer shall have the right to retain a reasonable part of the purchase price in proportion to the defect.
7. The Buyer must grant us the necessary time and opportunity for the subsequent performance to be provided. In particular, the Buyer must hand over to us for inspection purposes the item for which they have asserted a claim for a defect. In the event that we subsequently supply a defect-free item, the Buyer must return the defective item to us in accordance with the statutory provisions. The buyer is however not entitled to return the goods.
8. Unless we have a contractual obligation to do so, subsequent performance shall include neither the disassembly, removal or de-installation of the defective item nor the assembly, mounting or installation of a defect-free item. This shall not affect the Buyer's claims for compensation for the "assembly and disassembly costs".
9. We shall reimburse the expenses which are necessary for inspection purposes and for subsequent performance (transport, labour and material costs as well as any disassembly and assembly costs) in accordance with the statutory provisions and these General Terms and Conditions of Sale in the event that there is a defect. However, we may ask the Buyer to reimburse the costs incurred because of an unjustified request to remedy a defect in the event that the Buyer knew or could have realised that there was actually no defect.



10. The Buyer has the right to remedy the defect themselves and to request reimbursement of objectively necessary expenses for this if there is an urgent case (e.g., in the event of a risk relating to operational safety or to prevent disproportionate damage). The Buyer must inform us immediately in writing in the event of self-performance. In the event that, pursuant to the statutory provisions, we would be entitled to refuse subsequent performance, the Buyer would have no right to self-performance.
11. In accordance with the statutory provisions, the Buyer may revoke the purchase contract or reduce the purchase price if a deadline to be set by the Buyer for subsequent performance has expired without a result or is dispensable under the statutory provisions. However, in the event of a minor defect, the Buyer shall have no right of revocation.
12. Claims by the buyer for reimbursement of expenses in accordance with Section 445a(1) BGB shall be excluded, unless the last contract in the supply chain is a purchase of consumer goods (Sections 478, 474 BGB) or a consumer contract for the provision of digital products (Sections 445c sentence 2, 327(5), 327u BGB).
13. Even in the event of a defect, claims for damages or claims for reimbursement of futile expenses on the part of the Buyer (Section 284 BGB) shall only exist subject to X. and XI.

## **IX. Statute of limitations**

1. In deviation from Section 438(1) no. 3 BGB, the general limitation period for claims resulting from material defects or defects of title shall be one year from delivery. In the event that acceptance has been contractually agreed, the limitation period shall commence upon acceptance.
2. According to the statutory regulations, the limitation period is 2 years from delivery (Section 438(1) no. 2 BGB) in the event that the goods are a building, or an item that, in accordance with its normal use, has been used for a building and has caused its defects (building material). This shall apply subject to the other special statutory provisions on the limitation period (in particular Section 438(1) no. 1, (3), Sections 444, 445b BGB).
3. The above limitation periods under Sales Law shall also apply to the Buyer's contractual and non-contractual claims for damages that are based on a defect in the goods, unless the application of the normal statutory limitation period pursuant to Sections 195, 199 BGB would lead to a shorter limitation period in individual cases. The Buyer's claims for damages according to XI.(1.) and XI.(2.)(a) as well as those pursuant to the Product Liability Act (*Produkthaftungsgesetz*) shall become time-barred solely in accordance with the statutory limitation periods.

## **X. Other liability**

1. Unless otherwise provided for in these General Terms and Conditions of Sale, including the following provisions, we as the seller shall be liable for breaches of contractual and non-contractual obligations in accordance with the statutory provisions.



2. Within the scope of fault-based liability, we shall be liable for damages, irrespective of the legal grounds, only in the case of intent and gross negligence. In the event of simple negligence, subject to statutory limitations of liability (e.g. diligence we exercise in our own affairs; insignificant breach of duty) we shall only be liable:
  - a. for damages resulting from injury to life, limb or health
  - b. for damages resulting from the breach of a material contractual obligation (obligations whose fulfilment enables the proper implementation of the contract in the first place and the observance of which the contractual partner relies on and may also rely on). However, in this case, our liability is limited to compensation for foreseeable and typically occurring damage.
3. The limitations of liability arising in accordance with XI.(2.) shall also apply to third parties and in the event of breaches of duty by persons whose fault we are responsible for in accordance with statutory provisions. Insofar as a defect has been fraudulently concealed and a quality guarantee for the goods has been assumed, the liability limitations shall not apply. This shall also be the case for the Buyer's claims under the Product Liability Act.
4. The Buyer may only revoke or terminate the contract for a breach of duty that does not result from a defect in cases where we, as the seller, are responsible for the breach of duty.
5. The Buyer's right of termination (in particular, pursuant to Sections 650, 648 BGB) shall be excluded. Furthermore, the statutory requirements and legal consequences shall apply.

## **XI. Choice of law and place of jurisdiction**

1. These General Terms and Conditions of Sale and the contractual relationship between us as the seller and the Buyer shall be governed by the laws of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.
2. If the Buyer is a trader within the meaning of the German Commercial Code, a legal person under public law or a special fund under public law, our registered office in Fernwald shall be the sole, and also international, place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. The same shall apply if the buyer is a trader within the meaning of Section 14 BGB.
3. Furthermore, we are entitled to bring an action at the place of performance of the supply obligation in accordance with these General Terms and Conditions of Sale or an overriding individual agreement or at the Buyer's general place of jurisdiction. This shall not affect overriding statutory provisions (exclusive jurisdictions).