

General Conditions of Sale (Effective October 2020)

§1 General Provisions – Scope

1. Our conditions of sale shall apply exclusively; we reject any provisions to the contrary or customer terms that diverge from our conditions of sale, unless such provisions have been expressly accepted by us in writing. Our conditions of sale shall also be applicable if we perform an unconditional delivery to the customer even if we have been informed about customer terms to the contrary that diverge from our conditions of sale.
2. Our conditions of sale are usually enclosed with every order confirmation, unless we have established a long-term, orderly business relationship with the customer, so that the customer can be assumed to be already familiar with our conditions of sales and his agreement with such conditions can be taken for granted.
3. Our conditions of sale are only applicable with respect to business enterprises in the sense of § 310, section 1, German Civil Code.

§2 Offer – Offer-related Documentation

1. If an order qualifies as offer in the sense of § 145 German Civil Code, we can accept such order within a period of 3 months.
2. A contractual commitment always requires a written confirmation – even in the case of preliminary telephonic agreement.
3. We reserve all property rights and copyrights with respect to illustrations, drawings, calculations and other documentation. This shall also apply to all written documentation that has been marked “confidential”. Prior to making such documentation available to any third party, the customer shall be obliged to obtain our express written approval.

§3 Prices and Conditions of Payment

1. Unless stated otherwise in the order confirmation, our prices shall be quoted “ex works”, excluding packaging which will be charged separately unless an express, diverging agreement has been concluded.
2. Our price does not include any legally applicable value-added tax. The legal applicable amount at the date of invoicing will be itemized in the invoice.
3. The deduction of a discount requires a special written agreement.
4. Unless stated otherwise in the order confirmation, the purchase price shall be payable net (without discount) within 30 days following the date of invoice. The legal provisions governing the consequences of delay in payment shall be applicable.
5. In the event of cessation of payment on the part of the customer, the claimed purchase price shall be immediately due. At the same time all agreed rebates, bonuses, etc. are forfeited, so that the customer shall be obliged to pay the gross prices charged in the invoice.
6. The customer shall only be entitled to set off any claims if his counterclaims have been determined by final judgment, are uncontested or have been accepted by us. Furthermore the customer shall only be entitled to exercise a right of retention to the extent that his counterclaim is based on the same contractual relationship.

§4 Period of Delivery

1. The commencement of the delivery period as determined by us begins only after the clarification of all technical questions.
2. Adherence to our delivery obligation furthermore requires the timely and orderly fulfillment of the responsibilities by the customer. Defense of non-performance of the contract shall be reserved.
3. If the customer fails to accept delivery or negligently violates his obligation to cooperate, we shall be entitled to demand compensation for any damages resulting therefrom, including potential additional expenses. Further claims shall be reserved.
4. Provided that the preconditions set forth in the previous item 3 have been fulfilled, the risk of accidental perishing or accidental deterioration of the purchased article(s) shall pass to the customer at that point in time when the customer fails to accept delivery or effect payment.
5. We shall be liable within the framework of legal provisions to the extent that the respective purchase contract constitutes a transaction for delivery by a fixed date in the sense of § 286, section 2, item 4 German Civil Code or § 376 German Commercial Code. We shall also be liable within the framework of legal provisions if, as consequence of a delay in delivery on our part, the customer is entitled to claim that his interest in a continuing fulfillment of contract has ceased to exist.
6. We shall furthermore be liable in accordance with legal provisions if the delay in delivery is the result of an intentional or grossly negligent breach of contract on our part; the fault of our representatives or vicarious agents shall be attributable to us. If the delay in delivery is not the consequence of an intentional breach of contract on our part, our liability for damages shall be limited to the foreseeable, typical damage.
7. We shall furthermore be liable in accordance with legal provisions if the delay in delivery caused by us is the result of a negligent violation of an essential contractual obligation; in this case, our liability for damages shall, however, be limited to the foreseeable, typical damage.
8. Additional legal claims and rights of the customer remain reserved.

§5 Passing of Risk, Cost of Packaging

1. Unless provided otherwise in the order confirmation, delivery is agreed “ex works”.
2. Upon customer request we shall cover the delivery by taking out transport insurance; the costs incurred for such insurance shall be borne by the customer.

§6 Liability for Defects

1. Claims of the customer based on defects require the customer having in an orderly manner met his obligation to examine and lodge a complaint in respect of a defect immediately on receipt of the goods as set forth in § 377 German Commercial Code. If particular requirements have been specified regarding the quality of the purchased article or if the purchased article is to be forwarded directly to a third party or abroad, the purchased article must be collected at our plant. If the right to previous examination is not exercised, it is regarded as acceptance of condition according to contract.
2. If the purchased article is defective or flawed we shall be obliged, at our discretion, to subsequent performance in the form of correction of defects or delivery of a new, flawless article. In the case of correction of defects, we shall assume expenses only up to the amount of the purchase price.
3. In the event that subsequent performance fails, the customer can request, at his discretion, rescission or reduction.
4. We shall be liable within the framework of legal provisions if the customer asserts claims for damages which are based on intention or gross negligence including intention or gross negligence of our representatives or vicarious agents. Provided that we are not charged with an intentional breach of contract, our liability for damages shall be limited to the foreseeable, typical damage.
5. We shall be liable within the framework of legal provisions if we negligently violate an essential contractual obligation; in such a case our liability for damages shall, however, be limited to the foreseeable, typical damage.

6. To the extent that the customer is entitled to compensation for damage rather than performance, our liability shall be limited to the foreseeable, typical damage within the framework of the previously stated item 3.
7. Liability due to a negligent violation of life, body or health shall remain unaffected. This shall also apply to mandatory liability in accordance with the Product Liability Act.
8. Every machine that is delivered by us must be protected by a motor protection switch suitable for the respective motor.
9. If a technical failure occurs in a machine delivered by us we shall not be liable for direct or indirect damages due to loss of production regardless of the nature of the failure.
10. Unless provided otherwise in the previous provisions, liability shall be excluded.

§7 Total Liability

1. Any liability for damages exceeding the provisions set forth in § 6 – regardless of the legal nature of the asserted claim – shall be excluded. This shall apply, in particular, to claims for damages resulting from culpa in contrahendo, other dereliction of duty or compensation for material damages in accordance with § 823 German Civil Code.
2. The limitation of the previously stated item 1 shall also apply if the customer demands instead of compensation for damages, reimbursement of fruitless expenses rather than performance.
3. To the extent that our liability for damages is excluded or limited, such exclusion or limitation shall also apply to the personal liability for damages assumed by our staff, employees, associates, representative and vicarious agents.

§8 Retention of Title

1. We shall retain title to the article being purchased until all payments under the contract of delivery have been received. In case the customer infringes upon the provisions of the contract, especially in the event of default in payment, we shall be entitled to take back the purchased article. Our confiscation of the purchased article constitutes a rescission of contract. Subsequent to taking back the purchased article we shall be entitled to its exploitation; the proceeds from exploitation shall be set off against the customer's liabilities, after deduction of appropriate exploitation costs.
2. The customer shall be obliged to treat the purchased article carefully; he shall be especially obliged to take out appropriate replacement value insurance at his own expense to guard against fire, water and theft. To the extent that maintenance and inspection are required the customer shall be responsible for performing such work in a timely fashion.
3. In the case of levy of attachment or other third-party intervention, the customer shall be obliged to immediately advise us thereof, so that we can take legal action in accordance with § 771 German Code of Civil Procedures. Provided that the third party is not in a position to reimburse our judicial and extra-judicial costs of legal action in accordance with § 771 German Code of Civil Procedures, the customer shall be liable toward us with respect to the incurred loss. The customer shall be entitled to resell the purchased article within the course of orderly business; he shall, however, not be permitted to pledge the article or to assign it by way of security.
4. If the customer sells the purchased article, he shall immediately assign all claims in the total amount of the invoice (including value-added tax) of our claim which result from the resale to his purchasers or third parties, regardless of whether the purchased article is resold without or subsequent to processing. Even after assignment the customer shall be authorized to collect this claim. Our right to collect the claim ourselves remains unaffected by this provision. We shall, however, be obliged to refrain from collecting the claim provided the customer fulfills his payment obligations from the collected proceeds, the customer is not in default, no petition for insolvency proceedings has been filed and no cessation of payments has been effected. In the presence of any such condition, we shall, however, be entitled to demand that the customer inform us about any assigned claims and their debtors, provide all data required for collection as well as relevant documentation and advise the debtors (third parties) about the assignment. Upon our request the customer shall moreover be obliged to inform us about the whereabouts of goods that have been delivered by us and that have not yet been paid for as well as about any legal transactions taken with respect to such goods.
5. The processing or transformation of the purchased article by the customer is always performed on our behalf. If the purchased article is processed by means of other items that do not belong to us, we acquire co-ownership in the new product in accordance with the ratio between the value of the purchased article (total amount of invoice, including value-added tax) and the other processed items at the time of processing. The same provisions shall apply to articles resulting from processing as for purchased articles delivered with reservation.
6. If the purchased article is inseparably integrated with other items that do not belong to us, we shall acquire co-ownership in the new product in accordance with the ratio between the value of the purchased article (total amount of invoice, including value-added tax) and the other integrated items at the time of mixing. If the integration is performed in such a manner that the customer's item is considered to be the main ingredient, it shall be agreed that the customer transfers the prorated co-ownership to us. The customer shall store the resulting sole property or co-property for us.
7. The customer shall also assign the claims for securing our claims against him which result from the combination of the purchased item and real estate toward a third party.
8. Upon customer request we shall be obliged to release the securities to which we are entitled to the extent that the realizable value of our securities exceeds the claims that have to be secured by more than 10%; we shall be free to select the securities that are to be released.

§9 Statute of Limitations

1. The limitation of action for claims based on defects shall amount to 12 months, starting with the passing of the risk.
2. Provided that liability for damages that are not based on injury of life, body or health of the contractor is not excluded, such claims shall become statute-barred within one year starting with the arising of the claim.
3. Notwithstanding § 195 German Civil Code our claims for payment shall become statute-barred after 5 years. The commencement of the limitation period shall be governed by § 199 German Civil Code.

§10 Place of Jurisdiction, Place of Performance

1. Provided that the customer is a merchant, our place of business shall be place of jurisdiction; we shall, however, be entitled to file legal actions against the customer at the court of his legal residence.
2. The law of the Federal Republic of Germany shall be applicable; the provisions of the UN Sales Conventions shall be excluded.
3. Unless stated otherwise in the order confirmation, our place of business shall be place of performance.