

§ 1 Scope of application, form

1. The present General Terms and Conditions (GTC) apply to all our business relations with our clients ("Purchaser"). The GTC only apply if the Purchaser is an entrepreneur (§ 14 BGB (Civil Code)), a legal entity under public law or a special fund under public law.
2. In particular, the GTC apply to contracts on the sale and/or delivery of moveable items ("Merchandise"), irrespective of whether we manufacture the Merchandise ourselves or purchase it from suppliers (§§ 433, 651 BGB). As far as nothing else has been agreed, the GTC apply in the version applicable at the moment of the order of the Purchaser / in any case in the text version last communicated to him/it as framework agreement also to equivalent future contracts, without us having to refer to them again in each individual case.
3. Our GTC apply exclusively. Any deviating, contradictory or complementary General Terms and Conditions of the Purchaser only become part of the contract as far as we have explicitly consented to their validity. This requirement of consent applies in any case, e.g. also if we execute the delivery to the Purchaser without reserves while being aware of his/its GTC.
4. Any individual agreements concluded with the Purchaser in the individual case (including side agreements, amendments and changes) prevail in all events over these GTC. Subject to proof of the contrary, a written contract / our written confirmation is decisive for the content of such agreements.
5. Legally relevant declarations and notices of the Purchaser with respect to the contract (e.g. setting deadlines, notification of defects, withdrawal or reduction) must be given in writing, i.e. in written or text form (e.g. letter, email, fax). Statutory form requirements and other evidence, in particular in case of doubts on the legitimization of the declarant, remain unaffected.
6. Any references to the validity of legal provisions only have a clarifying meaning. Therefore, even without such clarification, the legal provisions apply, as far as they are not directly changed or explicitly excluded in these GTC.

§ 2 Contract conclusion

1. Our quotations are subject to confirmation and are not binding. This also applies if we have provided catalogues, technical documentations (e.g. drawings, plans, price and other calculations, references to DIN norms), other product descriptions or documents – also in electronic form – to the Purchaser to which we reserve title and copyrights.
2. The order of the Merchandise by the Purchaser is deemed a binding contract offer. As far as nothing else can be inferred from the order, we are entitled to accept this contract offer within 2 weeks from reception by us.
3. The acceptance can either be declared in writing (e.g. by an order confirmation) or by the delivery of the Merchandise to the Purchaser.

§ 3 Delivery period and default in delivery

1. The delivery period is individually agreed / indicated by us at the acceptance of the order.
2. As far as we cannot keep binding delivery periods for reasons not attributable to us (non-availability of the service), we will inform the Purchaser thereof and, at the same time, of the expected new delivery period. If the service still is not available within the new delivery period, we are entitled to wholly or partially withdraw from the contract, we will reimburse any consideration already provided by the Purchaser. A case of non-availability of the service within this meaning is given, in particular, if we have not received a delivery from our supplier in time, if we have concluded a congruent hedging transaction, if neither we nor our supplier is to blame or if we are not obliged to procurement in the individual case.
3. The start of our default in delivery is determined by the legal provisions. In any case, however, a reminder by the Purchaser is required. If we enter into default in delivery, the Purchaser can claim a flat-rate compensation of his/its default damage. The damage flat rate for each completed calendar week of delay is 0.5% of the net price (delivery value), but only up to a total maximum of 5% of the delivery value of the Merchandise delivered late. We reserve the evidence that the Purchaser has not suffered any damage at all or only to a substantially lesser extent than the abovementioned flat rate.
4. The rights of the Purchaser according to § 8 of these GTC and our legal rights, in particular in case of an exclusion of the performance obligation (e.g. due to the impossibility or unreasonableness of performance and/or of supplementary performance), remain unaffected.

§ 4 Custom-made productions

- The calculation of the prices for custom-made productions is based on our quotation, otherwise in addition to the additional expenditure. Specially finished articles cannot be returned. The revocation of orders involving custom-made productions is only possible with our express written agreement. We are not obligated to inspect samples, drawings or other documents of existing trademark rights relinquished for the custom-made productions. The responsibility therefor rests solely with the buyer. If we incur disadvantages on account of the buyer infringing upon the trademark rights of third parties in custom-made productions pursuant to his order, we can demand payment of the damage accruing to us from the buyer or - if we decide so - we can demand indemnification from the third party.

§ 5 Delivery, transfer of risk, acceptance, default in acceptance

1. Delivery is made ex stock, and this is also the place of performance for the delivery and any supplementary performance. Upon request and at the expense of the Purchaser, the Merchandise is sent to another destination (sales shipment). As far as nothing else has been agreed, we are entitled to determine the mode of shipment (in particular carrier, transport route, packaging) ourselves.
2. The risk of accidental loss and accidental deterioration of the Merchandise is transferred to the Purchaser at the latest at the moment of handover. In case of a sales shipment, however, the risk of accidental loss and accidental deterioration of the Merchandise and the risk of delay are already transferred at the moment of delivery of the Merchandise to the forwarder, the carrier or the person or entity otherwise charged with the execution of the shipment. As far as an acceptance has been agreed, it is decisive for the transfer of risk. As for the rest, the legal provisions of the work and services contract law also apply analogously to an agreed acceptance. If the Purchaser is in default of acceptance, this is equivalent to a handover / acceptance.
3. If the Purchaser enters into default of acceptance or fails to cooperate or if our delivery is delayed for other reasons attributable to the Purchaser, we are entitled to claim compensation of the damages thus incurred including additional expenses (e.g. storage cost). For this, we charge, for each completed calendar week of delay, a flat-rate compensation of 0.5% of the net price (delivery value), but only up to a total maximum of 5% of the delivery value of the Merchandise accepted late or not accepted, starting from the delivery period or - in the absence of a delivery period - from the notification on the readiness of the Merchandise for dispatch.
4. The proof of higher damages and our legal rights (in particular reimbursement of additional expenses incurred, appropriate compensation, cancellation) remain unaffected; but the flat rate shall be offset against further financial claims. The Purchaser keeps the right to prove that we have suffered no loss at all or only to a substantially lesser extent than the abovementioned flat rate.

§ 6 Prices and payment terms

1. As far as nothing else has been agreed in the individual case, our respectively current prices at the moment of contract conclusion apply ex stock plus legal value-added tax.
2. In case of a sales shipment (§ 5 sec. 1), the Purchaser bears the transport costs ex stock and the costs of any transport insurances the Purchaser might demand. From a net order value of the Merchandise of 150 EUR on, we deliver to clients in Germany, France and Belgium free of freight. As far as we do not invoice the actually incurred transport costs in the individual case, a transport cost flat rate (without transport insurance) of 4.50 EUR in Germany and 6.50 EUR in France and Belgium net is deemed agreed. Any customs, fees, taxes and other public levies must be borne by the Purchaser.
3. The purchase price is due and payable within 14 days from the invoice date and delivery / acceptance of the Merchandise. However, we are entitled anytime, also within an ongoing business relationship, to wholly or partially conduct a delivery on advance cash payment. We declare such a reserve at the latest at order confirmation.
4. When the abovementioned payment term expires, the Purchaser enters into default. During the default, the purchase price is subject to the respectively applicable legal interest rate. We reserve the right to claim compensation of additional default damages. Vis-à-vis merchants, our right to the commercial maturity interest (§ 353 HGB (Commercial Code)) remains unaffected.
5. The Purchaser can only claim rights to setoff or retention as far as his/its right is legally confirmed or undisputed. In case of defects of the delivery, the counter-rights of the Purchaser, in particular acc. to § 8 sec. 6 phrase 2 of these GTC, remain unaffected.
6. If it turns out after conclusion of the contract (e.g. by an application for the opening of insolvency procedures) that our right to the purchase price is jeopardized by a lack of ability to perform of the Purchaser, we are entitled, according to the legal provisions on refusal of performance and - if applicable, after setting a deadline - to withdraw from the contract (§ 321 BGB (Civil Code)). In case of contracts of the production of non-fungible goods (single items), we can immediately declare the withdrawal; the legal provisions on the dispensability of setting a deadline remain unaffected.
7. Invoices may be sent by post or e-mail at our discretion. The Purchaser agrees to receive invoices electronically. Electronic invoices shall be sent to the Purchaser by e-mail in PDF format to the e-mail address provided. At the express request of the Purchaser, the invoice dispatch can also be switched to delivery by post at any time.

§ 7 Retention of title

1. Until the complete payment of all our current and future claims from the purchase contract and an ongoing business relationship (secured claims), we reserve title to the Merchandise sold.
2. Before the complete payment of the secured claims, the Merchandise subject to reservation of title may neither be pledged to third parties nor assigned as security. The Purchaser must immediately inform us in writing when an application for opening insolvency proceedings is filed or any third parties seize our Merchandise (e.g. attachments).
3. In case of the Purchaser behaving in violation of the contract, in particular of non-payment of the due purchase price, we are entitled to withdraw from the contract according to the legal provisions or/and to claim back the Merchandise on the base of the reservation of title. The claim for returning of the goods does not simultaneously imply a declaration of withdrawal; instead, we are entitled to only claim the Merchandise and reserve the withdrawal. If the Purchaser does not pay the due purchase price, we may only assert these claims if we have set a reasonable deadline for the Purchaser to pay before which has been without effect or if it is dispensable according to the legal provisions to set such a deadline.
4. Until a revocation according to (c) below, the Purchaser is entitled to resell and/or further process the Merchandise subject to reservation of title in the ordinary course of business. In such case, the provisions below apply additionally.
 - a. The reservation of title extends to the products created by the processing, mixing or combination of our Merchandise at their full value, with us being considered the manufacturer. If, in case of a processing, mixing or combination with third parties' merchandise, their title continues to exist, we acquire a co-ownership in

- proportion of the invoice values of the merchandise so processed, mixed or combined. Apart from that, the same applies to the emerging product as to the delivered Merchandise subject to reservation of title.
- a. Already now, the Purchaser assigns the claims against third parties generated by the resale of the Merchandise or of the product in total / at the amount of our potential co-ownership share according to the paragraph above to us as security. We hereby accept such assignment. The Purchaser's obligations mentioned in sec. 2 are also valid with respect to the assigned claims.
 - c. Next to us, the Purchaser also keeps the right to collect the receivable. We undertake not to collect the receivable as long as the Purchaser fulfills his/its payment obligations towards us and shows no lack of ability to perform and we do not claim the reservation of title by exercising a right acc. to sec. 3. If such is the case, however, we can require the Purchaser to disclose the assigned claims and their debtors to us, to provide all information necessary for the collection and the associated documents, and to inform the debtors (third parties) about the assignment. In such case, we are further entitled to revoke the Purchaser's authorization to resell and further process the Merchandise subject to the reservation of title.
 - d. If the realizable value of the securities exceeds our claims by more than 10%, we will, upon the Purchaser's request, release securities at our discretion.

§ 8 Purchaser's claims for defects

1. The legal provisions apply to the rights of the Purchaser in case of defects of quality and title (including incorrect and short deliveries and improper assembly or faulty assembly instructions), as far as nothing else is provided for below. In all cases, the special legal provisions for the final delivery of the unprocessed merchandise to a consumer remain unaffected, even if the latter has further processed it (supplier regress according to §§ 478 BGB). Any rights from the supplier regress are excluded if the defective Merchandise has been further processed by the Purchaser or another entrepreneur, e.g. by incorporation into another product.
2. The basis of our liability for defects is, above all, the agreement concluded on the quality of the Merchandise. All product descriptions subject to the individual contract or published by us (in particular in catalogues or on our Internet homepage) are deemed agreements on the quality of the Merchandise.
3. As far as the quality has not been agreed, it must be determined, according to the legal regulation, whether there is a defect or not (§ 434 sec. 1 p. 2 and 3 BGB). However, we do not assume any liability for public statements of the manufacturer or other third parties (e.g. advertising statements).
4. The claims for defects of the Purchaser require that he/it has fulfilled his/its legal duties to inspect and complain (§§ 377, 381 HGB). If a defect appears at delivery, inspection or any later moment, it must immediately be notified to us in writing. In any case, obvious defects must be reported in writing within 10 working days from delivery, and defects not detectable at the inspection within the same period from detection. If the Purchaser fails to carry out the due inspection and/or notification of defects, our liability for the defect not timely or properly reported is excluded according to the legal provisions.
5. If the delivered item is defective, we can first choose if we provide supplementary performance by removing the defect (rework) or by delivering an item free from defects. Our right to refuse the supplementary performance according to the legal preconditions remains unaffected.
6. We are entitled to condition the owed supplementary performance on the Purchaser paying the due purchase price. However, the Purchaser is entitled to retain an appropriate part of the purchase price in proportion of the defect.
7. The Purchaser has to give us enough time and the occasion to provide the owed supplementary performance, in particular to hand over the rejected Merchandise for inspection purposes. In case of a replacement delivery, the Purchaser must return the defective item according to the legal provisions. The supplementary performance neither includes the disassembly/removal of the defective item nor the reassembly/installation if we have not been originally obliged to the installation.
8. The expenses required for inspection and supplementary performance, in particular transport, road, labour and material costs and, if applicable, disassembly and assembly costs, are borne/reimbursed by us according to the legal regulation if there really is a defect. Otherwise, we can claim the reimbursement of the costs incurred due to an unjustified claim to remove defects from the Purchaser (in particular inspection and transport costs), unless the lack of a defect could not be detected by the Purchaser.
9. Even in case of defects, the Purchaser only has any rights to damages / compensation of vain expenses according to § 8, apart from that, they are excluded.

§ 9 Other liability

1. As far as nothing else can be inferred from these GTC, including the provisions below, we are liable, in case of a breach of contractual and non-contractual duties, according to the legal provisions.
2. We are only liable for damages - irrespective of the legal ground - within fault-based liability in case of intent and gross negligence. In case of ordinary negligence, we are liable, subject to a milder standard of liability according to the legal provisions (e.g. for due diligence in own affairs), only
 - a. for damages from injury to life, body or health,
 - b. for damages from a significant breach of a substantial contractual obligation (obligation the fulfillment of which makes the proper fulfillment of the contract possible in the first place and on the fulfillment of which the contract partner does and may regularly rely on); in such case, however, our liability is limited to the compensation for the predictable, typically occurring damage.
3. The limitations of liability in sec. 2 also apply in case of breaches of duty by / for the benefit of persons the fault of which we are responsible for according to legal provisions. They do not apply as far as we have maliciously concealed a defect or have assumed a guarantee for the quality of the Merchandise and to claims of the Purchaser under the Product Liability Act (Produkthaftungsgesetz).
4. As a result of a breach of duty not consisting of a defect, the Purchaser can withdraw from or cancel the contract only if we are responsible for the breach of duty. Any free right to cancellation of the Purchaser (in particular according to §§ 651, 649 BGB) is excluded. Apart from that, the legal preconditions and legal consequences apply.

§ 10 Statute of limitations

1. By derogation from § 438 sec. 1 n° 3 BGB, the general limitation period for claims from defects of quality and title is one year from delivery. As far as an acceptance has been agreed, the limitation period starts at acceptance.
2. The abovementioned limitation periods under purchasing law also apply to contractual and non-contractual claims for damages of the Purchaser based on a defect of the Merchandise, unless the application of the regular legal limitation (§§ 195, 199 BGB) would lead to a shorter limitation period in the individual case. However, damage claims of the Purchaser according to § 8 sec. 2 phrase 1 and phrase 2 a) and according to the Product Liability Act only expire according to the legal limitation periods.

§ 11 Conditions of return

1. Any return of goods is possible within 2 weeks after receipt. Provided that the Purchaser returns the goods in their original packaging, not damaged and not thoroughly cleaned, and stating the reason. We will not accept packages sent freight collect. The Purchaser can have the package picked up free of charge if an item is defective or incorrectly delivered.
2. Custom-made products, remanufactures, discontinued items as well as items which are not listed in our sales documents are generally excluded from return. If the returned goods show defects or signs of use, we reserve the right to charge a reasonable reduction in value. Defects must be reported by the Purchaser immediately upon receipt of the goods.

§ 12 Export to the USA and Canada

3. We forbid the direct and indirect export of our products to the USA and Canada.
4. The buyer shall indemnify us from all claims that are raised against us from the US and Canada as a result of the export to these countries, even if we agree to such export.

§ 13 Data storage

- The buyer agrees that his data relevant for the execution of the contract will be stored by us.

§ 14 Final provisions

1. The law of the Federal Republic of Germany, under exclusion of the international uniform law, in particular the UN Sales Law, applies to these GTC and the contractual relationship between us and the Purchaser.
2. If the Purchaser is a merchant within the meaning of the Commercial Code (HGB), a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes directly or indirectly resulting from the contractual relationship is our place of business in Emsingen-1, Pflinggen. The same applies analogously if the Purchaser is an entrepreneur within the meaning of § 14 BGB. However, in all events, we are also entitled to file a suit at the place of performance of the delivery obligation according to these GTC / a prevailing individual agreement or at the general place of jurisdiction of the Purchaser. Prevailing legal provisions, in particular on exclusive competences, remain unaffected.
3. Even if any individual points of these GTC are legally invalid, the remaining parts of these GTC remain binding. The invalid points will be replaced by the legal provisions, as far as they exist. As far as this would be an undue hardship for a contract party, however, the contract shall remain invalid as a whole.