

Terms of Delivery and Payment

- ❶ The following provisions shall apply if the parties to the contract are entrepreneurs, legal entities under public law or special funds under public law.

§ 1 General provisions

1. These terms and conditions of delivery and payment form an integral part of all offers and contracts for deliveries and services of the Seller, including current and future business relations.
2. Deviating agreements and conditions are only binding if they have been confirmed in writing.

§ 2 Prices

1. The Seller's conditions and price lists in force at the time of the order shall apply. Sales prices shall only be binding fixed prices if they have been confirmed by the Seller. Prices are quoted exclusive of VAT at the rate applicable at the time of delivery. Unless otherwise agreed, they shall apply unpacked ex works (EXW).
2. In the case of dispatch, the prices shall apply plus the cost of packaging.

§ 3 Delivery and passing of risk

1. a) Delivery of the goods shall take place at the Seller's registered office or free warehouse (EXW). The Buyer shall bear the risk of shipment. This shall also apply in the case of delivery by the Seller's carriers. Shipment shall be made to the agreed place; in the event of changed instructions, the Buyer shall bear the additional costs.
b) The Seller is not obliged to load the goods into a vehicle belonging to the Buyer or a third party. If the Buyer instructs a forwarder to collect the goods from the Seller, the forwarder shall be obliged to load the goods in accordance with the statutory provisions of the HGB / ADSp or, in the case of cross-border traffic, in accordance with the provisions of the CMR.
2. The Buyer is responsible for the disposal of packaging.
3. Failure by the Seller to meet delivery dates and deadlines shall entitle the Buyer to assert the rights to which it is entitled only after it has granted the Seller a reasonable grace period of at least 8 working days.
4. In the event of force majeure, industrial disputes, official measures, and other operational disruptions for which we are not responsible, and which have lasted or are expected to last longer than one week, the delivery or acceptance period shall be extended appropriately for the duration of the impediment. In this case, the contracting party shall be entitled to withdraw from the contract within the framework of the statutory provisions after setting a reasonable period of grace. Claims for damages are excluded in the aforementioned cases.
5. In particular, the Seller shall not be liable in the event of force majeure, war, riot, industrial disputes, statutory regulations, and government orders.
6. a) In the event of a delay in performance (non-performance) or impossibility of performance for which the Seller is responsible, the Buyer may rescind the contract in accordance with *paragraphs 3 and 4* after setting a reasonable grace period.
b) In all other respects, the Buyer's claim for damages shall be limited to the reimbursement of proven additional costs (covering purchase). At least three comparative quotations must be obtained. The amount of damages is limited to 50% of the purchase price of the contractual goods. Any further claims for damages shall be excluded.
c) The Seller's liability for damages arising from injury to life, limb, or health due to a negligent breach of duty by the Seller or an intentional or negligent breach of duty by a legal representative or vicarious agent of the Seller shall remain unaffected by the provisions of *Clauses 6 a) and b)*.
d) Furthermore, liability for other damage based on a grossly negligent breach of duty by the Seller or an intentional or grossly negligent breach of duty by a legal representative or vicarious agent of the Seller shall remain unaffected by the provisions of *Clauses 6 a) and b)*.
e) In the event of simple negligence on the part of the Seller or its legal representative or vicarious agent, the Seller shall only be liable in the event of a breach of so-called „cardinal obligations“; in this case, however, to the extent specified in *Clause 6 a) to c)* for typical and foreseeable damage.
7. If the Buyer fails to take delivery of the goods on time, the Seller shall be entitled, after setting a grace period of at least 10 days, either to demand payment or to rescind the contract. When setting the grace period, the Seller must expressly inform the Buyer that it demands collection and payment and that it will withdraw from the contract if the

grace period expires without result. The Seller shall be entitled to reimbursement of expenses and damages for the period of storage during the delay in acceptance.

8. The Buyer's right to rescind the contract on the grounds of a deterioration in the Seller's financial position after conclusion of the contract shall be excluded.

§ 4 Payment

1. An invoice will be issued separately for each delivery with the date of dispatch. This also applies to agreed partial deliveries.
2. Agreed payment periods shall commence on this date. Unless otherwise agreed, advance payments shall be credited pro rata to the individual partial deliveries.
3. Unless otherwise agreed, the invoice amount is payable net within 30 days.
4. Payment by cheque or bill of exchange shall be made on account of payment and shall require the Seller's consent; discount, bill of exchange charges and costs shall be borne by the Buyer, unless otherwise agreed.
5. The contractual payment dates shall be observed even if a notice of defect proves to be justified to an extent that can be described as insignificant. Furthermore, in the event of a justified and timely notice of defect in respect of defective goods within the meaning of *Section 434 (1) to (3) of the German Civil Code (BGB)*, the Buyer may withhold provisionally only that part of the purchase price which corresponds to the invoice amount of the duly notified part of the delivery.
6. In the event of default in payment, default in the payment of interest on arrears, protest of a cheque or bill of exchange or any other material deterioration in the financial position of the Buyer after the conclusion of the contract, the Seller shall be entitled to make further deliveries only against advance payment, to make all outstanding invoice amounts due immediately and to demand cash payment or the provision of security against the return of bills of exchange accepted on account of payment.
7. In the event of default, interest shall be charged at 9 percentage points above the respective base rate in accordance with *§ 288 of the German Civil Code (BGB) and § 247 of the German Civil Code (BGB)*.
8. For the second and each subsequent reminder, the Seller will charge a fee of 8.00 EURO. The costs of legal proceedings shall be borne by the Buyer.
9. Counterclaims may only be set off against undisputed and legally established claims. The retention of due invoice amounts is not permitted; this does not apply in the event of cessation of payments by the Seller.

§ 5 Condition, Warranty

1. Obvious defects must be reported immediately. The period begins on the day the goods are received by the Buyer.
2. Non-obvious defects, including those that occur during or after processing, must be reported immediately upon discovery, but within 14 days at the latest. A later complaint is irrelevant.
3. Deviations which are customary in the trade, and which are minor and technically unavoidable shall be deemed to be in accordance with the contract and shall therefore not constitute a breach of duty (or a defect) entitling the customer to make a complaint.
4.
 - a) In the event of a complaint, the Seller shall be entitled to inspect the goods. The Seller may require the goods to be returned for inspection. After the goods have been returned, the Seller shall be entitled to remedy the defect by means of replacement instead of repair. The Seller must provide subsequent performance within at least ten days.
 - b) Before remedying the defect, the Seller is entitled to demand an advance payment from the Buyer in the amount of the transport costs, but not more than the value of the defective goods.
 - c) This provision shall not affect the Buyer's right to reduce the price, withdraw from the contract or claim damages in the event that the remedy fails, is unreasonable or impossible for the Seller, or if the Seller refuses to remedy the defect in accordance with the statutory provisions.
5. In addition, warranties as to quality and durability within the meaning of *§ 443 of the German Civil Code (BGB)* must be expressly designated as warranties. A reference to DIN standards only includes the conformity of the product with the standard and does not constitute a guarantee by the Seller unless such a guarantee has been expressly agreed.
6.
 - a) Claims for damages due to defective delivery or other breaches of contract by the Seller not covered by *§ 3 number 6* are excluded in the case of slight negligence, unless so-called „cardinal obligations“ have been breached. In this case, any claims for damages shall be limited to foreseeable, typical damage, which in turn shall be limited to the amount of the purchase price.
 - b) The Seller's liability for damages arising from injury to life, limb, or health due to a negligent breach of duty by the Seller or an intentional or negligent breach of duty by a legal representative or vicarious agent of the Seller shall remain unaffected by the provision in *Clause 6 a)*.

c) Furthermore, liability for other damage based on a grossly negligent breach of duty by the Seller or an intentional or grossly negligent breach of duty by a legal representative or vicarious agent of the Seller shall remain unaffected by the provision in *Clause 6 a)*.

d) In the event of simple negligence on the part of the Seller's legal representative or vicarious agent, the Seller shall only be liable in the event of a breach of so-called „cardinal obligations“ to the extent specified in *Clauses 6 a) and b)*.

7. Claims for damages based on a cause described in *§ 3 number 5* are excluded.
8. All warranty claims by the purchaser are subject to a limitation period of one year after delivery.
9. With regard to the recourse of the entrepreneur according to *§§ 478, 479 BGB (German Civil Code)*, the following shall apply:
 - a) The Seller's liability in the event of recourse by the Buyer pursuant to *§§ 478, 479 BGB* shall be limited to a claim based on the defectiveness of the purchased goods. A claim based, for example, on rescission is excluded.
 - b) Furthermore, liability for special quality agreements between the Buyer and the end user (consumer) is excluded if the item has been objected to as defective precisely because of the lack of this special quality and the corresponding rights have been asserted.
 - c) In the event that the Buyer has rightfully granted the end user (consumer) subsequent performance, only those expenses that prove to be necessary shall be reimbursed within the scope of *§ 478 Para. 2 BGB*. Expenses incurred by the Buyer on a goodwill basis shall not be eligible for compensation.
 - d) If the end user (consumer) justifiably demands subsequent delivery from the Buyer, the Seller is entitled to a second offer (subsequent delivery) from the Buyer without prejudice to the Seller's right. The use of a third-party supplier – without granting this possibility – or the like does not constitute a necessary, compensable expense within the meaning of *§ 478 Para. 2 BGB*.
 - e) In all other respects, the Seller's liability in the context of a claim under *§ 478 (1) BGB* is excluded with the proviso that, instead of the rights under *§ 437 BGB*, either a general discount scale for all purchase prices or a far-reaching deferment of payment has been agreed between the parties.

§ 6 Retention of title

1. The delivered goods shall remain the property of the Seller as reserved goods until payment of the purchase price and settlement of all claims existing from the business relationship and claims still arising in connection with the object of purchase. The inclusion of individual claims in a current account or the drawing of a balance and its acceptance shall not cancel the retention of title. If, in connection with the payment of the purchase price by the Buyer, a liability of the Seller under a bill of exchange is established, the retention of title shall not expire until the bill of exchange has been honoured by the Buyer as drawee. In the event of the Buyer's default in payment, the Seller shall be entitled to take back the goods subject to the retention of title and the Buyer shall be obliged to surrender the goods after the Seller has declared its withdrawal from the contract without setting a time limit and without prejudice to the provisions of *§ 323 (2) of the German Civil Code*. This shall also apply in the case of an instalment agreement if the Buyer is in default with a total of two instalments or with an amount corresponding to a total of two instalments. The rights of retention shall also exist to secure claims against the Buyer's affiliated companies.
2. If the goods subject to retention of title are sold by the Buyer alone or together with goods not belonging to the Seller, the Buyer hereby assigns the claims arising from the resale in the amount of the value of the goods subject to retention of title with all ancillary rights and priority over the rest; the Seller accepts the assignment. If the resold reserved goods are co-owned by the Seller, the assignment of the claim shall extend to the amount corresponding to the value of the Seller's share in the co-ownership. *Paragraph 1, sentence 2* shall apply mutatis mutandis to the extended retention of title; the advance assignment in accordance with *paragraph 2, sentences 1 and 3* shall also apply to the balance claim.
3. The Buyer shall only be entitled and authorised to resell, use, or install the goods subject to retention of title in the ordinary course of business and only on condition that the claim within the meaning of *paragraph 2* actually passes to the Seller. The Buyer shall not be entitled to dispose of the reserved goods in any other way, in particular by pledging or transferring ownership by way of security.
4. The Seller authorises the Buyer, subject to revocation, to withdraw the claims assigned in accordance with *paragraph 2*. The Seller will not make use of his own right to collect as long as the Buyer meets his payment obligations, including to third parties. At the request of the Seller, the Buyer shall name the debtors of the assigned claims and notify them of the assignment; the Seller shall be entitled to notify the debtors of the assignment itself.
5. The Buyer must inform the Seller immediately of any compulsory enforcement measures by third parties against the reserved goods or the assigned claims, handing over the documents required for the objection.
6. The right to resell, use or install the goods subject to retention of title and the authorisation to collect the assigned claims shall lapse in the event of cessation of payments, application for or opening of bankruptcy proceedings in or out of court; the authorisation to collect shall also lapse in the event of a protest of a cheque or bill of exchange.
7. If the value of the securities granted exceeds the claims by more than 20%, the Seller shall be obliged to retransfer or release them at his discretion. Upon settlement of all the Seller's claims arising from the business relationship, ownership of the reserved goods and the assigned claims shall pass to the Buyer.

§ 7 Model protection

The Buyer undertakes not to reproduce or have reproduced or distribute articles from the Seller's delivery programme. In the event of an infringement, the Seller shall be entitled to a contractual penalty. The amount of the claim shall be 100% of the price of the corresponding item of the Seller for each item reproduced, based on the Seller's price list in force at the time of the infringement. The Seller's right to claim damages shall remain unaffected.

§ 8 Place of performance and jurisdiction

1. The place of performance for the payment of the purchase price as well as for all other obligations of the Buyer shall always be the registered office of the Seller. The place of performance for the Seller's services is the Seller's registered office.
2. The parties agree that the place of jurisdiction is Göttingen.

§ 9 Foreign transactions

The following additional conditions apply to foreign transactions:

1. All transactions, including cheque and bill of exchange transactions, are subject to German civil and commercial law. The provisions of international private law and the UN Convention on Contracts for the International Sale of Goods are expressly excluded.
2. For deliveries abroad, the Seller may require payment in advance or a letter of credit. Unless otherwise agreed, delivery shall be made cash against documents (P/D). Unless otherwise agreed, payment shall be made in EURO.
3. Customs duties, fees, charges, and any taxes arising from the performance of the purchase contracts and delivery shall be borne by the Buyer, except for taxes levied by the Seller's country of domicile.
4. The Seller is also entitled to take legal action against the Buyer in the Buyer's home country. If the court with jurisdiction there rejects the applicability of German law, the contractual relationship shall be subject to the provisions of the UN Convention on Contracts for the International Sale of Goods subject to the agreements made in these GTC.
5. The Seller shall also be entitled to bring claims against the Buyer in arbitration proceedings to the exclusion of the ordinary courts. The proceedings shall be held at the Hanover Chamber of Industry and Commerce in accordance with the provisions of the UN Rules of Arbitration.

§ 10 Severability Clause

1. Should current or future provisions of this contract be invalid or unenforceable in whole or in part or subsequently lose their legal validity, this shall not affect the validity of the remaining provisions of this contract. The same shall apply if this Agreement is found to contain a loophole.
 2. In place of the invalid or unenforceable provision or to fill the gap, an appropriate provision shall apply which the parties would have made if they had considered the point when concluding the contract. This shall also apply if the invalidity of a provision is based, for example, on a measure of performance or time (deadline, date) specified in this agreement; in such cases, the agreement shall be replaced by a legally permissible measure of performance or time (deadline, date) which comes as close as possible to what was intended.
 3. If the validity of a provision in the sense described above can only be achieved by agreement in compliance with special formal requirements, the parties involved are obliged to perform the necessary acts and to make a declaration.
- ① The terms and conditions shall also apply if one of the parties to the contract is a consumer within the meaning of § 13 BGB (*German Civil Code*). This shall not apply if individual provisions are contrary to the provisions of the *German Civil Code (BGB)* as amended on 1 January 2002 – in particular §§ 305–310, §§ 474–477 BGB – to the detriment of the consumer. In this case, the statutory provisions shall apply to the provision in question.