

General Conditions of Sale and Delivery Edition 01/2017



I. Application

1. These General Conditions of Sale (Conditions) shall apply to all present and future contracts with commercial buyers, with public legal entities as well as public trusts in regard to deliveries and other services, including contracts relating to the supply and manufacture of non-fungible goods. The Buyer's purchase conditions shall not be binding even if we do not expressly object to them again after their receipt.
2. Our offers are subject to change. Oral agreements, promises, assurances and guaranties made or given by our sales staff shall not be binding unless confirmed by us in writing, such requirement being met also in cases of telefax and/or e-mail transmissions.
3. Any trade terms shall, in cases of doubt, be interpreted according to the Incoterms in their current version.

II. Prices

1. Unless otherwise agreed, our prices are ex works or our warehouse. They do not include freight charges, VAT and import duties. The goods will be calculated gross for net.
2. Should our external expenses (duties, taxes or other third-party charges) included in the agreed price change or newly incur later than 4 weeks after the conclusion of the contract, we shall be authorised to modify the price accordingly with regard to the goods not yet delivered to the Buyer as of the beginning of each calendar month concerned.
3. In the event that the modified price surpasses the originally agreed price by more than 15%, the Buyer may, within one week after receipt of our price modification notice, withdraw from the contract with respect to the goods affected by the price modification.

III. Payment and Setoff

1. Unless otherwise agreed, payment shall be made without cash discount deduction in such a way that we can dispose of the sum on the due date. Any payment transfer costs shall be borne by the Buyer. The Buyer may retain or set off any counterclaims only in so far as his claims are undisputed or have become legally binding, are based on the same contractual relationship with the seller and/or would entitle the Buyer to a refusal of his performance according to § 320 BGB.
2. Unless otherwise agreed, our invoices become due 30 days upon the date of invoice.
3. Should the Buyer default in payment, he will be liable to pay interests at 9 % points above the basic interest rate, unless higher rates have been agreed upon. Additionally, we charge a default allowance of EUR 40.00. We reserve the right to claim additional damages resulting from late payments.
4. Should it become evident after the conclusion of the contract, that payment is jeopardised by the Buyer's lack in financial means, or should the Buyer be in default with a considerable portion of the amount due or should other circumstances arise which show a material deterioration in the Buyer's financial position after the conclusion of the contract, we shall be authorised to make use of our rights under § 321 BGB (German Civil Code) and to make due any and all of our non-statute-barred accounts receivable resulting from the same legal relationship. This also applies in case the performance of our contractual obligation is not yet due.
5. Any agreed cash discount relates always to the invoiced value excluding freight and will only be granted if and in so far the Buyer has completely paid all payables due at the time the discount is deducted. Unless otherwise agreed, discount periods shall start at the date of the invoice.

IV. Delivery Times

1. Sale and delivery of the goods shall be subject to contractual as well as correct and punctual supply to ourselves and, in case of imports, subject to the punctual receipt of surveillance documents and/or import licenses, unless we are responsible for the incorrect or late self-delivery.
2. Any indications as to delivery times shall only be approximate. Delivery times shall commence with the date of our order confirmation and are subject to the punctual clarification of any details of the order as well as of the fulfilment of any of the Buyer's obligations, e.g. to produce official certifications, to provide letters of credit and payment guarantees or to pay agreed instalments.
3. Any agreed delivery times shall be considered to be met if and in so far the goods have left the works or our warehouse at such time or date. If and in so far the goods fail to be despatched at the agreed time for reasons not attributable to us, the agreed delivery time shall be considered to have been met at the day on which the goods are notified to be ready for dispatch.
4. Within events of force majeure we shall be entitled to postpone deliveries for the period of the impediment and for a reasonable time necessary for adaptation. The same shall apply to such events which arise during prevailing delays. Force majeure shall include measures affecting currency, trade policy and other governmental acts, strikes, lockouts, operating shutdowns not caused by us (for example fire, machinery and rolls breakdown, deficiency in raw material or energy), obstruction of traffic routes, delay in customs/import clearance, as well as any other circumstance which, not due to our fault, either substantially jeopardises our deliveries and services or makes them impossible for us to fulfil, no difference whether such circumstances will affect us or our supplier(s). Should, in consequence of the aforementioned circumstances, the performance of the contract become unreasonable to fulfil to one of the contractual parties, such party may then declare the contract avoided.

V. Retention of Title

1. All goods delivered to the Buyer shall remain our property (Reserved Property) until all of the Buyer's accounts resulting from the business relationship with him, in particular any account balances have been settled. This condition shall apply to any future as well as any conditional claims including accepted notes and such cases where the Buyer will effect payments on specifically designated claims. The current account reservation is not applicable in prepayment or delivery vs payment cases. In these cases, the goods remain our property until the purchase price for these goods has been paid in full.
2. With regard to processing or manufacturing of the Reserved Property, we shall be deemed to be manufacturer within the meaning of § 950 BGB (German Civil Code) without committing us in any way. The processed or manufactured goods shall be regarded as Reserved Property within the meaning of clause V/1 of these Conditions. If the Buyer manufactures, combines or mixes the Reserved Property with other goods we shall obtain co-ownership in the new goods in proportion to the invoiced price of the Reserved Property to the invoiced price of the other goods. If, by such combining or mixing, our ownership expires, the Buyer herewith transfers to us any rights which the Buyer will have in the new stock or goods in proportion to the invoiced price of the Reserved Property, and he will keep them in safe custody free of charge. Our co-ownership rights shall be regarded as Reserved Property within the meaning of clause V/1 above.
3. The Buyer may resell the Reserved Property only within the normal course of his business in accordance with his normal business terms and provided he is not in default of payment and provided also that any rights resulting from such resale will be transferred to us in accordance with clause V/4 through V/6 below. The Buyer shall not be entitled to dispose of the Reserved Property in any other way.
4. The Buyer hereby assigns to us any claims resulting from the resale of the Reserved Property. Such claims shall serve as our security to the same extent as the Reserved Property itself. If the Reserved Property is resold by the Buyer together with other goods not purchased from us, then any receivables resulting from such resale shall be assigned to us in the ratio of the invoiced value of the other goods sold by the Buyer. In the case of resale of goods in which we have co-ownership rights according to clause V/2 of these Conditions, the assignment shall be limited to the part which corresponds to our co-ownership rights.
5. The Buyer shall be entitled to collect any receivables resulting from the resale of the Reserved Property. This right shall expire if withdrawn by us, at the latest if the Buyer defaults in payment; fails to honour a bill of exchange; or files for bankruptcy. We shall exert our right of revocation only if and in so far it becomes evident after the conclusion of the contract that payment resulting from this contract or from other contracts is jeopardised by the lack of Buyer's ability to pay. The Buyer shall - upon our request - immediately inform his customers of such assignment and to forward to us any information and documents necessary for collection.
6. The Buyer shall immediately inform us of any seizure or any other attachment of the Reserved Property by a third party. He shall bear any costs necessary to suspend such seizure or attachment or removal of the Reserved Property, if and in so far as such costs are not borne by a third party.
7. Should the Buyer default in payment or should he fail to honour a draft we shall be entitled to take back the Reserved Property and to enter, for this purpose, the Buyer's premises. The same shall apply should, after the conclusion of the contract, it become evident that payment resulting from this contract or from other contracts is jeopardised by the Buyer's lack of ability to pay. If we take back the Reserved Property, this shall not be regarded as withdrawal from the contract.
8. Should the total invoiced value of our collateral exceed the amount of the secured receivables including additional claims (for interest, costs etc.) by more than 50 %, we shall - upon the Buyer's request - release pro tanto collateral at our discretion.

VI. Grades, Sizes and Weight

1. The weight of the goods shall be determined on our or our suppliers' scales and shall be evidenced by the presentation of the pertinent weight check. Where provided by law, the weight may be determined without weighing in accordance with the standards. We may calculate the weight without weighing on the basis of the applicable standards ("theoretical weight") plus 2 1/2% ("commercial weight").
2. Any indications given in the delivery notes as to the number of pieces, bundles etc. are not binding if and in so far as the goods are invoiced by weight. Where, in accordance with trade usage, the goods are not weighed piece by piece, the total weight of the delivery shall prevail. Any difference with regard to the calculated weight of the single pieces shall be proportionally allocated to them.

VII. Testing and Inspection

1. The enclosed delivery of test certificates according to EN 10204 requires written consent. We are entitled to hand out copies of such certificates. For lack of explicit agreement, the fee for test certificates depends on our price list or on the price list of the respective issuer (mill).
2. Where testing and inspection of the goods has been agreed, the goods must be inspected in the mill or in our warehouse immediately after the Buyer has been informed that the goods are ready for dispatch. The Buyer guarantees that we are authorised to charge the inspecting company of his choice for the name and for invoice of the acceptor. Unless otherwise agreed, this authorization is considered granted with the nomination of an inspecting company on the order form. Should, through no fault of ours, an agreed inspection of the goods fail or be delayed or be incomplete, we shall be authorised to dispatch the goods without prior inspection or to store them at the Buyer's expense and risk and to invoice the goods to him.

VIII. Dispatch, Passing of Risk, Packaging, Partial Delivery

1. We shall be entitled to choose the route and mode of dispatch as well as the forwarding agent and the carrier.
2. The Buyer shall immediately request delivery of those goods which have been notified to him as ready for dispatch. Otherwise we are entitled, upon reminder, to ship such goods at the Buyer's cost and risk or to store them at our discretion and to invoice them to the Buyer.
3. Can, by reasons not attributable to us, the goods not be shipped or shall it become substantially difficult to ship them via the designated route or to the designated place within the designated time, we reserve the right to ship them via a different route or to a different place. Any additional costs will be borne by the Buyer. In such cases we will ask the Buyer for his prior comments.
4. In all transactions, including freight-prepaid and freight-free deliveries, the risk of loss or damage to the goods shall pass to the Buyer at the time where we hand them over to the forwarding agent or to the carrier, at the latest with their departure from our warehouse or the works. We will buy insurance only if requested to by the Buyer and at his cost. The Buyer shall unload the goods at his cost.
5. The goods will be delivered unpacked and not be protected against rust. Only where so provided, the goods will be packed. Any package, protection and/or transport device will be supplied according to our experience and at the Buyer's cost. Within adequate terms, we will take back such devices only at our warehouse. We will not bear any costs for their retransport or disposal.
6. We shall be entitled to make partial deliveries with reasonable quantities. Where and in so far allowed by trade usage, we may exceed or reduce the agreed quantities by up to 10 %. We may likewise exceed or reduce by 10 % and invoice such goods which have been ordered to the Buyer's needs.
7. Where the contract provides for continuous deliveries, the Buyer shall divide the quantities and grades of the goods into approximately equal monthly shipments. Otherwise we shall be entitled to specify them at our own fair and just discretion.
8. Where the single calls for delivery exceed the total contractual quantity, we shall be entitled, yet not committed, to deliver the surplus quantity and invoice it at the prices applicable at the time of the call or the delivery.

IX. Warranty Provisions

1. The internal and external characteristics of the goods, especially grades, classification and sizes of the goods shall be determined in accordance with the agreed standards or, in absence of such an agreement, with the DIN and EN-standards effective at the time of the conclusion of the contract, or in absence of such standards with the trade practice and usage. Any reference to such standards and to similar rules, to works certificates and to similar inspection documents as well as any reference to grades, classification, sizes, weight or usage of the goods shall not be regarded as warranty of fitness for a special purpose nor as a guarantee. The same shall pertain to declarations of conformity and to any related marks such as CE- and GS-marks.
2. As to the Buyer's obligations to examine the goods and to notify us of any defects, the applicable statutory provisions shall apply, subject to the following conditions:

- The Buyer shall examine the goods immediately after delivery with regard to the properties relevant for the use of the goods and shall notify us in text form of any defects of the goods immediately thereafter. In case the Buyer intends to install the goods into another object or attach the goods to another object, the properties relevant for the installation or the attachment include the inner properties of the goods. The Buyer's obligation to examine the goods exists even in cases where an inspection certificate or any other material certificate is provided. Defects which, even upon most careful inspection, cannot be discovered immediately after delivery must be notified to us in text form immediately after their discovery.
- In case the Buyer, in the event of an installation of the goods into another object or attachment of the goods to another object, fails to inspect the properties of the goods relevant for the designated end use at least at random prior to installation resp. attachment (e.g. by function tests or a trial installation), this represents a particularly grave disregard of the care required in the ordinary course of business (gross negligence) in relation to us. In such a case, the Buyer may assert any rights in relation to these properties only if the defect had been deliberately concealed or in case of a guarantee for the respective quality of the goods.

3. If and in so far the Buyer's claim for defects is justified and has been made in time, we may, upon our discretion, remedy the defect or deliver non-defective goods ("substitution"). Should we fail or decline the substitution, the Buyer may, upon the elapse of an adequate additional period of time set by him, withdraw from the contract or reduce the purchase price. In cases where the defect is minor, where the goods have already been resold, processed or transformed, he may only reduce the purchase price.

4. In case the Buyer has installed the goods, in accordance with the goods' type and designated use, into another object or attached the goods to another object, he may claim reimbursement of his necessary costs for the dismantling of the defective goods and the installation or attachment of goods free from defects ("dismantling and installation costs") only in accordance with the following provisions:

- Necessary dismantling and installation costs are only those, which directly result from the dismantling resp. removal of the defective goods and the installation resp. attachment of identical goods, have accrued on the basis of competitive market prices and have been proven by the Buyer by appropriate documents in text form.

- Additional costs of the Buyer for consequential damages such as e. g. loss of profit, down time costs or additional costs for cover purchases are no dismantling and installation costs and therefore not recoverable under Sect. 439 para. 3 of the German Civil Code. The same applies for sorting costs and for supplementary costs resulting from the fact that the sold and delivered goods are at a place other than the agreed place of delivery.
- The Buyer is not entitled to request advance payments for dismantling and installations cost or other expenses required for the remedy of the defective delivery.

5. In case, on an individual basis, the costs incurred by the Buyer for the remedy of the defective delivery are disproportionate, namely with regard to the purchase price of the goods being free from defects and under consideration of the importance of the infringement of the contract, we are entitled to refuse the reimbursement of such costs. Disproportionate costs are especially given in case the costs requested by the Buyer, in particular dismantling and installation costs, exceed 150 % of the purchase price of the goods invoiced by us or 200 % of the value of the defective goods.

6. If and in so far as the goods are subject to contractually agreed testing and inspection by the Buyer, such testing and inspection shall bar any claims for such defects which might have been determined by the agreed type of testing and inspection. Has the Buyer, by his own negligence, not learned of the defect, then he may claim only such defects which we have knowingly not disclosed to him or which are subject to a guarantee.

7. If the Buyer fails to immediately give to us the opportunity to inspect the defect, especially if he fails - upon our request - to immediately make the goods or samples hereof available to us, he will lose all of his warranty rights.

8. No warranty shall be given to goods sold as declassified material with regard to such defects either specified in the contract or to those normally to be expected. Goods classified as "Ila-Ware" ("secondaries") are not subject to any warranty.

9. In accordance with Section X of these Conditions, additional claims are not acceptable. This applies in particular to claims for damages which did not occur to the goods themselves (consequential damages), costs of the Buyer related to the selfremedy of defects without the legal requirements being fulfilled and dismantling and installation costs, in case due to a transformation undertaken by the buyer before the installation of the goods into another object or before attachment of the goods to another object, the installed or attached goods provide substantially different features than the original goods delivered by us or have been transformed to new products.

X. Restriction of Liability

1. Our liability for breach of contractual or extra-contractual obligations, in particular for nonperformed or deferred deliveries, for breach of duties prior to the contract as well as for tortious acts - including our responsibility for our managerial staff and any other person employed in performing our obligations - shall be restricted to damages caused by our wrongful intent or by our gross negligence and, in case of gross negligence, shall in no case exceed the foreseeable losses and damages characteristic for the type of contract in question. Apart from that, our liability for damages resulting from defects including consequential damages shall be excluded.

2. The aforesaid restriction shall not apply to such cases where we breach our fundamental contractual obligations and where such a breach of contract will endanger the contractual purpose; it shall neither pertain to damages to life, to the body or to health caused by our fault nor to any cases where we have guaranteed certain characteristics of the goods. Nor shall such clause affect our statutory liability laid down in the Product Liability Act (Produkthaftungsgesetz) of 15/12/89. Any statutory rules regarding the burden of proof shall remain unaffected by the aforesaid.

3. Should we default on a delivery or performance, the Buyer shall be entitled to damages due to this delay; in case of slight negligence, however, the claim of the Buyer is restricted to maximum 10 % of the agreed purchase price for the performance in default. The rights of the Buyer for damages instead of performance in accordance with the present sec. X.1 and X.2 remain unaffected by the aforesaid.

4. Unless otherwise agreed, any contractual claims which the Buyer is entitled to in connection with the delivery of the goods shall fall under the statute of limitations within a period of one year after the goods have been delivered to the Buyer. This shall not apply insofar as Section 438 para. 1 No. 2, Section 478, 479 or Section 634 lit a) para. 1 No. 2 of the German Civil Code BGB require longer limitation periods, in cases of injuries to life, body and health, breaches of contract caused by our wrongful intent or by our gross negligence or in cases where a defect is fraudulently concealed.

XI. Place of Performance / Jurisdiction / Applicable Law

1. The place of performance for our deliveries shall be the supplying work in cases of exwork deliveries, in all other cases it shall be our warehouse. The place of jurisdiction shall be the Amtsgericht Nettetal/Landgericht Krefeld or - at our discretion - the Buyer's seat.

2. All legal relationships between us and the Buyer shall be governed by the laws of the Federal Republic of Germany.

3. In cases of doubt, the German version of these General Conditions of Sale and Delivery shall prevail.