

Terms of Sale and Delivery

Article 1 Scope of Application

1. Our Terms shall only apply to entrepreneurs as defined in Sec. 310 *BGB* [German Civil Code].
2. The below Terms shall apply to all of our contracts, deliveries and other services, unless they are modified or excluded subject to our express written consent. They shall particularly apply even if we perform the delivery/service without reservation in knowledge of deviating terms of our contractual partner. Our contractual partner's deviating general terms and conditions of business shall only apply if we confirm them in writing.
3. Our Terms shall also apply to all future contracts, deliveries and services, even if their text is not sent again to our contractual partner with our offer or order confirmation.

Article 2 Offer and Conclusion

1. Our offers shall be non-binding. Contracts and other agreements shall only become binding if we confirm them in writing or perform a delivery/service.
2. All agreements between us and our contractual partner shall be set forth in writing upon contract conclusion.

Any agreements entered into between our employees or representatives and our contractual partner upon or after contract conclusion shall be subject to our written confirmation in order to be valid; insofar, the power of representation of our employees and representatives shall be limited.

Article 3 Prices, Price Increases and Payment

1. Our prices apply to delivery ex works plus packaging, freight, customs duty, insurance, postage and statutory VAT, the latter being additionally charged in any case at the rate applicable on the day of delivery or service performance.
2. If in the case of orders which, as agreed, are to be fulfilled later than four months after contract conclusion or which can only be fulfilled later than four months after contract conclusion for reasons within our contractual partner's responsibility, our procurement prices and/or the wage and salary rates applicable to us increase between contract conclusion and performance of the order, we are entitled to demand a price which is increased in proportion to the percentage share of the affected procurement price and/or wage costs in the agreed price.
3. Our invoices shall be payable within 14 days of receipt without deduction if not agreed upon otherwise or not provided otherwise in our offer/order confirmation.
4. As of the due date, we shall be entitled to interest at the rate of 9.5%. Any further claims – in particular relating to our contractual partner's default – shall remain unaffected.
5. Any set-off with counterclaims that are disputed by us and that have not been finally adjudicated shall not be permissible. Any assertion of rights of retention for claims which are not based upon the same contractual relationship shall be excluded if such claims are not accepted by us and have not been finally adjudicated.

Article 4 Deterioration in Assets of the Contractual Partner

1. If one of the events stated below occurs or if such event that already existed upon conclusion of the contract becomes known only after the conclusion of the contract, we can demand that our contractual partner pays the agreed price in advance. This shall apply to the following events:
A judicial or extrajudicial insolvency or settlement procedure is initiated regarding the assets of our contractual partner or the initiation of such process is rejected due to lack of assets or there is a written credit report from a bank or credit agency according to which our contractual partner is unworthy of credit or a cheque or bill of exchange of our contractual partner accepted by us is not cashed and/or is dishonoured.
2. If our contractual partner does not meet our reasonable request for advance payment within an appropriate grace period set by us, although we declared to it that we will reject acceptance of any services by it after expiry of such period, we shall be entitled to withdraw from the contract or to demand damages in lieu of performance, however, the latter only regarding the part of the contract not fulfilled by us yet.

Article 5 Dispatch and Transfer of Risk, Insurance

1. The risk of accidental loss and accidental deterioration of the goods shall, in any case and regardless of the place of dispatch, pass on to our contractual partner upon dispatch of the goods, even if freight-paid delivery was agreed upon on an exceptional basis.
2. If the goods are not to be dispatched or if dispatch is delayed at the request of our contractual partner or for other reasons in our contractual partner's responsibility, the risk of accidental loss and accidental deterioration shall pass on to our contractual partner already when we notify the latter about readiness for delivery. In such case, we shall store the goods at the expense and risk of our contractual partner.
3. Goods for contract coating must be delivered to us free domicile. Such goods shall be insured by the contractual partner against any risks related thereto.

Article 6 Delivery and Service Periods and Deadlines

1. Delivery and service periods and deadlines shall only be regarded as binding if confirmed by us in writing.
2. Any delivery or service period only the duration of which is stipulated shall commence upon expiry of the day on which an agreement was reached regarding all details of the order contents, no sooner than upon acceptance of the order by us, however, not before presentation of all documents, permits, approvals to be procured by our contractual partner and not before receipt of any advance payment to be made by our contractual partner.
3. Delivery and service periods or deadlines are deemed observed if we dispatched the goods or, in cases in which the goods are not to be sent, our notification about readiness for delivery before the deadline/expiry of the period.
4. In the event of occurrence of a force majeure event and unforeseen obstacles occurring after contract conclusion for which we are not responsible to the extent such obstacles demonstrably have a substantial effect on the delivery of the object sold, periods shall be extended and deadlines shall

be postponed, also during a delay. Strikes and lockouts shall in any case also be regarded as obstacles for which we are not responsible pursuant to this paragraph. The above provisions shall also apply if the delaying circumstances occur at our suppliers or their sub suppliers. To the extent such delays in delivery last for more than 8 weeks, our contractual partner shall be entitled to withdraw from the contract, excluding any further claims.

5. Periods shall be extended and deadlines shall be postponed by such time period in which our contractual partner is in default with its obligations – in the course of an ongoing business relationship also with regard to other contracts – or does not create the conditions for commencement or continuation of the works which are to be created by it, in particular if it does not provide any required documents, plans or other specifications. The burden of proof that our contractual partner created required conditions and provided any required documents, plans or specifications shall rest with our contractual partner.
6. We are entitled to perform partial deliveries if the partial delivery is usable for our contractual partner in the course of the contractual intended purpose and if this does not result in any substantial extra effort or additional costs for the contractual partner.

Article 7 Nature of the Goods

1. Our information on the performance object and intended purpose, on dimensions, weights, practical value or other properties, whether set forth in brochures, price lists, descriptions, figures, drawings, sketches, indexes or other files, shall merely represent approximate values customary for the industry. They serve the purpose of merely describing our products and shall only become binding if this is explicitly confirmed by us.
2. We reserve the right to deviations from the nature, dimensions, weights and other properties to the extent this does not affect the usability of the objects delivered and such deviations are not unacceptable to our contractual partner for any other reasons.

Article 8 Declaration on the Exercise of Rights after Setting a Period for Supplementary Performance

Where our contractual partner set a time period for supplementary performance for us due to non-delivery or improper delivery and where such period has expired, we shall be entitled to request the contractual partner to declare within a reasonable time period whether it continues to exercise its claim for performance/supplementary performance or whether it will exercise the other optional rights available to it. If our contractual partner does not provide such declaration within the reasonable time period stipulated for it, its claim to performance/supplementary performance shall be excluded. If our contractual partner informs us within the reasonable time period set that it continues to demand performance/supplementary performance, it shall be free to set another period for this purpose and to exercise any other rights in the event of fruitless expiry thereof.

Article 9 Default, Exclusion of the Performance Obligation

If we are in default with delivery or service performance or if our performance obligation is excluded pursuant to Sec. 275 *BGB*, we shall only be liable for damages under the conditions and in the scope as set forth in Article 12 No. 3, however, subject to the following additional conditions:

1. If we are in default with delivery and if we are only to be blamed for slight negligence, any claims for damages of our contractual partner shall be limited to a lump-sum delay compensation in the amount of 1% of the delivery value for each complete week of default, however, to a maximum of 8% of the delivery value; however, we shall be entitled to prove that such default in delivery did not result in any damage or in a smaller damage only.
2. If we are in default, our contractual partner shall only be entitled to damages in lieu of performance if it first set a reasonable grace period for delivery of at least 6 weeks; however, it shall remain entitled to set a reasonable time period of less than 6 weeks if a grace period of at least 6 weeks is unacceptable to the contractual partner in any particular case.
3. Any right of withdrawal to which the contractual partner is entitled and any claim for damages to which the contractual partner is entitled shall, in general, be limited to the portion of the contract not fulfilled yet, unless our contractual partner is no longer reasonably interested in the performed portion of the contract.
4. Any claims for damages due to delay or exclusion of the performance obligation pursuant to Sec. 275 *BGB* directed against us shall lapse after expiry of one year after commencement of the statutory limitation period.
5. The above provisions shall not apply if any damage arising from injury to life, limb, health or freedom of our contractual partner is concerned or if such damage is based upon an intentional or grossly negligent violation of obligations by us, one of our legal representatives or vicarious agents and further, in the event of default, such provisions shall not apply if a fixed date transaction was agreed upon.

Article 10 Default of Acceptance of our Contractual Partner

1. If our contractual partner is in default of acceptance regarding our services in whole or in part, we shall be entitled, after fruitless expiry of a reasonable grace period set by us, to withdraw from the contract or to demand damages in lieu of performance, however, only with regards to the portion of the contract not fulfilled by us yet. We shall not be entitled to any damages if our contractual partner is not to be blamed for such default of acceptance. In the event of default of acceptance of our contractual partner, our statutory rights shall remain unaffected.
2. If the contractual partner is in default of acceptance, it shall reimburse us for our storage costs, warehouse rent and insurance costs for goods due for acceptance but not accepted. We are not subject to any obligation to insure goods stored.
3. If the delivery of the goods is delayed at the contractual partner's request or if the latter is in default of acceptance, we may charge storage fees in the amount of the customary local costs of storage with a specialist company after expiry of one month after dispatch of the notification of readiness for delivery; in such case, we shall remain entitled to claim compensation for any actual higher loss.

Article 11 Damages in Lieu of Performance

If we are entitled to damages in lieu of performance, we may demand 15% of the contractual price share corresponding to the affected portion of the delivery object without proof; our contractual partner shall be entitled to prove that no damage or only a smaller damage was incurred. Our right to claim compensation for actual higher losses shall remain unaffected.

Article 12 Liability for Defects and Damages

1. Our contractual partner's claims for defects of the objects supplied by us shall lapse upon expiry of one year after delivery of such objects. However, the statutory time period shall remain in effect for the claim for damages and reimbursement of expenses pursuant to Sec. 437 no. 3, 439 para. 2 + 3, 634 no. 4 *BGB* if losses arising from the injury of life, limb, health or freedom of our contractual partner are concerned or losses based upon an intentional or grossly negligent violation of duties of us, one of our legal representatives or vicarious agents.

The statutory limitation period shall apply even if we maliciously concealed the defect.

In the cases of Sec. 439 para. 2 + 3, 445 a para. 1 *BGB*, the provisions set forth therein shall remain in effect; however, the above sentences 1, 2 and 3 shall even then apply to the claim for damages.

2. The rights of our contractual partner due to defects of the object shall be based upon the statutory provisions provided that our contractual partner shall grant us a reasonable time period for supplementary performance of at least four weeks; we shall be free to elect whether we remove the defect or deliver a substitute object free from defects. Our contractual partner shall be entitled to set a reasonable time period of less than four weeks if a period for supplementary performance of at least four weeks is unacceptable to the contractual partner.

If only a portion of the goods delivered by us is defective, our contractual partner's right to demand annulment of the contract or damages in lieu of performance shall be limited to the defective portion of the delivery/services, unless such limitation is impossible or unacceptable to our contractual partner.

Our contractual partner's claims for damages for defects in delivery or service shall be limited to the extent resulting from below no. 3.

3. Our liability for any losses arising from the injury of life, limb, health or freedom of our contractual partner based upon a culpable breach of duties shall neither be excluded nor limited.

We shall be liable for any other losses of the contractual partner only if they are based upon an intentional or grossly negligent violation of duties of us, one of our legal representatives or vicarious agents.

If we caused the damage in a slightly negligent manner only, we shall only be liable if a violation of essential contractual obligations is concerned; such liability shall be limited to the reasonably foreseeable damage typical of the type of contract.

Apart from that, any claims for damages of our contractual partner based upon a violation of duties, tort or other legal ground shall be excluded.

The above limitations of liability shall not apply if there is a lack of warranted properties and in the event of guarantees if and to the extent the warranty of properties or guarantee served the purpose of protecting the partner against any damage deriving from the delivered object itself.

To the extent our liability is excluded or limited, this shall also apply to the personal liability of our employees, workers, staff members and vicarious agents.

The above exclusions of liability shall in any case also apply to consequential losses.

However, the above exclusions of liability shall not apply to claims under the *Produkthaftungsgesetz* [Product Liability Act].

4. If our contractual partner provides us with components or materials for processing or as delivery for fulfilment of an order, we shall not perform any inspection for manifest defects if not agreed upon otherwise.

Article 13 Retention of Title

1. In order to satisfy all claims against our contractual partner to which we are entitled at present or in the future, our contractual partner grants us the following collaterals which we can release upon request at our option to the extent their nominal value permanently exceeds our claims by more than 20%:

Any delivered goods shall remain our property.

Any processing or modification shall always be performed for us as manufacturer, however, without obligating us. If the goods delivered by us are processed with other objects which do not belong to us, we shall obtain co-ownership in such new object in proportion of the invoice value of the goods delivered by us to the invoice value of the other goods used at the point in time of processing.

If our goods are combined with other moveable objects to a uniform object and if the other object is to be regarded as main object, our contractual partner already now transfers the proportionate co-ownership to the new object to us to the extent such main object belongs to the contractual partner; such transfer shall take place in proportion of the invoice value of the goods delivered by us to the invoice value of the other goods used at the point in time of combination.

Any handover by us required for the acquisition of the ownership or co-ownership shall be replaced by the agreement, which is entered into already now, according to which our contractual partner keeps the object on our behalf as a borrower or, should the contractual partner not possess the goods itself, already now assigns its surrender claim against the possessor to us.

Objects regarding which we are entitled to (co-)ownership pursuant to the above provisions are hereinafter referred to as reserved goods.

2. Our contractual partner shall be entitled to dispose of the reserved goods in the normal course of business and to combine or process them with objects of third parties. Already now, the contractual partner assigns the claims arising from the disposal, combination or processing of the reserved goods or from any other legal ground to us in whole in the proportion in which we are entitled to co-ownership in the disposed, processed or combined object. Upon allocation of such claims to current accounts, such assignment shall also include all balance claims. This assignment shall have priority over any other claims.

Subject to revocation, we authorise our contractual partner to collect the receivables assigned. The contractual partner shall pay the amounts collected to us without delay to the extent and as soon as our claims become due. To the extent our claims are not due yet, the contractual partner shall record the amounts collected separately.

Our authority to collect such claims ourselves shall remain unaffected. However, we undertake not to collect the receivables as long as our contractual partner meets its payment obligations using the proceeds obtained, is not in default with payments and, in particular, no application for the initiation of an insolvency or settlement procedure has been filed or no cessation of payments has occurred.

At our request, our contractual partner shall be obliged to disclose the assigned claims and the debtor thereof to us, to provide us with the pertaining documents and all information required for collection activities. If we are entitled to collect the claims, our contractual partner shall be obliged to provide us with all information required for collection and to communicate such assignment to the third-party debtors; we are entitled to communicate such assignment to the debtor ourselves.

Upon a cessation of payments, application for or initiation of an insolvency procedure, judicial or extra-judicial settlement procedure, our contractual partner's rights to resale, processing or combination of the reserved goods and the authorisation to collect the assigned claims shall expire, even without revocation on our part.

3. Our contractual partner shall immediately inform us about any third-party access to the reserved goods and to the assigned claims. Any costs of interventions or of the defence thereof shall be borne by our contractual partner.
4. Our contractual partner shall be obliged to treat the reserved goods in a proper manner, in particular to adequately insure them, at its own costs, against fire, water and theft damage at replacement value.
5. In the event of conduct of our contractual partner that is contrary to the contract - in particular default in payment - we shall be entitled to withdraw the reserved goods at the expense of our contractual partner or to demand assignment of the contractual partner's surrender claims against third parties without us being obliged to declare our withdrawal from the contract beforehand or at the same time. In particular, any withdrawal or seizure of the reserved goods by us shall not represent a withdrawal from the contract, unless we expressly declare such withdrawal in writing.
6. If our retention of title becomes invalid regarding deliveries abroad or for other reasons or if we forfeit our title to the reserved goods for any reasons whatsoever, our contractual partner shall be obliged to provide us immediately with another security for the reserved goods or any other collateral for our claims which is valid pursuant to the laws applicable to the registered office of the contractual partner and which comes as close as possible to the right of retention under German law.

Article 14 – Ownership of Documents, Confidentiality –

1. Figures, drawings, calculations, samples and models shall remain our property. Our contractual partner undertakes not to make such objects accessible to third parties in any form without our express approval. In the event of a culpable breach of the above obligations, our contractual partner commits to pay a contractual penalty in the amount of € 6,000.00 in each individual case to us. Our right to claim compensation for any actual damage exceeding the contractual penalty shall remain unaffected.
2. The contractual partners are mutually obliged to treat any commercial and technical details of which they become aware in the course of the cooperation and which are not publicly available as their own trade secrets and to treat them strictly confidential towards third parties. In the event of a culpable breach of the above obligations, the contractual partners commit to pay a contractual penalty in the amount of € 6,000.00 in each individual case to the respective other contractual partner. The right to claim compensation for any actual damage exceeding the contractual penalty shall remain unaffected.

Article 15 Property Rights

1. If the goods are to be manufactured based upon drawings, samples or other information of our contractual partner, the contractual partner shall ensure that this does not result in violations of any third-party rights, in particular patents, utility models, other property rights and copyrights. The contractual partner shall hold us harmless from any third-party claims arising from any violation of such rights. Furthermore, our contractual partner shall bear all costs incurred by us due to the assertion of such rights by third parties and our defence against such claims.
2. If, in the course of our development work, any results, solutions or techniques are created which are patentable in any form, we shall be the sole owner of the ownership rights, copyrights and rights of use resulting therefrom and we shall remain entitled to perform the corresponding applications for registering such property rights on our own behalf and in our own name.

Article 16 Assignment

Our contractual partner shall be entitled to assign any claims directed against us only subject to our written permit.

Article 17 – Place of Performance, Place of Jurisdiction, Applicable Law

1. The place of performance and exclusive place of jurisdiction for deliveries, service performances and payments, including actions concerning cheques and bills of exchange, as well as for all disputes among the parties arising from and in connection with the contractual relationship shall be Overath to the extent our contractual partner is a *Kaufmann* [enterprise]. However, we shall be entitled to sue our contractual partner at any other place of jurisdiction applicable to such partner pursuant to Sec. 12 et seq. *ZPO* [Code of Civil Procedure].
2. The relationship between the contractual parties shall be solely based upon the laws applicable in the Federal Republic of Germany under exclusion of international sales law, in particular UN Sales Law and any other international conventions regulating the standardisation of sales law.
3. In case of differences the German Version of the Terms and Conditions of Sale and Delivery shall prevail.