

General Terms and Conditions of Sale and Supply

Status: 01.03.2021

I. Scope of validity, exclusion of the application of different Terms and Conditions of Business

1. Our General Terms and Conditions of Sale and Supply apply exclusively. They also apply to all future business transactions and ancillary services such as technical instructions, information or the like as well as to all business-related contacts with the customer, such as the commencement of contract negotiations or the initiation of a contract, even if it is not explicitly agreed again or no explicit reference is made thereto.
2. If in individual cases obligations are established towards persons who are not intended to become contract partners themselves, the liability provisions of these General Terms and Conditions of Sale and Supply also apply towards third parties, insofar as they were incorporated in the establishment of the obligation towards the third parties. This is primarily the case when the third party had become - or was already - familiar with the General Terms and Conditions of Sale and Supply when the obligation was entered.
3. We do not accept any Terms and Conditions of the customer which differ from or contradict our General Terms and Conditions of Sale and Supply and hereby explicitly contradict their validity. Earlier agreements or earlier versions of our General Terms and Conditions of Sale and Supply are cancelled by these General Terms and Conditions of Sale and Supply.

II. Conclusion of contract, contents and scope of performance, and non-assignment clause

1. Our offers are prepared free of charge and they are non-binding. The contract becomes effective when we accept the customer's order or when we start to execute it.
2. Our offer or our order confirmation is decisive for the scope of supply. Subsidiary agreements and modifications require our written confirmation. The same applies to the agreement of specific characteristics and quality of the object to be supplied. We are only obliged to present third-party test or acceptance certificates if this has been explicitly agreed.
3. The information, drawings, illustrations, technical data, weights, dimensions and specification of services are only approximate values unless they are explicitly marked as definitive.
4. The customer is not authorised to transfer or assign any debts or rights arising from the business contacts to third parties without our consent. The same applies to debts and rights which we incur directly by virtue of the legislation.
5. The Terms and Conditions for the Execution of Work on Motor Vehicles, power units and their parts apply additionally to the sale of motor vehicles equipped with a special conversion. This applies accordingly to the sale of wheelchairs on which conversion work has been carried out.

III. Payment, offset and rights of retention

1. Our invoices are due for immediate payment. Other instruments of payment will be accepted only by special agreement and only on account of performance, subject to payment of all due collection and discount charges.
2. In case of payment arrears we are authorised to make further services dependent upon the complete settlement of the arrears.
3. Furthermore, we are authorised to refuse our services if - owing to any circumstance arising after the contract has been concluded - we have cause to worry that we may not receive the consideration of the customer in full and punctually, unless the customer succeeds with the consideration or gives sufficient security. This applies primarily if our credit insurer refuses to insure the purchase of the object of supply for reasons of the customer's credit rating, or we obtain knowledge of enforcement measures and/or protests of cheques or bills against the customer.

4. Offset against counterclaims of the customer which are not disputed, legally finalised or are not ready for a decision is excluded. At the time of concluding the contract, if the customer acts in pursuance of his commercial or self-employed vocation, his notice of defects has no influence on the duty to pay or on the due date of payment and he will forego exercising his right to refuse payment or his right to retention, unless we - or our legal representatives or vicarious agents - are guilty of gross breaches of contract; the same applies if the counterclaims of the customer which form the basis for the right to refuse performance and the right of retention are undisputed, legally finalised or ready for a decision to be taken.

IV. Delivery period, partial deliveries, acceptance, delay on the part of creditors, delayed delivery

1. The agreed delivery period starts when the contract is concluded but not before receipt of any documents, releases or agreed advance payments. The delivery period is considered met if the object of supply leaves our premises before it expires, or when the customer is notified that it is ready for dispatch unless it is not possible for it to be delivered for reasons for which the customer is responsible.
2. The delivery period is extended appropriately in cases of force majeure and the occurrence of out-of-the-ordinary events, such as insurgence, strikes, lockouts, fire, confiscation, embargo, statutory or official limitations on energy consumption, or incorrect and/or unpunctual delivery, for which we are not responsible, which we were unable to avert in spite of acting with due care, and which affect the punctual fulfilment of the contract. If the delivery period is extended inordinately owing to such circumstances, the customer is authorised to cancel the unfulfilled part of the contract after an appropriate period of grace expires, or if the customer is interested in partial delivery.
3. Deliveries before the delivery period expires and partial deliveries are permissible insofar as conflicting interests on the part of the customer are not unreasonably affected.
4. The customer is under obligation to accept the object of purchase within 1 week of receipt of notification of readiness at the headquarters of the vendor. If it is not accepted, the vendor can exercise its statutory rights. If the customer wishes to have the object of purchase delivered, this will be done at his expense and risk. This is without prejudice to liability if culpable.
5. If the vendor demands compensation because of failure to accept, the compensation is 10% of the purchase price. The customer is explicitly permitted to prove that no damage has occurred, or that the damage is significantly less than the lump sum named in sentence 1.

V. Transfer of risk, dispatch, packaging

1. Our deliveries are ex-works.
2. In all cases – including the risk of confiscation – also for carriage-paid delivery the risk is transferred to the customer when the object of delivery is handed over to the person to transport it, if the customer is an entrepreneur and, when concluding the contract, does so in the course of exercising his commercial or self-employed profession. This also applies if we carry out the transport ourselves or have transport carried out, even if we have assumed dispatch at our own expense or cartage. If shipment is delayed for reasons connected with the person of the customer, the risk is transferred to the customer as soon as notification is given that the delivery object is ready for shipment, insofar as the customer is a businessman and was pursuing his commercial or self-employed line of business at the time of signing the contract. If the customer so requests, the merchandise to be delivered will be insured against transport damage at the customer's expense.

VI. Retention of title to ownership

1. We retain the title to ownership of the object of delivery until all debts arising from this contract have been settled, including those paid by cheques and bills of exchange. This also applies to any rights of recourse under the laws on cheques and bills, and to any claims for recourse under the law on cheques and bills arising from payments by cheques or bills on account of performance. When payments are made by the cheque and bill method we reserve the title to ownership of the object of delivery until the risk of recourse from the bills placed at our disposal has ceased to exist. Insofar as the customer is practising his commercial or self-employed profession at the time of concluding the contracts on which our accounts receivable are based, we furthermore reserve the right to retain the title of ownership of the object of supply until all open accounts receivable from the customer have been settled.
2. The customer carries out processing or conversion of the object of delivery without us thereby incurring any obligations. If the customer combines, mixes, blends or processes the object of delivery with other goods, we gain co-ownership of the resultant goods.
3. The co-ownership ratio is determined by the ratio of the invoice value of the object of delivery to the value of the freshly produced goods. In the proper course of business it is permissible for the object of delivery to be combined, mixed, blended or processed as long as the aforementioned security interest is upheld for us.
4. The customer is permitted to sell the objects and the objects which were developed from them in compliance with par. 2 above (hereinafter summarised as goods subject to the right to retention of title to ownership) insofar as it ensures the extended right to retention of title to ownership (assignment of obligations in compliance with paragraph 5 below). No other dispositions, especially lien, rental, lending or assignment as security, are permitted.
5. The customer hereby assigns to us the obligations which have arisen or will arise from the sale, installation or other use of the goods subject to retention of title to ownership. We accept the assignment. Insofar as we were co-owners of the goods subject to retention of title to ownership, assignment applies only to the proportion of debt which corresponds to the co-ownership share.
6. The customer is authorised to collect the assigned debts only in the due course of business and only subject to revocation. Revocation is only possible if the customer fails to meet its obligations properly under the present contract. In this case the customer must inform the debtor of the assignment if we so request; we are equally authorised to reveal the extended retention of title to ownership to the customers of our customer.
7. If the terms of payment are not met, if unauthorised dispositions are made, if cheques or bills are protested, if the customer becomes unable to meet financial obligations or if the customer is found to be over-indebted, if payments stop or if the customer files for bankruptcy, if bankruptcy proceedings are opened or not opened for lack of assets, it causes the authorisation of the customer to dispose of the goods subject to retention of title to ownership and to process, combine, mix and blend them as well as to collect the assigned debts, to expire. In each of these cases we are authorised to take possession of the goods subject to the retention of title to ownership without setting a period of grace and without notice of repudiation of contract; and the customer is under obligation to relinquish them immediately.
8. If the value of the security given to us exceeds the secured liabilities by more than 20% in all, we are under obligation to release the excess securities to the customer at our discretion.
9. The customer must immediately notify us in writing of pending or completed third-party access to the goods subject to retention of title to ownership, or to the assigned debts, and hand over the documents required for the intervention. In the relationship inter se between ourselves and the customer, the costs of intervention, which also include any legal costs, are borne by the latter.

VII. Warranty

1. If the customer is a merchant, he must inspect the goods immediately after receipt, primarily for damage, defects, weight and dimensions. The customer must give immediate notification of visible defects on the delivered goods after receipt of delivery. Defects which are not evident must also be claimed from us immediately after they are discovered. If the customer fails to complain within a 7-day cut-off period the delivered goods are considered approved even in spite of the defect.
2. If the customer is a consumer as defined in the German Civil Code and if a chattel is supplied (sale of consumer goods), according to the statutory provisions the customer can demand supplementary performance, price reduction or cancellation of the contract. The claims become time-barred 2 years from the statutory beginning of limitation for the delivery of new things. In the case of delivery of used things the claims become time-barred 1 year after the statutory beginning of limitation. There is no possibility of claiming compensation for damage due to slightly negligent behaviour which does not represent any infringement of an important contractual duty if there is no injury to life, the body or health. The claim for compensation for performance which is not rendered or is rendered late or deficiently is time-barred one year after the statutory beginning of limitation.
3. If the customer is an entrepreneur as defined in the German Civil Code and a used item is delivered, any kind of warranty for defects is excluded.
4. In all other cases there is a claim to supplementary performance, reduction, cancellation of the contract and compensation only in compliance with the following provisions:

If the agreed characteristics and quality of the item are lacking or if another material defect exists in compliance with section 434, par. 1, sent. 2 German Civil Code if a complaint is made in due time for a period of 1 year, we undertake to eliminate the defect or to deliver an item free of defects (supplementary performance), at our discretion. If our delivery consists of parts which we have purchased from third parties, instead of supplementary performance we are authorised to assign our claims for supplementary performance against our suppliers to the customer.

If we have made two attempts to eliminate the defect or we have made a single supplementary delivery of an item free of defects without being able to thus eliminate the existing defect, instead of elimination of the defect or delivery of an item free from defects, the customer may reduce the purchase price or - after an appropriate period of grace has been set - reduce the purchase price, or - after an appropriate period of grace has been set - demand rescission of the contract concluded with us. Claims on our suppliers, which are assigned to the customer, including any further claims which may have arisen from them, must be reassigned to us in this case.

5. The above stipulations in paragraphs 3 and 4 do not apply if we maliciously concealed defects, assumed a warranty for the characteristics and quality of the object of delivery or sold a chattel to a consumer. The same applies towards the customer's claims in compliance with § 478 German Civil Code, but not to the claims for compensation of the customer. Therefore the restrictions of paragraphs 3 and 4 above remain as do the following provisions in section VIII.

VIII. Liability

If our due performance is not rendered, or rendered belatedly or defectively, the customer can demand compensation for damage:

- a) For damage from injury to life, the body or health caused by our intended or negligent breach of duty or an intended or negligent breach of duty by one of our legal representatives or vicarious agents.
- b) For other damage caused by an intentional or grossly negligent breach of duty on our part, or by an intentional or grossly negligent breach of duty on the part of one of our legal representatives, executives or vicarious agents or the negligent breach of duties which are important for the contract (cardinal duties) on the part of our legal representatives, executives or vicarious agents. Essential contractual duties (cardinal duties) are those duties which must be met in order for the contract to be performed correctly, and the customer generally trusts in them being upheld.

- c) For damages covered by a warranty issued by us (assurance) or a warranty for specific characteristics and quality, or for damage for which we must assume mandatory liability according to the law.

This does not prejudice more extensive liability due to malicious conduct.

In the case of simple negligent infringement of an important contractual duty, the amount of liability is restricted to the kind of damage typically to be expected. This does not apply to damage from injury to life, the body or health.

Insofar as nothing else is agreed in the present Terms and Conditions, all customer claims for compensation for damage of all kinds, especially those which did not arise on the object of delivery itself, are excluded, as are claims arising from offences. This also applies to the claims because of and against our vicarious agents. The limitation of liability is also not applied when we or our vicarious agents are guilty of intent or gross negligence. If third parties have been commissioned or involved for initiating or processing the obligation between the parties, the warranty and liability restrictions named above also apply to the benefit of the third parties.

IX. Product liability

If the states into which the customer will be reselling our products have different - and especially more stringent - product liability and product safety regulations compared to German law, the customer must point this out to us when placing the order. In this case we are entitled to cancel the contract within one month. If the customer fails to enlighten us on this, we may cancel the contract within one month after we have obtained knowledge of the relevant legal situation. In this case the customer is under obligation to indemnify us from third-party claims which are more extensive than our duty to perform in a comparable product-liability case in Germany. This also applies if we decide to uphold the contract.

X. Dispute Settlement Proceedings Act (VSBG)

We refuse to take part in dispute settlement proceedings before the consumer arbitration board in accordance with the German Participation in Dispute Settlement Proceedings Act (VSBG).

XI. Final clauses

1. The place of performance and legal venue for all disputes arising from the contractual relationship (including those arising from bills of exchange and cheques) is 72539 Pfrontstetten – Aichelau, if the customer is a merchant, a legal entity under public law or a special fund under public law, or the customer has no general legal venue in the Federal Republic of Germany, or has removed his legal venue to a foreign country. We are also authorised to bring action at the court with jurisdiction for the domicile of the customer.
2. The customer is aware that data from business transactions and personal data are saved and processed as required for business purposes and must be transmitted to third parties. The customer agrees to this data capture and processing.
3. Should a provision of these General Terms and Conditions of Supply and Payment or a provision in other agreements be or become ineffective, it does not prejudice the effectiveness of all other provisions or agreements.
4. German law applies exclusively to all contractual and other legal relations with our customer; the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.