

General Terms and Conditions (GTC)

Section 1 Scope

1. These General Terms and Conditions (GTC) apply to all – including future – business transactions, agreements and negotiations with our business partners who are entrepreneurs, legal persons under public law or special funds under public law (referred to as “Buyer” below).
2. These GTC apply in particular to contracts for the sale of movable objects (“goods”) regardless of whether we manufacture the goods ourselves or procure them from suppliers (Sections 433, 651 German Civil Code [BGB]).
3. Unless agreed upon otherwise, these GTC apply in the version valid at the time of the Buyer’s order, but at least in the version last communicated in text form, as a framework agreement for similar future contracts without us having to refer to them again in each individual case.
4. Our Terms and Conditions shall apply exclusively; conflicting or deviating conditions of the Supplier are not recognized by us. Our GTC shall also apply if we carry out the delivery to the Buyer without reservation in the knowledge of conflicting or deviating conditions of the Buyer.

Section 2 Conclusion of contract

1. Our offers are non-binding and subject to change. This also applies where we have provided the Buyer with catalogs, technical documentations (e.g. drawings, plans, calculations, references to DIN standards), other product specifications or documents, including in electronic form. We reserve ownership rights and copyrights to all these.
2. The order of the goods by the Buyer constitutes a binding contract offer. Unless specified otherwise in the order, we are entitled to accept this contract offer within three weeks upon receipt.
3. All contracts are only concluded on the basis of our confirmation, which must at least be submitted in text form, or with the dispatch of the contractual item or the performance of the work.
4. Any individual agreements entered into with the Buyer (additional agreements, supplements and amendments) always take precedence over these General Terms and Conditions. Subject to evidence to the contrary, an agreement or our confirmation in text form are authoritative for the content of such agreements.

Section 3 Delivery period and delay in delivery

1. The specification of our service times (delivery time, installation time, repair time) is non-binding. If, in exceptional cases, a binding delivery time has been promised, it only begins after the clarification of all questions required for the execution of the contract and with the issuing of our written order confirmation.
2. The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. If our delivery is delayed due to simple negligence, the claims of the Buyer to compensation for delay damages or claims for damages because the service time was exceeded is limited to a maximum of 5% of the net purchase price.

Section 4 Delivery, transfer of risk

1. The delivery is ex warehouse. It is also the place of fulfillment for the delivery and any subsequent fulfillment. At the request and expense of the Buyer, the goods can be shipped to a different destination (sales shipment). Unless agreed upon otherwise, we are entitled to determine at our discretion the shipping method (especially in terms of means of transportation and route as well as the packaging and load carriers). Packaging materials and load carriers, except pallets, are not taken back.
2. The risk of accidental loss and accidental deterioration of the goods is transferred to the Buyer upon handover. In the case of sales shipment, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass upon delivery of the goods to the shipper, forwarding agent or other person or institution designated to carry out the shipment. Any agreements on the transport and insurance costs (e.g. cif, fob, franko, etc.) are 100% expense clauses. Insofar as acceptance has been agreed upon as an exception, the acceptance is decisive for the transfer of risk.

3. If the Buyer is in default with the acceptance of the goods, if he fails to fulfill an obligation to cooperate or if the shipping is delayed at the request of the Buyer or for other reasons for which the Buyer is responsible, we are entitled to demand compensation for the resulting damage, including additional expenses incurred (e.g. costs of storage). If we store the goods at our plant, we charge a lump-sum compensation in the amount of 0.5% of the invoice amount for each month or partial month, beginning with the delivery date or – if there is no delivery date – with the notice of readiness for dispatch of the goods. The proof of a higher damage and our statutory claims (in particular reimbursement of additional expenses, appropriate compensation, termination) shall remain unaffected; the lump sum shall be offset against further monetary claims. The Buyer is entitled to prove that we have incurred no damage at all or only considerably less damage than the above lump sum.

Section 5 Offer and prices

1. Our offers are non-binding and subject to change. Any binding offers, made in exceptional cases, lose their validity at the latest 30 days after submission, unless the offer specifies a binding commitment beyond this period. The Buyer is bound to his offers for 30 days, unless a longer period for the binding commitment arises from the circumstances.
2. Price information without additions are always net prices plus the applicable statutory VAT. In the absence of a special agreement, the prices are ex works, including loading at the factory but without packaging material and load carriers. Discounts, rebates or other reductions are only granted in cases where it has been expressly agreed.

Section 6 Payment

1. If not explicitly agreed upon otherwise in writing, the purchase price is due for payment within 30 days as of the invoice date. In the absence of a special agreement, payment must be made in cash or by bank transfer.
2. The Buyer shall be in delay upon expiration of the aforementioned payment period. For the delay, the purchase price accrues interest at the applicable statutory default interest rate. We reserve the right to assert further damages caused by the delay. With regard to merchants, our claim to commercial maturity interest (Section 353 German Commercial Code [HGB]) remains unaffected.
3. Unless agreed upon otherwise, we are entitled at any time, even within the framework of an ongoing business relationship, to make delivery in whole or in part only against advance payment. This applies in particular if the Buyer is in default of payment to us or in default of acceptance of a delivery, including partial delivery. We declare a corresponding condition at the latest with the order confirmation.
4. The Buyer is only entitled to set-off and retention rights of any kind if his counterclaims have been legally established or are undisputed. In addition, the Buyer is only entitled to exercise rights of retention if his counterclaim is based on the same individual delivery. In the case of defects in the delivery, the counterclaims of the Buyer remain unaffected, especially in accordance with Section 8 (5) of these GTC.
5. If, after the conclusion of the contract, it becomes apparent that our claim to the purchase price is at risk because the Buyer does not have the required capability, we are entitled to refuse the service and – after setting a deadline, if applicable – to withdraw from the contract in accordance with the legal provisions (Section 321 BGB).

Section 7 Reservation of title

1. We reserve the title to the sold goods (reserved goods) until receipt of all payments from the existing business relationship with the Buyer. In the case of a current account, the reserved title also serves to secure our balance claims.
2. The Buyer is entitled until revocation to resell the reserved goods in the normal course of business; however, he assigns to us as security already now all claims that accrue to him from the resale against his customers or third parties in the amount of the final invoice amount (including the respective VAT) of our claims. This applies regardless whether the reserved goods have been resold without processing or after processing. As long as he is not in default, no request for the opening of bankruptcy proceedings has been made and as long as there is no stoppage of payments and we have not revoked this consent, the Buyer is allowed to collect on a trust basis the claims we are entitled to due to the assignment under the condition that he pays us the amount of the existing and due claims we have against him from the collected amount.

If the power to collect is inapplicable in the aforementioned cases, we are entitled to demand that the Buyer makes the assigned claims and their debtors known to us; that he provides all information necessary for collection; hands over the relevant documents; and informs the debtors of the assignment.

3. The processing or transformation of the reserved goods by the Buyer is always carried out for us. If the reserved goods are processed, combined, mixed or blended with other items not belonging to us, we acquire co-title to the new item in the ratio of the invoice values of the reserved goods to the processed, mixed or combined goods. The above provision applies mutatis mutandis to the new item. If the Buyer manufactures new items that are to be regarded as the main item on the order of a third party using the reserved goods, the Buyer grants us pro rata co-title and keeps the new item safe for us free of charge.
4. If the realizable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the Buyer's request.
5. We are entitled to inspect the reserved goods at any time in the place at which they are located. In the event of a breach of contract on the part of the Buyer – in particular, in the case of delayed payments – we are, after setting a reasonable deadline, entitled to take back the security goods. Taking back the reserved goods does not establish a withdrawal from the contract on our part. After taking back the reserved goods, we are entitled to utilize the goods; the proceeds from this utilization are set off against the liabilities of the Buyer, minus reasonable costs of utilization.
6. The Buyer is obligated to treat the reserved goods with care and insure them at replacement value against fire, water and theft at his own expense. Upon request, he must assign us the claims against the insurer. As far as maintenance and inspection work is required, the Buyer must carry out the work at his own expense in a timely manner, unless contractually agreed upon otherwise. If the reserved goods are seized by third parties from the Buyer, the Buyer must inform us immediately of the seizure and inform the third parties carrying out the seizure of the existing reservation of title. The Buyer bears all costs we incurred from the seizure, unless he is not responsible for it.

Section 8 Claims for defects

1. Claims for defects of the Buyer presuppose that he has fulfilled his inspection and complaint obligations according to Section 377 HGB. This applies only to the extent that the purchase is a commercial transaction for both parties.
2. The basis of our liability for defects is, above all, the agreement on the quality of the goods. All product specifications that are the subject matter of the individual contract or have been made publicly known by us (in particular in brochures and on our Web site) are deemed an agreement on the quality of the goods. The handover of samples does not contain a quality agreement; the samples only illustrates the type of goods. The information on the production, composition, mode of action, suitability and application of our services shall not release the Buyer from the obligation to carry out his own tests and trials.
3. To the extent that the quality has not been agreed upon, an assessment based on statutory regulations must determine whether a defect is on hand or not (Section 434 [1] no. 1 and 3 BGB). We do not assume any liability for public statements of third parties (e.g. advertising statements).
4. If defects occur, we shall initially be entitled, at our own discretion, to rectify the defect or deliver a replacement ("subsequent performance"). If the subsequent performance fails twice, the Buyer is entitled to demand at his own discretion either a reduction of the price or to withdraw from the contract. In such a case, the Buyer can also assert claims for damages in accordance with Section 9 if we are responsible for the defect and the Buyer does not demand a reduction of the price.
5. We are entitled to make the subsequent performance dependent on the Buyer paying the due purchase price. However, the Buyer is entitled to retain a part of the purchase price that is reasonable in relation to the defect.
6. Subsequent performance does not include the removal of a defective item or its re-installation if we were not originally obligated to install it.

7. In the case of the elimination of a defect, we bear all expenses required for purposes of eliminating the defect; this refers in particular to transport costs, travel expenses, labor and material costs as well as, if applicable, the costs for removal and installation in accordance with the statutory provisions if a defect actually exists. Otherwise, we can demand from the Buyer to refund the costs that arose from unjustified demands for the elimination of defects (especially test and transport costs), unless the fact that there was no defect was not recognizable for the Buyer.
8. The customary manufacturer deviations and tolerances shall be deemed agreed for all deliveries.
9. In the case of purchase and contracts for work and services, the Buyer's defect-related rights shall expire one year after delivery of the purchase item or, in the case of work and services, one year after acceptance thereof. If the Buyer asserts claims for damages in the context of liability for defects, the statutory limitation periods apply.

Section 9 Liability

1. We are liable without limitations for damage caused intentionally by us, our legal representatives or our vicarious agents. The same applies to damages arising from injury to life, body or health culpably caused by the aforementioned persons. We are also liable without limitations for gross negligence on the part of our legal representatives and our executive staff.
2. If the conditions referred to in paragraph (1) are given, we are only liable – irrespective of legal basis – if an essential contractual obligation (major obligation) has been negligently breached or if one of our other vicarious agents who do not belong to the executive staff has caused damage through gross negligence. In these cases, our liability is limited to the foreseeable damage typical for the contract. Obligations whose fulfillment makes the implementation of the contract possible in the first place and on the compliance with which the Buyer normally can rely are seen as major obligations. This means they are obligations whose breaches would put the achievement of the purpose of the contract at risk.
3. The above limitation of liability does not apply to claims under the Product Liability Act and due to the absence of a guaranteed quality or a warranted quality of the contractual item. Insofar as liability is excluded or limited, this also applies to the personal liability of our legal representatives, executive staff and other vicarious agents.

Section 10 Place of jurisdiction/applicable law/final provisions

1. The place of jurisdiction for all disputes and types of procedures directly or indirectly connected to the business relationship between us and the Buyer, including disputes on the validity of a contract, is Borken, Westphalia, Germany, if the Buyer is a merchant, legal person under public law or a special fund under public law or if he has no general place of jurisdiction in Germany. We are also entitled to file a lawsuit at the Buyer's principal place of business.
2. With respect to all rights and obligations arising from contracts concluded with us, the law of the Federal Republic of Germany that governs the legal relationships of domestic parties shall apply, under the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
3. The invalidity of an individual clause of these Terms and Conditions do not affect the validity of the remaining provisions.