

# General Terms and Conditions of Sale, Delivery and Payment

**1. Introduction:** These General Terms and Conditions of Sale, Delivery and Payment shall apply exclusively unless they are amended in any express written agreement. Quotations, acceptance of quotations or sale of any goods shall be subject to these terms and conditions. Any terms and conditions of the purchaser or provisions of the purchaser that are contradictory to these terms and conditions shall, even if they are known, be rejected. These terms and conditions shall furthermore provide the basis for all future transactions. Notice pursuant to Section 33 of the Federal German Data Protection Act (BDSG): Personal data from contracts shall also be held on computer.

**2. Orders and quotations:** All user quotations and delivery options are subject to confirmation. Orders shall only be deemed to have been accepted if they are accepted in writing within 21 days of submission (also by invoice or delivery note). The scope of delivery shall be governed exclusively by the written order confirmation. The purchaser shall bear responsibility for the accuracy of the order. If goods need to be manufactured, processed or treated, the purchaser shall be required to make good any damage that is caused because such contractually agreed processing or treatment of the goods, carried out on the basis of the purchaser's specification, is shown to be a breach of patent, copyright, trademark or other property right of a third party.

**3. Prices and pricing:** Unless prices are agreed for products, the list prices, plus value-added tax, shall apply that are in effect on the day of delivery. All prices are ex-works and exclude packaging. Tolerances in quantities delivered shall be permissible if they are in a reasonable proportion to the total quantity (plus/minus 10%).

**4. Delivery of goods:** Deliveries shall be made ex-works for the account and at the expense of the purchaser. If goods are kept in store for the sole disposal of the purchaser (calloff items), the purchaser shall be in default if, without being reminded, it fails to take delivery of such goods within the agreed period.

**5. Delivery time:** The delivery dates or delivery periods stated in the order confirmation indicate the earliest possible delivery time and are without obligation. Set calendar delivery dates shall only be binding if they have been expressly confirmed in writing. Delivery periods shall commence on the day on which the order confirmation is dispatched, however not before the submission of any documents, approvals, clearances to be furnished by the purchaser or before receipt of any agreed deposit payment. The delivery period is met once the goods have left the factory or notice is given that they are ready for shipment.

**6. Passing of risk:** The risk of goods becoming damaged or lost shall pass to the purchaser as soon as the goods have left the user's factory, this also being the case if part shipments are made. If the user has undertaken to deliver the goods to the purchaser, the purchaser shall bear the risk of transportation even if Incoterms to the contrary are agreed. If shipment is delayed for circumstances for which the purchaser is responsible, the risk shall pass to the purchaser as from the day on which the goods are ready for shipment. Goods shall be stored on the purchaser's account and at the purchaser's risk. Items delivered must be accepted by the purchaser without prejudice to the purchaser's rights.

**7. Notification of defects:** It shall not be possible to give notice of defects that the purchaser could have established if care had been exercised when delivery was taken or initial sample inspection had taken place. Even if selection samples have been sent, the purchaser must inspect the goods without delay on arrival and give notice of any defects in writing or the warranty will be void. Notice of complaints must be given in writing before the goods are processed, contain an exact description of the alleged claim or flaw and be accompanied by packing slips. The quality of the goods shall be considered to have been approved if the user does not receive a written notice of defects within 7 working days of the goods arriving.

**8. Warranty:** The user shall not assume any responsibility for the good being suitable for a specific purpose. If the item supplied is faulty or if it lacks warranted qualities or if it becomes defective within a warranty period as a result of manufacturing or material flaws, the user shall, in its equitably exercised discretion, be able to rectify defects or make a new delivery on return of goods already delivered. If it is not possible to remedy the defect or if such would involve unreasonable effort and expense, the purchaser may only demand a reduction in payment. The purchaser shall, by way of exception, also be able to demand a reduction in payment if it cannot be reasonably expected to remedy the defect. The user must be given the opportunity to locate the defect brought to its notice. On request, complaint goods must be returned without delay. Replaced parts shall become the property of the user. The latter shall take no responsibility for inappropriate or improper use, for incorrect assembly or repair by the purchaser or third party, for natural wear, improper or negligent treatment or for improper maintenance. If rectification

is made by the purchaser or any third party, the user shall not be liable for any consequences that may arise there from. The same shall apply to any modifications that are made to the delivery item without the user's prior consent. If, within a reasonable period, warranty obligations are not met or not met in the manner agreed, the purchaser shall be able to set a final deadline in writing. If this deadline expires without result, the purchaser shall be able to make the necessary rectification itself or place rectification in the hands of a third party. If rectification has been carried out successfully by the purchaser or a third party, all claims on the part of the purchaser shall be settled upon reimbursement of the costs incurred by it. Only the user's product description shall be considered as the agreed quality of the goods. If the purchaser receives deficient assembly instructions, the user shall only be obliged to supply assembly instructions free of any deficiency if the deficiency in the assembly instructions prevents proper assembly.

**9. Restrictions on liability:** If the purchaser incurs damage as a result of a delay for which the user is responsible, the purchaser shall, to the exclusion of further claims, be entitled to demand compensation for damage caused by the delay. This shall amount to 0.5 per cent for each full week, however in total no more than 5 per cent of the value of that part of the overall shipment which, on account of the delay, cannot be used in time or as agreed. If, through fault on the part of the user as a result of failing to implement or of incorrectly implementing proposals or deliberations coming about before or after entering the contract, or as a result of infringing other contractual accessory obligations - in particular, instructions on operating and maintaining the delivery item - the delivery item cannot be used by the purchaser as agreed, the arrangements set forth in clause 8 of these terms and conditions and the following arrangements shall be applicable to the exclusion of further claims. The user shall only be liable for damage, including damage not occurring on the delivery item itself, if such is caused as a result of intent, of gross negligence, of a culpable harm to life, limb and health, of defects that the user has fraudulently concealed or whose absence it has guaranteed, of defects in the delivery item insofar as product liability law provides for liability for personal injury and damage to property caused by privately used objects. Liability for each occurrence of damage - for whatever legal ground - shall be limited to an amount of 30% of the order value. Any liability above and beyond this amount shall be ruled out.

**10. Acts of God:** Acts of God, industrial disputes, riots, government action, delivery stoppages or other unfore-seable, unpreventable and serious events shall release the user from its obligations for the duration of the disturbance and to the extent of the effect this disturbance has. This shall also apply if these events occur at a time at which the user is in default. The user shall, to the extent reasonably expected of it, immediately provide the necessary information and adapt its obligations in good faith to the changed circumstances.

**11. Terms of payment:** Unless otherwise agreed, all payments shall be due in the full amount upon delivery or upon acceptance of delivery. Without further notification, the purchaser shall be in arrears 30 days after the due date if payment is not made. Bills of exchange will only be accepted on the basis of written agreement and only on account of performance without liability for protest. The purchaser may not offset counterclaims and has no right of retention on the basis of these claims unless the purchaser's claims are undisputed or final and absolute.

**12. Default in payment and deterioration in purchaser solvency:** If the purchaser is in arrears with the payment of amounts invoiced for transactions already delivered, the user shall be able to make delivery of outstanding orders contingent on the settlement of due invoices or on advance payment of the purchase price or withdraw from the contract. The same right shall exist if, after entering the contract, a significant deterioration becomes known in the purchaser's financial circumstances. The agreed payment dates must still be observed even if warranty claims are put forward. In the event that the purchaser defaults in payment and composition or insolvency proceedings are instigated against it in or out of court, discounts granted as well as freight reimbursements shall be withdrawn. The same legal consequences shall ensue on the 31st day after the invoice becomes due.

**13. Retention of title:** The goods delivered by the user shall remain the user's property until it receives all payments due to it from the business relationship with the purchaser. If the purchaser acts in breach of contract, in particular if the purchaser falls into arrears, the delivery item may be repossessed; the purchaser shall undertake to surrender possession; it shall allow the user to collect and repossess its goods at any time. Repossessing a delivery item does not equate to withdrawing from the contract unless such is expressly declared in writing. In the event of attachment or other intervention by third parties, the purchaser shall be required to provide immediate notification so that opposition proceedings can be

instituted to prevent execution. If the third party is not in a position to reimburse the judicial and extra-judicial costs of opposition proceedings, the purchaser shall be liable for the arising losses. The purchaser shall be entitled to resell the delivery item in the ordinary course of business. Even at this stage, the purchaser assigns to the user all claims against its buyers or third parties in the amount of the final invoice balance, including value added tax, that arise from the resale, regardless of whether the goods have been resold without having been processed or after they have been processed. The purchaser is empowered to collect such claims even after assignment unless the user prohibits the purchaser from doing so. The user's power to collect the claim itself shall remain unaffected. The user shall, however, undertake not to collect the claim itself as long as the purchaser duly meets its payment obligations and is not in arrears.

The user shall, at all events, be able to demand that the purchaser disclose the assigned claim and its debtors, provide all information necessary for collection, hand over the associated documents and notify the debtors of the assignment. The purchaser shall only process or refashion the goods for the user. If the goods are processed with other items, the user shall acquire joint ownership of the new article in the proportion of the value of the retained goods to the other processed items at the time of processing. In all other respects, the same shall apply to the article that is created as a result of processing as applies to the retained goods. If the goods are inseparably combined with other items, the user shall acquire joint ownership of the new article in the relation of the value of the goods to the other combined items at the time of combination. If combination takes place in such a manner that the purchaser's article must be regarded as the primary article, it shall be considered as agreed that the purchaser will assign proportional joint ownership to the user. The purchaser preserves sole ownership or joint ownership. The purchaser shall assign any claim to security accruing to it against any third party as a result of combining the goods with a piece of land.

**14. Resale clause:** The goods supplied may only be exported to those countries for which written clearance is given. Without consent, the purchaser must not sell to buyers known to have the intention of exporting the goods. This ban shall only apply if and to the extent by which it is covered by the EU Commission's notice on agreements of minor significance. In cases where goods are delivered abroad, the purchaser shall bear any risk arising from the applicability of laws and statutes in force abroad.

**15. Warranty period and statute of limitation:** The warranty period shall be 24 months from the time at which the goods are delivered under clause 4 of these terms and conditions. However, the consequences set forth in clause 7 of these terms and conditions shall apply if the purchaser fails to provide notification of the defect in good time. The warranty period for goods which, in accordance with their normal usage, have been used for an edifice and have caused its defectiveness, shall be five years. All claims on the part of the purchaser - for whatever legal grounds, in particular claims for damages on account of goods being defective - shall become statute-barred after 12 months from the time of delivery.

**16. Place of performance, legal venue and applicable law:** The place of performance for all obligations arising from the contractual relationship shall be the place of business of the user. If the purchaser is a merchant, a legal person under public law or a special asset under public law, the legal venue for all legal disputes, including those arising as part of proceedings related to a bill of exchange or cheque, shall be the place of business of the user. The user shall also have the right to take legal action at the seat of the court having jurisdiction over the purchaser or at any other court that may have jurisdiction under national or international law. The contractual relationship shall be subject to German law. Application of the UNCITRAL sales convention (United Nations convention on the international sales of goods) shall be excluded.

**17. Escape clause:** Should individual provisions of these General Terms and Conditions of Sale, Delivery and Payment be or become ineffective, this shall not affect the validity of the remaining provisions.