

Terms and conditions of sale

I. Validity

- Our terms and conditions of sale apply exclusively and only vis-à-vis businessmen for the purposes of 310, clause 1 of the German Civil Code (BGB). We do not recognize the terms and conditions of our contracting party (also referred to as "the customer") which conflict with or diverge from our terms and conditions of sale - even if we are aware of them - unless we have expressly consented to their validity in writing. Our terms and conditions of sale also apply whenever we make the delivery to our contracting party unreservedly, while being aware of our contracting party's terms and conditions which conflict with or diverge from our terms and conditions of sale.
- Our terms and conditions of sale apply to all present and future business relationships, even if they have not expressly agreed yet. These terms and conditions apply when the goods are received or the delivery is accepted at the latest. Counter-confirmations referring to the customer's business terms and conditions are contradicted herewith.
- All agreements made between us and our contracting party are recorded in writing within the framework of this contract.

II. Quotation and conclusion of a contract

- Our quotations are non-binding and subject to change without notice, insofar as they are not expressly described as binding or contain a specific time stated for acceptance. If an order must be qualified as a quotation, then we can accept this within four weeks.
- The right is reserved to diverge technically and in terms of design from the descriptions and information given by brochures, quotations and written documents, as well as to alter the service, construction and materials during the course of technical progress and alter the colour, form or weight, or both, insofar as these modifications are reasonable for our contracting party. Information about our products (technical data, dimensions, etc.) are only approximate and rough; they do not represent any guaranteed qualities unless the guarantee has been given expressly and in writing.
- Only the product description applies as the quality of the goods basically. Public statements, recommendations or advertising claims made on our part do not represent any agreement about the quality of the goods.
- We retain the rights of ownership and copyright to samples, drawings, cost estimates and the like - also in electronic form. They are not to be allowed to be made accessible to third parties without permission and they must be given back immediately on demand.
- The contract is concluded subject to the reservation of timely and faultless self-supply by our suppliers. This certainly only applies to the case that we have concluded a congruent covering transaction with our supplier and we are not responsible for untimely supplies or defective self-supply respectively. The contracting party shall be informed immediately about the unavailability of our supplier's services. Any quid pro quo that has been provided already shall be reimbursed immediately.
- a) Tools and apparatus remain our property even when the costs have been fully reimbursed, insofar as nothing else is agreed. b) If our contracting party places tools at our disposal, this is to be done on loan. Our liability within the framework of safekeeping is limited to the care expected to be taken in our own affairs. Subject to divergent regulation, our contracting party bears the costs of maintenance and care; we are not obligated to arrange insurance coverage for such objects which are handed over from our contracting party's ownership. We are entitled to assert rights of retention regarding our contracting party's ownership.
- A charge shall be made in principle for samples provided by us.
- It is pointed out to our contracting party that excessive or deficient deliveries within the range of 5 % depend upon technical factors. Such excessive or deficient deliveries do not represent any infringement of contractual duty. The actually delivered quantity shall be accounted for.

III. Prices, price adjustments, payment, etc.

- The prices apply to the scope of work and extent of supply which is described in the acknowledgements of order. Extra or special services shall be charged for separately. The prices are stated in Euro ex works, plus the statutory rate of value-added tax; plus customs duties, fees and other public fiscal charges in the case of export deliveries.
- We reserve the right to adjust our prices reasonably if costs fall or increase after conclusion of the contract, especially on account of changes in the prices of materials. We shall prove these adjustments to our contracting party on demand.
- Our contracting party is obligated to pay within 14 days from the date of invoice without deduction. Cheques shall be accepted for the sake of fulfillment and only in the case of our express consent.
- It is only permissible to set off the customer's counter-claims or to withhold payments because of such claims, if the counter claims are not disputed or they have been established as legally binding or are recognized.
- We are entitled to carry out or provide deliveries and services that are still outstanding only against advance payment or security, if circumstances which essentially indicate doubt about the client's creditworthiness become known to us after conclusion of the contract and through which the payment by the customer of our outstanding claims - arising from the respective contractual relationship (including those from other individual orders, for which the same basic agreement applies) - is jeopardized.
- We are authorized to assign the claims from our business connection.
- All payments are to be made with debt-releasing effect to Deutsche Factoring Bank Deutsche Factoring GmbH & Co. KG, Langenstraße 15-31, 28195 Bremen, to whom we have assigned all our claims including property acquired under reserve.
- If the buyer is in delay with his payment obligations to us then all remaining receivables are due. We are entitled to claim our rights from the property acquired under reserve - especially the return of the good delivered to us under reserve - without a prior cancellation of the respective purchase agreement.
- A set-off on the side of the buyer with counter claims is excluded unless the counter claims are undisputed or legally valid. Buyer is not entitled to assert a right of retention unless he is claiming counter claims from the same contract relationship or the counter claims are undisputed or legally valid.

IV. Period of delivery, default of delivery and call-forward notice

- Deliveries shall be made ex-works. If we organize the transport at our contracting party's request, then the contracting party shall reimburse us with the transport costs according to the law of contract (repayment of expenses).
- The deadlines and dates for deliveries and services that are taken into consideration by us always apply only approximately, unless a fixed deadline or date has been expressly promised or agreed. Insofar as a despatch has been agreed, the delivery deadlines and dates of delivery refer to the time of handover to the carrier, freight forwarder or other third party commissioned with the despatch.
- The beginning of a period of delivery given by us requires as a prerequisite that all of the technical matters have been clarified. Furthermore, it is a prerequisite that our customer fulfils his contractual duties and obligations punctually and properly. If our contracting party is obligated to provide materials, then he has to ensure the timely delivery. The delivery shall be made at his cost and risk.
- We can - irrespective of our rights arising from the customer's delay - demand a reasonable extension of the delivery deadlines and service deadlines from him, or an extension of the delivery deadlines and service deadlines by the period in which the customer does not fulfil his contractual obligations or other cooperative obligations vis-à-vis ourselves, plus a reasonable start-up period.
- We are not liable for the impossibility of a delivery or for delayed deliveries, insofar as these were caused by a force majeure or other events (e.g., operational breakdowns, difficulties in procuring materials and energy, transport delays, strikes, lawful lock-outs, a lack of workers, energy or raw materials, difficulties with procuring the requisite official approvals or official measures) which were unforeseeable at the time that the contract was concluded and for which we are not responsible. Insofar as such events essentially impair the delivery or service or make it impossible and the hindrance does not only last temporarily, we shall be entitled to withdraw from the contract. The delivery deadlines or service deadlines shall be extended or postponed by the time of the hindrance, plus a reasonable start-up period, for hindrances that last temporarily. Insofar as the customer cannot be expected to accept the delivery or services as a result of the delay, he can withdraw from the contract by means of sending a written declaration to us immediately.
- We are entitled to make partial deliveries if a) the partial delivery is usable by the customer within the framework of the contractually stipulated purpose and b) the delivery of the remaining ordered goods is insured and c) the customer does not incur any considerable extra outlay or additional costs hereby, unless we declare ourselves ready to accept these costs.
- If we fall into delay with a delivery or service, or if it is impossible for us to make a delivery or provide a service, irrespective of whatever reason, then our liability shall be limited to claims for compensatory damages according to the following regulations in article VIII.
- If we owe a delivery on the basis of a call-forward notice, then the call-forward notices shall be given within six months from conclusion of the contract at the latest, insofar as nothing divergent has been agreed in writing. We are entitled to deliver and assert our debt claims - even without the customer's call-forward notice - after the existing or divergently agreed period of the call-forward notice has expired. The contracting party is then obligated to issue the acceptance and remuneration. Concerning a delivery on the basis of a call-forward notice, our contracting party has to organize the call-forward deliveries in such a way that at least one of the requested dates of delivery falls after the 7th calendar month has expired from conclusion of the contract.
- If our contracting party falls into delay with the acceptance, then we shall be entitled to demand reimbursement of the additional expenditures which we had to incur for the unsuccessful quotation as well as for safeguarding and maintaining the owed articles; we are entitled to claim for storage costs in particular.

V. Despatch, packing and packaging, passage of risk and acceptance

- The type of despatch as well as the packing and packaging are subject to our dutiful discretion.
- An insurance, irrespective of whatever kind, shall only be arranged at the customer's express request and then only in return for the reimbursement of expenses.
- The risk shall pass to the customer when the delivery item is handed over to the carrier, freight-forwarder or other third party who has been chosen to carry out the despatch to the customer: whereby the loading procedure is decisive. This provision also applies whenever part deliveries are made or if we have undertaken other services. If the despatch or handover is delayed as a result of a circumstance which has been caused by the customer, then the risk shall pass to him on the day that we are ready for despatch and have advised the customer about this.
- The customer shall bear the storage costs that are incurred after the passage of risk. The storage costs shall amount to 0.25 % of the invoiced amount (net) per commenced week of the delivery items to be stored, if the storage is done by us. We reserve the right to assert and prove any storage costs beyond that.

VI. Warranty

- The warranty period amounts to 12 months from the passage of risk or from the date of acceptance, insofar as an acceptance is required.
- The customer's defects claims require as a prerequisite that he has properly fulfilled his obligations of inspection and complaint according to article 377 of the German Commercial Code (HGB).
- The criticized delivery item shall be sent back to us freight prepaid on our demand. We shall reimburse the costs of the cheapest method of despatch if the customer's complaint is justified; this does not apply insofar as the costs are increased because the delivery item is located at a place other than the place according to the intended use.
- If the delivered article has material defects, then we shall be obligated and entitled to choose appropriately whether to repair it or delivery a replacement within a reasonable period of time. If this (repair or replacement) fails, i.e. because it is impossible to make the repair or deliver the replacement, or it is unacceptable or rejected, or there is an unreasonable delay, then our contracting party can withdraw from the contract or demand that the purchase price is reduced reasonably.
- If we are at fault because of a defect, then the customer can demand compensatory damages according to the provisions in article VIII (Liability and claims for compensatory damages) of these terms and conditions of sale.
- The warranty shall lapse if the customer modifies the delivery item or if he arranges for it to be modified by a third party without our consent and it becomes impossible or unreasonably difficult to remedy the defect because of that. In every case, the customer has to bear the extra costs of remedying the defect which have been incurred because of the modification.
- Every single warranty is excluded for used articles which are delivered by agreement with the customer in an individual case.
- Unless an agreement on quality attributes / specifications has been concluded with us in a particular case, we shall not assume any liability for the usability of closures delivered by us with respect to third-party packaging components, filling materials or other kinds of use, which the customer may designate or intend.

VII. Intellectual property rights

- Each contracting party shall immediately notify the other contracting party in writing whenever claims are asserted against him due to the infringement of protected commercial, intellectual property rights or copyrights of third parties.
- If we manufacture according to the customer's instructions or if we provide services according to our customer's specifications, then the customer shall be obligated to exempt us from third-party claims for infringement of intellectual property rights.
- If and insofar as we develop products, draw up designs or proposed constructions, or both, or drawings, then we shall retain all legal rights to them, insofar as nothing divergent is agreed. Our contracting party is only allowed to make use of them with our express consent in writing.

VIII. Liability and claims for compensatory damages

- Our liability for compensatory damages, irrespective of whatever legal reason - especially one arising from impossibility, delay, defective or deficient delivery, breach of contract, infringement of duties during contractual negotiations and unauthorized action, insofar as we are at fault in each case as a result - is limited according to this article.
- We are not liable, a) in the case of simple negligence committed by our organs, legal representatives, staff or other subcontractors, b) in case of gross negligence committed by non-managerial staff or other subcontractors, insofar as the matter does not concern an infringement of contractually essential duties.
- a) Insofar as we are basically liable for compensatory damages according to clause 2 above, this liability is limited to the damage which is foreseeable and occurs typically. In addition, indirect damages and consequential damages which result from defects in the delivery item, can only be reimbursed insofar as such damages should be typically expected in accordance with the delivery item's intended use. b) If we are liable in the case of a delayed delivery, then our liability shall be limited to 3 % of the net value of the goods (ex-works) for each full week of the delay, but not exceeding 15 % of the delivery's value.
- In the case of liability for simple negligence, our duty of reimbursement for damage to property and personal injury is limited to an amount of 50 % of the net value of the goods (ex-works) per claim or case of loss, even if the matter concerns an infringement of contractually essential duties.
- The aforementioned exclusions of liability and limitations apply equally and fully in favour of our organs, legal representatives, staff or other subcontractors.
- Insofar as we give technical information or are intended to act in an advisory capacity and this information or advice is not included in the scope of work that we owe as contractually agreed, then this happens free of charge and subject to excluding any liability.
- The aforementioned provisions (article VIII.) do not apply to our liability and that of our subcontractors because of deliberate conduct, nor to guaranteed qualitative features, nor to the impairment of life, physical injury, harm to health, nor according to the Product Liability Law.

IX. Reservation of ownership

- Concerning contracts, we reserve the ownership of the goods until all our debt claims arising from the current business relationship have been settled in full. We also reserve the ownership until all payments arising from any existing current account relationship with our contractual partner have been received. The reservation refers to the recognized balance.
- Our customer shall look after the conditional commodities for us free of charge; he is entitled to process and resell the conditional commodities during the course of proper business, until the case of utilization occurs (refer to clause 5 below). Pledges and assignments as security are impermissible.
- The processing or transformation of the delivery item by the customer shall always be carried out for us. If the delivery item is processed with other articles that do not belong to us, then we shall acquire co-ownership of the new article in the ratio of the delivery item's value (finally invoiced amount including value-added tax) to the other processed articles at the time of processing. The same thing applies otherwise to the article created through processing, as for the goods delivered subject to reservation.
- If the delivery item is inseparably mixed with other articles which do not belong to us, then we shall acquire co-ownership of the new article in the ratio of the value of the article for sale (finally invoiced amount including value-added tax) to the other mixed articles at the time of mixing. If the mixing takes place in a way that the customer's article should be regarded as the main article, then it shall apply as agreed that the customer assigns his co-ownership to us proportionately. Our contracting party shall look after the sole ownership or co-ownership which is vested in us on our behalf.
- The customer is entitled to resell the goods during the course proper business. However, he assigns herewith all debt claims to us amounting to the invoiced amount (including value-added tax), which accrue to him from the resale to third parties. We accept the assignment herewith. After the assignment, the customer is entitled to collect the debt claim for our account until his payments are countermanded or stopped, or until an application is made to open insolvency proceedings. Our authorization to collect the debt claim ourselves remains unaffected. In the case that the customer is in default of payment, or if he stops his payments or business, or both and in cases of making an application to open insolvency proceedings (referred to as a "concerted case of utilization"), we can demand that the contracting party announces the assigned debt claims and their debtors to us, as well as that he gives us all of the information required for collection, hands over the associated documents and advises the debtors (third parties) about the assignment. Our right to expose the assignment in such cases and to collect the claims ourselves remains unaffected.
- The contracting party is obligated to treat our sole ownership or co-ownership carefully. Insofar as maintenance work and inspection work are required, he has to carry this out regularly at his own cost.
- The contracting party is obligated to advise us immediately about third-party interference with our sole ownership or co-ownership, such as in the case of a seizure. The same thing applies to any damage or destruction of the goods. The contracting party also has to advise us immediately about a change of ownership of the goods and the change of his own place of residence.
- If the contracting party infringes the aforementioned duties according to clauses 6 and 7, then we shall be entitled to demand that the goods are returned. This provision also applies whenever we do not withdraw from the contract at the same time. Our recovery of the goods does not imply any withdrawal from the contract, unless we would have declared this in writing expressly. The aforementioned sentences 1 and 2 apply accordingly in the case of stopping the payments or the business as well as in the insolvency proceedings: subject to the insolvency administrator's rights. We are authorized to utilize the goods after they have been returned. The proceeds from the utilization - less reasonable administrative costs - shall be offset against the contracting party's liabilities.
- We undertake to release the securities vested in us on the contracting party's demand, insofar as the realizable value of our securities exceeds the debt claims which have to be secured by more than 10%; it is incumbent upon us to choose the securities which are to be released.

X. Final provisions

- Place of fulfillment¹ is at our choice the headquarters of the company or Bremen.
- The relationships between us and the customer are exclusively subject solely to the Federal Republic of Germany's laws. The United Nations Convention on Contracts for the International Sale of Goods (CISG), dated 11th April 1980, does not apply.
- Sole venue¹ for all disputes is at our choice the headquarters of the company or Bremen. The same thing applies if our contracting party does not have any general place of jurisdiction in Germany or if his place of residence or usual whereabouts is unknown at the time when legal proceedings are instituted. However, we are entitled to institute legal proceedings at the client's registered office. Legal provisions about exclusive places of jurisdiction remain unaffected.
- It is pointed out to our customer that we shall store data arising from the contractual relationship in accordance with article 28 of the German Data-Protection Law for the purposes of data-processing and that we reserve the right to transmit the data to third parties, insofar as it is necessary to do so for the contractual fulfillment.

¹ domicilium executandi

² domicilium excludendi