

General Delivery and Payment Conditions (GDPC)

I. Scope of Application:

The conditions below apply to all present and future business relations with entrepreneurs as defined in § 14 of the German Civil Code (*BGB*), with legal persons under public law and special public law assets. Any general terms and conditions which conflict with, are contrary to or supplement these General Business Terms and Conditions will not be deemed an element of this contract unless their applicability has been expressly consented to in writing.

II. Offer and Conclusion:

1. Purchase orders shall be deemed to be an offer. The buyer is bound by his/her offer for a period of four (4) weeks.
2. The purchase contract is concluded if we confirm the purchase order of the buyer in writing or perform delivery within the stipulated four weeks.
3. Oral arrangements and subsequent change requests will become part of the originally concluded contract only if confirmed by us in writing to the respective contracting party. This also applies to oral side agreements or warranties given by sales persons and/or agents.

III. Subject Matter of Agreement

The scope of delivery is subject to the agreed specifications. Technical data, illustrations, drawings, brochures, advertising, information given via electronic media etc. serve to provide a general description of the goods. They are only approximately relevant information. We reserve the right to make changes to the construction, form, weight, measurement, design and colour of our products within the extent described above as long as they do not alter the functions and application of our products and the amendments are reasonable for the buyer according to generally accepted standards.

IV. Contractual Price

1. All prices are deemed to be ex works our establishment.
2. The agreed price are deemed purely net plus VAT as amended from time to time.
3. Any carriage and packaging costs as well as expenditures for insurance policies, inspection work or other ancillary services or payments provided in consultation with the buyer and/or in his/her interests is additionally invoiced if incurred at our usual unit prices and hourly rates. This applies, in particular, to agreed special work or special work required for technical reasons in the context of performance of contract and to other items outside our scope of delivery. Any tool costs are invoiced on a pro rata basis unless otherwise agreed, no claims to the tool arising in this connection.

V. Delivery/Acceptance/Passage of Risk

1. Delivery is effected ex our establishment.
2. Transport route and means are at our choice unless otherwise agreed.
3. Upon surrender of the subject of the contract to a forwarding agent or haulier, but no later than upon leaving our warehouse or upon seizure of the goods or, in the event of delayed acceptance, upon receipt of the notification of readiness for surrender or delivery, the risk shall pass to the buyer (EXW Incoterms 2010). The same applies to delivery free of charge.
4. If it is agreed that the goods are collected at the seller's establishment, the buyer is obligated to accept the subject of the contract within five (5) working days after receipt of the notification of readiness for surrender.
5. If the buyer is in arrears with acceptance of the subject of the contract for a period of more than five working days after receipt of the notification of readiness for surrender, we are entitled after fixing a subsequent deadline of twelve (12) working days to rescind the contract and demand compensation pursuant to the statutory provisions. We need not fix a subsequent deadline if the buyer seriously and finally refuses acceptance or obviously is not prepared or not in a position to pay the purchase price within this period of time. If one of the above cases exists, we need not provide the subject of the contract for acceptance.
6. If we are entitled to compensation pursuant to (5), such lump sum compensation will be 15% of the purchase price. We reserve the right to prove that the costs incurred were higher, the buyer reserves the right to prove that the costs incurred were lower.

VI. Delivery Deadlines and Default

1. Delivery dates and deadlines agreed as "approximate", or not agreed in writing to be fixed or binding, are deemed to be approximations. They are without engagement. We endeavour to comply with the delivery deadline to the best of our ability. Part deliveries are admissible unless the customer cannot reasonably be expected to accept them.
2. Any circumstances for which we are not responsible which lead to a delay in delivery, in particular, events of force majeure and occurrences outside our sphere of influence (such as strikes, lock-outs, riots, significant operational disruptions, delays in delivery and insolvency of the suppliers and sub-suppliers) will result in relevant extension of the delivery period. On no account will we be in default as long as the buyer is in default with one of his/her obligations under any contractual relationship with us.
3. After expiry of a non-binding delivery date or a non-binding delivery deadline, the buyer is entitled to set a reasonable additional period of at least three (3) weeks for us to meet our delivery obligation. If this additional period expires without result, we will be in default. If the additional period has expired, the buyer may rescind the contract.

VII. Payment Terms

1. The purchase price and the remuneration for the ancillary services and payments will be due for payment upon transfer of risk of the subject of the contract to the buyer, at the latest, however, on the 5th working day after receipt of the notification of readiness for surrender. An early payment discount equal to 2% will be granted by us if we receive payment within 10 days.
2. Any payment instructions, cheques or bills of exchange will be accepted only in the event of a special agreement and only on account of performance. Acceptance of such papers does not mean granting a deferment. We are entitled to charge the buyer for collection and discount expenses.
3. If, after conclusion of contract, we become aware of circumstances that give rise to doubts about the buyer's creditworthiness, we may request advance payment or appropriate security. If the buyer does not comply with a request of this kind without delay, we may rescind the contract and demand compensation. The lump sum compensation will amount to 15% of the purchase price. We reserve the right to prove that the costs incurred were higher, the buyer reserving the right to prove that the costs incurred were lower.
4. If partial payments have been agreed, the total outstanding amount will become due for payment – regardless of the maturity of any bills of exchange – if the buyer is in arrears with an instalment for longer than 14 days, discontinues payments, we become aware of circumstances giving rise to doubts about the buyer's creditworthiness without security being provided on request for the outstanding claim, at the latest when insolvency proceedings relating to the assets of the buyer are opened.
5. Delivery to unknown customers is effected cash on delivery or against cash in advance payment.
6. Payments are set off in accordance with §§ 366, 367 of the Civil Code.
7. The buyer may only set off our claims or assert rights of retention if his/her claims are undisputed or if he/she has a final and absolute judgment. The buyer has no right of retention unless it is based on the same contractual relationship.
8. We charge default interest at a rate of 9% p.a. above the base interest rate. We are entitled to claim compensation over and above this.

VIII. Warranty for Defects

1. The buyer must inspect the goods received for defects without delay after their receipt. Deviations in quantity of up to 10% (overdelivery and underdelivery) are deemed approved. The buyer must report any obvious defects to us in writing without delay, no later than within one week; any hidden defects must be reported in writing without delay, no later than within one week after their discovery. Minor deviations in adhesion that do not impair suitability are deemed approved and are not regarded as defects.
2. Claims based on defects become time-barred within 12 months of delivery. Should the defect have been caused by us intentionally or through gross negligence or should an injury to life, limb or health of the buyer occur due to a defect, the statutory limitation periods will apply.

3. Warranty includes claims for material, assembly or design defects. In this respect, we undertake to subsequently remedy the defect of the merchandise if, according to our findings, it was defective – and not damaged as a result of use for a purpose other than that for which it is intended, or if it was improperly handled or changed. In the case of defects in construction components originating from third party, we are entitled to initially refer the buyer to the claim against the sub-contracted supplier, by assigning our claims to him/her.

4. Subsequent remedy will take the form of replacing or remedying defective parts without invoicing the costs of wages and materials necessary for this or taking back the goods and issuing a corresponding credit note covering the reduced value.

In the case of replacement delivery or restoration, we reserve the right to carry out design changes without prior notification in the context of subsequent remedy pursuant to III. (3).

5. Replaced parts become our property. The limitation period for claims based on defects will be inhibited for the period of substitute delivery or restoration.

6. The buyer may assert compensation claims due to defective delivery only in accordance with the provision in IX.

IX. Liability

1. We are liable under statutory regulations in the event of intent and gross negligence, for negligent injury to life, limb or health, for the assumption of a warranty or a procurement risk and in the event of liability under the Product Liability Act (*Produkthaftungsgesetz*).

2. In addition, we are liable in the event of culpable breach of material contractual duties, thus such duties that cannot be satisfied unless the contract is duly and properly performed and, on compliance with which, the purchaser generally depends and may depend. In this case, however, our liability is limited in amount to losses that are typical of this type of contract that were foreseeable at the time the contract was concluded.

3. Any other liability is excluded.

4. The above-mentioned provisions also apply if a loss is caused by our governing bodies, legal representatives, employees or other vicarious agents.

5. If our liability is excluded or limited pursuant to the above provisions, this also applies to the personal liability of our governing bodies, legal representatives, employees, workers and other vicarious agents.

X. Retention of Title

1. We reserve the right of possession in the delivered goods until all and any claims against the buyer under the business relationship have been settled. The reservation of title also includes the acknowledged balance if we book claims against the buyer on current account (current account retention).

2. In the event of conduct of the buyer in breach of contract, notably if he/she is in arrears with payment, we are entitled to claim back the goods under reservation of title following a reminder. The buyer is obligated to surrender such goods. Clause 6 sentence 2 applies accordingly. The repossession or attachment of the goods by us constitutes a rescission of the contract.

3. In the case of attachments or other third-party interventions, the buyer must notify us in writing without delay by sending the attachment record and a statement in lieu of an oath on the identity of the attached merchandise and provide us with the required information to enable us to reclaim our property by way of a third-party claim in opposition pursuant to § 771 of the German Code of Civil Procedure (ZPO). If the third party is unable to reimburse us for the costs incurred in or out of court of an action pursuant to § 771 German Code of Civil Procedure, the buyer is liable for our deficit.

4. The buyer is entitled to re-sell the merchandise in the ordinary course of business; however, it even now assigns to us all claims in the amount of the final invoice sum (including VAT) of our claim against his/her customers or third parties which it acquires from the resale, irrespective of whether the delivered merchandise was resold without processing or after processing. The buyer is authorised to collect this claim even after its assignment. Our power to collect the claim ourselves shall remain unaffected by this, however we undertake not to collect the claim as long as the buyer meets his/her payment obligations and is not in default with payment. In such case we may demand that the buyer notifies us of the assigned claims and their debtors, provides us with all data required to collect the claims, the associated documents and notifies the debtors (third parties) of such assignment. If the goods are resold together with other goods that are not owned by us, the buyer's claim against the customer is

deemed assigned in the amount of the delivery price agreed between us and the buyer.

5. Finishing and processing of the goods under reservation of title is effected for us as the manufacturer as defined in § 950 of the German Civil Code. If the reserved goods are processed or inseparably intermingled with other goods not belonging to us, we acquire pro-rata co-ownership in the new matter in the ratio of the invoice value of the other goods used to that of the goods supplied by us and processed at the time of processing or intermingling. The processed good are deemed to be goods under reservation of title as defined in these terms and conditions. If our goods are intermingled with other movable items and if the other matter is to be considered the main matter, it is deemed agreed that the buyer will proportionally assign co-ownership to us or procure that co-ownership is assigned to us. Should we not become co-owner for whatever reason, the buyer will compensate us for the incurred losses – even in the absence of fault. With regard to the rest, the same also applies to this matter as applies to the reserved goods.

6. We have the right to inspect or reclaim the reserved goods at any time if our payment claim appears to be at risk. In this respect, the buyer irrevocably allows us to set foot on his/her premises and to take away the reserved goods without this being deemed an infringement of property rights.

7. We give an undertaking at the request of the buyer to release the collateral to which we are entitled inasmuch as – to the extent such claims are not yet settled – its value exceeds by more than 20% the claims to be secured.

XI. Applicable Law/Place of Performance/Place of Jurisdiction/ Miscellaneous

1. All contractual relationships between us and the buyer are subject to the law of the Federal Republic of Germany, excluding the United Nations Convention on Agreements for the International Sale of Goods (CISG).

2. The place of performance and exclusive venue for shipments and payments (including actions on cheques and bills of exchange) and for all and any disputes arising between the parties is our registered office.

3. The transfer of rights of the buyer under the contract concluded with us requires our written consent to be valid.

Limited Partnership, registered office Erftstadt, Commercial Register at Cologne Local Court, HRA 18573. General Partner: MV Welter GmbH, registered office Erftstadt-Lechenich, Commercial Register at Cologne Local Court, HRB 43810. Managing Directors: Monique Welter and Jean-Pierre Welter