

§ 1 Scope

1. Our General Business Terms shall be exclusively used in business transactions with companies within the meaning of § 310 I BGB in conjunction with § 14 BGB [German Civil Code].
2. All of our offers, deliveries and other services are exclusively based on these General Business Terms provided that these are not preceded by individually negotiated contractual agreements. We shall not acknowledge contradictory provisions or provisions which deviate from our General Business Terms – even with execution of the delivery without reservation – unless we had explicitly approved their validity in writing.
3. Insofar as the orderer is already aware of our General Business Terms they shall also apply to all future business relationships in the event of continuous business relationships or framework agreements with the orderer without a renewed announcement until the validity of our new General Business Terms.
4. All agreements, in particular collateral agreements, amendments or deviations from these terms and conditions principally require a written form.

§ 2 Conclusion of contract

1. Advice in all forms is provided by us to the best of our knowledge and based on our experience. Details and information concerning suitability and application of our products shall not lead to an exemption of the orderer from the obligation to carry out own inspections and tests. The orderer is in particular not exempted from inspecting our products for the intended use. Application and processing of our products shall be carried out in the exclusive area of responsibility of the orderer. The orderer has in particular to pay attention to the compliance with statutory and official regulations when using our products.
2. Our offers shall be carried out subject to change insofar as not explicitly otherwise agreed. This applies to price, quantity, delivery period and possibility of delivery. Orders shall only be deemed as accepted by us when we have confirmed these in writing, by no later than when the invoice is issued. This shall also apply to changes, supplements and oral collateral agreements, also the revocation of the agreed written form.

§ 3 Prices

1. Our prices respectively apply “ex works” plus the applicable rate of value added tax on the day of the delivery as well as possible customs, freight, packaging and insurance costs insofar as not explicitly otherwise agreed.
2. Increases in customs duties, taxes and similar duties occurring after conclusion of the contract shall be for the orderer's account.

3. The price is calculated based on the quantities or weights determined by us or the delivering plant if these are not objected to immediately by the recipient.

§ 4 Terms of payment

1. The invoice amount is due and payable immediately with the receipt of the invoice and to be paid as of the due date without deduction. Cash discounts and other discounts shall only be granted owing to a special agreement. The payment is deemed on time if we can dispose over the money on the account stated by us with the valuation on the due date.
2. In case of agreed deduction of cash discount this is excluded on new invoices if the orderer has not yet paid older due invoices.
3. The right is explicitly reserved to accept bills of exchange and cheques. These shall only be accepted in payment and shall only be deemed as payment when they are redeemed or encashed. Discount and bill of exchange charges shall be charged to the orderer and are due and payable immediately.
4. The orderer shall be deemed in default of payment by no later than by a reminder which shall be issued after occurrence of the due date. Default of payment shall also occur without a reminder if the time of service is determined according to the calendar or the orderer does not make payment within 30 days after the due date and receipt of invoice or receipt of an equivalent list of payments.
5. In case of default of payment we are entitled to request interest on default in the amount of 8 percentage points above the base lending rate p.a. We reserve the right to demand a higher interest rate based on concrete proof.
6. In case of the non-payment of due invoices or other circumstances, which allow the conclusion to be drawn about an essential deterioration in the asset circumstances of the orderer after conclusion of the contract, our claims from all existing contracts with the orderer shall be due and payable immediately – deferrals or other postponements of payments shall end immediately. We can request advance payment or provision of collateral for deliveries and services which have not yet been carried out. If the orderer does not satisfy the request for the setting of a reasonable deadline we are entitled to cancel the contract and to request damages owing to non-satisfaction.
7. The orderer is only entitled to offset against counter-claims and to exercise rights of retention against our claims if the counter-claims are undisputed or have been declared final and binding. The assignment of claims directed against us requires our consent.

§ 5 Scope of deliveries

1. The right is reserved to partial deliveries as well as surplus or shortfall in deliveries to the extent which is customary for the industry of up to 10 %.
2. Necessary technical changes, which are necessary for reasons of the production, by virtue of law or for other reasons, are permitted.

§ 6 Delivery, shipment, passing of risk, packaging on loan

1. Delivery is principally carried out "ex works" (67547 Worms) thus according to the International Commercial Terms 2000 insofar as not explicitly otherwise agreed.
2. In case of collection by the orderer or an agent authorised by the orderer or its authorised agent shall be responsible for the loading and the compliance with the statutory regulations with regard to the transport in particular according to the regulations governing hazardous goods. As our goods are principally at danger of suffering damages due to frost the orderer has to ensure suitable transport.
3. The risk of accidental loss or the accidental deterioration of the goods (transfer of risk) shall pass to the orderer when notification is given that the goods are ready for collection. The notification that the goods are ready for collection is deemed equivalent to the hand-over of the goods to the orderer or a transport person. Insofar as we have agreed to provide assistance in the loading we shall act as vicarious agents of the orderer.
4. In case of agreed shipment or agreed delivery in own vehicles the unloading and storage is in any case the responsibility of the orderer. With deliveries in tank vehicles and tank containers it must in particular ensure the impeccable technical condition of its tanks or other delivery containers as well as arrange the fact that its systems can be driven to and the connection of the filling - lines to its intake system at its own responsibility. In this case our obligation is limited to the operation of the vehicle's own equipment. Assistance of our employees beyond this during unloading or emptying of the tanks shall be provided at the sole risk of the orderer, these shall act as vicarious agents of the orderer.
5. In case of the agreed shipment or agreed delivery in own vehicles the risk shall pass, even if we have assumed the obligation in this respect, after loading and hand-over to the transport person thus "free carrier" according to the International Commercial Terms 2000 or when the goods leave our plant. This shall also apply in case of partial deliveries. If the shipment is delayed as a result of circumstances for which the orderer is responsible then the risk shall pass to it from the day upon which notification is given that the goods are ready for shipment.
6. We shall principally determine the type and scope of the packaging which is chosen at our best discretion and by applying the necessary care and attention. We will not take disposable packaging back, but these shall pass to the property of the orderer. Upon request we will give the orderer the name of an agency which recycles the packaging in accordance with the packaging regulations.

7. If the goods are delivered in packaging on loan this is to be sent back to us or handed over free to our plant by the orderer carriage paid, empty and in an impeccable condition by no later than within four weeks after receipt of the delivery. Packaging on loan may not be used for other purposes or to hold other products or forwarded to third parties; writing or affixed markings may not be removed. If the orderer does not satisfy its proper obligation for return within the deadline we are entitled to charge a reasonable fee for the period of time exceeding four weeks and to request damages in the amount of the replacement value after the unsuccessful setting of a deadline.

§ 7 Delay in delivery, impossibility

1. Delivery deadlines stated by us are approx. deadlines and do not include any binding promise. The delivery deadline which is to be agreed separately shall begin no earlier than with the despatch of the order confirmation, however not before the full provision of the documents which are to be procured by the orderer such as permits, releases, etc. The compliance with our delivery obligations presumes in all cases the timely, full and proper satisfaction of the obligations of the orderer to provide assistance as well as the receipt of a possible agreed down payment.
2. In the event of force majeure or with the occurrence of unforeseen events which are not our fault such as strike, lock-out, interferences to operation, etc. as well as the exceeding of delivery deadlines or delivery failures of our suppliers the delivery time shall be extended by the duration of the impediment. If the impediment lasts for longer than two months or if the delivery or service becomes impossible for us without this being our fault both the orderer as well as we are entitled to cancel the contract with regard to the quantity affected by the impediment under the exclusion of claims for damages.

§ 8 Delay in acceptance

1. If the orderer does not accept the object of contract within the deadline we are entitled, after setting a reasonable final deadline and expiry thereof, to dispose otherwise over the object of contract and to deliver to the orderer with a reasonable extended deadline. This shall have no effect on our rights to cancellation of the contract according to § 323 BGB (German civil code) and damages according to § 281 BGB. Insofar as we demand damages these shall be due in the amount of 25 % of the order value plus the applicable rate of value added tax without further proof. The right is reserve to prove higher damages.
2. In case of delay in the shipment of the object of contract at the initiation of the orderer by more than one week after notification that the goods are ready for shipment we can invoice the orderer storage costs in the amount of 0.5 % of the gross price per started week, however in the maximum total of 5 %. This shall have no effect on the right to prove higher or lower storage costs.

§ 9 Reservation of title

1. We reserve the ownership to the delivered goods until the settlement of all claims from the business relationship with the orderer, which have already been incurred at the time when the contract is concluded and which will be incurred in future, including all secondary claims, in particular also until the full settlement of a recognised current account balance and until the redemption or encashment of the bills of exchange and cheques issued in this respect.
2. The reservation of title shall also cover the products which have been produced by processing, connection and mixing of our goods whereby the orderer is entitled to process, connect and mix the goods in the ordinary course of business. In case of processing, connection and mixing the orderer hereby now already assigns the co-ownership to the new object to us, in order to secure our claim, in the ratio of the value of the reserved goods to the value of the other material at the time of the processing whereby the orderer shall store the new object in safekeeping on our behalf.
3. The orderer hereby now already assigns claims from the sale of goods, to which we are entitled to rights of ownership, to us if applicable in the amount of our co-ownership share to the sold goods, in order to secure all claims from the business relationship, the assignment is accepted by us.
4. The orderer is responsible for the obligation to store the reserved goods carefully and to insure these against loss or damages at its own costs. Insofar as collateral claims are incurred in a damaging event these are to be assigned to us. The orderer further has to provide us all necessary information upon request concerning the stocks of goods which are owned by us as well as concerning the claims assigned to us as well as to inform its buyers of the assignment.
5. If the orderer no longer satisfies its payment obligations, it suspends the payment or if an application has been filed for the initiation of insolvency proceedings, the orderer's right to dispose over the reserved goods and to collect the claims assigned to us shall lapse. In these cases, as well as in case of any other conduct of the orderer which is in breach of the contract, we are entitled to take back the goods delivered subject to reservation of title without this or the attachment of the goods representing a cancellation of the contract unless we explicitly confirm this in writing.
6. A pledging or assignment as collateral of the reserved goods by the orderer is excluded. The orderer has to inform us immediately of an attachment or other impairments by third parties.

§ 10 Rights in case of defects, statute of limitation

1. The orderer undertakes to satisfy its immediate obligation to inspect the goods and report defects in case of obvious defects of quality, false deliveries and deviations in quantities (§ 377 HGB [German Commercial Code]). In case of hidden defects the orderer has to report these to us in writing within seven calendar days after they have been discovered whereby the orderer bears the burden of proof that it concerns a hidden defect.

2. The orderer is responsible for the obligation, if applicable by a sample processing, to check whether our goods are suitable for the envisaged use. Our product specifications are decisive for the condition of our goods. However, no guarantee is given hereby for the condition of our goods. In case our goods are mixed or processed with other products rights in case of defects shall only exist for the orderer if the defects and damages were as proven caused by our goods. The orderer bears the burden of proof that the goods of the third parties are free of defects and suitable.
3. If our goods feature a substantial defect when the risk is passed the orderer's right is limited to subsequent performance whereby, at our choice, the goods shall either be subsequently improved or delivered anew. In the event of the subsequent performance we shall bear the expenses which are necessary for the purpose of subsequent performance, in particular transport, route, labour and material costs provided that these are not increased by the fact that our goods were transported to another location than the place of delivery unless the transport corresponds with the use as per contract.
4. The orderer shall only be entitled to reduce the purchase price, cancel the contract or request damages instead of the service in case the subsequent performance fails within a reasonable deadline.
5. Insofar as the subsequent performance requires a disproportionate amount of work we can request that the orderer's rights are limited to reduction of the purchase price, cancellation of the contract or damages instead of the service.
6. Claims of recourse of the orderer according to § 478 BGB (so-called recourse of the entrepreneur) shall only exist to the extent that the orderer has not reached any agreements which exceed the statutory claims for defects with its buyer.
7. The statute of limitations owing to claims and rights because of defects is one year. This shall not apply insofar as the law according to § 438 I No. 2 BGB (Buildings and objects for buildings), § 438 I No. 1 BGB (Deficiency in title with immobile objects), § 479 I BGB (Claims for recourse of the entrepreneur), § 634 a I No. 2 (Buildings and planning and monitoring services in this respect) stipulate longer deadlines. This shall further not apply in the cases of the injury to life, the body or the health, in case of wilful or grossly negligent breach of duty and with malicious non-disclosure of a defect as well as in the cases of the assumption of a guarantee and with claims according to the Product Liability Law. The statutory regulations relating to inhibition and new start of deadlines remain unaffected.

§ 11 Liability

1. Our liability is limited to cases of the wilful and gross negligence by us, our representatives or our vicarious agents and is oriented to the statutory provisions. We shall further be liable according to the Product Liability Law and for damages from the injury to life, the body or the health of a person and owing to the culpable breach of essential contractual duties. In case of the breach of essential contractual duties, also in cases of gross negligence our liability is limited to the typical, foreseeable damages for the contract insofar as there is no exception case from § 11.1. Sentence 2.

2. Insofar as no liability exists owing to wilful intent, gross negligence, culpable breach of essential contractual duties, injury to life, the body or health of a person or according to the Product Liability Law a liability for damages by our goods to legally protected interests of the orderer (e.g. other objects, missed profit, etc.) is excluded.
3. Insofar as no liability exists owing to wilful intent, gross negligence, culpable breach of essential contractual duties, injury to life, the body or health of a person or according to the Product Liability Law our obligation for damages is limited with regard to the amount to the scope of our product - liability insurance (currently € 2 million).
4. If the orderer on its part has effectively limited the liability towards its buyer our obligation for compensation shall also be excluded accordingly.
5. The regulations of the afore-mentioned paragraphs 1 – 4 shall apply to damages in addition to the service and damages instead of the service no matter for what legal ground. They shall also apply to claims for reimbursement of fruitless expenses and to the liability from impossibility and delay. Exclusions and restrictions shall also apply to claims of the orderer from the fault upon conclusion of the contract, breach of secondary contractual obligations, producer liability and liability in tort insofar as permitted by law. Liability exclusions and restrictions shall further also apply to the personal liability of our employees, workers, vicarious agents and assistants.

§ 12 Place of performance, place of jurisdiction, escape clause

1. The place of performance for all liabilities from the business relationship or from the individual contract is Worms, Germany.
2. The place of jurisdiction for all claims of the parties ensuing from the contractual relationship, also from deeds and documents, bills of exchange and cheques, is at our choice Worms, Germany or the general place of jurisdiction of the orderer.
3. The law of the Republic of Germany shall apply. The application of the Convention of the United Nations concerning Contracts for the International Sale of Goods (CISG) of 11.04.1980 is excluded.
4. Should individual clauses of these General Business Terms be invalid in full or in part this shall have no effect on the validity of the other clauses. Instead of the invalid clause the parties have to accordingly agree upon a regulation which shall as far as possible correspond with the commercial intention of the invalid provision and is permitted by law.