
General and Delivery Terms and Conditions for agreements with businessmen

- Last updated 2009-

§ 1 - General

Delivery transactions - including future delivery transactions - are concluded pursuant to the following General and Delivery Terms and Conditions. These General and Delivery Terms and Conditions are the basis of all orders, confirmations of orders and supply agreements. Incorporation of the customer's General Terms and Conditions is excluded.

§ 2 - Object of agreement

1. Our products may only be used for the purposes given in our product specifications, analysis certificates and security data sheets. The product specifications, analysis certificates and security data sheets are sent to the customer either at product delivery or at regular intervals or at express request of the customer. Differences require the supplier's express confirmation.
2. We are giving statements on the products' applications engineering to our best knowledge on basis of our research and experience. However, all statements and information on suitability and application of the products are not binding unless expressly agreed otherwise between the parties in writing. They do not release the customer from own checks and tests. The customer is responsible to observe legal and official provisions when using the products.
3. Any and all information and statements connected to our products or offers only serve to describe the goods and do not represent statements of condition, representations of conditions, representations of features or letters of indemnity.

§ 3 - Passing of risk

All deliveries are made ex work. Transport is made by a forwarding agency to the delivery address only on order of the customer.

§ 4 - Prices

1. Prices of an offer by the supplier are not binding.
2. All prices do not include applicable VAT.

§ 5 - Payments

1. The supplier's invoices issued to the customer are due and payable immediately.
2. Agreed discount deductions may only be made if the amount is received by the supplier within the agreed period of time.
3. The customer is entitled to set off against counter claims only if these have been accepted or recognized by declaratory judgement.

4. If the supplier receives information of circumstances giving rise to serious doubts as to the customer's liquidity or creditworthiness the supplier is entitled to immediately accelerate all open invoices - including prolonged invoices - irrespective of the agreed date of payment and to make conditional future supply to the customer on payments in advance or recoverable good-faith deposit.

§ 6 - Reservation of title

1. The goods remain property of the supplier until any and all claims from the business relationship, including secondary claims and claims for compensation - including future ones - have been paid in full.
2. The reservation of title also remains effective if individual claims of the supplier have been incorporated into an ongoing invoice and the balance has been struck and recognized.
3. If goods subject to reservation of title are processed to new moveables the processing is made for the supplier without it taking on any obligations on this basis. The new moveable becomes the supplier's property. In case of processing, mixing or blending with goods not property of the supplier the supplier acquires joint ownership to the new moveable in relation to the invoice amount of its goods subject to reservation of title to the total value.
4. The customer only is entitled to resell or to process the goods subject to reservation of title in consideration of the provisions below and only provided that the claims are transferred to the supplier in accordance with no. 5 below.
5.
 - a) The customer hereby cedes to the supplier the claim with all subsidiary rights from the reselling of the goods subject to reservation of title - including possible discount claims.
 - b) If the goods have been processed, blended or mixed and the supplier acquired joint ownership to them for its invoice amount it is entitled to the ceded purchase price claim in proportion to the value of its rights to the goods.

If the customer acquired wage claims against third parties from the processing of the goods subject to reservation of title it cedes them now to the supplier for the invoice amount of the goods subject to reservation of title including all subsidiary rights.

- c) If the customer sold the claim within true factoring the supplier's claim is due immediately and the customer cedes the claim replacing it to the supplier and immediately forwards its proceeds to the supplier.
 - d) The supplier accepts above cessions.
6. The customer is entitled to collect the ceded claims insofar as it meets its payment obligations. The collection authorisation lapses on cancellation, however, the latest when the customer falls into arrears or when the customer's financial circumstances deteriorate significantly.

In such a case the supplier hereby is authorised by the customer to inform the buyers of the cession and to collect the claims itself.
 7. If the value of the securities existing for the supplier exceed all of its claims by more than 20% the supplier is obliged to insofar release securities of its choice on request of the customer or a third party affected by the supplier's excess securing.

8. Pledging or transferring the goods subject to reservation of title or the ceded claims by way of security is inadmissible. The supplier shall be informed immediately of pledges, stating the pledgee.
9. The supplier may satisfy itself from retrieved goods subject to reservation of title by means of direct sale.

§ 7 - Time limit for deliveries

1. Observing the time limit for deliveries requires that the customer in time meets the obligations incumbent on it to cooperate; otherwise they are extended appropriately.
2. Force Majeure, civil commotion, strike, lockout, unexpected shortage of input material, absence of correct or timely supply to ourselves and outages through no fault of our own automatically extend an agreed delivery time by their duration.
3. If the supplier falls into arrears the customer may demand compensation of a damage possibly incurred by the delay in addition to the delivery; in case of slight negligence of the supplier or its vicarious agents this claim is limited to 5% of the agreed purchase price for the delivery's part which could not be put into expedient operation due to the delay at most.
4. If the customer may demand compensation of damages in lieu of performance due to the default this claim for compensation in lieu of performance is limited to 30% of the purchase price for the delivery's part which could not be put into expedient operation due to the delay at most in case of slight negligence of the supplier or its vicarious agents.
5. The supplier's limitation of liability prescribed in no. 3 and 4 does not apply insofar as it is mandatorily liable in cases of malicious intent, gross negligence or injury to life, body or health.

§ 8 - Obligation of inspection, notification, and rejection

The customer shall immediately notify visible defects, delivery of other goods or delivery of an insufficient quantity 7 days after receiving the goods at their destination the latest. Concealed defects shall be notified immediately after discovering the defect.

§ 9 - Material defects/shortage of quantity

The supplier is liable for defects as follows:

1. If the supplier delivers according to drawings, specifications, samples, etc. of the customer, the customer carries the risk of suitability for the intended purpose.

For defects occurring due to unsuited or inexperienced use, faulty or negligent treatment, excessive use or unsuitable resources there are no warranty claims. The same applies for defects occurring due to special outer influences not prescribed in the agreement.

2. If a material defect, delivery of other goods or delivery of an insufficient quantity occur the supplier is liable within the scope of law and to the legal extent for supplementary performance, abatement, rescission of contract for work and labour and indemnification of expenses.

3. If the legal requirements have not been met the supplier furthermore is liable for damages in lieu of performance. The claim to damages in lieu of performance is limited to the predictable damage as per agreement in case of a purely negligent breach of obligation by the supplier or its vicarious agents.
4. If other claims for damages (than damages in lieu of performance) are justified due to material defects the supplier is liable pursuant to the provisions in § 10 of these terms and conditions.
5. Claims for material defects fall under the statute of limitation 12 months after passing of risk.

If the requirements of either sec. 438 para. 1 no. 2 German Civil Code (buildings and items used for a building according to their usual use), sec. 479 para. 1 German Civil Code (claim for recourse at purchase of commodities) or sec. 634 a para. 1 no. 2 German Civil Code (constructional defects) have been met the legally provided longer time limits apply.

6. Further or other claims of the customer towards the supplier or its vicarious agent for a material defect are excluded.

§ 10 - Other claims for damages

1. We are liable pursuant to legal prerequisites and within the legal extent
 - for all injuries to life, body and health and
 - pursuant to the German Product Liability Act and
 - in case of wilful deceit, including but not limited to fraudulently concealing material defects, and
 - in case of giving warranty for the item's condition and
 - in case of causing damages wilfully or grossly negligently, including by vicarious agents.
2. We are liable pursuant to legal prerequisites
 - if we expressly or logically accepted a qualified position of trust with regard to prevention of the
 - occurred damage and if and insofar as an exclusion of liability or limitation of liability deviates
 - irreconcilably from significant legal basic ideas and if and insofar as a breach of duty is of such significance that fulfilling the purpose of the obligation is at risk due to it.

In such cases our liability is limited to the predictable damage typical for this type of contract.

3. If a damage occurs - without a case of no. 1 or 2 at hand - due to simple negligence not based on default or impossibility claims for damages due to breach of obligation and claims for damages due to breach of the obligation to consider interest, rights and legally protected rights of the customer are excluded.

In such a case we are not liable for damages in lieu of performance or compensation for futile expenses as well in case of less than gross negligence. If there are claims for damages in lieu of performance or compensation of expenses due to material defects, however, the liability of § 9 no. 3 and 4 of these terms and conditions remains in effect.

§ 11 - Place of performance and jurisdiction

Place of performance for all services is the supplier's domicile.

Place of jurisdiction for both parties is Oldenburg.

§ 12 - Applicable law

German substantive law applies to the contractual relationships excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

§ 13 - Final provisions

These General and Delivery Terms and Conditions remain binding in their remaining parts even in case of legal inoperativeness of individual provisions.