

General terms and conditions

§ 1 General information

These general terms and conditions shall apply to all offers and contracts for the delivery of goods by the Seller, including current and future business relationships. Should, for example in conjunction with the order placement, other conditions of purchase, such as special terms for a commercial association, be presented to the Seller, these conditions shall not be applicable unless the Seller gives explicit written consent. The Buyer's acceptance of our service constitutes acceptance of our conditions even when delivery is taken of goods under differing conditions. These general terms and conditions apply only to entrepreneurs, legal persons under public law or special funds under public law.

§ 2 Offers

Unless otherwise stipulated, the prices listed overleaf are ex works. Other offers by the Seller regarding deliverability and pricing are, unless agreed to the contrary, not binding.

§ 3 Overdelivery/underdelivery

Due to technical considerations, overdeliveries and underdeliveries of up to 20% more or less than the quantity ordered or the quantity stated in the order confirmation must be accepted. Overdeliveries are invoiced at the previously agreed price. Underdelivery does NOT entail a right to supplemental shipment.

§ 4 Delivery, impossibility

Shipping shall always be effected, even when it is to be carriage paid, by rail or truck at the option of the Seller and at the expense and risk of the Buyer. Should express freight, parcel service or a partial delivery be necessary, for whatever reason, then the Buyer shall bear the additional shipping expenses. Industrial action, force majeure, fire damage, delayed delivery of supplies, and other events beyond the control of the Seller shall release him of his obligation to deliver for the duration of the events or, in case of impossibility, entirely from this obligation. In the case of a delay in service or of impossibility of service for which the Seller is answerable, claims for damages by the purchaser are ruled out except in cases of intent or gross negligence on the part of the Seller, his legal representatives or vicarious agents.

§ 5 Payment

Drafts or cheques shall only be accepted on account of payment pursuant to express agreement by the Seller. Any bill discounts, note charges or other costs arising in connection therewith shall be paid by the Buyer. The Buyer may offset counterclaims only insofar as these are recognised by the Seller and determined to be due for payment or legally binding. In the case of financial difficulties on the part of the Buyer, particularly in the event of delayed payment or protest of a cheque or bill, the Seller reserves the right to effect future deliveries on a prepayment basis only, to make all outstanding invoice balances – including deferred payments – due for immediate payment, and to demand cash payment or a payment bond in lieu of bills which have been accepted on account of payment. The Seller also reserves the right to withdraw in part or in full from contracts which have not yet been fulfilled. The Seller shall deliver goods to new customers on a prepayment basis only unless the purchaser can provide him with sufficient references.

§ 6 Notification of defects, warranty

1. All fabrics have to be tested prior to processing. Notification of defects must be sent to the Seller within 12 days of receipt of the goods in question.
2. No claims can be made regarding defects once the goods in question have been cut or other processing has begun.
3. Slight, technically unavoidable deviations in the quality, colour, width, weight, finish or pattern shall not constitute grounds for a claim. The same shall apply for commercial tolerances unless the Seller has agreed in writing to deliver goods equivalent to a sample.
4. In the case of legitimate complaints, the Seller reserves the right to rectify the defects or to deliver defect-free goods within 20 days of receipt of the original goods in question. In such a case, the Seller bears the freight charges. Should no rectification of defects be possible, the Buyer is entitled to reduce the purchase price or to withdraw from the contract. No other rights are applicable in this case.
5. Upon expiration of the deadline mentioned in No. 4 hereunder, the Buyer is entitled only to reduce the purchase price or to withdraw from the contract.
6. The Buyer shall report hidden defects to the Seller immediately upon their discovery. On the basis of such a defect which has been reported immediately, the Buyer shall be entitled only to reduce the purchase price or withdraw from the contract.
7. The burden of proof for all claims, in particular of defects, of the time at which such defects were noticed and of the timeliness of the notification thereof, lies entirely with the Buyer.

§ 7 Liability

The Seller shall under no circumstances be liable for consequential losses suffered in connection with the use or the further processing of the goods. The liability for culpable damage to life, body or health as well as our liability under the Product Liability Act remain unaffected. This also applies to mandatory liability under the Product Liability Act (Produkthaftungsgesetz).

§ 8 Retention of title

1. The items delivered remain the property of the Seller until payment has been made in full and/or any bills or cheques given have been encashed. The Buyer shall, however, be entitled to resell or process the items in the normal course of business. Such reserved goods may not be pledged or assigned as security without the express consent of the Seller. Should items be seized by a third party, notification must be made immediately to the Seller.
2. Regarding the processing and subsequent sale of goods, the following additional stipulations shall apply:
 - a) The items delivered remain the property of the Seller until full payment for them has been received.
 - b) The entitlement of the Buyer to process and resell reserved goods ceases when payments are stopped or the Buyer is adjudged insolvent or the Buyer files for reorganisation in order to prevent bankruptcy. In such a case the Buyer is required to return any unprocessed reserved goods to the Seller on first demand. The Seller shall credit the account of the Buyer with the proceeds of the best possible utilization of the returned unprocessed reserved goods (§ 254 of the German Civil Code). A return or demand for return of reserved goods does not constitute a cancellation of the contract.
 - c) No pledging or assigning as security of reserved goods or an assigned claim is admissible. The Buyer undertakes the processing of the reserved goods for the Seller, without acquiring any claim against the Seller with regard to such processing. Should the preceding manufacturer's clause not apply, the parties agree that the processing of the reserved goods shall be effected to the exclusion of acquisition of ownership according to § 950 of the German Civil Code.
 - d) The Buyer shall thus assign to the Seller any claims resulting from the resale of the reserved goods even to the extent that the goods have been processed. The assignment of claims shall be limited to the invoice value of those reserved goods which have been processed into new product/ products.
 - e) The Seller shall not collect any assigned claim provided the Buyer meets his payment obligations. The Buyer is obliged, however, to name the third-party debtors to the Seller on demand and to notify these of the assignment of claim. He is entitled to collect himself the amounts due him insofar as he meets all his payment obligations and insofar as the Seller does not issue any instructions to the contrary.
 - f) Retention of title shall also remain in effect when the Seller combines individual accounts receivable into one account outstanding; offsetting any payments by the Buyer, and the Buyer accepts such statement of account. Title passes to the Buyer when the balance is cleared.
 - g) Insofar as the value of the security provided by the Buyer in accordance with the aforementioned stipulations and under consideration of value added by the Buyer exceeds the value of claims to be secured by more than 10.%, the Seller shall be obliged to release security to such extent. The choice of such security shall be left to the Seller.
 - h) In case of attachment, the Buyer must notify the Seller immediately and identify the pledge.
 - i) As soon as the Buyer stops payment and immediately upon giving notice of such stoppage, the Buyer must provide the Seller with a listing of all remaining reserve goods, including information as to the extent to which these have been processed, as well as an itemisation of receivables from third-party debtors and any applicable credit notes.
3. Should the Seller accept contingent liabilities in the interest of the Buyer (e. g. refinancing or reverse bill of exchange), his simple and extended title to the goods shall remain valid until his full release from these liabilities.

§ 9 Place of performance

The place of performance for all goods and services in the supply contract shall be Gross-Zimmern, Germany.

§ 10 Jurisdiction, applicable law

The place of jurisdiction shall be Darmstadt, Germany. These general terms and conditions and all legal relationships between the parties shall be governed by the laws of the Federal Republic of Germany excluding the Convention on Contracts for the International Sale of Goods.

§ 11 Language

In case of differences between the German and English versions of these General Terms and Conditions, only the German version shall apply and be legally binding.

Status: July 2019