

1. Scope of Application, Conclusion of Contract

- 1.1 These General Terms and Conditions of Sale and Delivery („GTC“) shall only apply to companies (Section 14, BGB (German Civil Code)), legal entities under public law or special funds under public law within the meaning of Section 310, Paragraph 1 BGB (German Civil Code).
- 1.2 These GTC shall apply, including but not limited, to contracts for the sale and/or delivery of movable items (“Goods“), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (Sections 433, 650 BGB).
- 1.3 Our GTC shall apply exclusively. Any terms and conditions of the purchaser contrary to or deviating from these GTC shall only become part of the contract if and insofar as we have expressly agreed to their applicability in writing. This consent shall apply at any rate, including but not limited, to any case in which we carry out the delivery to the purchaser without reservation and in awareness of the purchaser’s GTC.
- 1.4 These GTC in the version as may have been amended at the time of the conclusion of the contract or, at any rate, in the version last communicated to the purchaser in text form shall also apply to all future contracts with the purchaser of a similar nature.
- 1.5 Any individual agreements made with the purchaser on a case by case basis (including collateral/subsidiary agreements, amendments and supplements) shall, at any rate, take precedence over these GTC. Subject to rebuttal, a written contract or our written confirmation shall be decisive for the content of such agreements.
- 1.6 Our offers are subject to change and non-binding. This shall also apply in the event that we have provided the purchaser with any samples, cost estimates, drawings and similar information of a physical and non-physical nature, including in electronic form, to which we reserve the rights of ownership and copyright; they may not be made accessible to third parties. We undertake to make available any information and documents designated by the purchaser as confidential to any third parties only with the purchaser’s consent.
- 1.7 Any orders placed with us are deemed to be binding offers. The purchaser will be bound to its offer for the period of two weeks. Acceptance of the offer may either be declared in writing (e.g. by means of an order confirmation) or by delivery of the Goods to the purchaser.

2. Price and Payment

- 2.1 Our prices are deemed to be ex works. The prices will be in accordance with the current price list in effect at the time of the conclusion of the contract. A minimum order value of €150.00 shall apply. The costs for packaging and shipment, including any transport insurance which may be desired by the purchaser, shall be borne by the purchaser. All prices are subject to the addition of the legal value added tax at the respectively applicable rate. Any customs duty, fees, taxes and other public levies shall be borne by the purchaser as well.
- 2.2 Our invoices shall be payable in euro currency without any deductions within 30 days from the date of the invoice and delivery. However, we reserve the right at any time – even within the scope of an ongoing business relationship – to carry out any delivery in whole or in part only against advance payment. We shall, at the latest, declare a respective reservation in conjunction with the order confirmation.
- 2.3 Upon expiry of the aforementioned term of payment the purchaser shall be in default. During the default period the purchase price shall be subject to default interest charges at the statutory default interest rate applicable at the particular time. We reserve the right to assert claims for further losses incurred by us due to the purchaser’s default. Our claim against businesses [Kaufleute] for commercial maturity interest (Section 353, HGB (German Commercial Code)) shall remain unaffected.
- 2.4 The purchaser shall be entitled to offsetting and retention rights only insofar as its counterclaims are undisputed or have been determined without further legal recourse. In the event of defects, the purchaser’s reciprocal rights shall remain unaffected particularly in accordance with Item 7 of these GTC.
- 2.5 If, following the conclusion of the contract, indications arise that our claim to the purchase price may be in jeopardy due to the purchaser’s lack of capacity to perform we shall, according to the statutory provisions governing the refusal to perform and -- following the setting of a grace period as the case may be – have the right to withdraw from the contract (Section 321 BGB) or to demand collateral in the amount of the active debts. For contracts covering the production of non-fungible Goods (one-off production) we shall have the right to immediately declare withdrawal; the statutory provisions governing the dispensability of setting a grace period shall remain unaffected. A lack of capacity to perform on the part of the purchaser shall be deemed to exist in cases including but not limited to the purchaser having been in default with previous payment obligations for periods exceeding four weeks.

3. Delivery Period and Delay in Delivery

- 3.1 Dates for deliveries of goods and services held out by us shall always be deemed to be approximations only, unless expressly agreed to otherwise. In the event that shipping has been agreed, the delivery periods and delivery dates shall refer to the time at which the Goods are handed over to the shipping company, carrier or other third party entrusted with transporting them.
- 3.2 Compliance with our delivery obligation presupposes that all required commercial and technical questions have been resolved between the contractual parties and that the purchaser has met all of its contractual obligations (such as procurement of the required official certifications or making of a down payment) properly and in due time. In the event that we are unable to comply with binding delivery dates for reasons beyond our control (unavailability of the goods or services) we shall inform the purchaser accordingly without delay and, at the same time, communicate the anticipated, new delivery date. If the goods or services should not be available within the new delivery period either, we shall have the right to withdraw from the contract, either in whole or in part; any consideration already rendered by the purchaser shall be reimbursed by us without delay. Cases of non-availability of goods or services in this context shall include but not be limited to our supplier’s failure to make timely delivery to us, in the event that we have entered into a congruent hedging transaction, neither we nor our supplier is at fault or if, on a case by case basis, we are not obligated to carry out procurement. In the event of impossibility or of delivery delays due to force majeure or in similar cases including but not limited to mobilisation, pandemics, war, operational disruptions or labour disputes we shall not be liable. This shall not apply to the extent in which we are responsible for impossibility or delayed delivery in the spirit of Item 6 below.
- 3.3 The commencement of delivery delay shall be governed by the applicable statutory provisions. A reminder by the purchaser shall be required in any event.

4. Delivery, Passage of Risk and Acceptance

- 4.1 The delivery shall be performed ex works, which shall also be the place of performance for the delivery and any cure that may be required. At the purchaser's request and cost, we shall also send the Goods to a different destination (sale by dispatch). In the absence of any other agreements, we shall have the right to select the type of dispatch (including but not limited to the transport company, dispatch route, packaging) ourselves.
- 4.2 The risk of accidental loss or damage or accidental impairment of the Goods shall, at the latest, pass to the purchaser at the time the Goods are handed over. In the event that shipping has been agreed, the risk of accidental loss or damage or of accidental impairment of the Goods as well as the risk of delay shall pass as early as at the time the Goods are delivered to the shipping company, the carrier, or other person or organisation selected to carry out the dispatch, and in the event of delayed acceptance by the purchaser at the time the Goods are made available by us. In the event of delayed acceptance, the purchaser shall have to bear the costs of storage and preservation of the delivered item. During the period of delayed acceptance, by derogation from the provisions of Item 6 below of these GTC, we shall only be responsible for intent and gross negligence. Insofar as an acceptance has to occur, such acceptance shall be decisive for the passage of risk. In all other respects, the statutory provisions of the law governing work and services shall apply accordingly as well. If the purchaser is in default of acceptance, such default shall be deemed to be equivalent to handover or acceptance.
- 4.3 Partial deliveries shall be permissible if they are of use to the purchaser within the scope of the contractual purpose, the delivery of the remainder of the Goods is ensured and the purchaser does not incur any resulting additional costs.

5. Retention of Title

- 5.1 We shall retain title to the delivered item up until the full payment of the purchasing price including all incidental costs. The retention of title shall also extend to the acknowledged balance to the extent that we post claims against the purchaser in current accounts (current account retention). The retention of title shall also extend to all existing and future claims arising out of our business relationship with the purchaser.
- 5.2 In the event of a breach of contract by the purchaser we shall have the right to withdraw from the contract according to the statutory provisions and/or to demand the Goods based on our retention of title. The demand to hand out the Goods shall not simultaneously imply a declaration of withdrawal from the contract. Rather we shall have the right to merely demand the handing out of the Goods and to reserve our withdrawal. In the event that the purchaser fails to pay the purchasing price due, we shall only be entitled to asserting these rights if we have previously set a reasonable grace period for the purchaser without success or if the setting of such grace period is dispensable according to the applicable statutory provisions.
- 5.3 The purchaser may neither pledge the Goods that are subject to retention of title nor assign them as security to any third parties. In the event that an application for opening of insolvency proceedings has been filed or in the event of attachment, seizure, confiscation or other third-party access to the Goods belonging to us the purchaser shall inform us in writing without delay. The costs of any third-party objection proceedings shall be borne by the purchaser.
- 5.4 Until such time that title has passed to the purchaser, the purchaser shall be obligated to treat the purchased item with due care.
- 5.5 The purchaser shall have the right to sell the delivered item to a third party during the proper course of business. The purchaser already cedes to us all claims (incl. VAT) arising out of the sale to a third party, irrespective of whether the delivered item has been sold with or without further processing. This cession shall also concern any balances claimed at the end of an accounting period against the purchaser's sub-purchasers insofar as the purchaser includes the claim in a current account relationship with its sub-purchaser. The purchaser shall have the right to collect the claims ceded to us in this manner.
- 5.6 Any processing or conversion of the delivered items by the purchaser shall always be carried out on our behalf. In the event that the delivered item is combined with any other items not belonging to us we shall acquire co-ownership of the new item at a ratio equating to the value between the delivered item and that of the other processed items. In the event that no such acquisition of ownership should occur for us, the purchaser already transfers its future (co-)ownership of the newly created item to us as security. Other than that, the item created as a result of further processing shall be subject to the same provisions applying to the Goods that are subject to retention of title.
- 5.7 In the event that the delivered item is inseparably combined or mixed with other items we shall acquire co-ownership of the new item at a ratio equating to the value of the delivered item and that of the other combined or mixed items at the time of their combination or mixing. In the event that the purchaser's item is to be regarded as the main item, it shall be deemed to have been agreed that the purchaser assigns co-ownership of it to us.
- 5.8 If the value of the collateral/securities exceeds 150 % of the value of any still outstanding claims, the purchaser shall be entitled to release.

6. Liability

- 6.1 In the event of property damage or financial loss caused by negligence, we and our vicarious agents shall only be liable in case of breach of a material contractual obligation, albeit limited to an amount equating to the typical loss or damage foreseeable at the time of conclusion of the contract; material contractual obligations are obligations the fulfilment of which characterises the contract and which the purchaser may rely on.
- 6.2 Other than that, we shall only be liable in accordance with the applicable statutory provisions. The same shall apply to compulsory liability according to the Product Liability Act.
- 6.3 Items 71 and 722 below shall apply accordingly to tort liability.
- 6.4 Insofar as we provide technical information or act in a consulting capacity and such information or consulting support is not part of the services we owe within the scope of contractually agreed products and services, this shall occur free of charge and by excluding any liability.
- 6.5 The purchaser may only withdraw from or terminate the contract due to a breach of obligations that does not consist of a defect in the event that we are responsible for such breach of obligations. A free right of the purchaser (including but not limited to the provisions of Sections 650, 648 BGB) is excluded. Other than that, the statutory prerequisites and legal consequences shall apply.

7. Claims for Defects

- 7.1 The purchaser may assert any claims due to a defect of the Goods delivered by us only in the event that the purchaser has notified us of the defect in writing without delay. In the event of a hidden defect, the purchaser shall be required to notify us of the defect in writing following its detection without delay. Other than that, the complaint and investigation responsibilities of Section 377 HGB (German Commercial Code) shall apply accordingly. In the event that we provide a drawing of the Goods prior to delivery of the Goods, the following shall apply: in reference to a defect of the Goods that was previously foreseeable in the drawing, the purchaser may assert any claims only if the purchaser notifies us in writing of the defect foreseeable in the drawing without delay. In the event of a hidden foreseeable defect, the purchaser shall be required to notify us of such defect in writing following its detection without delay. Other than that, the complaint and investigation responsibilities of Section 377 HGB shall apply accordingly.
- 7.2 The delivery shall have been carried out without defects if made in accordance with the quality and dimensional tolerances typical of the industry and trading practices. Other than that, the purchaser shall be responsible itself for inspecting the Goods for suitability for its specific use.
- 7.3 In the event of a defect, we shall initially have the right to correct the defect or to supply a replacement. Our right to refuse the cure or supplementary performance under the statutory prerequisites shall remain unaffected. We shall have the right to make the owed cure or supplementary performance dependent upon the purchaser paying the purchase price due. The purchaser, however, shall have the right to retain a reasonable share of the purchase price in relation to the defect. The purchaser shall have to grant us the time and opportunity required for the cure or supplementary performance owed, including but not limited to returning to us the Goods that are subject to the complaint for inspection purposes. In the event of a replacement delivery, the purchaser shall be required to return the defective item to us in accordance with the applicable statutory provisions. If in fact no defect exists, we shall have the right to require the purchaser to reimburse us for the costs incurred for the unjustified demand for a correction of defects (including but not limited to inspection and transport costs) unless the lack of defectiveness was undetectable for the purchaser. If the rework or replacement delivery should fail, the purchaser shall have the right to withdraw from the contract insofar as this is provided for by law. The cure or supplementary performance shall neither include the removal of the defective item nor its re-installation in the event that we were not originally required to carry out the installation. The purchaser's right to claims for damages shall remain unaffected by this provision. The special statutory provisions applying to the final supply of the Goods to a consumer (supplier's recourse Sections 478, 479 BGB) shall remain unaffected as well.
- 7.4 A guarantee of quality or durability shall only exist in the event that such guarantee has been expressly agreed to in writing. The description of our Goods does not constitute such a guarantee; this provision includes but is not limited to information published on our website.
- 7.5 The period of limitation for claims due to defects shall be twelve months from the time of the passing of the risk. This limitation shall not apply insofar as Sections 438 Paragraph 1 No. 2 and Section 634 a Paragraph 1 No. 2 BGB stipulate longer periods. Neither shall it apply in cases of an at least negligently caused injury to life, limb or health nor in the event of intentional or grossly negligent breach of an obligation. Furthermore, other special statutes of limitation (including but not limited to Section 438 Paragraph 1 No. 1, Paragraph 3, Sections 444, 445b BGB) shall remain unaffected as well.
- 7.6 Warranty shall not apply in the event that the purchaser, without our permission, alters the delivered item or has it altered by a third party and the correction of defects thus becomes impossible or is made unreasonably more difficult. In any event, the purchaser shall be required to bear the additional costs incurred for the correction of defects.
- 7.7 Any delivery of second-hand items agreed to with the purchaser on a case by case basis shall exclude any warranty for defects of quality.
- 7.8 Even in the event of defects, any claims of the purchaser to compensation for damages or reimbursement of futile efforts or expenses shall exist only as provided for in Item 6 above and are otherwise excluded.

8. Compliance with Export Control Regulations, Caveat

- 8.1 When transferring the contractual items delivered by us to third parties at home and abroad, the purchaser shall be required to comply with the respectively applicable regulations of national and international (re-)export control law. In any event, the purchaser shall be required to comply with the (re-)export control regulations of the Federal Republic of Germany, the European Union and the United States of America.
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- 8.3 To the extent required for the performance of export control reviews, the purchaser shall, upon request, provide us without delay with any and all information concerning final recipients, end-use and intended purpose of the contractual items delivered by us as well as related export control limitations.
- 8.4 The performance of the contract on our part shall be under the caveat that there are no obstacles to the performance due to national or international regulations of foreign trade legislation and no embargoes and/or other sanctions.

9. Place of Jurisdiction, Applicable Law

- 9.1 If the purchaser is a business [Kaufmann] in the spirit of the HGB, legal person under public law or a special fund under public law our business domicile in 72793 Pfullingen, Germany, shall be the exclusive place of jurisdiction including any international litigation. The same shall apply correspondingly if the purchaser is a business [Unternehmer] in the spirit of Section 14 BGB. However, we shall, in any event, also have the right to file lawsuits at the place of performance of the delivery obligation or at the general place of jurisdiction of the purchaser.
- 9.2 German law shall apply excluding International Uniform Law including but not limited to the UN Convention on the International Sale of Goods (CISG).
- 9.3 The ineffectiveness of individual provisions shall not affect the effectiveness of the remainder of the provisions.