

Terms and Conditions of Sale and Delivery

Witzenmann GmbH

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1. Scope of application

- 1.1 These Terms and Conditions of Sale and Delivery solely apply with respect to entrepreneurs within the meaning of Section 14 German Civil Code (BGB); they do not apply with respect to consumers.
- 1.2 We shall perform all of our deliveries and services exclusively in accordance with these Terms and Conditions of Sale and Delivery. We do not accept conflicting or deviating terms issued by the customer, except for where we have agreed in writing with the validity of said terms.
- 1.3 Our Terms and Conditions for Sale and Delivery shall also apply to future transactions, even if we should not make reference thereto in the individual case.

2. Offer and conclusion of agreement

- 2.1 Our offers shall be subject to change without notice and non-binding, provided that they are not expressly designated as a binding offer.
- 2.2 The order shall be governed by our written order confirmation. If the customer has objections to the content of the order confirmation, he must raise said objections immediately. Failing this, the agreement shall be deemed to have been concluded in accordance with the order confirmation.

3. Prices

- 3.1 The effective prices shall be deemed to be the prices indicated in the order confirmation. Unless agreed otherwise, these prices shall apply ex works and shall not include packaging, carriage, shipping, insurance, customs duties, other expenses or statutory value-added tax.
- 3.2 If, in the period between the conclusion of the agreement and the fulfillment of the order, there occur cost increases which we are unable to foresee, for example, as a result of an increase in labour costs or material costs or an introduction or substantial increase of taxes or customs duties, we shall be entitled to adjust the prices within the scope of the altered circumstances and without charging an additional profit. This shall not apply if we are in default of delivery.

4. Offsetting and retention

The customer may only offset with an uncontested counter-claim or a counter claim which has been declared legally valid. The customer shall only be permitted to assert a right of retention where said right is based on the same contractual relationship.

5. Delivery / Passage of risk

- 5.1 The risk of accidental destruction and accidental deterioration of the goods shall pass to the customer upon delivery, or in the case of dispatch, upon the transfer of the goods to the party responsible for transport.
- 5.2 If we select the mode of dispatch, the route or the dispatching party, we shall only be liable for gross negligence in the selection concerned.
- 5.3 The customer may only withdraw on account of a failure to adhere to delivery dates if he has previously issued us a reasonable grace period under threat of declining the delivery and if the delivery has not occurred within said period. This shall not apply where the fixing of a deadline is superfluous in accordance with Section 323 (2) BGB.
- 5.4 Should we be in default of delivery, we shall be liable for the delay-related damage incurred by the customer in the event of gross negligence. In the event of ordinary negligence, our liability for delay-related damage shall be limited to compensation for respectively 0.5%, but no more than 5% in total, of the price for the part of the goods and services that could not be used expeditiously on account of the delay. In addition, for delay-related damage in the event of ordinary negligence, we shall only be liable from the point in time at which a reasonable grace period set by the customer has expired.
- 5.5 We shall be entitled to partial deliveries if this is not unreasonable for the customer.

6. Confirmation of arrival

Customers in other EU countries shall be obligated to send us on demand, in accordance with legal regulations and using a form which we have provided a confirmation of arrival for the purpose of documenting tax exemption. Should the customer use his own text for the confirmation of arrival, we will accept said text if it satisfies all legal requirements. If, despite the fixing of a deadline, the customer fails to provide us this confirmation of arrival, the customer shall be liable for any disadvantages which we incur as a result.

7. Defects

- 7.1 The customer shall be obligated to inspect without delay each delivery upon acceptance or receipt and to immediately give notice of any visible defects in writing. Notice of hidden defects must be given in writing immediately after their discovery. Otherwise, the delivery shall be deemed to have been approved.
- 7.2 If a defect should be present for which we are to be held liable, we shall have the right to subsequent performance in that we may choose to eliminate the defect or to deliver an item free from defects. In the event that the subsequent performance is refused by us, has failed or is unreasonable for the client, the client shall have the right to assert the further claims provided for by law. The provisions in Item 8 of these Terms and Conditions shall apply to claims for damages.
- 7.3 We reserve the right to make changes to the design and/or the finish which do not negatively affect either the functional efficiency or the value of the delivery object; said modifications shall not constitute a defect.
- 7.4 The materials shall be stated on the basis of our experience with regard to production, except where specified by the customer. Our recommendation shall not absolve the customer of the responsibility to verify the suitability for his intended application. The risk of use shall be borne by the customer.
- 7.5 In the event of improper handling, installation errors, intervention by third parties and defects due to processes over which we have no control, there shall be no liability for defects. Natural wear is not covered by liability for defects.

8. Damages

- 8.1 We shall be liable for damages, regardless of the legal grounds therefor, in the event of wrongful intent and gross negligence. In the event of ordinary negligence we shall only be liable
 - for damage resulting from the injury to life, limb or health;
 - for damage resulting from the violation of material contractual duties (obligations without the performance of which the proper discharge of the agreement would not be possible and on the compliance with which the customer relies and may rely); in this case, however, our liability shall be limited to the foreseeable, typically occurring damage.
- 8.2 These limitations on our liability shall not apply where we have maliciously concealed a defect and where we have issued a warranty for the quality of the goods and accepted liability under the German Product Liability Act (Produkthaftungsgesetz).
- 8.3 Any fault on the part of our legal representatives and vicarious agents shall be attributed to us.
- 8.4 The legal provisions pertaining to the burden of proof shall remain unaffected by the foregoing provisions.

9. Limitation period for bringing claims

- 9.1 Except where otherwise stipulated below, the general period of limitation for claims brought by the customer due to defects in quality and title shall be one year following delivery. This period of limitation shall apply to the contractual and non-contractual claims for damage brought by the customer based on a defect of the goods.

- 9.2 The statutory limitation periods, also provided that the claims are based on a defect, shall apply
 - to claims for damage resulting from the injury to life, limb or health;
 - to liability under the German Product Liability Act (Produkthaftungsgesetz);
 - where we have maliciously concealed a defect;
 - where we have issued a warranty;
 - where said claims concern a structure or an item which has been used for a structure in accordance with the item's common manner of use and causes said structure to become defective;
 - to claims for supplier recourse in the case of an end delivery to a consumer (Section 479 BGB).

10. Retention of title

- 10.1 We reserve the right to retain the title to all goods we deliver until such time as all claims from prior agreements have been paid in full. Said claims also include checks receivable and bills of exchange receivable as well as claims from open accounts. If liability is established on our part from a bill of exchange in connection with the payment, the right to retain the title shall not expire before the claims arising from the bill of exchange can no longer be brought against us.
- 10.2 Should the customer be in default of payment, or if it becomes noticeable that our payment claims are jeopardized due to an inability of the customer to render payment, we shall be entitled to reclaim the goods on the basis of the retention of title.
- 10.3 In the event of attachments or other interventions by third parties, the customer shall notify us without delay. The customer shall bear all expenses which must be incurred in order to reverse the seizure and to recover the delivery object, provided that said expenses are not eligible for collection by the third party.
- 10.4 The customer shall be entitled, subject to a revocation permissible for good cause, to dispose of the delivery object within the scope of the ordinary course of business. In particular, transfer of title as collateral and pledging shall not be permitted. The goods subject to the retention of title may only be passed on to the purchaser by the customer if the customer is not in default on its obligations towards us. In the event of a resale, the customer shall assign to us with immediate effect all claims arising from the resale, in particular payments claims, as well as other claims related to the sale, in the amount of our final invoice amount (including value added tax). The customer shall be authorised by us, until a revocation permissible for good cause, to collect the assigned claims in a fiduciary capacity. The resale of the claims as part of non-recourse factoring transaction shall require our prior consent. We shall, for good cause, also be entitled to notify the third party debtors of the claim assignment in the name of the customer. The customer's collection authorisation shall expire upon the announcement of the assignment to the third party debtor. In the event that the collection authorisation is revoked, we may demand that the customer identify to us the assigned claims and the debtors thereof, provide us with all information necessary for collection, surrender to us the corresponding documents and report the assignment to the debtors. In particular, good cause within the meaning of these provisions shall be deemed to be present in the event of a default in payment, stoppage of payments, initiation of insolvency proceedings, protest of a bill of exchange or reasonable indications for absolute insolvency of the customer or an imminent inability of the customer to pay.
- 10.5 The working and processing of the delivery object by the customer shall always occur on our behalf. We shall be considered the manufacturer within the meaning of Section 950 BGB without further obligation. If the delivery object is processed to include other objects not belonging to us, we shall acquire joint ownership of the new item in the ratio of the value of the invoice amount to the purchase price of the other processed goods. Otherwise, the provisions which apply to the delivery object shall apply to the item resulting from the processing.
- 10.6 In the event that the delivery object is connected to, blended with or combined with personal property of the customer in such a manner that the property of the customer can be deemed as constituting the main item, the customer shall hereby transfer to us with immediate effect joint ownership of the entire item in the ratio of the value of the delivery object to the value of the other connected, blended or combined items. The customer shall keep custody of the property for us free of charge. If the delivery object is connected to, blended with or combined with the personal property of a third party in such a manner that the property of the third party can be deemed as constituting the main item, the customer shall assign to us with immediate effect his right to the payment claim against the third party in the amount equal to the portion of the total invoice amount accounted for by the delivery object. The new item resulting from a connection or blending, or the rights of (joint) ownership in the new item, which rights belong to us or are to be transferred to us, as well as the claims for payment assigned as set forth in the paragraph above, shall serve to secure our claims in the same manner as the delivery object itself.
- 10.7 Unless the retention of title or the assignment of claims should be invalid or unenforceable due to mandatory foreign legal provisions, the security corresponding to the retention of title or the assignment of claims in this scope shall be deemed to have been agreed. If the involvement of the customer should subsequently be necessary, the customer shall take all measures as are required to establish and maintain the security.

11. Consulting, project work, planning

Consulting, project work and planning shall only be binding on the customer to the extent that they are related to the use of our delivery object and are based on the customer being fully informed of the application purpose and the use within the facility. Should the customer provide drawings, plans, data or other information, he shall bear the sole responsibility for the accuracy thereof. The customer shall assume sole liability for any defects arising therefrom. The provision under Item 8 shall apply to our liability.

12. Ownership and copyright

All offer documents, drawings, cost estimates and other documents shall remain our property and must be returned on request. A right of retention shall not exist. The documents must not be made available to third parties nor otherwise exploited by the customer in any way. Ownership rights, copyright and any other protective rights shall belong to us without restriction. In the case of a breach, the customer shall pay compensation.

13. Confidentiality

The confidentiality of all business or technical information made accessible by us to the customer shall, until and unless it can be verified that said information is publicly known, be maintained with respect to third parties, and said information may only be provided to third parties by the customer with our written consent, wherein the third parties shall also be put under an obligation to maintain confidentiality. The customer may only use this information himself in connection with the order or with the eventual use of the object in accordance with the order. At our request, all information we have provided shall be returned to us or destroyed immediately and completely. Information within the meaning of this agreement shall be all data, plans, programs, knowledge, experience and know how, namely regardless of the manner of recording, storage or transmission, and also independent of whether said information is designated explicitly or implicitly as secret or confidential.

14. Information requirements according to the Consumer Dispute Settlement Act

The European Commission is providing a platform for online Dispute Settlement (OD), which you can find at <http://ec.europa.eu/consumers/odr/>. We are not obligated and not prepared to participate in a dispute settlement procedure before a consumer arbitration board.

15. Place of performance, place of jurisdiction, applicable law

- 15.1 The place of performance for delivery and payment, as well as for all other obligations under the supply contract, shall be Pforzheim for both parties.
- 15.2 The place of jurisdiction for all legal disputes arising from the contractual relationship, as well as for all legal disputes pertaining to the establishment and to the validity of said contractual relationship, shall be Pforzheim for both parties in the case where merchants are involved. At our discretion, we may also bring the claim at the customer's principle place of business.
- 15.3 The contractual relationship is subject to German law. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.