

I. General

All orders shall be accepted and carried out on the basis of the conditions below, which shall also apply to future services, even if they are not referenced. Deviations from the Supplier's General Terms and Conditions, in particular the General Terms and Conditions of the Buyer, shall not be binding for the Supplier, even if they are not explicitly contradicted. Deviations shall only be valid if they are confirmed in writing by the Supplier. All subsidiary agreements to the Purchasing Agreement, in particular also oral agreements with travelling sales personnel and representatives as well as orders via telephone must be confirmed in writing by the Supplier for them to be valid. When purchased according to samples, no more than a professionally tested consistency shall be guaranteed, while assurances and guarantees for merchantability for any kind of use shall not be granted.

II. Place of Performance and Jurisdiction

1. Place of Performance shall be the Supplier's principal place of business or, in the case of a delivery by a branch establishment, the branch establishment.
2. Place of jurisdiction regarding all rights and obligations of both parties to the contract resulting from business of any kind shall be, at the discretion of the Supplier, the seat of the principal place of business or the seat of the branch establishment. Supplier shall be entitled to pass on Customer's activity data on goods and payments to third parties.

III. Delivery

1. The delivery period commences with the dispatch of the confirmation, however, not prior to the receipt of any documents, permits, releases and the receipt of a potentially agreed upon down-payment to be provided by the customer. The delivery period shall be extended correspondingly – even if the delay is due to circumstances beyond the control of the Supplier, such as operational disruptions, impeded supply of raw materials, auxiliary materials and supplies, missing loading opportunities, measures by the authorities, strikes, lockouts and others. Supplier shall inform Customer of the beginning and the end of such situations as soon as possible. If the duration of the impediment is one month, or if it is obvious that it will last longer than one month, the Supplier as well as the Customer may withdraw from the contract. In this case, the Customer shall not be entitled to any further claims.
2. In the event of special orders, Supplier shall be entitled to exceed or fall short of the agreed delivery amounts by 10%.
3. If the acceptance of partial deliveries is agreed upon to take place within a certain time frame, then a rough, evenly spaced distribution of the delivery shall be considered to have been agreed upon. If the delivery or call does not take place within one year at the most, then Supplier shall no longer be obliged to delivery. If so requested by the Supplier, however, Customer shall be obliged to accept [the goods], regardless of the rights of the Supplier to assert damage claims.
4. All offer and sales prices are based on the respective initial costs; should these change, then we reserve the right – insofar as this is legally permissible – to charge those prices that apply on the day of the delivery. In the event of low-amount special orders a surcharge according to a special calculation shall be charged.

IV. Passing of Risk, Shipping and Insurance

1. With all deliveries, the risk of the accidental loss or accidental deterioration of the delivery items shall pass to the Customer at that time, at which the goods are handed over to the first carrier. In the event that employees of the Supplier take care of the delivery, the above risk shall pass at the instance the transport process commences. Should the transport be delayed due to circumstances that are the responsibility of the Customer, then the risk shall pass to the Customer on the day that the goods are ready to be shipped.
2. Insurances against damages of any kind, against delivery delays, etc., shall be purchased only at the express wishes of the Customer and will be invoiced in the amounts required to purchase the insurances.
3. The packaging account shall be charged if the packaging has not been returned freight paid at the Supplier within 90 days after invoice date in a closed, clean and undamaged condition.
4. Insofar as freight paid delivery has been agreed upon, then this shall only apply to deliveries of at least 400 kg or 400 litres, and only to freight paid deliveries to the customer's railway station; otherwise, the delivery shall be ex works. If the Customer is entitled to free delivery and the delivery is freight collect, then in all cases only the freight for the piece goods and the loading or shipping charges without surface freight and rolling freight shall be reimbursed for the receipt. Additional charges for express shipping and other surcharges shall also be borne by the Customer. Additional freights that are the result of an increase in the freight rates after the contract has been concluded shall be borne by the Customer.

V. Prices

1. The prices do not include the statutory Value Added Tax at that time. Unless specifically permitted by the order confirmation, any subtracting of discounts and rebates shall be subject to a special written agreement. A deduction of discounts and rebates shall be prohibited as long as there are older unpaid invoices that are due.
2. If the invoice amount has not been paid within 30 days of the due date, then from this date forward Customer shall pay interest on the invoice amount of 8% above the respective base rate; the right to assert a higher claim for compensation due to delay shall remain reserved. The Customer shall be entitled to prove that Supplier experienced no or substantially lesser damage as a result of the delay in payment.
3. Customer shall have the right to offset against Supplier's invoice amounts only if the counterclaims have been determined judicially, are uncontested or have been acknowledged by the Supplier. In addition, he shall be authorised to exercise the right of retention only to the extent as his counterclaims are based on the same contract.
4. In case that ordered goods are not accepted, Supplier shall have the right to demand 15% on top of the value of the goods and the value of contracts already concluded and not accepted for expenses already incurred and lost profits as well as for appropriate provisions for the sales person; Supplier shall reserve the right to assert further claims.
5. Insofar as partial deliveries have been agreed, the Supplier shall be entitled to invoice the partial delivery (deliveries) already carried out.

VI. Notice of Defects, Liability

1. Customer shall check the goods immediately upon receipt, both for quality and quantity and check if their condition meets the contractual requirements. Apparent defects must be indicated in writing within 14 days, defects that are not apparent shall be indicated immediately after they have been uncovered, however, no later than within 12 months after receipt of the goods. At its discretion, Supplier shall then be entitled to remove the defects or provide a replacement delivery. In case of minor defects, however, Customer shall only be entitled to a reduction of the contractual relationship. Incidentally, the right to a reduction of the contractual relations shall be excluded.

In particular, Supplier shall provide no guarantee in case of:

- defective, improper processing/use or treatments by the Customer (such as mixing in thinning agents, hardeners, add-in lacquers or other components, especially if not purchased from Supplier).
- improper storage
- product-typical changes of the colour and/or the gloss level

2. The Supplier's oral and written application technology recommendations it has provided to support the Customer as a result of its experience according to its best and current practical knowledge are non-binding and do not constitute any assurances
3. or guarantees, they do not justify any contractual legal relationships or secondary obligations from the contract. They shall not relieve the Customer of the responsibility to check Supplier's products for their suitability for the intended utilisation purpose. Otherwise, all cited characteristics/quality features are designed for their intended use.
4. Supplier shall be liable for damages that did not occur on the delivered item itself, for whatever legal reason, only in case of:
 - intent
 - gross negligence by the managing director or executive employees
 - culpable injury to life, body and health
 - defects that he has deceitfully concealed or the absence of which he has guaranteed
 - defects of the contractual item, wherever mandatory liability exists under the product liability laws for personal injury or material damage to privately used items.
5. In the event of culpable breach of fundamental contractual obligations, Supplier shall also be liable for the gross negligence of non-managerial employees and in the event of slight negligence; in the latter case this shall be limited to reasonably foreseeable typical contract damage. In all other cases, claims for damages due to a violation of a contractual obligation as well as prohibited acts shall be excluded, so that there shall, in particular, be no liability for lost profits as well as other losses to the assets of the Customer.
6. All claims by the Customer, for whatever legal reasons, shall be subject to a statute of limitation of 12 months.
7. The statute of limitation shall start in accordance with legal provisions.

VII. Retention of Title

1. The Supplier shall retain the title to the delivered goods until such time as all - including future - claims (including all collateral claims, such as costs for bills of exchange, financing costs, interest, etc.) arising from the business relationship with the Customer are met. If there is a current account agreement with the Customer, the retention of title shall remain in effect until the recognised current account balance has been paid in full. Fulfilment shall only be deemed to have been effected when the check or bill has cleared and Supplier can fully access the funds without any risk of recourse.
2. Supplier shall be entitled to insure the item to be delivered, at the Customer's cost against theft, breakage, fire, water and other damages, unless the Customer himself has demonstrably purchased the insurance himself.
3. The Customer agrees to handle the retained goods carefully and to immediately notify Supplier in case of any seizure of goods, confiscation, damage or loss; a violation of this obligation shall entitle Supplier to withdraw from the contract. Customer shall bear
4. all costs incurred or that must be incurred, in particular within the scope of a third-party motion to vacate the seizure, in the recovery of the delivered items, unless these can be recovered from third parties.
5. Customer may process the delivered item in the course of his regular and ordinary business and sell it; however, he may not pledge it nor assign it for security.
6. In the case of delayed payment or when the Customer violates other material contractual obligations, Supplier shall be entitled to temporarily take back the goods under retention of title. Exercising the right to take back the goods shall not constitute a withdrawal from the contract.
8. Customer shall already beforehand assign to Supplier, who shall accept the assignment, the outstanding amounts from the receivables obtained from the resale or further processing or due to any other legal grounds (insurance, tortious act, loss of ownership by connecting the delivered item with a piece of property) regarding the item that is subject to retention and in the amount of the invoice. Supplier revocably authorises Customer to collect in his own name the receivables assigned to Supplier for the account of the Supplier.
9. This authorisation to collect can be revoked only if the Customer does not meet his payment obligations in a timely manner. In such a case, if Supplier so requests, Customer must provide the required information regarding the collection of the assigned receivables, Customer shall make available the appropriate documentation and indicate to the debtor the assignment. Assignment of receivables in accordance with VII., 6 Clause 1 serves to secure all receivables - also future ones - arising from the business relationship with the Customer.
10. If the Supplier's realisable value exceeds the securities granted according to the above provisions the Supplier's receivables against the Customer by more than 10% - not only temporarily - then Supplier shall, at its own discretion, release securities granted for this reason upon request by the Customer. The cover limit of 110%, as stated in the preceding, shall increase by the amount of the turnover tax that arises from a delivery to the Customer that is subject to the turnover tax if Supplier is charged turnover tax when utilising the goods subject to retention rights.
11. If, in the event of international deliveries, the above provisions regarding the right to retention are not valid in the country to which the goods were exported or would need to be amended to be valid and/or would need to be registered with the authorities, then 11. Customer shall be obliged and Supplier shall be entitled to demand that a collateral agreement be concluded according to the laws of the country of export and that the respective required registration be undertaken.
12. Customer shall agree to cooperate with Supplier in providing declarations and actions that result in an effective collateral agreement for the products delivered by Supplier.
13. An application by the Customer to open insolvency proceedings shall entitle Supplier to withdraw from the contract and demand the immediate return of the delivery item. The same shall apply in the event of a material deterioration of the economic conditions of the Customer, in particular if the trade credit insurance securing the goods is suspended or materially decreased.

VIII. Other

The substantive law of the Federal Republic of Germany shall apply to these General Terms and Conditions as well as the legal relationships between Supplier and Customer, while excluding the United Nations Convention on Contracts for the International Sale of Goods (UN sales law, CISG).