

Sales, Delivery and Payment Terms

1. General

1.1 Unless otherwise agreed in writing, the following terms apply to all - including future – rendering of goods and services.

1.2 The terms of business of the Seller's customers apply only if the Seller has agreed to them in writing.

2. Quotations for the Rendering of Goods and Services

2.1 All quotations provided as well as prices that appear in lists are subject to change without notice.

2.2 Written confirmation or delivery of goods and services shall constitute the Seller's acceptance of an order. Orders or agreements made verbally, including those made with GUTEX and independent sales agents require the written acknowledgement of the Seller.

2.3 Unless otherwise specified in writing as binding, all images, illustrations, drawings, colour, weight and dimensional information that are provided with a quotation represent approximations.

3. Credit Worthiness

3.1 The acceptance of an order presupposes the credit worthiness of the Purchaser.

3.2 The Seller reserves the right to void an order or request immediate payment if the Purchaser is deemed not creditworthy at the time the order is placed or after the order is placed. This shall also apply if a bill of exchange was issued.

3.3 The failure of the Purchaser to pay for previous goods or services, i.e. outstanding invoices, may be considered sufficient grounds to determine the Purchaser is not creditworthy.

4. Prices

4.1 The Seller's prices do not include VAT.

4.2 The Seller reserves the right to raise or lower the agreed prices on orders with delivery deadlines of more than two months if significant changes in cost of labour, salary, material, energy or raw materials occur after the order has been confirmed and provided the changes are beyond the influence of the Seller. However, price increases shall not exceed more than 5 %.

5. Delivery, Delivery Deadlines

5.1 The period of delivery begins with the receipt of the order confirmation, but not before all the specifics of the order and all technical questions have been cleared up and not before the receipt of the agreed down payment.

5.2 The delivery is subject to the Seller obtaining his materials punctually and in satisfactory condition from his suppliers.

5.3 Unpredicted, unavoidable events or circumstances that are beyond the control of the Seller (such as acts of God, strikes, lockouts, plant failures, problems with material or energy procurement, transportation delays, deficiencies of personnel, energy or raw materials as well as actions by government authorities or difficulties in obtaining permits, in particular, import and export licences) extend the delivery deadline for the duration of the interruption and its effects. This applies as well to hindrances to the upstream suppliers of the Seller or during a delay in performance. If the event or circumstance is not temporary, both the Purchaser and Seller shall be entitled to withdraw from their commitments to the order. Claims for damages are excluded for the above-mentioned instances.

5.4 The Seller shall reimburse the Purchaser for any delay in the delivery of ordered goods or services at a rate of 0.5 % of the net invoice sum of the portion of the order that is delivered late, per workweek (Monday through Friday) for every workweek that ends after the deadline date, provided the delay is not attributable to wilful intent or gross negligence, but rather is attributable to ordinary negligence. However, the penalty fee shall not exceed 5 % of the net value of the portion of the order that is delivered late. The right to claim indemnity instead of the delivery of goods or services as per Sub-clause 11 shall remain herewith unaffected. The Purchaser shall inform the Seller of non-performance penalties that the Purchaser is subject to from the Purchaser's clients, at the latest, upon concluding the contract.

6. Packaging

The Seller will reassume possession of the packaging materials on the Seller's premises during regular business hours. The Purchaser shall bear the cost of the return shipping and disposal. The packaging must be clean, free of foreign materials and sorted according to materials when it is returned.

7. Shipping, Passage of Risk, Partial Delivery

7.1 Unless otherwise specified, the Purchaser pays for the shipping.

7.2 At the time when the goods are made available for shipping, the risk passes to the Purchaser. This applies to prepaid freight as well. The Purchaser is not obligated to insure the shipping of freight.

7.3 Partial deliveries are allowed, provided such are acceptable to the Purchaser, and are to be billed individually.

8. Payment

8.1 Unless otherwise specified, invoices shall be paid without deduction within 30 days of the invoice date.

8.2 Invoices shall be considered completely paid when their full sums have been credited to the Seller's bank account.

8.3 If the Purchaser should fall into arrears, all of his obligations to pay the Seller that originate through his business relationship with the Seller as well as those for which there are bills of exchange are due.

8.4 If the time specified for payment (30 days) is exceeded, interest up to 8 percentage points over the base interest rate, but at least 10 %, may be charged. All further debts remain unaffected.

8.5 If previously agreed, cheques and bills of exchange will be accepted, however, their acceptance does not constitute payment (see Clause 8.2). Bank charges will be billed separately and are immediately due without deduction.

8.6 Purchaser set-offs or rights of retention are possible only for undisputed or legally determined claims.

9. Retention of Title

9.1 The ownership of the delivered goods remains with the Seller until the Purchaser has paid off all the debt from the business transaction, including any current account balances as well as bills payables or cheques payables.

9.2 Goods subject to retention of title shall be kept separate from the other goods, shall be handled carefully, shall be clearly marked as property of the Seller and they shall be insured at the cost of the Purchaser against loss and damage sufficiently to cover their replacement with new goods of equal quality and value. The insurance policy and proof of payment of the insurance premium are to be presented to the Seller upon the Seller's request. The Purchaser cedes all rights to benefits derived from the insurance to the Seller now. As soon as the goods are transferred to the ownership of the Purchaser, the Purchaser waives all rights to the benefits derived from the insurance.

9.3 Processing and conversion of the goods subject to the retention of title into new articles by the Purchaser always takes place for the Seller without the Seller incurring additional obligations. In the event of the goods' integration or use with other goods, the Seller shall acquire co-ownership of the newly created goods, proportionate to the ratio of the invoice value of the Seller's retention goods to the foreign materials.

9.4 The Purchaser has the right to sell the goods that are subject to retention or new goods in line with legal business practices. However, the Purchaser herewith cedes to the Seller all claims to receive payment for the sale of the goods for the full invoice amount that may proceed from the resale or use of the products.

9.5 The Purchaser may sell the goods for which he ceded receivable claims to pay for his debt to the Seller, provided the Purchaser pays his debt from the proceeds.

9.6 If the Purchaser fails to pay his debt, the Seller may revoke the permission to resell and use the goods and request that the Purchaser make known to the Seller the ceded payment claims and the debtors, all information required to collect the debts, including documents, and to inform his debtors of the transfer of receivables. The return of goods subject to retention does not constitute the withdrawal from the contract. If the Seller withdraws from the contract, he may sell the goods on the open market.

9.7 The Purchaser shall immediately inform the Seller if a third party seizes the goods subject to retention. Any costs incurred for the defence of the seizure shall be borne by the Purchaser, provided payment cannot be obtained from the third party.

9.8 If the value of the collateral exceeds the Seller's receivables by more than 10 %, the Seller shall release at the request of the Purchaser the collateral specified by the Purchaser.

10. Warranty Claims

10.1 The Purchaser shall inform the Seller in writing immediately of defects – at the latest, within eight days from the time when the goods are received and in the event of hidden defects, no later than three days after receipt of the goods. If the above-mentioned deadlines are exceeded, all warranty claims and rights for the defects will be nullified.

10.2 The violation of third-party rights only represents a defect if these proprietary rights exist in the Federal Republic of Germany.

10.3 If the claim is justified, the Seller has the choice of providing a replacement or improving the goods. If the remediation fails, is unjustifiably denied or delayed, the Purchaser may request a lowering of the price after the expiration of a reasonable deadline or – if the defects are significant – withdraw from the contract and demand indemnification for damages instead of the contracted goods or services as per Clause 11. The Seller will not pay costs for remediation that occurs because the purchased goods are transported to another site other than the business establishment of the Purchaser after their delivery.

10.4 If the defect can be significantly attributed to a foreign product, the Seller shall have the right to limit his liability first to the transfer of warranty liability and the rights that are available to him against the supplier of the foreign product, unless the transfer of the claim or right is unsatisfactory or for some other reason cannot be asserted. If this is the case, the Purchaser may make use of the rights in Clause 10.3.

10.5 The period of limitation is twelve months from the date of the passage of risk, provided the Seller is not liable for physical injury, does not violate his obligations wilfully or with gross negligence, does not deceitfully hide the defect or provided the Seller did not have a superseding guarantee or provided a longer period of limitation is not legally stipulated.

11. General Liability

11.1 Regardless of their nature, damage claims against the Seller are excluded, if the Seller, the Seller's legal representative or a person employed in performing an obligation caused the damage due to ordinary negligence. This disclaimer of liability does not apply to physical injury, nor does it apply to the giving of a contractual guarantee, nor does it apply in the event of a fundamental violation of contract obligations that threaten the purpose of the contract. The Seller's liability is limited to the scope of the warranty or in the event of negligent violation of fundamental contract obligations to the typical contract and foreseeable damages. Rights based on product warranty law shall remain unaffected.

11.2 Damage claims expire one year after the Purchaser became aware of the damage and asserted his claim or should have if gross negligence was not involved. Claims based on product warranty law involving physical injury and defects shall remain unaffected by this.

12. Place of Jurisdiction – Place of Performance

Place of performance is Gutenberg, 79761 Waldshut-Tiengen, Germany.

13. Applicable Law, Court of Law

13.1 The laws of the Federal Republic of Germany apply. The United Nations Convention on Contracts for the International Sale of Goods from April 11, 1980 does not apply.

13.2 Place of jurisdiction is Waldshut-Tiengen, Germany.

14 Languages, Translation

14.1 These Terms were drawn up in the German language. An English translation is provided solely for convenience. If there are any discrepancies between the German and English texts, the German has precedence.