

# Standard Terms of Sale & Delivery



## I. Application

- (1) Orders only become binding when Supplier issues confirmation of order; any amendments and additions must be specifically confirmed by Supplier in writing. All quotations are subject to alteration unless expressly termed firm offers.
- (2) In ongoing business relations, these terms shall also apply to future transactions even if no express reference is made to them at the time.
- (3) Supplier shall only be bound by Customer's divergent terms of purchase if it has expressly recognised them. This also applies if Supplier makes a delivery unconditionally, despite being aware of Customer's divergent terms.
- (4) If any of the terms hereunder are or become ineffective, this shall not affect the remaining terms.

## II. Prices

- (1) Prices are ex works, excluding freight, customs and packaging. Value-added tax at the statutory rate must be added.
- (2) The minimum order value is EUR 150. For orders for less than this amount, a minimum quantity surcharge of EUR 5 is charged. For orders worth EUR 1,500 and over, we deliver to German destinations without charging for freight and packaging, and we deliver freight-paid as far as the German border if the order is being sent abroad. Deliveries are only made in the packaging units listed; short quantities are made up to the next size of standard packaging.
- (3) If pricing by weight has been agreed, then the calculation of the final price shall be based on the weight of the outturn sample that has been released.

## III. Obligations to Effect & Accept Delivery

- (1) The delivery period commences after we have received all the documents required for discharging the order as well as the down-payment, and after any materials being provided (if agreed) have been received on time, in no event however before we have issued written confirmation of order. Even if shipment is impossible for reasons beyond Supplier's control, the delivery deadline shall be deemed met when we announce that the goods are ready for dispatch.
- (2) If the agreed delivery deadline is not met due to Supplier's fault, then – after setting Supplier a reasonable deadline for post-performance that has expired to no avail – Customer shall be entitled to demand default damages, which shall be limited in amount to 5% of the value of that part of the delivery failing to comply with the contract. Moreover, Customer shall be entitled to withdraw from the contract provided it has threatened to do so in writing when setting the deadline for post-performance. Further claims on Customer's part are excluded, unless default is due to intent or gross negligence.
- (3) Reasonable part-deliveries and acceptable differences of up to 10% from the quantities actually ordered are permissible.
- (4) For on-call orders placed without specifying periods, batch sizes or acceptance dates, Supplier may request within three months of the confirmation of order at the latest that these specifications be bindingly fixed. If Customer fails to comply with this request within three weeks, Supplier shall be entitled to set a deadline of two weeks and – if such deadline expires to no avail – to withdraw from the contract or to refuse to make the delivery and claim compensation.
- (5) Incidents of force majeure shall entitle Supplier to defer the delivery for the duration of the impediment plus a reasonable start-up time, or to partly or entirely withdraw from the contract with regard to the outstanding performance. Strikes, lockouts and unforeseeable circumstances, such as e.g. operational breakdowns, shall be deemed equivalent to force majeure if they make it impossible for Supplier to deliver on time, despite it making all reasonable efforts to do so. The same applies if the aforementioned obstacles occur during a delay already existing, or affect a sub-supplier. Customer may request Supplier to state within two weeks whether it intends to withdraw from the contract or to make the delivery within a reasonable subsequent period. If Supplier fails to state its intention, Customer may withdraw from the contract with regard to the outstanding performance. Supplier shall immediately notify Customer if an incident of force majeure occurs, as specified in Paragraph 1. It must keep any impairment to Customer to a minimum, if necessary by handing over the moulds for the duration of the impediment.

## IV. Packaging, Shipment, Passing of Risk

- (1) Unless otherwise agreed, Supplier shall select the packaging, the mode of shipment and the delivery route at its own discretion.
- (2) The risk shall pass to Customer when the consignment leaves Supplier's plant, also if it is sent freight-paid. If there is any delay in dispatch for which Customer is responsible, the risk shall pass as soon as it is announced that the goods are ready for shipment.
- (3) If Customer so requests in writing, the goods shall be insured at Customer's expense against warehouse damage, breakage, transport damage and damage by fire.
- (4) Apart from recyclable pallets, transport packaging and other packaging in accordance with the Packaging Ordinance is not taken back. Customer is obliged to ensure that packaging is disposed of at its own expense.

## V. Reservation of Title

- (1) Deliveries shall remain Supplier's property until Supplier's entire claims vis-à-vis Customer have been satisfied, even if the purchase price for some specifically named items has been paid. In a current account, retaining title to the items delivered (reserved goods) is deemed security for the balance owed to Supplier. If recourse to Supplier is established due to payment by bill of exchange, Supplier's reservation of title shall not lapse prior to discharge of the bill by Customer as the drawee.
- (2) If the goods are worked or processed by Customer this shall be done on Supplier's behalf, excluding Customer's acquisition of ownership pursuant to German Civil Code, Sect. 950. Supplier shall acquire co-ownership of the new items created on working or processing its own goods, at a rate of the net invoiced value of its own goods in proportion to the net invoiced value of the newly created items, which items shall be reserved goods serving to secure Supplier's claims pursuant to Item (1) above.
- (3) If Supplier's goods are mixed or combined by Customer with other goods not belonging to Supplier, the provisions of German Civil Code, Sect. 947 and Sect. 948 shall apply, meaning that Supplier's co-ownership share in the newly created items then counts as reserved goods within the meaning of these terms.
- (4) Customer is only permitted to resell reserved goods in the ordinary course of business, on condition that it likewise reaches an agreement with its own customers on reservation of title pursuant to Items (1) – (3) above. Customer is not entitled to dispose over the reserved goods in any other manner, in particular by making pledges or assignments by way of security.
- (5) In the event of re-sale, Customer here and now assigns to Supplier – until such time as Supplier's entire claims have been satisfied – all and any receivables and other claims accruing to it vis-à-vis its own customers on re-sale, along with all and any ancillary rights. At Supplier's request, Customer shall be under obligation to furnish Supplier with all the information and hand over all the documents required for asserting Supplier's rights vis-à-vis Customer's own customers.
- (6) If the reserved goods, after being worked or processed pursuant to Item (2) and/or (3) above, are re-sold together with other goods not belonging to Supplier, then the assignment of the claim to the purchase price pursuant to Item (5) shall only apply up to the invoiced amount of Supplier's reserved goods.
- (7) If the value of the security for Supplier's benefit exceeds its total receivables by more than 10%, then at Customer's request Supplier shall be under obligation to release items of security of Supplier's own choosing that are equivalent to the excess amount.
- (8) Supplier must be notified immediately if reserved goods are garnished or seized by third parties. Any intervention costs thus incurred that are not borne by third parties shall in all events be at Customer's expense.

## VI. Warranty, Liability for Defects

- (1) The outturn samples submitted to Customer for inspection at Supplier's request shall be decisive as regards the quality and design of the products. Any warranty that delivered items feature given characteristics and any warranty of mould specifications must be documented in writing in the confirmation of order. A reference to technical norms serves as a specification of features. The warranty does not cover the risk of consequential damage caused by defects, unless Supplier, its managerial staff or vicarious agents act with intent or gross negligence.
- (2) Supplier, if it has provided advice to Customer in addition to its contractual performance, shall be held liable for the functionality and suitability of the item delivered only if it has expressly issued a warranty in writing. The state-of-the-art on the date of the acceptance of the order shall be decisive.
- (3) Defects must be reported in writing immediately. Unless otherwise agreed, guarantee claims shall become statute-barred six months after receipt of the goods.
- (4) In the event of a justified complaint about a defect, Supplier shall be under obligation to make subsequent repairs or to make a replacement delivery free of charge, at its own option. If it fails to fulfil these obligations within a reasonable period, Customer shall be entitled to demand a reduction in the price or to rescind the contract and demand reimbursement of the incidental costs (such as e.g. costs for installation and disassembly, transport costs, etc.). Further claims beyond this, for whatsoever legal cause, are excluded. Replaced parts are to be sent back to Supplier freight collect on request.
- (5) Arbitrary repairs and wrong handling shall result in forfeiture of all claims based on defects.

## VII. General Limitations of Liability

- (1) In all cases in which Supplier, in derogation from the above provisions, is bound by law or by contract to pay damages, it shall only be liable to the extent that Supplier or its managerial staff or vicarious agents are at fault due to gross negligence. If liability is not due to intent, it shall be limited to the foreseeable damage typically occurring.

## VIII. Terms of Payment

- (1) Unless otherwise agreed, the purchase price for deliveries or other services shall fall due on receipt of the invoice. A cash discount of 2% is granted for payments made within two weeks of date of invoice, provided all undisputed invoices falling due on some earlier date have been settled. No cash discount is granted for payments made by bill of exchange.
- (2) If no payment has been made within 30 days of receipt of the invoice, default interest in accordance with German Civil Code, Sect. 286 shall be charged. The right is reserved to assert claims for further default damages.
- (3) The right is reserved to turn down cheques or bills of exchange. Cheques and re-discountable bills shall be accepted by way of performance only; all and any costs involved shall be at Customer's expense.
- (4) Customer may only effect setoff or assert right of retention if its claims are undisputed or have been declared res judicata.
- (5) Non-compliance with the terms of payment, or circumstances that cast serious doubt on Customer's credit rating, shall result in all Supplier's demands falling due immediately. In addition, Supplier shall be entitled to demand advance payments for any outstanding deliveries, and – after setting a reasonable period of grace – to withdraw from the contract or demand compensation for non-performance; moreover, it shall be entitled to prohibit Customer from re-selling the goods and to fetch back any unpaid goods at Customer's expense.

## IX. Moulds (Tools)

- (1) Unless otherwise agreed, Supplier shall retain title to the moulds made for Customer by Supplier or manufactured to Supplier's instructions. These moulds are used exclusively for Customer's orders, as long as the latter performs its payment obligations and honours its undertaking to accept deliveries. Supplier's duty to retain specimens shall lapse two years after the final delivery of parts made from the mould, whereby Customer shall be notified beforehand. During the retention period, Supplier is under obligation to store and handle the mould carefully; however, it shall not be held liable for any damage that occurs despite proper handling.
- (2) The price for moulds also includes the costs for sampling once only, not however the costs for testing and processing devices, or the costs for any modifications requested by Customer.
- (3) If it is agreed that Customer is to acquire title to the moulds, title shall pass to Customer after payment of the purchase price. Handing over the moulds to Customer shall be substituted by Supplier's duty to retain them. Until a minimum number of items (to be agreed) has been accepted, or until the end of a fixed period, Supplier shall be exclusively entitled to keep a mould in its possession. Supplier must mark the mould as third-party property and insure it at Customer's expense if the latter so requests.
- (4) In the case of Customer's own moulds pursuant to Item (3) and/or moulds lent out by Customer, Supplier's liability with regard to storage and handling shall be limited to the due care it applies in its own affairs. Any costs for maintenance and insurance shall be borne by Customer. Supplier's obligations shall lapse if, after completion of the order and after being requested to do so, Customer fails to collect the moulds within a reasonable period. As long as Customer has not fully performed its contractual obligations, Supplier shall remain entitled to right of retention in the moulds.

## X. Provision of Materials

- (1) If materials are provided by Customer, they must be supplied at Customer's own cost and risk, including a reasonable excess quantity of at least 5%, and delivered in good time and in perfect condition so that processing without interruption is guaranteed.
- (2) If this requirement is not met, the delivery time shall be extended reasonably. Other than in cases of force majeure, Customer must compensate Supplier for any losses caused by a hold-up in production.

## XI. Protective Rights

- (1) In the event of Supplier having to deliver in accordance with drawings, models or samples, or using parts provided by Customer, the latter vouches that this does not infringe the protective rights of any third parties. Customer shall release and discharge Supplier from all and any third-party claims and compensate it for any loss or damage sustained. If Supplier is prohibited from doing manufacture or making delivery by a third party claiming to be the proprietor of a protective right, then – excluding all Customer's claims to damages, and without having to verify the legal position – it shall be entitled to discontinue performing its tasks, provided it immediately informs Customer that the third party's protective rights are being asserted.
- (2) Any drawings and samples provided to Supplier without an order subsequently being placed shall be returned on request; otherwise, Supplier shall be entitled to destroy them three months after issuing the quotation.
- (3) Supplier is entitled to copyrights and – where applicable – industrial property rights in the models, moulds, devices, drafts and drawings that it has made itself or has had made by third parties.

## XII. Place of Performance, Place of Jurisdiction

- (1) Place of performance shall be the location of Supplier's plant.
- (2) Place of jurisdiction shall be the location of Supplier's registered place of business or Customer's domicile, at Supplier's option, also for any proceedings restricted to documentary evidence and for any action for enforcing cheques or bills of exchange.
- (3) German law shall apply exclusively, excluding CISG.