

# General terms and conditions of sale

## § 1 General/scope of validity

(1) Our terms and conditions of sale apply exclusively. They apply to all our offers, sales, deliveries and services. Insofar as the purchaser was not able to take note of them at the time the contract was concluded, they shall nevertheless apply if the purchaser was aware of or must have been aware of them from previous business transactions.

(2) We do not recognise any terms and conditions of business of the purchaser that contradict or deviate from our terms and conditions of sale. If we carry out the delivery or service required by us in knowledge of the purchaser's terms and conditions of business, we also do not acknowledge such terms and conditions of the purchaser which are not contradicted by our terms and conditions of sale.

(3) Our terms and conditions of sale shall only apply to commercial entities within the meaning of § 310 of the German Civil Code (BGB), i.e. not if the customer's order cannot be attributed to its commercial or self-employed professional activity (consumer in accordance with § 13 BGB).

(4) Verbal agreements have not been made. All future amendments to this contract must be made in writing or in text form in accordance with § 126b BGB (in particular by fax or email); this also applies to any agreement to waive the requirement for written arrangements. Our sales representatives are not authorised to waive this requirement verbally. Changes will therefore only become effective when they have been formally confirmed by the Management Board or Sales Management.

## § 2 Offer – conclusion of contract

(1) Our offers are subject to change without notice, unless otherwise specified.

(2) If the purchaser's order is an offer to conclude a contract, we may accept this offer within 10 days.

(3) We reserve all property rights and copyrights to illustrations, drawings, calculations and other documents. This applies in particular to such written documents which are designated as 'confidential'. Before passing them on to third parties, the purchaser

must obtain our express consent in writing or text form in accordance with § 126b BGB (in particular by fax or email).

### **§ 3 Prices – terms of payment**

(1) Unless otherwise agreed, all prices are quoted ex-warehouse or ex-works including the packaging. From a gross goods value of EUR 1250.00, our prices include free delivery within Germany. Freight, insurance, postage and all other agreed special or ancillary services will be charged additionally at reasonable prices. This shall also apply if the purchaser orders special packaging or shipment.

(2) Our employees are only entitled to collect payment if this has been confirmed in writing to the purchaser by our Management beforehand.

(3) Payment by the purchaser is due immediately. The purchaser shall be notified that it is in default of payment at the latest within 30 days upon receipt of the invoice. If the purchaser is late with payment, it is obliged to reimburse a fixed administrative fee of EUR 1.50 for each (further) reminder.

(4) The purchaser can only offset this if its counterclaims are legally established, undisputed or acknowledged by us.

(5) We are entitled to exercise a right of retention on account of all claims arising from the business relationship with the purchaser.

### **§ 4 Delivery – delivery time**

(1) The commencement of the delivery period stated by us presupposes that all technical questions have been clarified and that the purchaser has fulfilled its obligations in a timely and proper manner. The defence of non-performance of the contract remains reserved.

(2) In the event of force majeure or disruption of operations occurring at our premises or our suppliers' premises, e.g. due to riots, strikes or lockouts, which temporarily prevent us from delivering the object of purchase on the agreed date or within the agreed deadlines at no fault of our own, the delivery times or delivery periods specified by us will be postponed for the duration of the disruption in performance caused by these circumstances. If a corresponding disturbance leads to a delay in

performance of more than two months, the purchaser shall be entitled to withdraw from the contract.

(3) If the object of the contract is not a concrete object, we are obliged to deliver an object of average quality and type from the stipulated category. This obligation to procure such an item is limited to the stock in our warehouse or goods from our production plant. If we do not produce the stipulated goods or if we have not yet received them, we reserve the right to have our supplier take care of delivery. This shall apply mutatis mutandis in the event of a special purchase of goods which we have not yet received as property. We shall not be liable for any non-delivery by our supplier for which we are not responsible. This shall also apply in the event of a delay in delivery by our supplier for which we are not responsible.

(4) The manufacturer reserves the right to make design or shape changes, deviations in colour and changes to the scope of delivery during the delivery period, provided that the object of purchase is not significantly changed and the change is reasonable for the purchaser.

(5) We reserve the right to charge a surcharge for very small quantities.

## **§ 5 Delay in delivery**

(1) We are liable for delays in accordance with legal provisions, provided

- the underlying purchase contract is a fixed transaction within the meaning of §§ 361 BGB and 376 of the German Commercial Code (HGB);

- the purchaser is no longer interested in the further performance of the contract following a delay in delivery for which we are at fault;

- the delay in delivery is the result of a wilful or grossly negligent breach of contract on our part, or on the part of our representatives or vicarious agents.

(2) We are liable in accordance with legal provisions, but said liability is limited to foreseeable, typical damages if

- the delay in delivery is the result of a wilful or grossly negligent breach of contract on our part;

- the delay in delivery is the result of a slightly negligent breach on our part of an essential contractual obligation.

(3) If our delay in delivery is only the result of a breach of a non-essential contractual obligation, for which we are at fault, the purchaser's claim is limited to 20% of the delivery value.

## **§ 6 Endangerment of the performance/insolvency**

(1) If it becomes apparent to us after conclusion of the contract that the (further) fulfilment of the contract is endangered due to a lack of performance by the purchaser, we shall be entitled to refuse the provision of advance performance under this contract until the corresponding consideration has been effected by the purchaser or security has been provided for it.

(2) We shall be entitled to withdraw from the contract or to terminate it without notice if, despite a reasonable grace period for the provision of the corresponding counter-performance, the purchaser fails to provide the security on a performance upon counter-performance basis.

(3) If the purchaser is insolvent or over-indebted, the opening of insolvency or composition proceedings is applied for or opened against its assets, we are entitled to withdraw from the contract or to terminate it without setting a grace period.

(4) If we terminate or withdraw from the contract in accordance with paragraphs 2 or 3, we shall be entitled to claim damages from the purchaser instead of performance or reimbursement of expenses.

## **§ 7 Acceptance**

(1) The purchaser is obliged to carry out the actions necessary for our fulfilment of the contract, in particular to accept the goods. If it violates this obligation and cannot prove that it is not at fault, it shall be obliged to reimburse us for the damage incurred in this respect, in particular additional expenses. We reserve the right to make further claims.

(2) If the purchaser defaults on acceptance of the object of purchase for more than 14 days from receipt of the notification of readiness for delivery or proper first delivery by us, we may grant the purchaser a grace period of 14 days with the declaration that we will reject acceptance of the object of purchase after expiry of this period. After this grace period has elapsed, we shall be entitled to withdraw from the purchase contract by means of a written declaration or to demand performance for non-performance. The setting of a grace period is not necessary if the purchaser seriously and definitively refuses acceptance or is obviously unable to pay the purchase price even if a grace period is granted. In this case, we are entitled to demand lump-sum compensation of 10% of the agreed purchase price for lost profit. However, the purchaser reserves the right to prove that we have suffered no damages or less than that lump-sum amount. We also reserve the right to assert and produce evidence of higher damages.

## **§ 8 Shipment – transfer of risk**

(1) Unless otherwise specified in the order confirmation, delivery 'ex-warehouse' or 'ex-works', i.e. EXW Oyten (Incoterms 2020), shall be agreed upon.

(2) We will not take back any packaging other than pallets and lattice boxes. The purchaser has the opportunity to have our packaging material disposed of in accordance with our agreement through Interseroh.

(3) Exchange pallets and lattice boxes which are not exchanged will be invoiced. Exchange pallets will be charged at net EUR 16.00 and box pallets at EUR 132.50 each.

(4) We will only take out transport insurance if this is contractually agreed. The corresponding costs shall be borne by the purchaser.

(5) We shall be entitled to make partial deliveries to a reasonable extent.

## **§ 9 General rules regarding defects of the purchased items**

(1) All claims of the purchaser arising from defects depend on the fulfilment of the purchaser's obligations to inspect and report defects in accordance with § 377 HGB.

(2) Advertising statements of third parties are only binding for us if they have been approved by the manufacturer or us.

(3) If the purchaser fails to fully comply with our or the manufacturer's operating or maintenance instructions, or the purchaser makes changes to the products, replaces parts or uses consumables that do not correspond to the original specifications, the warranty shall be void if the purchaser does not refute a substantiated claim that at least one of these circumstances has caused the defect.

(4) Moreover, our warranty terms and conditions shall apply.

## **§ 10 Subsequent performance**

(1) If the item is defective, the purchaser shall initially only have the right to demand subsequent performance from us, provided that the subsequent performance is not unreasonable for us or we have seriously and finally refused it.

(2) Subsequent performance may consist of a new delivery of the item or rectification (repair) by us or a third party engaged by us. In each case, we shall be obliged to bear all expenses necessary for the purpose of remedying the defect, in particular transport, travel, labour and material costs, insofar as these have not been increased by the fact that the object of purchase has been brought to a place other than the place of performance. In case of a new delivery, the purchaser must bear the costs for a dismantling and installation of the purchased item if the purchaser is a commercial entity.

(3) We shall be entitled to choose between the various types of subsequent performance at our reasonable discretion (§ 315 BGB). In any case, we shall be entitled to refuse a type of subsequent performance selected by the purchaser if the other type of subsequent performance results in 15% lower costs for us. The remaining residual value of the item returned in the case of a new delivery shall be credited against this.

(4) We shall be entitled to provide the subsequent performance dependent on an appropriate share of the purchase price having been paid. We shall also be entitled to refuse subsequent performance if the costs thereof exceed the stipulated purchase price. If we are at fault for the defect, or if we have officially guaranteed the absence of the defect, we can only refuse subsequent performance if its costs exceed the stipulated purchase price by one third. The remaining residual value of the item returned in the case of a new delivery shall be credited against this.

(5) Any subsequent performance by us shall be conducted without recognition of a legal obligation, unless we have expressly acknowledged the defect. Our technicians or fitters are not authorised to acknowledge a defect.

(6) If a concrete object is the subject matter of this contract, we are entitled to repair it, if a repair by us or a third party engaged by us is possible. We shall also be entitled to subsequently deliver an item other than the stipulated item if it is just as suitable for the purchaser's contractual purposes as the stipulated item. If used goods are the subject matter of this contract, the purchaser (if it is a commercial entity) shall be obliged to inspect them immediately for visible defects. If the purchaser does not report such defects within three weeks of handover, the purchaser shall not be entitled to assert any rights based on identifiable defects, if the purchaser does not prove that the defect already existed at the time of handover.

## **§ 11 Additional rights in case of defects**

(1) If the subsequent performance pursuant to § 440 BGB has failed, the purchaser may assert the rights from § 437 No. 2 BGB (rescission or reduction) or § 437 No. 3 BGB (compensation for damages or reimbursement of expenses) at its discretion and in compliance with the provisions of §§ 10, 11, 12 and 13 of these General Terms and Conditions of Sale.

(2) The purchaser is not entitled to claim damages in accordance with § 280 Para. 1 BGB in the case of insignificant defects of the goods. The right to a reduction of the purchase price is also excluded in the case of minor defects.

## **§ 12 Statute of limitation for claims arising from defects**

(1) The purchaser's claims arising from defects of the item shall lapse after five years upon delivery of the item. This shall also apply to the purchaser's rights to compensation for damages or damages in lieu of performance, including those for all damages to other legal assets of the purchaser which have arisen through the defect, unless this concerns damage to the purchaser's life, body or health, or unless we are responsible for the defect due to wilful intent or gross negligence.

(2) If the subject matter of this contract also includes rights, the limitation period for the purchaser's claims arising from defects shall commence with the agreement of the contracting parties on the transfer of these rights to the purchaser.

### **§ 13 Cancellation and compensation for damages instead of performance due to a breach of duty**

(1) A period of time set by the purchaser for subsequent performance must be at least 14 days, unless the subsequent performance must be provided within a shorter period of time for special reasons.

(2) Even after the unsuccessful expiry of a reasonable grace period, the purchaser shall only have the right to withdraw from the contract or to demand compensation for damages instead of performance if it has announced this beforehand when setting the grace period or any other reasonable period of time.

(3) If the purchaser sets multiple deadlines for subsequent performance, the purchaser shall not be entitled to withdraw from the contract or demand compensation for damages in lieu of performance during the respective time period.

### **§ 14 Returns**

(1) Returns and/or exchange of defect-free goods is only possible if we have expressly agreed to this. There is no legal obligation to take back the goods. Return deliveries and return shipments intended for exchange must be delivered to our registered office as quickly as possible at the expense of the purchaser, including any advance freight charges paid by us, and the delivery note or invoice number must be specified. The purchaser shall bear the risk for this until the goods are accepted. We are entitled to charge administrative fees or to refuse the return. The minimum processing fee for returns is EUR 75.00 net. If special expenses are necessary in order to identify the returned goods or restore them to perfect condition (repairs, cleaning, etc.), we are entitled to charge any arising costs to the purchaser.

(2) The purchaser is obliged to give us advance notice of any returns. If the purchaser violates this obligation, it shall be liable for any damage resulting from this. We reserve the right to return unreported return deliveries unprocessed and at the purchaser's expense, or even refuse acceptance of such deliveries. Returns must be reported in writing or in text form in accordance with § 126b BGB (in particular by fax or email) and confirmed in writing by DOYMA – returns that are not reported first will either be returned to the sender (carriage to be paid by you) or will be subject to an administrative fee of EUR 25 (in addition to the incurred costs of the return itself).



## **§ 15 Liability**

(1) We shall not be liable for slightly negligent breaches of duty, insofar as these do not concern essential contractual obligations, or if we have assumed a guarantee for the fulfilment of this obligation or for the success which did not occur due to the breach of duty. This also applies to corresponding actions of our subsidiaries and vicarious agents.

(2) This exclusion of liability shall not apply if the damage consists of injury to life, limb or health or if claims arising from the German Product Liability Act or claims arising from data protection regulations (in particular the EU General Data Protection Regulation, the German Federal Data Protection Act) are affected.

(3) We have business liability and product liability insurance. Insofar as this occurs, the exclusion of liability in accordance with Section 1 of this paragraph does not apply with the provision that the claim for damages is not limited to a maximum total of EUR 1,500,000 in each individual case.

(4) Any claims for damages on the part of the purchaser arising from a grossly negligent breach of duty or from a grossly negligent act on our part shall be limited to the damage foreseeable for us.

(5) The Sections 1 to 4 of this paragraph shall apply mutatis mutandis to offences committed by our employees and vicarious agents.

## **§ 16 Retention of title**

(1) We reserve title to the purchased item until all payments arising from the delivery contract have been received. In the event of a breach of contract on the part of the purchaser, in particular in the event of a delay in payment, we shall be entitled to seize the object of purchase after the unsuccessful expiry of a grace period (if this is not dispensable under the applicable law). The reclaiming of possession regarding the object of sale by us shall constitute a withdrawal from the contract. After taking back the object of sale, we shall be entitled to sell the object of sale at our discretion. The proceeds from the sale shall be offset against the purchaser's liabilities – less the reasonable sales costs.

(2) The purchaser shall be obliged to treat the object of sale with care. In particular, it shall be obliged to insure the object of sale at its own expense against fire, water damage and theft to a sufficient extent of the replacement value. Insofar as maintenance and inspection work is required, the purchaser must carry this out in good time and at its own expense.

(3) In the event of seizures or interventions by third parties, the purchaser must inform us immediately in writing or text form so that we can take legal action in accordance with § 771 of the German Civil Code (ZPO). Insofar as the third party is not in a position to reimburse us for the judicial and extra-judicial costs of a lawsuit in accordance with § 771 ZPO, the purchaser shall be liable for the loss incurred by us.

(4) The purchaser shall be entitled to resell the object of sale in the ordinary course of business; however, it shall immediately assign all claims to us in the amount of the final invoice amount (including VAT) of our claim accruing for it from the resale against its purchasers or third parties, irrespective of whether the object of sale has been resold without or after processing. The purchaser shall remain authorised to collect this claim even after the assignment. Our authority to collect the claim ourselves remains unaffected by this. However, we undertake not to collect the claim as long as the purchaser fulfils its payment obligations from the collected proceeds, is not late with payments and, in particular, as long as no petition for the opening of settlement or insolvency proceedings has been filed, or payments have been suspended. If this is the case, however, we shall be entitled to demand that the purchaser notifies us of the assigned claims and the respective debtors, provides us with all information necessary for collection, hands over the associated documents and notifies the debtors (third parties) of the assignment.

(5) The processing or transformation of the object of sale by the purchaser shall always be carried out on our behalf. If the object of sale is processed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the value of the object of sale (final invoice amount, including VAT) to the other processed objects at the time of processing. In all other respects, the same shall apply to the item created by processing as to the object of sale delivered under reservation of title.

(6) If the object of sale is inseparably combined with other objects not belonging to us, we shall acquire co-ownership of the new object in proportion to the value of the object of sale (final invoice amount, including VAT) to the other combined objects at the time of combination. If the combination is carried out in such a way that the purchaser's item is to be regarded as the main item, it shall be deemed to have been agreed that the purchaser shall transfer co-ownership to us for the respective share. The purchaser shall keep the sole ownership or co-ownership thus created in safe custody for us.

(7) The purchaser shall also assign to us the claims to secure our claims against it, which arise against a third party as a result of the combination of the purchased item with real estate.

(8) We shall be committed to release the securities to which we are entitled at the purchaser's request insofar as the realisable value of our securities exceeds the claims to be secured by more than 10%. The selection of the securities to be released shall be at our discretion.

## **§ 17 Place of jurisdiction – place of performance – data protection**

(1) If the purchaser is a merchant, our place of business shall be the place of jurisdiction. However, we shall also be entitled to sue the purchaser at its residential or business domicile court.

(2) In the case of cross-border deliveries, the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Oyten, Federal Republic of Germany, insofar as the purchaser is a merchant within the meaning of the German Commercial Code. However, we are also entitled to sue the purchaser at any other court which is competent under the Brussels Regime, or under other legal provisions and international conventions.

(3) If the purchaser is a consumer, the statutory place of jurisdiction shall apply. However, the court at our place of business shall also have additional jurisdiction if the consumer has an unclear place of residence, or has moved abroad after the conclusion of the contract.

(4) Unless otherwise specified in the order confirmation, our place of business is the place of performance.

(5) For all legal relationships between us and the purchaser under this contract, only the law governing the legal relationships of domestic parties at our registered office (German law) shall apply, under exclusion of any foreign law. The validity of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

(6) Please note our data protection statement, which we have provided for you on our website <https://www.doyma.com/privacy-policy> under 'Privacy policy'.

