

General terms and conditions for the sale and delivery of movable items.

I. General, scope of application

- These general terms and conditions of sale (GTS) apply to all of our business relationships with our customers ('buyers'). The GTS apply only if the buyer is a businessman (Section 14 of the German Civil Code [Bundesgesetzbuch, BGB]), a legal entity under public law or a special fund under public law.
- The GTS particularly apply to contracts concerning the sale and/or delivery of movable objects ('goods'), regardless of whether we make the goods ourselves or procure them from suppliers (Sections 433 and 651 of the BGB). Unless otherwise agreed, the version of the GTS valid at the time the buyer places an order or the version last communicated to the buyer in text form shall also be considered to be the framework agreement for similar future agreements, without us having to refer to them again in each individual case.
- Our GTS apply exclusively. Deviating, conflicting or supplementary buyer general terms and conditions shall become an integral part of the contract only if and to the extent that we have explicitly approved the validity of those terms and conditions. This approval requirement applies in all cases, for example, even if we make an unconditional delivery to the buyer with full knowledge of the buyer's GTS.
- Individual agreements made with the buyer (including subsidiary agreements, supplements and amendments) always take precedence over these GTS. A written contract or our written confirmation determines the content of such agreements, subject to evidence to the contrary.
- Legally relevant declarations and notices that the buyer must provide us with after the contract is concluded (e.g. to set deadlines, to provide notifications of defects, to declare rescission or reduction) must be in writing if they are to be valid.
- References to the validity of legal provisions are for clarification only. Even without such clarifications, the legal provisions apply unless they are directly amended or explicitly excluded in these GTS.

II. Conclusion of contract

- Our offers are without obligation and are non-binding. This also applies if we have given the buyer catalogues, technical documentation (e.g. drawings, plans, computations, calculations, references to DIN standards), other product descriptions or documents – including in electronic form – in which we reserve property rights or copyrights.
- An order from the buyer for our goods constitutes a binding contractual offer. Unless otherwise stated in the order, we are entitled to accept this contractual offer within two weeks of receiving it.
- Acceptance can either be made in writing (e.g. via an order confirmation) or by delivering the goods to the buyer.

III. Delivery period and delivery delays

- The delivery period shall be individually agreed and/or specified by us on acceptance of the order.

- If we cannot meet binding delivery deadlines for reasons for which we are not responsible (service unavailability), we shall inform the buyer of this without undue delay, at the same time providing information about the expected new delivery period. If the service is also not available within the new delivery period, we are entitled to withdraw from the contract in full or in part; we will reimburse any consideration made by the buyer without undue delay.
- Any delivery delays are determined by legal provisions. In any event, the buyer must send a reminder. If we delay on delivery, the buyer may request a fixed amount of compensation for damages caused by the delay. The fixed amount of compensation is 0.5% of the net price (delivery value) for each full calendar week of delay, but shall not total more than 5% of the delivery value of the goods delivered late. We reserve the right to prove that the buyer incurred no damage or incurred a significantly lower amount of damage than the above-mentioned fixed amount.
- The buyer's rights pursuant to VIII. of these GTS and our legal rights, with particular reference to the exclusion of the performance obligation (e.g. due to performance and/or supplementary performance being impossible or unreasonable), remain unaffected.

IV. Delivery, transfer of risk, acceptance, acceptance default

- Delivery is ex warehouse, which is also the place of performance for the delivery and any supplementary performance. Goods may be sent to another destination at the request of and at the expense of the buyer (sales shipment). Unless otherwise agreed, we are entitled to determine the shipment type (with particular reference to transport companies, transport route, packaging).
- The risk of accidental loss and accidental deterioration of the goods shall pass to the buyer on transfer at the latest. For sales shipments, however, the risk of accidental loss and accidental deterioration of the goods, as well as the risk of delay, transfers as soon as the goods are delivered to the carrier, freight forwarder or other person selected to carry out the shipment. If the goods have been accepted, the transfer of risk begins with the acceptance. In addition, legal provisions under work and services contract law (Werkvertragsrecht) apply accordingly to an agreed acceptance of the goods. If the buyer is in default of acceptance, the goods are deemed to have been transferred and accepted.
- If the buyer is in default of acceptance, fails to cooperate, or delays our delivery for reasons for which the buyer is responsible, we are entitled to request compensation for damage incurred as a result of this, including additional costs (e.g. storage costs). Evidence of any damage and our legal claims (with particular reference to the reimbursement of additional expenses, reasonable compensation, termination) remain unaffected; the fixed amount, however, must be offset against any further monetary claims. The buyer is entitled to prove that we did not incur any damage or incurred only a significantly lower amount of damage.

V. Prices and payment terms

1. Unless otherwise agreed individually, our partial prices agreed at the time of delivery apply, plus statutory VAT. Delivery terms apply as per Incoterms 2010: FCA – Bad Urach, Hengen or Hülben factories – excl. packaging.
2. For sales shipments (number 1 of IV.), the buyer bears the transport costs ex warehouse and the costs of any transport insurance requested by the buyer, where applicable. The buyer shall bear any duties, fees, taxes and other public charges.
3. Unless otherwise agreed, the purchase price for serial parts is due and payable with a 2% discount within 10 days and net within 30 days of invoicing and delivery or acceptance of the goods. We are also entitled at any time, however, as part of an ongoing business relationship, to make a full or partial delivery only against prepayment. We shall declare a corresponding reservation at the latest on the order confirmation date.
4. The buyer is in default if the above-mentioned payment deadline is not met. During the default period, interest shall be added to the purchase price at the respectively applicable legal default interest rate. We reserve the right to assert further damages caused by the default. With respect to businessmen, our claim to commercial maturity interest (Section 353 of the German Commercial Code [Handelsgesetzbuch, HGB]) remains unaffected.
5. The buyer is entitled to set-off or retention rights only to the extent that its claim is legally binding or undisputed. If the delivery is defective, the buyer's counterclaims, with particular reference to those under sentence 2 of number 6 of VII. of these GTS, remain unaffected.

VI. Retention of title

1. We reserve ownership in the sold goods until full payment has been made for all of our current and future receivables from the purchase agreement and an ongoing business relationship (secured receivables).
2. Goods subject to retention of title may not be pledged to third parties or transferred for security before full payment of the secured receivables is made. The buyer must immediately inform us in writing if an application has been made to commence insolvency proceedings or if third parties have accessed goods that belong to us (e.g. seizure).
3. If the buyer breaches the contract, with particular reference to non-payment of the purchase price due, we are entitled to withdraw from the contract in accordance with legal provisions and/or to demand the surrender of the goods based on the retention of title. The request to surrender the goods does not also comprise a declaration of rescission; rather, we are entitled to solely request that the goods are surrendered whilst reserving rescission. If the buyer does not pay the purchase price, we may assert these rights only if we have previously set a reasonable payment deadline for the buyer or if such a deadline is dispensable under legal provisions.
4. Once declaration of rescission has been given, the buyer must grant us or our representatives immediate access to the items subject to the retention of title and surrender them. Once a corresponding notice has been given sufficiently in advance, we may otherwise utilise the items subject to the retention of title to fulfil our other receivables due from the customer.

5. The buyer is authorised to resell and/or to process goods subject to the retention of title in the course of ordinary business until revocation, pursuant to (c) below. In this case, the following provisions also apply.
 - a.) The retention of title extends to the full value of items that result from the processing, mixing or combining of our goods, where we are considered to be a manufacturer. If third-party property rights are involved in the processing, mixing or combining with third-party goods, we shall acquire co-ownership proportionate to the invoice value of the processed, mixed or combined goods. Otherwise, the same applies to the items as for goods supplied under retention of title.
 - b.) The buyer shall hereby assign receivables from third parties that are a result of the resale of the goods or item to us as security, either in full or in the amount of our eventual co-ownership share, in accordance with the paragraph above. We shall accept the assignment. Buyer duties outlined in number 2 shall also apply with respect to the assigned receivables.
 - c.) In addition to us, the buyer shall remain authorised to collect the receivable. We are obligated to forego collecting the receivable if the buyer has met its payment obligations to us, if performance is not defective and if we do not assert retention of title by exercising a right under number 3. Should this be the case, however, we may request that the buyer notifies us of the assigned receivables and debtors, providing all of the information required for collection and any related documents, whilst also notifying the debtors (third parties) of the assignment. In this case, we are also entitled to withdraw the buyer's authorisation to resell and process goods subject to the retention of title.
 - d.) If the realisable value of the securities exceeds our receivables by more than 10%, we shall release securities at our discretion and at the buyer's request.

VII. Buyer claims for defects

1. Legal provisions apply to buyer rights concerning material defects and defects of title (including wrong deliveries, insufficient deliveries and improper assembly or defective assembly instructions), unless otherwise specified below. Special legal provisions for the final delivery of the goods to the consumer (supplier recourse pursuant to Sections 478 and 479 of the BGB) shall remain unaffected in all cases.
2. The legal basis for our liability for defects is predominantly the agreement made regarding the condition of the goods. An agreement regarding the condition of the goods is considered to be any product descriptions that are the object of a specific contract; here, it is irrelevant whether the product description is given by the buyer or the manufacturer.
3. If no agreement has been made regarding the condition, legal regulations must be used to determine whether or not there is a defect (Section 434 Paragraph 1 Sentences 2 and 3 of the BGB). We assume no liability for public statements made by the manufacturer or other third parties (e.g. advertisements).
4. Buyer claims for defects presuppose that the buyer has complied with its legal inspection and reporting duties (Sections 377 and 381 of the HGB). If it transpires that there is a defect either upon inspection or at a later date, this must be reported to us in writing without undue delay.

'Without undue delay' is considered to be notification within two weeks, where sending the notification on time is sufficient to meet the deadline. Regardless of this inspection and reporting duty, the buyer must report any obvious defects (including wrong deliveries or insufficient deliveries) in writing within two weeks of delivery, where sending the notification on time is also sufficient to meet the deadline. If the buyer fails to properly inspect and/or report defects, we have no liability for the defects not reported.

5. If the delivered item is defective, we may initially decide whether we provide supplementary performance to rectify the defect (repair) or whether we rectify it by delivering a non-defective item (replacement delivery). Our right to refuse supplementary performance under legal conditions remains unaffected.
6. We are entitled to make the supplementary performance owed dependent on the buyer paying the purchase price due. The buyer is, however, entitled to retain a reasonable part of the purchase price that is proportionate to the defect.
7. The buyer must give us the time and opportunity required for the supplementary performance owed, with particular reference to providing the rejected goods for inspection purposes. If a replacement delivery is made, the buyer must return the defective items to us, in line with legal provisions. Supplementary performance does not include either the removal of the defective item or the re-installation of the item if we were not originally obligated to install it.
8. We bear any costs required for inspection purposes and for carrying out supplementary performance, with particular reference to the costs of transportation, travel, labour and materials (not removal and installation costs) if there actually is a defect. Otherwise, we may request compensation from the buyer for costs incurred in connection with the unjustified rectification of the defect (with particular reference to inspection and transportation costs), unless the lack of defect was not apparent to the buyer.
9. In urgent cases, e.g. if operational safety is compromised or to avoid excessive damages, the buyer has the right to rectify defects itself and request compensation from us for objective expenses required for this. We must be informed of such self-repair without undue delay, and in advance if possible. There is no right to self-repair if we would be entitled under legal provisions to refuse corresponding supplementary performance.
10. If supplementary performance fails or if a reasonable deadline to be set by the buyer for supplementary performance lapses without performance, or if such a deadline is dispensable under legal provisions, the buyer may withdraw from the purchase agreement or reduce the purchase price. There is no right of rescission if the defect is immaterial.
11. Buyer claims for compensation for damages and/or compensation for wasted expenditure shall also apply to defects only in accordance with VIII of these GTS and shall otherwise be excluded.

VIII. Other liability

1. Unless otherwise stated in these GTS, including the following provisions, we shall be liable for breaches of contractual and non-contractual duties in accordance with legal provisions.
2. Regardless of the legal grounds, and within the scope of liability for fault, we shall be liable for compensation for damages for intent and gross negligence.

With respect to simple negligence, we are liable, subject to a lesser standard of liability under legal provisions (e.g. for diligence we exercise in our own matters), only

- a.) for damages resulting from injury to life, limb or health; or
 - b.) for damages resulting from the material breach of a material contractual duty (where proper execution of the contract is possible only if such an obligation is fulfilled and the contracting partner may reasonably expect to rely on compliance with such an obligation); though in this case, our liability is limited to compensation for foreseeable typically occurring damages.
3. Limitations of liability outlined in number 2 also apply to breaches of duty by or to the benefit of persons whose fault we are legally responsible for. They shall not apply if we have fraudulently concealed a defect or assumed a guarantee for the condition of the goods and are liable for buyer claims under product liability law.
 4. The buyer may withdraw from or terminate the contract due to a breach of duty if there is no defect only if we are responsible for the breach of duty. The buyer's free right of termination (with particular reference to Sections 651 and 649 of the BGB) is excluded. Otherwise, legal conditions and consequences apply.

IX. Industrial property rights and copyrights

1. With respect to claims based on the infringement of industrial property rights or copyrights of third parties (hereinafter: property rights), we shall not be liable if the property right is owned by the buyer or a company owned by the buyer either directly or indirectly, whereby the buyer has or had the majority of capital or voting rights.
2. With respect to claims based on the infringement of property rights, we shall not be liable if at least one property right from the family of property rights is published either by the European Patent Office or in one of either the Federal Republic of Germany, France, the UK, Austria or the USA.
3. The buyer must notify us of any (alleged) infringements of property rights or associated risks without undue delay and – if possible – allow us to lead legal disputes (including out-of-court disputes) at our request.
4. At our discretion, we are entitled to obtain a right of use for an item infringing a property right, to modify it in such a way that it no longer infringes the property right, or to replace it with a similar item that does not infringe the property right. If we are unable to do so under reasonable conditions or within a reasonable time frame, the customer shall be entitled to legal rights of rescission – provided the buyer has allowed us to carry out the modification. There is also a right of rescission under the conditions outlined.
5. Buyer claims are excluded if the buyer is responsible for the property right infringement, or if the buyer does not provide us with a sufficient degree of support when defending against third-party claims.
6. Buyer claims are also excluded if items are manufactured in accordance with the customer's specifications or instructions, or the (alleged) property right infringement is based on use in conjunction with another item not supplied by us, or if the items are used in a way we were unable to foresee.
7. The regulations outlined in XI. apply accordingly to the limitation of claims based on infringements of property rights.

X. Rescission

1. If the buyer breaches the contract, with particular reference to defaulting on payment, we are entitled to withdraw from the contract after setting a reasonable grace period, regardless of our other contractual and legal rights.
2. If, after conclusion of the contract, it is clear (e.g. through an application to commence insolvency proceedings), that our claim to the purchase price is compromised by defective performance by the buyer, we are entitled to refuse performance and – after setting a deadline, where necessary – to rescind the contract under legal provisions (Section 321 of the BGB). With respect to contracts relating to the manufacture of specific items (custom-made items), we may declare rescission immediately; legal regulations concerning the dispensability of the deadline remain unaffected.
3. We are also entitled to rescission without setting a deadline
 - a.) if the buyer's financial circumstances deteriorate or if deterioration is expected, resulting in the fulfilment of a payment obligation to us being compromised; or
 - b.) if the buyer is insolvent or over-indebted.
4. Legal rights and claims are not restricted by regulations contained in this provision.

XI. Limitation

1. Contrary to Section 438 Paragraph 1 No. 3 of the BGB, the general limitation period for claims resulting from material defects and defects of title is one year from the date of delivery. If the goods are accepted, the statute of limitations begins upon the acceptance.
2. If the goods, however, are a structure or an item that has been used for a construction in accordance with its normal use that has caused its defectiveness (building material), the limitation period is five years from the date of delivery, in accordance with the legal regulation (Section 438 Paragraph 1 No.2 of the BGB). Other special legal regulations regarding limitation remain unaffected (with particular reference to Section 438 Paragraph 1 No. 1 and Paragraph 3, as well as Sections 444 and 479 of the BGB).
3. The above-mentioned limitation periods under sales law (Kaufrecht) also apply to contractual and non-contractual buyer claims for compensation for damages that are based on defective goods, unless the application of the regular legal statutes of limitation (Sections 195 and 199 of the BGB) would result in a shorter statute of limitation in specific cases. The buyer's compensation claims for damages under sentences 1 and 2(a) of number 2 and under product liability law, however, expire exclusively in accordance with legal limitation periods.

XII. Non-disclosure

1. Any commercial or technical information provided by us (including features that can be taken from the items or software supplied, and other knowledge or experience) must not be disclosed to third parties and may be made available in the buyer's business only to persons that must be involved in using the information and are subject to non-disclosure obligations, provided that and to the extent that such information is not already demonstrably public knowledge or we have specified that such information is for resale by the customer; it shall remain our exclusive property.

Such information must not be reproduced or used for commercial purposes without our prior written consent. At our request, all information provided by us (where applicable, including any copies or records made) and items provided by us must be returned to us in full or completely destroyed without undue delay.

2. We reserve all rights in the information specified in number (1) (including any copyrights and the right to register industrial property rights, such as patents and registered designs).

XIII. Choice of law and place of jurisdiction

1. The law of the Federal Republic of Germany applies to these GTS and the contractual relationship between us and the buyer, with the exclusion of international uniform law, particularly the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. If the buyer is a merchant within the meaning of the HGB, a legal entity under public law or a special fund under public law, our head office in Bad Urach shall be the exclusive – and international – place of jurisdiction for any disputes arising from the contractual relationship either directly or indirectly. The same shall apply if the buyer is a businessman within the meaning of Section 14 of the BGB. In any case, however, we are entitled to file a suit in the place of performance of the delivery obligation in accordance with these GTS or an individual overriding agreement, or in the buyer's general place of jurisdiction. Overriding legal provisions, with particular reference to exclusive jurisdictions, remain unaffected.