

Standard terms and conditions of business

I. AREA OF APPLICATION

1. The following standard terms and conditions of business apply to the entire business relationship with our customers.

The customer acknowledges them as binding on it for the present contract and also for future transactions. Any variant agreement requires our written consent. The customer does not claim to apply any purchasing terms and conditions of its own, nor do the latter become part of the content of the contract as a result of our silence or our delivery.

2. Our supply and payment terms and conditions only apply vis a vis entrepreneurs within the meaning of § 14 BGB (Civil Law Code), legal persons under public law or public law special assets in accordance with § 310 BGB. Entrepreneurs within the meaning of § 14 BGB are natural or legal persons or partnerships with legal capacity that are conducting their commercial or freelance professional activities when concluding a legal transaction.

II. OFFER AND DELIVERY

1. Our offers are non-binding. Timely delivery depends upon undisturbed production processes and timely input materials receipt. If we are prevented from fulfilling our contract in good time as a result of purchasing, manufacturing or delivery problems on our side or with our suppliers for which we are not to blame e.g. labour disputes, lack of power, the delivery time will be extended by the duration of the problem but up to a maximum of three months from the agreed delivery date.

2. The customer may cancel the contract in writing only if it grants us a reasonable further period after the expiry of the extended period. Cancellation must be in writing if we do not deliver within the further period.

3. If fulfilment of the contract becomes entirely or partly impossible for us, we are released to that extent from our duty to deliver.

4. We will inform the customer without delay of any hindrance as in Para. 2 and of the impossibility of delivery as in Para. 3.

5. If the customer is in arrears with the payment of an earlier delivery, we are entitled to withhold deliveries without being obliged to pay compensation for any resulting loss.

6. We are entitled to make part deliveries unless this is unreasonable for the customer.

7. The customer will pay a proportion of the cost of tools and equipment that are produced for processing customers' orders. They remain our property.

8. Our delivery quantities may vary by +/- 5% from the order quantities. Such additional quantities must be accepted and paid for by the customer. No claims may be made in the event of delivery of such a lower quantity.

9. In the event of the supply of ancillary materials by the customer, the latter is obliged to deliver the materials to us at its own expense inspected, identified, strapped and ready for machine processing at least two weeks before production starts. 2% materials overdelivery should be allowed for. If the customer supplies incorrect quantities of ancillary materials requiring setting up the machines several times or if technical changes to the product hinder production, we are entitled to invoice the customer for the relevant additional cost.

10. Materials surpluses resulting from packaging units must be accepted if the material cannot be used elsewhere.

III. PRICES

1. With calloff orders or orders for a specific date, if only part of the agreed quantity has been accepted within the agreed period, we are entitled as we see fit either to charge for the delivered part at the price applicable to this batch size or to deliver and charge for the quantity not yet called off.

2. If the order has special technical features to which the customer has not drawn attention despite its knowledge and which were not evident to us at the time of issuing our offer and if this gives rise to additional costs that are essential from a technical point of view, we will point this out to the customer without delay and recharge these additional costs incurred to the customer at cost price.

IV. PRICE ADJUSTMENTS

Because of possible materials price fluctuations in the market we reserve the right to make price adjustments. For imported goods e.g. electronic components the prices are based on the dollar exchange rate at the date of the offer. If the dollar exchange rate changes we reserve the right to adjust the prices to the dollar exchange rate applicable on the date of delivery and to charge on that basis.

V. PAYMENT

1. Our invoices are due for payment within eight days following the invoice date unless otherwise agreed. With development services 30% is due with the placement of the order, 40% with delivery of the first samples and 30% with order completion.

2. One-off costs such as one-off order costs are invoiced immediately after receipt of the order. 50% of the materials costs are due for payment six weeks before delivery of the components. In addition, we are entitled to charge the customer in advance for materials that we have ourselves purchased if the customer is responsible for a delay in production.

3. In the event of the customer being in arrears with payment, we are entitled to charge interest at a level of 8 percentage points above the relevant annual base rate of the Deutsche Bundesbank. We reserve the right to prove a higher level of loss as a result of arrears and to claim it.

4. We expressly reserve the right to refuse cheques or bills of exchange. Acceptance is subject to clearance.

5. In the event of serious breaches of contract that justify making all outstanding amounts immediately due for payment and for which the customer is to blame e.g. dishonoured cheques, arrears with payment, incapacity to pay or insolvency, we may make all amounts outstanding immediately due for payment.

6. We are entitled despite any customer's terms to the contrary to first apply payments to its oldest debt.

7. The customer may only claim a right of retention if its counterclaim is based on the same contractual relationship. It is only entitled to setoff if we have acknowledged the counterclaim, if it is undisputed or it has been determined by law.

VI. TERMINATION

Cancellation (termination) of the order is only possible in return for acceptance of the costs incurred to date and any consequential costs (in particular setup costs for machines, scrapping costs, idling costs). The cancellation fees will be charged at actual cost unless any other individual contractual agreements have been made.

VII. RESERVATION OF TITLE

1. The goods remain our property until the payment of all claims, including future ones, arising from our business connection with the customer. These also include conditional receivables.

2. The processing or conversion of the goods purchased by the customer is always undertaken for us. In the event of the goods subject to reservation of title being combined or mixed with other goods that do not belong to us within the meaning of §§ 947, 948 BGB, we acquire joint ownership of the new goods in proportion to the value of the goods purchased (final invoice amount including Value Added Tax) to the other combined or mixed goods at the time of the combination or mixing. If the combination or mixing occurs in such a way that the customer's goods are deemed to be the major part within the meaning of §§ 947, 948 BGB, it is deemed to be agreed that the customer shall transfer to us our proportion of the joint ownership. The customer shall retain the joint or sole property for us free of charge. Moreover, the same applies to the goods created by processing, combination or mixing as to the purchased goods subject to reservation of title.

3. The customer may dispose of the goods subject to reservation of title in the course of its correct business operations. However, it is not entitled to dispose of them in any other way, in particular to transfer them by way of security or to pledge them.

4. As of now the customer assigns to us its receivables arising from the resale of the goods subject to reservation of title with all associated rights for the amount that corresponds to the final invoice amount including Value Added Tax of our receivables and in fact regardless of whether the purchased goods have been resold without or after processing.

5. In the event that the customer's receivables from the resale are included in a current account, as of now the customer hereby assigns its receivable from the current account with its customer to us. The assignment shall be for the final invoice amount for our receivable including Value Added Tax.

6. Until revocation of this entitlement, the customer is entitled to collect receivables assigned to us. Assignment or pledging of these receivables is only permitted with our written consent. In the event that circumstances occur with the seller that actually justify revocation of the authority to collect, in particular if our interests in security are affected e.g. with arrears in payment, insolvency or incapacity to pay, upon our request the customer must inform the debtors in writing of the assignment and give, submit or transfer to us all the information necessary for collection. To this end the customer must if necessary grant us access to its documents relating to this.

7. In the event of not merely inconsiderable conduct in breach of the contract by the customer, in particular with the existence of the circumstances in Para. 6 P. 3, according to §§ 323, 324 BGB we are entitled to cancel the contract. At our request the customer must grant us access to the goods subject to reservation of title still in its possession, send us an accurate list of the goods, isolate the goods and issue them to us.

8. If the realisable value of our sureties exceeds the value of our receivables to be secured by more than 10%, upon the customer's request we will release the sureties selected by us.

9. The customer must inform us immediately in writing of access by third parties to the goods subject to reservation of title or to the receivables assigned to us and support us in every way to support our intervention.

10. The cost of fulfilling the above-mentioned duty to cooperate in pursuing all rights arising from the reservation of title and all expenditure incurred for the purpose of obtaining and storing the goods are borne by the customer.

VIII. PACKAGING AND DISPATCH

1. Delivery will be made ex works in reusable packaging or in packaging provided by the customer free of charge. Packing will be done in accordance with the usual technical standards and those of the trade. In the event that the packaging is provided by the customer we give no guarantee regarding any damage that has been caused by defective packaging.

2. Special packaging and replacement packaging is to be invoiced at cost price.

3. Delivery is at the customer's expense.

IX. TRANSFER OF RISK

1. The risk of accidental destruction and of accidental deterioration of the goods is transferred with the handover or, with dispatch, upon delivery of the goods to the carrier, haulier or other persons or organisations appointed to carry out the dispatch.

2. The same applies to any returns by the customer.

3. Transport insurance is charged at a rate of 1% of the value of the goods. Insurance will only be taken out at the customer's request and at its expense.

X. GUARANTEE AND LIABILITY

1. The goods are to be produced and delivered in accordance with relevant applicable quality regulations.
2. Our deliveries are to be inspected upon receipt with regard to their correctness. The customer shall guarantee Goods In inspection to AQL. Obvious defects may only be complained about in writing within two weeks of receipt of the goods. Otherwise claims of rights relating to defects will be excluded. Giving notice in good time is sufficient to secure these periods. In addition, § 377 HGB (Commercial Law Code) is unaffected.
3. If testing of correct functioning by means of an electrical test (in-house manufacturing stage) is not agreed in the individual contract, we are liable only for observance of our manufacturing instructions (workmanship standards) based on visual inspection.
4. Rights relating to defects are excluded if the customer or a third party has made changes to the delivered goods unless the customer demonstrates in connection with notice of the defect that the changes were not the cause of the defect. Claims for defects are also excluded if the customer does not comply with our request for the return of the items complained about without delay.
5. In the event of a justified complaint we will make good the defects free of charge as we see fit either by rework (correction of the defect) or by replacement delivery (delivery of goods free of defects). In this event we will bear the costs required for subsequent fulfilment such as transport costs, tolls and labour and materials costs. If the rework or replacement delivery fails, the customer may as it sees fit reduce the purchase price or cancel the contract.
6. The goods complained about must be returned to us in suitable packaging. Para. 5 applies with regard to who bears the cost.
7. The customer is entitled to correct the defect itself and to demand compensation from us for the cost incurred only with our prior written agreement.
8. Reworking is excluded if there is no written notice of a defect in accordance with § 377 HGB and Point X. Para. 2. Any reworking nevertheless carried out is not covered by our guarantee.
9. If the rework carried out is defective, the customer must report this in writing within two weeks following receipt of the reworked goods at the latest in the case of obvious defects or within one year at the latest in the case of defects that are not obvious. Otherwise further guarantee claims are excluded. Giving notice in good time is sufficient to secure these periods. In addition, § 377 HGB is unaffected.
10. The original guarantee periods are neither restricted nor do they start to run again as a result of the reworking of goods delivered.

XI. EXCLUSION OF LIABILITY/LIMITATION OF LIABILITY

1. Any claims by the customer for compensation for loss or damage or for expenditure, regardless of the legal basis, are excluded in so far as the loss or damage was not the result of breach of a duty caused by deliberate act or gross negligence or of the breach of a major contractual duty by us, our legal representatives or our agents. Major contractual duties are those the observance of which makes the correct fulfilment of the contract at all possible, in particular our duty to supply the goods, which may have to be manufactured, including handing over goods and obtaining ownership and possession of them.
2. The customer's compensation claims are limited to the foreseeable losses typical of such a contract, in so far as we, our legal representatives or agents are to blame for simple negligence.
3. The exclusion or limitation of liability in accordance with Paras. 1 and 2 does not apply to claims arising from product liability. Nor does it apply to claims arising from loss of life, personal injury or harm to the health of the customer that are based on negligent breach of duty by us or to breach of duty caused by deliberate act or negligence by one of our legal representatives or agents. Nor does it apply if we maliciously fail to mention the defect or have given a guarantee of the characteristics of the goods.

XII. LIMITATION PERIOD

1. The limitation period is
 - a) one year from delivery of the goods for claims for refund of the charge as a result of cancellation or a deduction, but not less than three months from issue of the effective notice of cancellation or the declaration of a deduction for defects that are the subject of a correctly notified complaint.
 - b) one year for other claims arising from physical or legal defects.
 - c) two years from the date on which the ordering party discovered the circumstances that led to the complaint or should have discovered them if it had not been grossly negligent, in the case of other claims for compensation or for the refund of costs incurred in vain. The limitation period ends with the expiry of the longest periods specified in § 199 BGB.
2. With claims for compensation and for the refund of expenditure in the following cases, however, the statutory limitation periods always apply:

Claims arising from product liability; claims arising from loss of life, personal injury or harm to the health of the customer that are based on negligent breach of duty or on breach of duty caused by the deliberate act or negligence of one of our legal representatives or agents; also claims based on us maliciously failing to mention the defect or on us giving a guarantee of the characteristics of the goods.

3. The original guarantee periods are neither restricted nor do they start to run again as a result of the reworking of goods delivered.

XIII. INTELLECTUAL PROPERTY RIGHTS

With goods manufactured according to the customer's instructions, we are not liable within the internal relationship with the customer for the infringement of third party intellectual property rights. We reserve the right to make compensation claims against the customer. This also applies if we have cooperated on development or have developed the goods according to the customer's instructions.

XIV. VALIDITY

If individual terms of the contract with the customer including these standard terms and conditions of business are or become invalid in their entirety or in part, this does not affect the validity of the other terms. The content of the contract is governed by the legislation. In the event of the lack of legislation the term that is invalid in its entirety or in part is to be replaced by a term that comes as close as possible in its commercial effect to the invalid term.

XV. CHOICE OF LAW, PLACE OF FULFILMENT AND JURISDICTION

1. The law of the Federal Republic of Germany applies. The terms of the UN Convention on Contracts for the International Sale of Goods do not apply.
2. The place of fulfilment for delivery and payment is Delbrück.
3. The place of jurisdiction for any disputes arising directly or indirectly from the contractual relationship is Delbrück.

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