

International Terms of Business

I. Scope of Application

1. The following International Terms of Business shall apply exclusively to Customers whose relevant subsidiary is not in Germany.
2. The International Terms of Business shall also apply to all future contracts concluded with the Customer.
3. Any opposing terms of business of the Customer shall not bind us, even if we do not expressly contradict them or render services or deliveries.

II. Conclusion of Contract

1. Orders have to be placed in writing. Should the order of the Customer deviate from our offer, the Customer shall make reference to such discrepancy.
2. All orders shall require our written confirmation in order to become valid. The confirmation will be made within 14 calendar days.
3. Our written order confirmation will define the entire contents of the contract even if it deviates from the order with exception of price and quantity. This shall also apply to the inclusion of these International Terms of Business.
4. If our order confirmation deviates from the Customer's order, he may object to the order confirmation within 14 calendar days. As a consequence, the contract shall not become effective.

III. Quality of the Goods

1. Unless otherwise agreed, the quality of the goods shall be in accordance with ordinary trade practice and with the specifications set out in our order confirmation.
2. We do not assume liability as to whether the goods comply with the legal requirements, in particular any safety regulations under public law, at the Customer's place of business.
3. Insignificant changes of measurements, structure and colour are reserved as far as this is reasonable for the Customer.
Partial deliveries can be effected and accounted for separately insofar as this is acceptable to the Customer.
4. Delivery shall be effected ex works Marienfeld (Incoterms 2010).

IV. Delivery Date

1. We shall be entitled to deliver prior to the agreed date.
Deliveries after the intended date shall be permitted if we inform the Customer of any such delay in delivery and state the period during we will perform our contractual duties. The Customer shall be entitled to object to the subsequent performance within a reasonable period should he consider this subsequent performance unacceptable. The objection shall only be valid if received prior to commencing the performance. Insofar as we are responsible for the delay in delivery we shall reimburse necessary and proven additional expenses incurred by the customer.

2. In case of default in performance, we liable for damages if the default was caused negligently or intentionally. Liability for all damages shall in this case be limited to an amount of 0,5 per cent of the contract price of the goods (net) for each full week of delay up to a maximum amount of 5 per cent of the net contract price. Any claim for damages shall also be limited to this maximum amount if the Customer declares the avoidance of the contract due to the delay. Any further liability pursuant to para. VIII. shall not be affected by this.
3. If delivery is delayed for reasons attributable to the Customer by more than two weeks after notice was given of readiness for dispatch, we may charge the Customer storage costs for each commenced month thereafter amounting to 0,5 per cent of the net contract price of the goods up to a maximum of 5 per cent of the contract price (net). Other rights shall remain unaffected.

V. Payment

1. The price and date for payment are set out in our written order confirmation. Our prices are exclusive of value added tax. The Customer shall provide us with any documentation required by the competent tax authorities as evidence for an export tax exemption.
2. Any taxes, fees, duties and other charges to be borne by us in connection with the performance of the contract in the country of destination shall be reimbursed by the Customer.
3. In case of default with payment, we will charge an interest of an annual rate of 9 per cent points above the base rate of the European Central Bank as applicable throughout the period of delay. Any further rights shall remain unaffected.
4. The Customer may only set off claims that are either undisputed between the parties or have become res judicata. This shall apply mutatis mutandis to any right of retention of the Customer.

VI. Quality Defects

1. The goods shall be deemed to be non-conforming if the Customer can prove, taking into consideration the agreed quality of the goods (cf. our written order confirmation) at the point of passing of risk, that they differ considerably with regard to packaging, quantity, quality or type from the requirements stated in the written order confirmation or if they are not suitable for the intended use. Any legal exclusions or restrictions of our responsibility shall remain unaffected.
2. We shall not be liable for any non-conformity occurring after the passing of risk. We are not responsible in respect of any defect due to failed use, maintenance or modifications of the goods, use of unsuitable spare parts, defective installation or erection.
3. The Customer shall be obligated to check each consignment with regard to identifiable or typical lack of conformity of goods.
4. In case of delivery of non-conforming products we will repair any defect or replace any products or parts thereof that are non-conforming. The Customer has to give us adequate time and opportunity to remedy the defect. He will grant us access to the products. Additional costs incurred by us due to any relocation of the goods to a place other than the original place of destination shall be borne by the Customer.

5. The Customer shall have the right to a reduction of the contract price once either two attempts to remedy the defect have failed or if we have not undertaken such remedial measures within reasonable time upon receipt of a notice from the Customer, indicating the defect and lapse of an additional final respite set by the Customer. Subject to para. VIII. The same shall apply for any claim for damages in lieu of performance. If the defect constitutes a fundamental breach of contract, the Customer is in this event entitled to declare the contract avoided.
6. The examination of the goods has to be made as soon as is practicable in the circumstances. The period of time for the examination of the goods shall not exceed a period of 14 days the handover of the goods.

VII. Legal Defects

1. The goods shall be considered legally defective only if they are not free from enforceable rights of third parties existing at the time of transfer of risk and only if
 - a. the intellectual property right is registered in the country of intended use if it is also registered in Germany and if
 - b. the use of the goods as agreed between the parties is impeded.
2. We will either
 - ensure that the Customer is granted to the right to use the goods or
 - provide him with a replacement or modify the goods so that they become non-infringing. The replacement product / modified product has to meet substantially the same functional specifications as the product or
 - refund the purchase price to the Customer upon return of the product. We are entitled to charge the Customer for the use of the goods.
3. If we do not provide for the above remedies within reasonable time for the Customer, the Customer may declare the avoidance of the contract and claim damages pursuant to para. VIII.
4. Any claim for a quality defect or legal defect is excluded upon one year from the date of handover of the products to the Customer. This shall not apply if the defect relates to facts that we have been or ought to have been aware of at the time of handover of the goods and which we did not disclose to the Customer.

VIII. Damages

Our contractual und extra-contractual liability for damages shall be subject to the subsequent provisions.

1. The Customer has to assert other legal remedies first. He may claim compensation only for remaining disadvantages, however, not instead of other legal remedies. We are not liable for damages caused by force majeure or other circumstances beyond our control.
2. Our liability for damages shall be limited to an amount equalling the value of the consignment.
3. The limitation of liability shall not apply if the damage has been caused by intentional or gross negligent conduct of our executive bodies or directors or if we have violated a fundamental contractual duty.
4. The aforementioned limitations of liability shall also apply to our staff, employees, workers, agents or vicarious agents.

5. The limitations do not apply in case of death, bodily injuries damage to health or product liability.
6. If we are liable for damages we will indemnify the Customer subject to the limits stated above. We will only compensate for damages which have been proven by the Customer, which could not be prevented by the Customer and which had been foreseeable as a consequence of the infringement of the contract as regards the occurrence of the damage and its extent. The Customer is obliged to inform us of any particular risks and any excessive damage. The Customer shall also be obligated to minimize damages in the event of a recognizable infringement of a contractual obligation.

IX. Limitation

1. All claims for defects as to quality or title shall be time-barred one year after handover of the respective product.
2. Insofar as the limitation period may not already have barred the claim, claims for damages brought by the Customer are excluded after one year starting with the rejection of the claim by us, at the latest after having accrued.

X. Retention of Title

1. Irrespective of the delivery and the passing of risk or other provisions of these International Terms of Business the title to the goods shall not pass to the Customer as long as the purchase price has not been paid in full.
2. Upon any rescission of the contract we shall have the right to reclaim the goods, sell them elsewhere or dispose of them at our discretion.

XI. General Provisions, Jurisdiction, Applicable Law

1. The place of performance, payment and fulfilment shall be Marienfeld.
2. The legal relationship with the Customer shall be governed by German Law.
3. Should any of the provisions of these International Terms of Business be or become invalid in full or in part, the remaining provisions shall continue to be valid. Both parties shall be obligated to replace the invalid provision with a stipulation which comes closest to the economic meaning and purpose of the invalid provision.
4. All disputes arising out of or in connection with our business relationship with the Customer shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law. The arbitral tribunal shall be comprised of a sole arbitrator. The seat of the arbitration is Frankfurt/Main, Germany. The language of the arbitration shall be English.