

General Terms of Sale and Delivery

1. Validity of the terms and conditions

1.1. The Terms of Sale and Delivery shall apply to all of our deliveries and services, also from future concluded business transactions, with the exception of the delivery of used devices or goods. Deviating terms and conditions of the buyer shall only apply if they have explicitly been recognised by us in writing. The invalidity of individual provisions shall incidentally have no effect on the validity of our Terms of Sale and Delivery.

1.2. All previous Terms of Sale and Delivery are revoked hereby.

2. Offer and conclusion of contract

Our offers are without obligation and non-binding. Following offers all contracts shall be concluded with the receipt of our written order confirmation, no later than when the goods are handed over. The order confirmation and our Terms of Sale and Delivery are decisive for the contents of the contract. Agreements deviating from this shall always require our explicit written confirmation.

3. Delivery time and delivery

3.1. The delivery deadline will begin with the sending of the order confirmation, however not before the provision of the documents, permits and releases to be procured by the buyer as well as before the receipt of an agreed down payment.

3.2. The delivery deadline or a delivery date shall be deemed as adhered to if the object of delivery has left the delivering plant or our warehouse or it was communicated that the goods are ready for shipment by its expiry or on the delivery date.

3.3. If the delivery and service owed by us is delayed by unforeseeable circumstances for which we are not responsible (e.g. due to industrial disputes, interferences to operation, transport impediments, official measures – respectively also at our sub-suppliers – as well as a late self-delivery with a faultless good) we are entitled to cancel the contract in full or in part or, at our choice, to reasonably postpone the delivery by the duration of the impediment. We will inform the buyer of the start and end of such impediments immediately. In the event of the cancellation possibly provided considerations of the buyer will be reimbursed immediately. Claims for damages of the buyer are excluded.

3.4. Insurance against transport risks generally has to be carried out by the buyer. We will only provide insurance at the explicit request of the buyer.

3.5. Partial deliveries as well as deliveries before the stated delivery time are permitted. We do not conduct fixed date transactions.

3.6. In the event of a delay in delivery the buyer is obliged, at our request, to declare within a reasonable deadline whether he will continue to insist on delivery or will cancel the contract owing to the delay and/or request damages instead of the service. Should the buyer suffer a damage owing to a default for which we are responsible, then he is only entitled to request compensation due to default if the default is at least due to gross negligence. The right to the assertion further presumes that we have not adhered to a reasonable final deadline set by the buyer in writing. We do not have to assume responsibility for the fault of our sub-suppliers, because these are not our vicarious agents. We are, however, obliged to assign claims to which we are possibly entitled against our sub-suppliers to the buyer upon request.

3.7. If the shipment is delayed at the buyer's request the costs incurred by the further reservation and storage will be charged to him, beginning one month after the report that the goods are ready for shipment. After the unsuccessful expiry of a set reasonable deadline we are entitled to dispose otherwise over the object of delivery and to make delivery to the buyer with a reasonable extended deadline.

3.8. No complaint can be made in case of deviations in quantity, weight, quality, execution and colour, which are customary for the trade or due to technical reasons.

4. Acceptance and passing of risk

4.1. The delivery is carried out either ex works or warehouse by the take-over by the buyer or by shipment, insofar as not otherwise regulated in the contract.

4.2. If the object of delivery is taken over by the buyer then the risk of loss of or damage to the object of delivery will pass to him with the take-over. In the event of the shipment the risk of loss of or damage to the object of delivery will pass to the buyer at the time, at which we hand over the goods to a carrier or freight forwarder (also Deutsche Bahn AG), no later however than when they leave the plant or our warehouse and also if partial deliveries are made or we have taken over other services (e.g. the shipping costs) still. This shall not apply if the buyer is a consumer.

4.3. If the object of delivery is ready for shipment and if the shipment or the acceptance is delayed for reasons, for which we are not responsible then the risk shall pass to the buyer with the receipt of the report of readiness for shipment.

4.4. Delivered goods are, even if they feature insignificant defects, are to be accepted by the buyer irrespective of the rights from Section 5.

5. Reports of defects and warranty

5.1. Warranty claims presume that the responsibilities for inspection and report of complaints of Section 377 HGB [German Commercial Code] were complied with. In all cases it is necessary to send a sample of the goods for which a complaint was made.

5.2. Insofar as there is a defect to the object of purchase for which we are responsible we are entitled, by taking the type of defect and the justified interests of the buyer into consideration, to stipulate the type of subsequent fulfilment (substitute delivery, subsequent improvement). In the event of the subsequent improvement we are obliged to bear the expenses necessary for the purpose of subsequent improvement, in particular transport, route, labour and material costs, insofar as these expenses are not increased by the fact that the object of purchase was taken to another location than the place of performance.

5.3. If we are not willing or not in the position to make subsequent improvements/a substitute delivery, if this is delayed in particular beyond a reasonable period of time for reasons, for which we are responsible, or if the subsequent improvement/substitute delivery fails in any other way then the buyer is entitled at his choice to cancel the contract or to request a reasonable change to the purchase price.

5.4. Insofar as not otherwise derived below further claims of the buyer – no matter for what legal grounds – are excluded. We will therefore not be liable for damages, which are not suffered to the object of delivery itself. We will in particular not be liable for missed profit or other financial losses of the buyer. Our warranty obligation shall in addition cease to apply,

a) with a change to or repair of the object of purchase by the buyer without our written consent,

b) with a faulty, improper or negligent use or treatment of the object of purchase by the buyer,

c) if the buyer does not grant us reasonable time and opportunity to carry out work to remedy defects or make substitute deliveries,

d) in case of natural wear and tear or other circumstances, for which we are not responsible,

e) in case of small quality fluctuations, weight and/or colour deviations due to the nature of the products,

f) if the customer further processes or mixes the goods without having previously fulfilled the responsibility to inspect the goods for which he is responsible. The same shall apply if the customer further processes or mixes the goods, although he is aware or should have been aware of a defect.

5.5. The aforementioned exemption from liability shall not apply if the cause for the damages is due to wilful intent or gross negligence. It shall further not apply if we failed to disclose the defect due to malicious intent or have assumed a guarantee for the condition of the goods or a procurement risk.

5.6. The exemption from liability shall nevertheless apply if the damage was caused by gross negligence of a vicarious agent or assistants, unless the damage is due to the breach of a main contractual obligation. In addition the obligation for compensation is limited to the foreseeable, not atypical damages.

5.7. The warranty period for the subsequent improvement/substitute delivery with the delivery of new devices and appliances to consumers is two years and with the delivery of used devices and appliances is one year. In case of commercial buyers the warranty period is one year.

6. Marketability

The customer distributes the goods at his own responsibility and is personally responsible for their marketability in his sales region. We are not liable for the marketability in the sales region of the customer.

7. Overall liability

7.1. Insofar as according to Subclause 5. our liability for damages is excluded or limited this shall also apply to all claims owing to fault with contractual negotiations, breach of secondary obligations, in particular for claims from producer liability according to Section 823 BGB [German Civil Code].

7.2. The regulation according to Subclause 7.1. shall not apply to claims according to § 1 – 4 German Product Liability Act or in the event of damages from the injury to life, the body or the health, which are due to a negligent breach of obligation by us or a wilful or negligent breach of obligation by a legal representative or a vicarious agent.

7.3. Insofar as our liability is excluded or limited, this shall also apply to the personal liability of our employees, workers, agents and vicarious agents.

8. Prices and payments

8.1. The prices stated by us are decisive. The statutory value added tax is not included in the price.

8.2. Sales on duty paid basis shall be carried out at the applicable rates at the time of the date of the sales contract. Each change until the time of the delivery shall be for the expense of the buyer.

8.3. Cash discount deduction is only possible if there is no other due payment obligation.

8.4. A payment shall only be deemed as made when we can finally dispose over the amount. We only accept bills of exchange and cheques owing to an explicit agreement. Insofar as bills of exchange or cheques are accepted this will only take place as conditional payment. By the acceptance of bills of exchange or cheques we do not assume any obligation whatsoever with regard to the filing of an objection and the timely submission.

8.5. If the buyer does not satisfy his payment obligations despite a reminder or if there is an essential deterioration to the assets at the buyer then we are entitled to deem the total residual debt due, even if we have already accepted bills of exchange or cheques. In this case we are additionally entitled to request advance payments or provision of security and to refuse to fulfil our obligations until the advance payment or provision of security. If our request is not fulfilled within a reasonable deadline set by us then we are entitled to cancel the contract and/or request damages owing to non-fulfilment. In case of the suspension of payments or over-indebtedness of the buyer it will not be necessary to set a final deadline.

8.6. From the occurrence of default the buyer will pay interest on default in the amount of 5 percentage points above the respective applicable base lending rate. If the buyer is not a consumer the interest rate is 8 percentage points above the base lending rate. Insofar as we prove higher damages we can request compensation for said damages.

8.7. Complaints about the goods shall only release the buyer from a payment obligation if the complaints are undisputed, have been declared final and binding by arbitration or a court.

8.8. The buyer will only be entitled to the right to offset if his counter-claims are declared final and binding by arbitration or a court, are undisputed or have been recognised by us. In addition he is authorised to exercise a right of retention to the extent that his counter-claim is based on the same contractual relationship.

9. Reservation of title

9.1. Until the full payment of all claims from the business relationship with the buyer including possible refinancing or reverse bill of exchange we shall reserve the property to the sold objects.

9.2. The buyer undertakes to treat the sold objects with due care and attention.

9.3. In case of attachments or other accesses of third parties to the reserved goods the buyer has to inform us hereof immediately in writing.

9.4. The buyer is entitled to further dispose over the purchased objects in the ordinary course of business. A further disposal to such end buyers, who have excluded or limited the assignment of the remuneration claim directed against them, is on the other hand not permitted. Other disposals, in particular pledges and assignments as collateral of the reserved goods, are not permitted for the buyer without our consent. The buyer hereby now already assigns all claims to us in the volume of the final invoice amount (including value added tax), accrued to him from the resale of the reserved goods – also in a processed condition – against his buyers or third parties. If we are only entitled to the co-ownership to the reserved goods and if the processing product only contains those objects in addition to our reserved goods, which either belonged to the buyer or which have only been delivered under a simple reservation of title, then the buyer shall assign the total claim to us. In all other cases, i.e. with the concurrence of several advance assignments to several suppliers the advance assignment is limited to the part of the claim, which corresponds with the share of our co-ownership (based on the invoice value). The buyer will also remain revocably authorised to collect the claim after the assignment. Our authorisation to collect the claim shall remain unaffected hereby. We undertake however not to collect the claim as long as the buyer satisfies his payment obligations, is not in default of payment and in particular no application has been filed for the opening of insolvency proceedings or payments have been suspended. If this is however the case we can request that the buyer announces the assigned claims and their debtors to us, provides us all necessary information for the collection, hands over the associated documents and informs the debtors of the assignment. Incoming amounts are to be collected on a special account.

9.5. Processing and conversion of the reserved goods by the buyer are always carried out on our behalf. Should the reservation of title nevertheless lapse for any reasons the buyer and we hereby agree now already that the ownership to the objects shall pass to us with the processing and we accept the assignment. The buyer shall remain the free safekeeper. If the object of purchase is processed with other objects that do not belong to us we shall thus acquire the co-ownership to the new object in the ratio of the value of the object of purchase to the other processed objects at the time of processing.

9.6. The same shall incidentally apply to the objects or co-ownership shares owned by us according to Subclause 9.5 as to our objects delivered under the reservation of title.

9.7. We undertake to release the collateral items to which we are entitled at the buyer's request to the extent that the value of our collateral items exceed the claims that are to be secured by more than 20%. We are responsible for selecting the collateral items that are to be released.

9.8. If the buyer does not fulfil his payment obligation despite maturity and a reminder we are entitled to request that the goods are handed over and to sell these. This shall take place as a precautionary measure.

This shall not be deemed as a cancellation.

10. Applicable law, place of performance

10.1. The law of the Federal Republic of Germany shall apply exclusively to the business relationship and the entire legal relationships between the buyer and us.

10.2. The sole place of performance for delivery and service is Bremen.

11. Place of jurisdiction

11.1. All disputes, which arise in the business transactions, also with cross-border deliveries and services (also for actions relating to bills of exchange and cheques), are to be decided under the exclusion of recourse to the ordinary courts of law by the arbitration regulation or the court of arbitration of the Chamber of Commerce Bremen if the customer is a merchant.

11.2. Notwithstanding Subclause 11.1. recourse can also be taken to the ordinary courts of law. The exclusive place of jurisdiction in this case is the court of jurisdiction for Bremen. We are however also entitled to file action against the buyer at his general place of jurisdiction. If the action is directed against us we are obliged, following a correspond request by the buyer, to exercise the option to which we are entitled before the action is filed already.

12. Final provisions

12.1. In addition to these Terms of Sale and Delivery the business terms and conditions of Waren-Verein der Hamburger Börse e. V. [Trade Association of the Hamburg Stock Exchange] shall apply in the respective applicable latest version insofar as they do not stand in contradiction to these Terms of Sale and Delivery.

12.2. If one provision of these General Terms of Sale and Delivery is not legally valid or the contract features a loophole this shall have no effect on the legal validity of the other provisions. The invalid or missing provision should rather be replaced by the dispositive law or by another provision, which shall as far as possible take the intention of the parties expressed in these terms and conditions into account.

Bremen, in October 2015