

General Terms and Conditions of Sale and Delivery

1. Scope of applicability of the terms and conditions

1.1. The terms and conditions of sale and delivery apply to all our goods and services, as well as future business transactions, except for the supply of used equipment or goods. Deviating terms and conditions of the Buyer shall apply only if they are expressly accepted by us in writing. The invalidity of individual provisions shall not affect the validity of the remaining provisions in our terms and conditions of sale and delivery.

1.2. All previous terms and conditions of sale and delivery are hereby superseded.

2. Offer and conclusion of contract

Our offers are subject to change and are non-binding. Regarding offers, all contracts shall be deemed concluded upon receipt of our written order confirmation, but no later than upon handover of the goods. The order confirmation and our terms and conditions of sale and delivery shall govern the contents of the contract. Deviating agreements shall always require our express written confirmation.

3. Delivery time and delivery

3.1. The term of delivery shall commence upon dispatch of the order confirmation, but not before the Buyer has supplied the documents, approvals and clearances, and prior to receipt of any agreed advance payment.

3.2. The delivery term or delivery deadline is met if, before its expiry or on the delivery deadline, the delivery object has left the delivery facilities or our warehouse, or it is notified as being ready for dispatch.

3.3. If the delivery and services owed by us are delayed due to unforeseen circumstances for which we are not to be blame (e.g. as a result of labour disputes, operational disruptions, transport obstacles, regulatory actions – including those experienced by our sub-suppliers – as well as untimely delivery of defect-free goods by our own suppliers), we are entitled to fully or partly withdraw from the contract or, at our discretion, suitably postpone delivery for the duration of the disturbance. We shall immediately inform the Buyer of the start and end of such a disturbance. In case of contract withdrawal, any contractual payments made by the Buyer for goods and services shall be refunded immediately. Claims for compensation by the Buyer are excluded.

3.4. Insurance against damage in transit must generally be arranged by the Buyer. We provide insurance only at the express request of the Buyer.

3.5. Part deliveries and deliveries before the stated delivery time are permitted. Performance deadlines are not fixed, pursuant to the *Fixgeschäft* legal provision under German law.

3.6. If delivery is delayed, the Buyer shall undertake to state at our request and within a reasonable time whether he/she still insists on the delivery or withdraws from the contract due to the delay and/or demands compensation instead of delivery. If the Buyer suffers damage or loss due to a delay for which we are responsible, the Buyer is only entitled to claim compensation for the delay if the delay is attributable to at least gross negligence. The right to make a claim also presupposes that we have not complied with a reasonable grace period set by the Buyer in writing in accordance with law. We shall not be responsible for culpability on the part of our sub-suppliers because these are not our vicarious agents. However, we are obliged to assign to the Buyer on request any claims that we may make against our sub-suppliers.

3.7. If the shipment is delayed at the request of the Buyer, he/she will be charged any costs – commencing one month after notice is given that the goods are ready to be shipped – that are incurred as a result of additional holding and storage. We are entitled to otherwise dispose of the delivery object if the reasonable deadline set in accordance with law expires without effect, and to supply the Buyer by a reasonably extended deadline.

3.8. No complaint can be made in the event of deviations in quantity, weight, quality, design and colour which are customary in the industry or are due to technical reasons.

4. Acceptance and transfer of risk

4.1. Unless otherwise set out in the contract, delivery will be made either ex works or ex warehouse upon collection by the customer, or by shipment.

4.2. If the delivery object is collected by the Buyer, the risk of loss of or damage to the delivery object is transferred to him/her upon collection. In the case of shipping, the risk of loss of or damage to the delivery object transfers to the Buyer when we hand over the goods to a forwarding agent or carrier (including Deutsche Bahn AG), but no later than when the goods leave the factory or our warehouse; this provision shall apply even if partial deliveries are made or we have undertaken other services (such as shipping charges). This does not apply if the Buyer is also the consumer.

4.3. If the delivery object is ready for shipping and the shipping or acceptance is delayed due to reasons for which we are not responsible, the risk is transferred to the Buyer upon notice being received that the goods are ready for shipping.

4.4. Delivered goods shall be received and accepted by the Buyer notwithstanding the rights arising from Section 5 even if the goods have minor defects.

5. Defect notifications and warranty

5.1. Warranty claims can be made only after the defect inspection and notification obligation pursuant to Section 377 of the German Commercial Code (*HGB*) has been fulfilled. In all cases, it is imperative to send a sample of the defective goods.

5.2. Insofar a defect is present for which we are responsible, we are entitled to determine the nature of the subsequent performance (replacement, repair), taking into consideration the type of defect and the legitimate interests of the Buyer. In case of repair, we are obliged to bear the expenses necessary to carry out said repair work, in particular transport, travel, labour and material costs unless these costs increase due to the purchase item being brought to a location other than the place of performance.

5.3. If either we are unable or not prepared to carry out repair work/replacement; this is delayed, especially beyond a reasonable period of time, due to reasons for which we are responsible; or the repair work/replacement fails in any other way, the Buyer shall at his/her discretion be entitled to withdraw from the contract or demand a reasonable amendment to the purchase price.

5.4. Unless otherwise specified below, further claims of the Buyer – for whatever legal grounds – are excluded. We are therefore not liable for damage not caused to the delivery item itself. In particular, we are not liable for lost profits or other pecuniary damage of the Buyer. Our warranty obligation shall also not apply in the following circumstances:

- a) the purchase item is modified or repaired by the Buyer without our written consent,
- b) the purchase item is used or handled by the Buyer in an incorrect, improper or negligent manner,
- c) if the Buyer does not grant us reasonable time and opportunity to carry out the repair work/replacement,
- d) in the event of natural wear and tear or other circumstances, for which we are not responsible,
- e) in the event of minor quality variations, weight and/or colour deviations present in the nature of the product,
- f) if the customer further processes or mixes the goods without having fulfilled his/her obligation to inspect the goods. The same applies if the customer processes or mixes the goods in spite of the fact that a defect is known or ought to have been known.

5.5. The above disclaimer of liability does not apply if the cause of damage is a result of intent or gross negligence. This disclaimer of liability shall also not apply if we have fraudulently concealed the defect or have given a guarantee for the quality of goods or accepted a procurement risk (*Beschaffungsrisiko*).

5.6. The disclaimer of liability shall also apply if the damage was caused by gross negligence committed by vicarious agents unless the damage is caused by the breach of a primary contractual obligation. In addition, the compensation obligation is limited to foreseeable, atypical damage.

5.7. The warranty period for the repair work/replacement is two years for the supply of new equipment to consumers and one year for the supply of used equipment. The warranty period is one year for business customers.

6. Marketability

The customer is solely responsible for selling the goods and for their marketability in his/her distribution area. We shall not be held liable for marketability in the distribution area of the customer.

7. Joint liability

7.1. As far as our liability for damages is excluded or limited pursuant to Section 5, this shall also apply to all claims due to culpability regarding contract negotiations and breach of secondary obligations, particularly to claims arising from manufacturer's liability according to Section 823 of the German Civil Code (*BGB*).

7.2. The provision pursuant to Section 7.1. shall not apply to claims pursuant to Section 1.4 of the Product Liability Act (*Produkthaftungsgesetz*) or in the case of damage or losses resulting from injury to life, limb or health, which are based on a negligent breach of duty by us or on an intentional or negligent breach of duty by a legal representative or a vicarious agent.

7.3. If our liability is excluded or limited, this shall also apply to the personal liability of our employees, workers, co-workers, representatives and vicarious agents.

8. Prices and payments

- 8.1. The prices specified by us shall be deemed binding. Statutory VAT is not included in the price.
- 8.2. Duty-paid sales are made at the applicable rates as of the date of the contract of sale. Any amendment made up to the time of delivery shall be at the expense of the Buyer.
- 8.3. A discount is only possible if there are no payment obligations due.
- 8.4. A payment is considered to have been made when we can ultimately dispose of the amount. We accept bills of exchange and cheques only by express agreement. Insofar as bills of exchange or cheques are accepted, this is only as conditional payment. By accepting bills of exchange or cheques, we assume no obligation whatsoever regarding disputes and timely submission.
- 8.5. If the Buyer does not comply with his/her payment obligations despite a payment reminder or the Buyer's financial circumstances significantly deteriorate, we are entitled to demand payment for the remaining debt even if we have already accepted bills of exchange or cheques. We are in this case also entitled to demand advance payments or provision of securities and to refuse to meet our obligations until advance payment or provision of a security has been made. If our demand is not met within a reasonable time set by us under law, we are entitled to withdraw from the contract and/or claim damages for non-performance. In the event that payments cease or the Buyer is overindebted, a grace period shall not be set.
- 8.6. From the time of falling into arrears, the Buyer shall pay default interest of five (5) percentage points above the respective applicable base rate. If the Buyer is not a consumer, the interest rate is eight (8) percentage points above the base rate. Insofar as we prove greater loss or damage, we may demand compensation for such.
- 8.7. Complaints about the goods revoke the payment obligation of the Buyer only if the complaints are undisputable or established as legal valid through arbitration or by a court of law.
- 8.8. The Buyer is entitled to exercise the right of set-off only if his/her counterclaims are established as legally valid through arbitration or by a court of law, are undisputable or recognised by us. The Buyer is also entitled to exercise a right of retention insofar as his/her counterclaim is based on the same contractual relationship.

9. Retention of title

- 9.1. Until full payment of all claims arising from the business relationship with the Buyer, including any refinancing or acceptor's bill of exchange, we shall retain title to the goods sold.
- 9.2. The Buyer is obliged to treat the goods sold with care.
- 9.3. The Buyer shall immediately inform us in writing of attachment or other third-party seizures of the goods that are subject to retention of title.
- 9.4. The Buyer is entitled to sell or pass on the purchase items as part of ordinary course of business. However, selling or passing on the goods to end customers who have excluded or limited the assignment of any claims for payment against the Buyer is not permitted. Without our consent, the Buyer is not permitted to dispose of the goods subject to retention of title in any other way, particularly pledging or transferring of ownership by way of security. The Buyer hereby assigns to us all its claims in the amount of the final invoice amount (including VAT) which arise against its customers or third parties from the resale of the goods subject to retention of title, even if said goods have been processed. If we are only co-owners of the goods subject to retention of title, and the processed product, in addition to our goods subject to retention of title, contains only such items that either belonged to the Buyer or have been delivered subject to simple retention of title, the Buyer shall assign to us the entire claim. In all other cases, i.e. if several advance assignments to numerous suppliers arise at the same time, the advance assignment shall be limited to that part of the claim that corresponds with our share of co-ownership (based on the invoice amount). The Buyer shall have the revocable right to collect the claim even after the assignment. Our right to collect the claim shall remain unaffected. However, we shall not collect the claim provided that the Buyer complies with his/her payment obligations, is not in default of payment and, in particular, no application has been made to initiate insolvency proceedings, and payments have not been suspended. If this is the case, we can demand that the Buyer notify us of the assigned claims and the corresponding debtors, provide us with all information and documents necessary for the collection, issue the relevant documents and inform the debtor of the assignment. Received payments shall be accumulated in a separate account.
- 9.5. Any processing or alteration carried out by the Buyer on the goods subject to retention of title is always done so on our behalf. However, should the retention of title expire for any reason, the Buyer and we hereby agree that title to the goods shall be transferred to us upon processing and we shall accept the transfer. The Buyer shall remain custodian free of charge. If the purchase item is processed with other goods that do not belong to us, we shall thereby acquire co-ownership of the new goods in relation to the value of the purchase item compared with the other processed goods at the time of processing.
- 9.6. For goods or parts thereof under our ownership or co-ownership pursuant to Section 9.5, the same shall otherwise apply for items delivered subject to retention of title.
- 9.7. We hereby undertake to release the securities due to us upon the request of the Buyer insofar as the value of our securities exceeds by more than 20% the claims to be secured. We shall be responsible for selecting the securities to be released.
- 9.8. If the Buyer fails to fulfil his/her payment obligation in spite of the due date and a payment reminder, we are hereby entitled to demand restitution of the goods and to use them. This is done as a precaution. This does not represent a withdrawal from the contract.

10. Applicable law, place of performance

- 10.1. The business relationship and entire legal relationship between the customer and us shall be governed exclusively by laws of the Federal Republic of Germany.
- 10.2. The sole place of performance for delivery and services is Bremen.

11. Court of jurisdiction

- 11.1. If the customer is a business person, all disputes that arise from business transactions, including cross-border deliveries and services (as well as litigation concerning bills of exchange and cheques) shall be settled by the arbitration regulation or the court of arbitration of the Bremen Chamber of Commerce without recourse to established legal action.
- 11.2. Notwithstanding Section. 11.1., ordinary legal action can also be taken. The exclusive court of jurisdiction in this case is the court responsible for Bremen. We also have the right to pursue legal proceeding against the Buyer at his general place of jurisdiction. If legal proceedings are brought against us, and if so requested by the Buyer, we shall undertake to exercise our right to vote before the proceedings are initiated.

12. Final provisions

- 12.1. In addition to the present general terms and conditions of sale and delivery, the latest version of the business terms and conditions of Waren-Vereins der Hamburger Börse e. V. shall apply insofar as they do not contradict the general terms and conditions of sale and delivery herein.
- 12.2. Should any provision herein lack legal validity or if there is a gap in the contract, this shall not affect the legal validity of the remaining provisions. The ineffective or lacking provision shall be replaced by a dispositive law or another provision, which fulfils, where possible, the intention of the parties expressed in these terms and conditions.

In the event of any disputes, the German version shall be binding.

Bremen, March 2013