

General Conditions of Sale

I. Entry into contract

1. These General Conditions of Sale apply to all - including future - contracts, deliveries and other services where we are the vendor or the contractor. By placing the order with us, our customer or principal declares itself in agreement with the supply and payment conditions below. If the order is only confirmed by our principal on the basis of its own purchasing conditions, then these are hereby objected to. Our conditions are deemed to have been accepted at the latest upon acceptance of our goods or upon shipment approval.
2. Insofar as they are not organs of the company, procurists or authorised agents, our employees are not authorised to make binding declarations on our behalf.
3. Information such as dimensions, weights, pictures, sketches in product catalogues and other printed materials are only approximately, but have been determined in the best way possible. We reserve all rights in offer documents (particularly pictures, drawings, weight and dimension information) and any samples. These documents may not be made accessible to third parties and are to be returned to us without undue delay upon request.
4. Amendments to contract terms agreed upon in writing also require the written form.
5. Orders placed by the principal only become binding after our written order confirmation. We can validly issue the order confirmation within four weeks of receipt of the order. The order confirmation can also be given in the form of an invoice or a delivery note.

II. Oral supplementary agreements

Oral supplementary agreements as well as any amendments or additions to a contract require our express written confirmation in order to be valid.

III. Prices and payment conditions

1. Subject to a deviating price agreement, the prices are calculated according to our price list applicable when entering into the contract, which we will send the principal upon the latter's request if it is not already known to the principal.
2. We are bound by confirmed prices 3 months from the time the contract comes into existence. For deliveries after that point in time, we are entitled to increase the prices in accordance with the costs of wages, administration and the purchase of materials which have changed since the last price determination. If the price difference is more than 10% of the confirmed price, the principal is entitled to rescind the contract for the services not yet rendered.
3. Number III.1. applies correspondingly if our purchasing prices increase due to foreign exchange rate changes.
4. The prices are understood to be in addition to the VAT in the amount prescribed by

law on the date of invoicing.

5. The invoice amount is due 30 days after invoicing without deduction of discounts.
6. After default has occurred, default interest in the statutory amount can be charged. The right to claim compensation for further default loss or damage remains reserved.
7. Payment by bills of exchange or cheques is only ever made as conditional payment. Its acceptance is not to be regarded as deferral of payment of the purchase price. The contractor's liability for timely exhibition, protesting, notification or return in the event of a dishonoured bill of exchange or cheque is hereby excluded.
8. Withholding payments or set-off is only permissible on the basis of counterclaims which have been determined in a final and legally-binding manner or counterclaims which are not disputed by us.
9. The principal is not entitled to transfer claims arising out of this contract to third parties.

IV. Quality and quantities

1. The quality, particularly performance and material properties (e.g. plastics), is initially determined pursuant to our respectively-applicable technical specifications, and should no such specifications exist, pursuant to the DIN standards applicable when the contract is entered into. Insofar as no DIN standards exist, the corresponding Euro standards applicable when the contract is entered into will apply, and in the absence of such Euro standards, established commercial practice.
2. Insofar as nothing to the contrary is agreed, we are obliged to make the delivery only to the country of the delivery location free from third-party industrial property rights and copyright.
3. We can modify the composition, construction, design and/or appearance of the goods insofar as this is necessary for technical or medical reasons, the functionality of the goods is not impaired and the deviation is reasonable for the principal.

V. Rescission right in the event of impossibility

1. We are entitled to rescind the contract if despite having entered into coverage transactions in a timely manner we are unable to receive delivery, to receive correct delivery or to receive timely delivery ourselves, and other coverage transactions are unreasonable or have failed, or if timely delivery is not possible for us or our pre-suppliers due to reasons which have arisen since entry into the contract or were unknown to us and which lie outside our sphere of influence, such as strikes, lock-outs, non-culpable business disruptions, including at our suppliers (e.g. broken tools), supply blockades, shutdowns, refusal of the import or export licence, other state intervention as well as circumstances going beyond this which are to be regarded as *force majeure*. Therefore, we do not assume the procurement risk.
2. We undertake to inform the principal without undue delay about unavailability and to refund without undue delay the consideration rendered by the principal

VI. Rescission right, etc. in the event of default in payment and deterioration in financial position

1. We are entitled to rescind the contract or according to our choice to only deliver in return for advance payment if the principal is in default with the fulfilment of existing payment obligations owed to us, if bills of exchange or cheques are protested or if during the contract term adverse changes arise in the principal's circumstances which mean that it is no longer to be expected that the principal's obligations under the transaction will respectively be fulfilled in the manner in which a proper businessperson would fulfil them.
2. In the event of default in payment, all of our other claims will also become due immediately. In such cases, we are also entitled to demand cash payment in advance for further (part) deliveries as well as to take all current acceptances, bills of exchange and cheques out of circulation immediately – costs arising as a result thereof are borne by the purchaser – and to demand cash payment of these.

VII. Delivery period, transfer of risk and disposal of packaging

1. Insofar as no transaction where time is of the essence is agreed upon, but a delivery period is given in our offer or our order confirmation, this may be exceeded by 1 week. Before exercising the rights arising out of compensation due to non-performance, a reasonable supplementary period must be set. The delivery period is prolonged by the period in which the delivery impediments exist for the reasons named in number V. hereof. If such an impediment exists for longer than 3 months, we are entitled to rescind the contract, without any compensation obligation arising as a result thereof. The customer remains at liberty to exercise the rights to which it is entitled.
2. Risk is transferred to the principal at the latest upon dispatch of the goods, even if part-deliveries are made or we have also undertaken to bear other costs, such as shipping costs. In response to written request by the principal, the consignment will be insured by us against theft, breakage, transport damage, fire damage and water damage as well as other insurable risks, at the principal's expense.
3. If shipment is delayed as a consequence of circumstances which are attributable to the principal, then the risk is transferred to the principal and the principal bears the storage costs from the date of readiness for shipment onwards; however, we are obliged at the principal's request and expense to procure the insurance which the principal requests. If the delivery is delayed by more than 4 weeks for reasons which are attributable to the principal, we are entitled to rescind the contract and to make the statutory claims.
4. Delivered goods are to be accepted by the principal, even if they have insignificant defects, without prejudice to the rights arising out of number VIII. hereof.
5. Part-deliveries are permissible.
6. The principal undertakes to recycle the packaging at its own responsibility and at its own expense pursuant to § 5.3 and § 6 of the German Recycling and Waste Management Act (Krw-/AbfG).

VIII. Defect complaints, claims due to a defect and compensation due to breach of obligation

1. The principal is obliged to inspect the goods without undue delay after receipt, and if they have a defect, to notify us of the same in writing without undue delay. Otherwise the goods are deemed to have been accepted, insofar as it is a defect which was recognisable in the case of a proper inspection. The same applies if the principal does not effect an agreed acceptance, or does not effect it in a timely or complete manner. If a defect emerges subsequently, then this must be complained about without undue delay after it is discovered. A later defect complaint is hereby excluded.
2. Insofar as nothing to the contrary is stipulated in numbers VIII. 4 or VIII. 5 hereof, claims of the principal due to quality defects or defects in title – regardless of the legal ground – are hereby excluded. In this respect we are not liable for damage which has not been caused to the delivery item itself. In particular, we are not liable for lost profit or other pecuniary loss suffered by the principal in this respect.
3. Insofar as nothing to the contrary is stipulated in numbers VIII. 4 or VIII. 5 hereof, claims of the principal due to breach of an obligation arising out of the law-of-obligations relationship are hereby excluded.
4. The foregoing liability disclaimers (numbers VIII. 2 and VIII. 3) do not apply insofar as we are liable due to mandatory law, for example (1) pursuant to the German Product Liability Act, (2) due to loss of life, personal injury or damage to health which is due to a negligent or intentional breach of obligation committed by us or one of our legal representatives or by one of our vicarious agents, (3) insofar as the cause of the harm is due to intentional behaviour or gross negligence by us or one of our legal representatives or by one of our vicarious agents, (4) if the principal asserts rights due to a defect under a guarantee of the quality or the particular duration of a quality, (5) we negligently breach an essential contract obligation whose fulfilment is what makes the due performance of the contract possible at all and on whose compliance the contract partner may usually rely (cardinal obligation), (6) recourse claims in the consumer goods supply chain (§ 478 of the German Civil Code (BGB)) are concerned.
5. Insofar as we negligently breach a cardinal obligation, our compensation obligation is limited to the contract-typical, foreseeable damage and loss, insofar as no intentional behaviour or gross negligence is involved or we are not liable due to loss of life, personal injury or damage to health.
6. If we have rendered part-performance, then the principal is only able to rescind the entire contract if it no longer has any interest in the part-performance. In the case of multiple delivery contracts, the principal's rights are limited to the respective part-delivery.
7. In the event that the defect is rectified or replacement delivery is made (subsequent performance), number VII. nrs. 1 and 2 hereof apply correspondingly.
8. We can refuse to rectify defects as long as the principal has not paid for the part of the delivery which it has not objected to or complained about.

9. There are no claims against us for damage or loss which is attributable to the principal. The principal is responsible in particular for damage or loss which is due to improper assembly or installation or commissioning by the principal or third parties, or due to natural wear and tear.
10. All claims directed against us due to a quality defect or a defect in title become time-barred 12 months after the statutory warranty commencement, unless the German Product Liability Act or other legislation, particularly § 479.1 of the BGB (recourse claims in the consumer goods supply chain), prescribes longer periods. The time-barring of claims due to liability for damage and loss arising out of loss of life, personal injury or damage to health which is due to a negligent or intentional breach of obligation committed by us or one of our legal representatives or vicarious agents, and for other damage and loss which is due to an intentional or grossly negligent breach of obligation committed by us or one of our legal representatives or vicarious agents, is determined pursuant to the statutory provisions.

IX. Retention of title

1. We retain ownership of all of the goods delivered by us until the principal has paid all of the claims - including future ones - arising out of the business relationship. This applies even if some of our claims have been included in a current invoice and the balance has been drawn; the retention of title then pertains to the respective balance claims. Handing over bills of exchange and cheques is not deemed to be payment before the respective instrument has been redeemed.
2. Subject to number IX.3. hereof, the principal is entitled to sell on the goods subject to retention of title in the framework of an ordinary business operation. If the sales price is deferred for the customer, then the principal is obliged to retain ownership on the same conditions as those above. The principal hereby assigns to the seller the purchase price claims to which the principal is entitled out of the onward sale. In the event of onward sale together with third-party goods, this assignment only applies in the amount of the value of the goods subject to retention of title at the time of the onward sale. Provisionally, the assignment takes place silently; however, the seller has the right to collect the claims itself as soon as the principal does not duly comply with its payment obligation. Upon the seller's request, the principal is obliged to notify the customer about the assignment and to provide the seller with all of the information necessary and useful for the assertion of the assigned claims.
3. The principal is only entitled to sell on the goods subject to retention of title if it is certain that the claim arising out of the sale contract is transferred to the seller. For this reason, the onward sale may not take place in the framework of a current-account relationship, nor may the assignability of the claims arising out of the onward sale with the customer be excluded.
4. If the value of the securities existing in our favour exceeds our claims in total by more than 20%, then upon request by the principal we are obliged to release securities in accordance with our choice; however, only fully paid-for deliveries need to be released from the goods subject to retention of title.

5. The principal is obliged to insure the goods subject to retention of title against all of the usual risks, particularly fire, burglary and water risks, to an appropriate extent and to treat and store them with care. In the event that insured events occur, insurance claims are to be assigned to the seller.
6. In the event of levies of execution and seizures of the goods and/or the assigned claim by third parties, the seller is to be notified in writing without undue delay and such notification is to be accompanied by a copy of the levy of execution record.

X. Rendering services

In the event that only services are rendered by us, the service law of the BGB applies, with the proviso that these General Conditions of Sale apply correspondingly.

XI. Final provisions

1. This contract is exclusively governed by German substantive law, and the application of the rules of the Vienna UN Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) is hereby excluded. The place of performance for the obligations arising out of this contract is Arnsberg.
2. The courts of Bonn have local and international jurisdiction for all disputes arising out of this contract
 - a) if the other party is a businessperson, legal entity under public law or a public-law special fund,
 - b) if the other party has no general jurisdiction (place of residence, headquarters or usual abode) within the Federal Republic of Germany, or
 - c) if after entering into the contract the other party moves its place of residence or usual abode out of the territory of the Federal Republic of Germany or if its place of residence or usual abode is not known at the time the lawsuit is filed.
3. The statutory provisions apply for summary proceedings for the recovery of debts.
4. Should a provision of these Conditions and the other agreements entered into be or become invalid, then the validity of the rest of the contract shall not be affected thereby. The contract partners are obliged to replace the invalid provision with a provision which is the closest possible equivalent in terms of its financial success.

1 August 2010 Eurocor GmbH, Bonn/Germany