

Witt Handel GmbH

General Terms and Conditions of Purchase, Delivery and Payment

I. Validity, Rejection of Conflicting Terms and Conditions, Non-Binding Offers

1. Unless special agreements are explicitly made, all our offers and sales, including any purchase agreements concluded with the buyer in the future, shall be subject exclusively to the following general terms and conditions.
2. We shall not recognise any conflicting or deviating terms and conditions of the customer. Our general terms and conditions shall apply even if we unreservedly provide the customer with a service despite being fully aware of the customer's conflicting or deviating conditions. By concluding a contract with us or accepting our delivery, the customer shall waive the applicability of its own terms and conditions and shall accept ours unreservedly.
3. Our offers shall be subject to change, unless they are explicitly described as binding.
4. These general terms and conditions shall only apply to dealings with "entrepreneurs", as defined in Section 310 (1) of the German Civil Code (BGB).

II. Written Conclusion of Contract

Any orders placed shall only be considered accepted once we have given our written confirmation. Any verbal side agreements must be confirmed in writing to be considered valid.

III. Payment, Set-Off, Consequences of Late Payment

1. Unless otherwise agreed, payment must be made without deductions immediately upon receipt of invoice. If payment is made by cheque or bill of exchange, the timeliness of the payment shall not be determined by the date on which we receive the paper, but the date on which it is finally encashed.
2. The customer shall only be entitled to offset claims against counterclaims that are acknowledged by us, undisputed or legally recognised. In addition, the customer shall only be entitled to exercise a right of retention if its counterclaims are based on the same contractual relationship.
3. In the event of late payment, we shall be entitled to charge interest at 8 percentage points above the respective base interest rate from the date on which the payment becomes delayed. In the event of late payment, and after a 7-day grace period has expired to no avail, we shall also be entitled to make further deliveries from ongoing contracts subject to a reasonable advance payment.

IV. Delivery Delays; Type of Shipping; Handover; Acceptance; Partial, Excess and Short Deliveries

1. If any of our suppliers fail to deliver materials on time, or if we or our suppliers are affected by staff shortages, strike action, lockout, shipping disruptions, traffic disruptions, official orders, fire damage, flooding or other cases of force majeure, we shall be released from our delivery obligations for the duration of the disruption.
2. If a firmly agreed delivery deadline is not met through our own fault, the buyer shall be entitled to withdraw from the contract after a reasonable grace period; however, the buyer shall not hold any further claims.
3. The goods shall be delivered by lorry, ship or train, as chosen by the seller. If the buyer requests a specific type of shipping, any additional costs compared to a more inexpensive type of shipping shall be borne by the buyer.
4. We shall be deemed to have fulfilled our delivery obligations when the goods are handed over to the transport company at the place of performance.
5. When the goods are handed over to the carrier, the risk of accidental loss or deterioration shall be transferred to the buyer, even if they are delivered carriage paid.
6. The buyer shall be obliged to immediately accept the ordered products. If the buyer is late to accept the goods, we shall be entitled to store the goods at the expense and risk of the buyer or to have them auctioned off in accordance with Section 373 (2) to (5) of the German Commercial Code (HGB) or to withdraw from the contract after granting a reasonable grace period.
7. We shall be entitled to make partial deliveries.
8. Short and excess deliveries of up to 10% of the contracted quantity shall be permissible and must be remunerated accordingly by the buyer.

V. Prices and Changes

1. Our prices shall not include value added tax.
2. If, after the conclusion of the contract, public duties are increased or introduced, or if there are increases in the freight costs included in our price calculations, we shall be entitled to adjust our purchase prices accordingly.
3. Any price increases introduced by our own suppliers after the conclusion of the contract, even retrospectively, shall be borne by the buyer. In such cases, the buyer shall have the right to withdraw from the contract within 7 days of being notified of the price increase.

VI. Warranty for Defects, Liability

1. The buyer shall be obliged to immediately inspect the goods and notify us of any defects in accordance with Section 377 HGB; we must be immediately notified of any such defects in writing. The buyer must ensure that we are able to unequivocally identify the delivered goods described in the notification of defects.
2. In the event of defects in goods delivered by train carriage, the buyer must arrange for the relevant rail company to prepare a report detailing the facts of the matter and the damage. The report must include the cause, type and extent of the damage. The notification of defects must contain the exact delivery date and carriage number. The report, the relevant waybills and evidence of any problems affecting the train carriage must be submitted to us immediately.
3. In the event of defects in goods delivered by ship, the buyer must arrange for the responsible claims adjuster to assess the damage – at the latest when the cargo is unloaded. The damage report prepared by the claims adjuster and evidence of any problems affecting the ship's cargo must be submitted to us immediately.
4. If a notification of defects is justified, the buyer shall be entitled to demand the rectification of the defects or to keep the goods at a discounted price or to cancel the contract.
5. We shall only be liable for ensuring that the delivered goods are suitable for the contractually agreed use. We shall not be liable for any consequential damage caused by the use of such items.
6. We shall be liable according to the statutory provisions if we or our representatives or vicarious agents are accused of intent or gross negligence.
7. Our liability for injury to life, limb or health remains unaffected. The same applies to our mandatory liability under the German Product Liability Act (ProdHaftG).

VII. Retention of Title and Related Provisions

1. We shall retain ownership of the delivered goods until all claims we hold from the business relationship with the buyer have been settled in full. This shall apply even if a payment term has been agreed. The buyer shall not be permitted to pledge the goods or assign them as security before they have been paid for in full.
2. The buyer shall be obliged to store the delivered goods properly, to treat them with care and to insure them adequately at its own expense against fire, water damage, storms, hail and theft at their replacement value. The buyer shall assign to us, in advance, any claims that may arise against the insurer due to damage to the delivered goods to secure our overall claims and, if insurance has been taken out for an entire inventory, up to the amount of our claim for the goods delivered by us that are included in the inventory.
3. The buyer must store the goods delivered by us separately and mark them as ours as long as we hold the rights to them.
4. If purchased items are inextricably combined with items that do not belong to us, we shall obtain joint ownership of the new item in the ratio of the value of the purchased items to the respective value of the other combined items at the time of mixing. If the items are combined in such a way that the item belonging to the buyer may be seen as the main object, the buyer hereby agrees to transfer proportional joint ownership to us in accordance with the first sentence. The buyer shall store the items created as described in the first and second sentence for us in accordance with No. 2 above.
5. If purchased items are ever processed or remodelled by the buyer, this shall be done for us. If purchased items are inextricably processed with items that do not belong to us, we shall obtain joint ownership of the new item in the ratio of the value of the processed items to the respective value of the other combined items at the time of processing. The buyer shall store the items created as described in the first sentence for us in accordance with No. 2 above.

6. The buyer may resell the goods within its ordinary course of business before our payment claims have been settled in full. When doing so, the buyer must describe the quality, composition and quantity of the goods in the invoice and delivery note in the same way as we did when delivering the goods to the buyer. The buyer shall assign to us, in advance, any claims arising from the resale of our goods to third parties – without the need for a special document – to secure any claims we may hold against the buyer. The buyer hereby agrees to the advance assignment of such claims. We hereby accept the assignment.

7. The buyer shall be authorised to collect our claims described in No. 2 and No. 6 as long as the buyer fulfils its payment obligations to us in accordance with the contract. The buyer shall be obliged to transfer the collected amounts of money to us if our claims are due. If the buyer is in default of payment, stops making payments or files for insolvency, the buyer shall be obliged to notify us of the assigned claims and the debtors, to provide all information required to collect the claims, to hand over the associated documents, and to inform the debtors that the claims have been assigned to us.

8. The buyer must immediately notify us, also in writing, if goods delivered under retention of title or assigned claims are accessed by third parties (e.g. if they are seized), providing us with all the information and documents we need to intervene (e.g. by means of third-party proceedings instituted to prevent the execution of a judgement). If the costs of the intervention cannot be obtained from the third party concerned, the buyer shall be liable for them.

9. If the buyer fails to comply with the agreed terms of payment or violates its obligations under this agreement, we shall be entitled to take back the goods delivered under retention of title at the buyer's expense – without this constituting our withdrawal from the contract.

10. The buyer may ask us to waive securities if the realisable value of the goods subject to retention of title and the claims assigned to us exceed the claims against the seller to be secured for us by more than 10%. An agreement must be made on the individual securities to be released; we shall be entitled to select the securities to be released.

11. If the buyer has fulfilled all payment obligations arising from our deliveries, we shall assign any claims remaining from No. 2 and No. 6 to the buyer. In such cases, no special agreement shall be required regarding the individual claims.

VIII. Assignment

The buyer may only assign its claims arising from the purchase agreement to third parties with our prior written consent.

IX. Effectiveness

If a provision in these general terms and conditions proves to be ineffective, this shall have no bearing on the validity of the remaining provisions or the validity of the contract.

X. Place of Performance and Place of Jurisdiction

1. The place of performance for deliveries shall be the place of dispatch in each case. Hamburg shall be the place of performance for payments.

2. Hamburg shall be the place of jurisdiction for both parties.

3. German law shall apply. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is hereby excluded.

4. Unless otherwise agreed in these general terms and conditions, in the contract or in the statutory provisions, the currently valid version of the International Commercial Terms (Incoterms), as published by the International Chamber of Commerce in Paris, shall also apply.