

TERMS AND CONDITIONS in commercial transactions with companies – Version of 12/2015

1. **Scope**
- 1.1 These Terms of Delivery and Payment shall apply to all contracts entered into between the Contractual Parties on the production, machining, processing and delivery of moveable goods and other services.
- 1.2 Our Terms of Delivery and Payment shall apply exclusively. We do not accept any provisions of the Customer contrary to or deviating from our Terms of Delivery and Payment unless we expressly approved of their application. Our Terms of Delivery and Payment shall apply even in case we, being aware of provisions of the Customer contrary to or deviating from our Terms of Delivery and Payment, carry out the delivery without any reservation.
2. **Offer – Conclusion of Contract – Offer Documents**
- 2.1 Orders by the Customer represent a binding offer which we can accept within two weeks by sending an order confirmation or by delivering the goods. Offers provided by us beforehand shall be subject to alteration.
- 2.2 We reserve ownership rights and copyrights to figures, proof prints, drawings, calculations and other documents, including in file form. This shall also apply to such documents (hardcopy and file form) marked as confidential. Before disclosure thereof to third parties, the Customer shall obtain our prior and express written consent.
3. **Prices and Terms of Payment**
- 3.1 The price agreed upon shall apply. If by the time of performance, the price has increased due to a change of the market prices or due to an increase of the fees of third parties involved in the performance, the increased price shall apply. If such price exceeds the price agreed upon by 20% or more, the Customer shall be entitled to rescind from the Contract. Such right must be exercised immediately after notification of the increased price.
- 3.2 Our prices are in EURO plus the statutory VAT on the day of invoicing. The VAT is set forth separately on the invoice.
- 3.3 Our prices are ex works Neu-Ulm including packaging.
- 3.4 Unless otherwise agreed upon, we reserve the choice of delivery method.
- 3.5 The total remuneration shall be paid within fourteen days of the date of invoice with a cash discount of 2% or within 30 days without cash discount if not agreed upon otherwise. Upon expiry of 30 days after the due date at the latest, the Customer is in default. In case of default of payment, we will charge interest amounting to 8% p.a. above the respective base interest rate for the outstanding amount. Furthermore, we shall be entitled to compensation of dunning and collection costs, including such costs for lawyers or collection agencies involved.
- 3.6 The Customer shall be entitled to set-off rights only if their counterclaims are determined in a legally binding manner, have not been objected to or have been accepted by us. They shall be entitled to rights of retention only if their counterclaim is based upon the same contractual relationship.
- 3.7 Due to technical reasons, we reserve the right to carry out excess or short deliveries of up to 10% of the quantity ordered.
- 3.8 All proof prints, files, films, print templates, moulds, tools and other means of production shall remain in our possession and will be retained for any subsequent orders. Payment of proportional costs for the abovementioned means of production – in particular proportional tool costs – do not entitle the Customer to demand handing over of such tools or means of production.
4. **Term of Delivery or Performance**
- 4.1 The expected date of delivery set forth in the order confirmation is not binding. The term of delivery starts on the date on which we have all required information and all approvals of the Customer. In case of strikes or force majeure events, the term of delivery is extended by the duration of the delay. The same shall apply if the Customer does not fulfil any obligations to cooperate.
- 4.2 In case of delays in delivery, the Customer shall grant an appropriate extension period of at least three weeks. If we do not use such extension period, the Customer shall be entitled to rescind from the Contract.
- 4.3 The Customer undertakes to accept partial deliveries.
- 4.4 In case delivery by our own supplier is not performed, not performed correctly or in time, we shall be entitled to rescind from the Contract.
- 4.5 We shall be entitled to rescind from the Contract if the Customer filed an application for the initiation of insolvency proceedings regarding their assets, submitted an affidavit in accordance with Section 807 of the ZPO [Code of Civil Procedure] or if the insolvency proceedings regarding their assets were initiated or if such initiation was rejected due to lack of assets.
- 4.6 If the Customer is in default of acceptance or if they culpably violate other obligations to cooperate, we shall be entitled to claim compensation for any damage including any additional expenses we incurred. Further claims or rights shall remain unaffected.
- 4.7 To the extent the preconditions under 4.6 are fulfilled, the risk of accidental loss or accidental deterioration of the purchased object shall pass onto the Customer at the point in time when they come into default of acceptance or debtor's default.
5. **Transfer of Risk**
- Deliveries are performed on the Customer's account and at their risk ex works Neu-Ulm.
6. **Liability and Violation of Property Rights**
- 6.1 We do not assume any liability regarding the accuracy or completeness of drawings or files or printing documents, templates or colour samples submitted to us.
- 6.2 The Customer shall be solely responsible for making sure that they are legally entitled to use brand names, names, logotypes etc.
- 6.3 If the performance leads to the violation of property rights of third parties, the Customer shall hold us harmless for and against all claims.
- 6.4 Unless otherwise agreed upon, we shall be entitled to use the goods delivered and services performed for advertising for our own purposes.
7. **Liability for Defects**
- 7.1 We provide all information, indications, recommendations and statements according to our current best knowledge and based upon our previous experiences. They do not exempt the user from conducting their own examinations and tests due to the large number of possible influential factors during storage, processing and use. For the application and processing of our products, the user shall be solely responsible. We do not assume any guarantee, explicit or implied, for the accuracy of the statements, in particular with regard to suitability for a certain purpose. Accordingly, the user himself is responsible for the decision as to whether one of our products is suited for a certain purpose and for the type of application of the Customer/user.
- 7.2 In case of a defect, we reserve the right to choose the type of supplementary performance.
- 7.3 The guarantee obligation is always applicable for a period of one year after transfer of risk.
- 7.4 We do not provide any guarantee in the legal sense to the Customer.
- 7.5 In case of release of a pre-serial sample/prototype by the Customer, a notice of defects regarding defects the Customer could have detected if they had carried out a conventional careful examination shall be excluded.
8. **Liability for Damage**
- 8.1 Our liability for breaches of contractual duties as well as in tort shall be limited to intentional conduct and gross negligence as well as to the compensation for typically arising types of damage. This shall not apply to injury to the life, limb or health of the Customer, claims arising from the violation of major obligations, i.e. obligations arising from the nature of the Contract and if a violation thereof endangers the achievement of the contractual purpose as well as to the compensation for default damage (Section 286 of the BGB [Civil Code]). In this respect, we shall be liable for all degrees of fault. With regard to damage which does not result from injury to the life, limb or health of the Customer, we are only liable for typically occurring damage.
- 8.2 The aforementioned exclusion of liability shall also apply to slightly negligent violations of obligations by our agents.
- 8.3 To the extent liability for damage not based upon injury to the life, limb or health of the Customer is not excluded regarding slight negligence, such claims shall lapse within a period of one year starting upon the day on which the claim arises or, in the case of claims for damages due to defects, upon handover of the object.
- 8.4 To the extent liability for damages towards us is excluded or limited, this shall also apply regarding the personal liability for damages of our employees, workers, staff members, representatives and agents.
9. **Reservation of Title**
- 9.1 We reserve the title to the goods until all claims against the Customer have been fulfilled, even if the goods in question have already been paid for.
- 9.2 The Customer shall inform us without any delay of enforcement measures regarding the reserved goods, providing us with the documents necessary for an intervention. This shall also apply to restrictions of all kinds. Regardless thereof, the Customer shall inform third parties in advance of the rights existing regarding the goods. The Customer shall bear our costs of any intervention to the extent the third party is not able to reimburse these.
- 9.3 In case of resale/renting out of the reserved goods, the Customer already now assigns to us as collateral all claims against their customers arising from the abovementioned transactions until our claims have been completely fulfilled. If the reserved goods are processed, transformed or combined with other goods, we obtain a direct title to the goods produced. Such goods shall be considered reserved goods.
- 9.4 If the value of the collateral of our claims against the Customer is exceeded by more than 10%, we shall release collaterals to which we are entitled in the respective amount upon the Customer's request and at our option.
10. **Lapse of our own Claims**
- Our claims for payment shall lapse after five years, in deviation of Section 195 of the BGB. Regarding the start of the lapse period, Section 199 of the BGB shall apply.
11. **Form of Declarations**
- Legally relevant declarations and announcements the Customer has to provide to us or to third parties shall be in writing.
12. **Place of Performance – Choice of Law – Place of Jurisdiction**
- 12.1 Unless otherwise specified in the Contract, the place of performance and payment shall be our business office in Neu-Ulm. The legal provisions regarding jurisdiction shall remain unaffected unless the special regulation of section 12.3 provides otherwise.
- This Contract shall be exclusively governed by the laws of the Federal Republic of Germany. Application of the UN sales law is excluded.
- 12.2 The court competent for our business office in Neu-Ulm shall have exclusive jurisdiction over contracts with merchants, legal entities under public law or special funds under public law. We shall also be entitled to file actions against the Customer at their general place of jurisdiction.
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