



**General Terms and Conditions of Sale**  
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**Clause 1 General - scope**

1. Our terms and conditions of sale shall apply exclusively; we do not accept the customer's terms and conditions that deviate from our terms and conditions unless we have specifically agreed to their application in writing. Our terms and conditions of sale shall also apply if we carry out delivery to the customer without reserve in the awareness of customer terms and conditions which deviate from our terms and conditions.
2. All agreements made between us and the customer for the purpose of performing this contract are set out in writing in this contract.
3. Our terms and conditions of sale shall apply only to entrepreneurs within the meaning of Section 14(1) of the German Civil Code as well as to legal entities governed by public law and special funds under public law.
4. Our terms and conditions of sale apply to all current and future business relations with the customer.

**Clause 2 Entry into a contract**

1. Our offers are subject to confirmation and are non-binding. We expressly reserve the right to amend the content of the catalogues, sales folders, price lists or other brochures provided.
2. As a matter of principle, orders with a total order value of less than 800.00 EUR will not be accepted for delivery. The total order value shall be derived from the price list applicable at the time the order is placed or the invoice amount indicated in the relevant price agreement. Where a customer places a number of individual orders for one delivery day from a single shipping department and no single order reaches the total order value but they are all to be delivered to the same location then these orders shall be aggregated for the purposes of calculating the total order value. Furthermore, when calculating the total order value only those orders will be aggregated into a single order which are sent from the same location.
3. Arrangements and agreements, in particular where these amend our terms and conditions of sale, shall only become binding upon our written confirmation. This shall also apply to orders placed with our representatives.
4. The contract is entered into subject to the reservation that we are properly and promptly supplied by our own suppliers. This shall only apply where the failure to deliver is not our responsibility, in particular where we have entered into an identical purchase transaction with our supplier to cover this contract. The customer shall be immediately informed of the unavailability of performance. The consideration shall be immediately repaid.

### **Clause 3 Prices, payment terms**

1. Unless stated otherwise in the order confirmation, our prices shall be “ex Works/Warehouse“. The valid prices shall be derived from the price list applicable at the time the contract was entered into or from the price agreement. We reserve the right to amend our prices accordingly if, following entry into the contract, cost decreases or cost increases come into effect, in particular as a result of wage agreements or changes to the prices of materials and/or raw materials.
2. Statutory value-added-tax is not included in our prices; the statutory amount of value-added-tax applicable on the day the invoice is issued will be shown separately in the invoice. Invoices are sent by us exclusively in paper form or by e-mail.
3. Unless stated otherwise in the order confirmation, the net purchase price shall be due for payment (without any deduction) within 8 days of the invoice date. The statutory regulations shall apply regarding the consequences of late payment.
4. The customer shall only have the right to set-off if his counter claims have been made the subject of an unappeasable court order, are undisputed or have been accepted by us. Furthermore, the customer is only entitled to exercise a right of retention where his counter-claim stems from the same contractual relationship.

### **Clause 4 Delivery, delivery period**

1. We shall, to the extent this is reasonable, be entitled to carry out performance in instalments or part deliveries. The customer may not reject such part deliveries.
2. Commencement of the delivery period indicated by us is conditional upon the clarification of any technical issues.
3. Compliance with our delivery obligation is further conditional upon the prompt and proper performance of the customer's obligation. This is without prejudice to the defence of unperformed contract (Section 320 of the German Civil Code) and the defence of uncertainty (Section 321 of the German Civil Code).
4. Where the customer is late in accepting delivery or is in flagrant breach of other duties of cooperation we shall then be entitled to demand compensation for any damages incurred by us, including any additional expenditure. This shall be without prejudice to any further claims.
5. To the extent the conditions of Para (4) are met, the risk of accidental destruction or accidental impairment of the purchase item shall pass to the customer at the time the latter delays acceptance or defaults as a debtor.
6. All force majeure events which are not our responsibility under Section 276 of the German Civil Code shall release us from the performance of the contractual obligations undertaken for as long as such events continue. We are obliged to inform the customer without delay if such an event occurs; at the same time we are obliged to let the customer know how long such event is

expected to continue. Where such an event lasts for longer than two months we may rescind the contract wholly or in part. The consideration shall be immediately repaid.

7. We are liable in accordance with the statutory regulations to the extent the underlying purchase contract is a fixed-date purchase within the meaning of Section 286(2)(1) of the Germany Civil Code or Section 376 of the German Commercial Code. We are liable in accordance with the statutory regulations to the extent that, as a result of a delay in delivery for which we are responsible, the customer is entitled to claim that he no longer has any interest in the further performance of the contract.
8. We are further liable in accordance with the statutory regulations to the extent the delay in delivery is caused by a deliberate or grossly negligent breach of contract for which we are responsible; a fault of one of our representatives or vicarious agents can be attributed to us. To the extent the delay in delivery has not been caused by a deliberate breach of contract for which we are responsible, our damages shall be limited to foreseeable damages typically arising.
9. We are liable in accordance with the statutory regulations to the extent the delay in delivery which is our responsibility was caused by a flagrant breach of a material contractual obligation; in this case damages shall, however, be limited to foreseeable damages typically arising.
10. This is without prejudice to the customer's further statutory claims and rights.

#### **Clause 5 Transfer of risk, transport insurance**

1. Unless otherwise stated in the order confirmation delivery is agreed as "EXW (INCOTERM 2010) Works/Warehouse".
2. In case of a shipment contract we shall be entitled to send the goods to be delivered from a location other than the place of performance.
3. As a rule, the delivery is not insured. Where the customer so wishes we shall take out transport insurance to cover the delivery; the customer shall bear the costs arising in this respect.

#### **Clause 6 Food legislation**

Our products comply with the applicable provisions of the food legislation of the Federal Republic of Germany and the relevant statutory provisions of the European Union.

#### **Clause 7 Liability for defects**

1. The customer's rights in case of defects are conditional upon the latter's having properly complied with his obligations to inspect and make a complaint under Section 377 of the German Commercial Code. Notifications of defects shall be voiced in writing. The customer is obliged to properly store the goods in respect of which a complaint has been made; we shall be entitled to demand evidence from the customer of an uninterrupted cold chain.
2. To the extent the purchased item is defective, we shall be obliged to carry out supplementary performance in the form of the delivery of a new item free of defects.

3. Where the supplementary performance is unsuccessful, the customer shall have the option of rescinding from the agreement or claiming a reduction of the purchase price. However, in cases of a minor breach of contractual obligation, in particular in cases of minor defects, the purchaser shall have no right of rescission.
4. We are liable in accordance with the statutory regulations to the extent the customer brings claims for damages based on intent and gross negligence, including intent and gross negligence on the part of our representatives or vicarious agents. To the extent we are not accused of any deliberate breach of contract, the liability for damages shall be limited to foreseeable damages typically occurring.
5. We are liable in accordance with the statutory regulations to the extent we commit a flagrant breach of a material contractual obligation; in this case, damages shall, however, be limited to foreseeable damages typically arising. Material contractual obligations are such obligations whose fulfilment forms the nature of the contract and on which the customer can rely. The liability for culpable loss of life, personal injury or damage to health shall remain unaffected thereby; this shall also apply to mandatory liability under the German Product Liability Act.
6. Unless provided otherwise above, [any other] liability shall be excluded.
7. The limitation period for defect claims shall be 12 months, calculated from transfer of risk.
8. This is without prejudice to the limitation period in case of the supplier's right of recourse under Sections 478 and 479 of the German Civil Code; this lasts five years calculated from delivery of the defective item.

#### **Clause 8 Joint and several liability**

1. Irrespective of the legal nature of the claim being made, any further liability for damages beyond that envisaged in Clause 7 shall be excluded. This shall apply in particular to compensation claims for culpability in the conclusion of a contract, due to other breaches of obligations or due to claims in tort for compensation for damage to property under Section 823 of the German Civil Code.
2. The limitation under Para (1) shall also apply to the extent the customer asserts a claim to be refunded for wasted expenditure instead of claiming compensation for damages.
3. To the extent the liability for damages is excluded or limited in respect to us, this shall also apply in regard to the personal liability for damages of our staff, employees, colleagues, representatives and vicarious agents.

#### **Clause 9 Retention of title, title to documents**

1. We shall retain title to the purchase item until receipt of all payments from the business connection with the customer. In case the customer's is in breach of contract, in particular in case of delayed payment, we shall be entitled, following the setting of a reasonable time limit, to take the purchase item back. By taking back the purchase item we rescind the contract. After we take back the purchase item we shall be authorised to sell the same. The proceeds of the

sale shall be set off against the customer's obligations following the deduction of the reasonable costs of sale.

2. The customer shall be obliged to treat the purchase item with care; in particular the latter shall be obliged, at his own cost, to adequately insure the same for its replacement value against fire and water damage and theft. The customer shall be obliged to provide evidence of the insurance to the seller on first demand. To the extent maintenance and inspection works are necessary the customer shall carry these out promptly at his own cost.
3. In case of attachment or other third-party interventions, the customer shall immediately notify us in writing so that we can bring a claim under Section 771 of the Civil Procedure Code (Zivilprozessordnung "ZPO"). To the extent the third party is not in a position to refund us the court and out-of-court costs of a claim under Section 771 of the ZPO, the customer shall be liable for the financial loss caused to us.
4. The customer shall be entitled to resell the purchase item in the proper course of business; however, he assigns to us with immediate effect all claims in the final invoice amount (including VAT) of our claim such as accrue to him against his customers or third parties from the further sale, irrespective of whether the purchase item is resold without or after processing. In order to enforce this claim the customer shall remain authorised even after the assignment. This is without prejudice to our capacity to enforce the claim ourselves. However, we undertake not to enforce the claim for as long as the customer complies with his payment obligations out of the appropriated proceeds, does not fall into arrears and in particular is not the subject of an application for the initiation of bankruptcy, settlement or insolvency proceedings or there is a cessation of payments. Where this is the case, however, we may demand that the customer inform us of the assigned claims and the debtors under the same, provide all the necessary information for the collection of payments, hand over the related documents and notify the debtors (or third parties) of the assignment.
5. The processing or transformation of the purchase item by the customer shall always be carried out on our behalf. Where the purchase item is processed with other objects that do not belong to us we shall then acquire joint title to the new item to the value of the purchase item (final invoice amount including VAT) pro rata to the other processed items at the time of processing. The same shall apply to the item resulting from the processing as applies to the purchase item delivered under reserve.
6. Where the purchase item is inextricably mixed with other objects that do not belong to us we shall then acquire joint title to the new item to the value of the purchase item (final invoice amount including VAT) pro rata to the other mixed items at the time they are mixed together. Where the mixing occurs in such a way that the customer's item should be regarded as the main component it shall be deemed agreed that the customer transfers proportional joint title to us. The customer shall hold the sole title or joint title thereby arising for us.

7. As security for our claims against the customer, the latter shall also assign to us the claims against a third party that arise through the joining of the purchase item with a plot of land.
8. Where the retention of title or assignment is effective under the law of the jurisdiction in which the goods are located then the corresponding protection relating to the retention of title or assignment of the goods shall be deemed agreed. Where the customer's collaboration is necessary for the formation of such protection then the customer shall be obliged, upon our request, to take all steps at his expense cost as are necessary for the establishment and maintenance of such rights.
9. We undertake to release the security due to us at the customer's request to the extent the realisable value of our security exceeds the claims to be secured by more than 10%; the choice of security to be released shall be ours.
10. We retain the title rights and copyright to images, drawings, calculations and other documents. This shall also apply to such written documents described as "confidential". The customer must obtain our express written consent before passing such documents on to third parties.

#### **Clause 10 Pallet exchange**

Reusable pallets shall be exchanged contemporaneously in accordance with the applicable UIC norms as amended from time to time. We shall pass any additional costs arising to us due to the fact that a pallet exchange is not contemporaneously available (e.g. through the commissioning of pallet service providers) on to the customer.

#### **Clause 11 Printing**

With regard to the printing of packaging material according to the documents provided by the customer, the latter shall bear the risk and liability for any breach of third-party rights, in particular third-party patents and intellectual property rights relating to the format, layout and text and shall indemnify us against any such claims by third parties. The customer shall bear any costs arising in this connection, in particular any legal defence costs.

#### **Clause 12 Jurisdiction, place of performance, applicable law**

1. To the extent the customer is a trader, the courts of the location of the registered office of Hochwald in Thalfang shall have sole jurisdiction; we shall, however, also be entitled to bring an action against the customer in the court of his domicile. The place of performance for the actions to be performed under this contract shall be Thalfang unless the law mandatorily prescribes otherwise.
2. The law of the Federal Republic of Germany shall apply exclusively under exclusion of international private law and the United Nations Convention on Contracts for the International Sale of Goods.