



# General Terms of Delivery and Payment

As of 01 January 2018

## I. Scope of application

1. Our following Terms of Delivery and Payment shall only apply to companies, legal entities under public law or public separate estates pursuant to section 310 sub-section 1 German Civil Code [BGB- Bürgerliches Gesetzbuch]. They do not apply to consumers.
2. Our Terms of Delivery and Payment shall apply exclusively. Contradictory or conflicting Terms of Delivery and Payment of the buyer shall not constitute part of the contract, unless we have expressly agreed to their application in writing. Our offers are subject to change, unless otherwise expressly agreed.
3. Additional agreements, changes and modifications to these terms are to be made in writing.

## II. Prices

1. The agreed prices are to be paid plus the statutory value-added tax at the date of delivery.
2. The price is calculated under consideration of the weight, quantity and amount as determined by us, unless the buyer objects immediately after delivery.

## III. Consultation regarding usage

1. If we are performing consulting services, we do so to the best of our knowledge. This service is not binding. All data and information regarding the suitability and usage of the delivered products do not exempt the buyer from conducting his/her own tests and trials. This shall in particular apply when thinners, hardeners, supplementary varnishes or other components, which were not purchased from us, are to be admixed.

## IV. Delivery

1. The buyer shall collect the products at the place of performance pursuant to section IX (1) at the agreed date of delivery or, if no binding delivery date was agreed, immediately after receiving notice that the products are available. If the buyer comes into default on accepting the products, we are entitled to choose to send the products at the expense of the buyer or to store them outdoors, if necessary (should no other option be available). In this case, we are not liable for the accidental destruction, loss or damage of the products. If we are storing the products, we are entitled to demand payment for this service starting one week after the default began.
2. If, contrary to section 1, it was agreed that we are obliged to send the products, the buyer bears the cost of transport, and the choice of the means of transport and the transport route is subject to our sole discretion, unless the buyer has given us specific instructions concerning this matter. The risk is transferred the moment we are handing over the products to the carrier.



3. Partial deliveries that may be reasonably imposed on the buyer are acceptable.
4. If it bears significance for the delivery of the products, significant and unforeseeable hold-ups, delayed deliveries or non-deliveries on the part of our suppliers that are beyond our control as well as e.g. interruptions of production due to a shortage of raw materials, energy or man power, strikes, lockouts, difficulties in procuring means of transportation, traffic disruptions, official orders or cases of force majeure on part of us or our sub-contractors extend the delivery period for as long as the hindrance of performance lasts. We shall inform the buyer immediately of the start and end of such hindrances. In case the delivery is postponed by more than one month, both, the buyer and we, are entitled to withdraw from the contract in regard to the products effected by the delay while precluding any claim for damages. The buyer's statutory right of withdrawal in case of default in delivery due to circumstances for which we are responsible shall remain unaffected.
5. If the products are delivered in returnable containers, the buyer shall return them empty of any residues and free of charge within 90 days after receipt of delivery. The buyer shall bear the costs of any loss or damage of the returnable containers, if he/she caused said loss or damage. The returnable containers must not be used for other purposes or for holding other products. They shall only be used for the transport of the delivered products. Labels must not be removed.
6. One-way packaging shall not be taken back. We are instead naming a third party that shall recycle the packaging according to the statutory and official regulations.

## **V. Payment**

1. The invoice amount shall be paid without any deductions immediately after receipt of the invoice. Payment is only made in time, if the money is credited to the account provided by us on the due date.
2. If the payment is late, the buyer shall pay default interest in the amount of 9% above the respective base interest rate.
3. Bills of exchange do not constitute a cash payment and are only valid with our prior consent. The buyer shall bear the costs for bills of exchange and discounting.
4. The buyer shall not be entitled to retention and set-off, unless the claim made in connection with the exercising of the retention and set-off is undisputed, legally established or arises from the same contractual relationship.
5. The non-payment of due invoices or other circumstances that are the result of a significant deterioration of the buyer's financial situation after the conclusion of contract qualifies for immediate repayment of all our claims that are based on the same legal relationship.

## **VI. Retention of title**

1. We are retaining ownership of the delivery item until the purchase price has been paid in full. We are retaining ownership if the delivered products until all claims in connection with the



current business relationship with the buyer have been fulfilled. In addition, the retention of title shall remain unchanged, if individual claims made by us have been incorporated in current invoices and the balance has been drawn and accepted. Purchase price claims shall not expire in spite of payment as long as our liability under a bill of exchange in connection with these claims - such as the liability in connection with a check-bill-of-exchange-procedure- continues to exist.

2. The buyer shall perform processing and compounding for us without creating a liability for us. In the case of processing or compounding with other products not owned by us, the buyer shall, at this time, transfer the product for the purpose of securing our claims to the joint ownership in the new item in proportion to the value of the conditional commodity with respect to other processed items on the condition that the buyer store the new item for us.
3. The buyer is entitled to dispose of the individual products in the ordinary course of business so long as he/she meets the obligations arising from the business relationship in due time.
4. The buyer shall at this time assign us the claims arising from the sale of the products, for which we are entitled to ownership rights, to the extent that our ownership in the sold products is secured.  
If the buyer mixes or compounds the delivered products against payment with a main item of a third party, the buyer shall assign us at this time his/her claims for remuneration against said third party in the amount of the invoice value of the delivered products.  
We shall accept these assignments.
5. Upon our request, the buyer shall provide all necessary information regarding the inventory of the products owned by us as well as the claims assigned to us. He must also inform his/her customers of said assignment.
6. The buyer is obliged to store the conditional commodities with due care and insure them against loss and damage at his/ her own expense. The buyer shall hereby assign us in advance the claims arising from the insurance contracts. We shall accept this assignment.
7. If the securities' value exceeds our claims by more than 20 percent, we shall release securities of our own choice upon the buyer's request.
8. The buyer's right to dispose of the products subject to our ownership as well as the collection of claims assigned to us shall expire as soon as the buyer stops payment and/or experiences financial collapse. Should any of these conditions occur, we are entitled to demand the immediate, temporary surrender of all products subject to our retention of title without setting an additional acceptance period or exercising our right to withdraw from the contract, while precluding the right of retention.
9. Should the retention of title be invalid under the law of the country in which the delivered products are, the buyer shall provide an equivalent security upon our request. If the buyer fails to fulfill our request, we may demand immediate payment of all outstanding invoices regardless of any agreed terms of payment.



## VII. Claims for defects

1. Immediately after the receipt of the products, the buyer shall check said products for any defects.
2. Defects are to be reported in writing immediately after the products' receipt, unless the defect is of a nature that is not apparent at the time of the examination. Should any such defect become apparent later, it shall be immediately reported as well. The defect is to be reported in writing and the type and extent of the defect shall be defined accurately.
3. The buyer is obliged to immediately notify us and give us the option to investigate without delay, should he/she want to assert a claim for defects in connection with the products delivered by us.
4. In case of rectification, we may either remedy the defect or make a replacement delivery.
5. In case of remedying the defect, we shall bear all expenses necessary for this purpose, provided that said expenses will not be increased, because the purchased product had to be delivered to a location other than the place of performance.
6. We are only liable for the replacement of subsequent damage from defects, if we are (partly) responsible for the defect due to intent or gross negligence.
7. If we are unwilling to remedy a defect and/or make a replacement delivery, or if we are unable to do so, or should the reasonable time limits set for this purpose be unreasonably delayed for reasons for which we are responsible, or if the remedying of a defect and/or replacement delivery fails for other reasons, the buyer has the option to rescind the contract or request a corresponding reduction of the purchase price.
8. All claims arising from a defect shall lapse 12 months after Purchaser receives the merchandise, if the supplied merchandise was not used in accordance with its usual instructions for building work and thus caused the defect.
9. In case of recourse by the contractor (section 445a BGB), it can be assumed that no defects existed at the time when the risk was transferred to the buyer, if the buyer examined the product prudently pursuant to section VII (2) (Sentence 1), but did not report any defects, unless this assumption is incompatible with the product type or the type of defect.
10. Should the buyer assert claims of recourse, he/she shall be treated as if he/she had put into practice all options permitted under contract law for his/her contracting partner (e.g. the refusal of subsequent performance due to the disproportionate nature or the limitation of the reimbursement of expenses to a reasonable amount).
11. We are entitled to decline the buyer's claims for recourse, with the exception of the claim for new delivery of the products, as long as we provide the buyer with compensation equivalent to the exclusion of his/her rights. We are only liable for the replacement of subsequent damage from defects, if we are (partly) responsible for the defect due to intent or gross negligence.



12. The buyer's claim for damages shall be excluded without the need for compensation, unless we acted deliberately or with gross negligence.

## **VIII. Liability**

1. Unless otherwise agreed, all further claims for compensation on the part of the buyer against us and our employees, members of staff, personnel, representatives and vicarious agents shall be excluded. This applies in particular to claims for damages, in cases where the delivered products were not damaged directly.
2. The liability for damages or futile efforts which have not been caused by a consultation or information that are to be remunerated separately shall be excluded, so long as we have not acted with intent or gross negligence and this violation of obligations does not represent a material defect pursuant to section 434 BGB. 3. Our technical information and advice (in particular Technical Data Sheets) do not constitute a guarantee of characteristics or warranty in the legal sense. A liability based on the technical information and advice - irrespective of the legal relationship or legal grounds - shall be excluded. Section 475 BGB remains unaffected.
3. The limitations and exclusions of liability contained in the aforementioned Number 1 as well as these Terms of Delivery and Payment shall not apply, if a liability on our part is mandatory, in cases of intent, gross negligence, fraudulent concealment or injury to life, body and health, or as a consequence of an accepted quality or service life guarantee, or in accordance with the regulations of the Product Liability Act. The same applies, if we are violating our obligations in a way that jeopardizes the achievement of the contractual purpose, although our liability is limited to the replacement of typical, foreseeable damage.

## **IX. Place of performance, jurisdiction and miscellaneous**

1. The place of performance for all liabilities arising from business relationships or from individual contracts is our respective shipping center and the place of performance for payments is our headquarters.
2. The place of jurisdiction is, at our discretion, our headquarters or, alternatively, the buyer's general place of jurisdiction. This also applies to litigations regarding the transactions with documents, bills of exchange or checks. The buyer is obliged to ask us to make use of our right to choose within a reasonable period of time.
3. The law of the Federal Republic of Germany shall be applicable exclusively to contractual relationships with our customers. The applicability of the United Nations Convention on Contracts for the International Sale of Goods [UN-Kaufrecht] shall be excluded.
4. The buyer's data shall only be stored and processed to an extent that is necessary for conducting contractual relationships in accordance with the appropriate statutory provisions.