

§ 1 Scope, form

(1) These General Terms and Conditions (hereinafter referred to as the "Terms") apply to all our business relationships with our customers (hereinafter referred to as "Buyers"). The terms and conditions apply only if the buyer is an entrepreneur (§ 14 BGB). Entrepreneurs acc. § 14 BGB is a natural or legal person or a legal partnership that acts in the execution of a legal transaction in the exercise of their commercial or independent professional activity.

(2) The GTC apply in particular to contracts for the sale and / or delivery of movable goods ("goods"), regardless of whether we manufacture the goods ourselves or purchase from suppliers (§§ 433, 651 BGB). Unless otherwise agreed, the GTC shall apply in the version valid at the time of the order of the purchaser or at least in the version communicated to him in text form as a framework agreement for similar future contracts, without us having to refer to them again in each individual case.

(3) Our terms and conditions apply exclusively. Divergent, conflicting or supplementary general terms and conditions of the buyer shall only become part of the contract if and insofar as we have expressly consented to their validity. This approval requirement applies in any case, for example, even if we carry out the delivery to him unconditionally with knowledge of the terms and conditions of the buyer.

(4) In individual cases, individual agreements with the buyer (including side agreements, additions and changes) have priority over these terms and conditions. Subject to proof to the contrary, a written contract or our written confirmation shall be decisive for the content of such agreements.

(5) Significant statements and notifications by the buyer regarding the contract (eg setting of deadlines, notice of defects, withdrawal or reduction) are in writing, i. in written or textual form (for example letter, e-mail, fax). Statutory formal requirements and further proof, especially in case of doubt about the legitimacy of the declarant, remain unaffected.

(6) References to the validity of statutory provisions are only of clarifying significance. Even without such clarification, therefore, the statutory provisions, unless they are amended or expressly excluded in these terms and conditions.

§ 2 Conclusion of contract

- (1) Our offers are non-binding. This also applies if we have provided the buyer with catalogs, technical documentation (eg drawings, plans, calculations, references to DIN standards), other product descriptions or documents - also in electronic form - in which we own property rights and copyrights Reserved.
- (2) The order of the goods by the buyer is considered a binding contract offer. Unless otherwise stated in the order, we are entitled to accept this contract offer within 2 calendar weeks of its receipt by us.
- (3) The acceptance may be declared either in writing (for example by order confirmation) or by delivery of the goods to the buyer.

§ 3 Contract language, contract text storage

- (1) The languages available for the conclusion of the contract are German and English.
- (2) The contract text will be stored on our systems

§ 4 Delivery time and delivery delay

- (1) The delivery period is agreed individually or specified by us upon acceptance of the order. If this is not the case, the delivery period is 14 weeks from the conclusion of the contract. We are entitled to deliver before the delivery deadline
- (2) We are entitled to partial deliveries, as far as this is reasonable for the buyer.
- (3) If we can not meet binding delivery deadlines for reasons for which we are not responsible (unavailability of the service), we will inform the buyer without delay and at the same time notify the expected new delivery deadline. If the service is not available within the new delivery period, we are entitled to withdraw from the contract in whole or in part; We will reimburse immediately any consideration already provided by the buyer. As a case of non-availability of the service in this sense, in particular the non-timely self-delivery by our supplier, if we have a congruent hedging transaction, neither we nor our suppliers are at fault or we are not obliged to procure in individual cases.
- (4) The occurrence of our default in delivery is determined by the statutory provisions. In any case, however, a reminder from the buyer is required. If we fall into delay of delivery, then the buyer can demand flat-rate replacement of its delay damage. The lump sum for each completed calendar week of default amounts to 0.5% of the net price (delivery value), but in total not more than 5% of the delivery value of the goods delivered late. We reserve the right to prove that the buyer did not incur any damage or only a significantly lower damage than the above flat rate.
- (5) The rights of the buyer acc. § 9 of these terms and conditions and our statutory rights, in particular in the case of an exclusion of the obligation to perform (for example, due to impossibility or unreasonableness of performance and / or subsequent performance), remain unaffected.

§ 5 Delivery, Transfer of Risk, Acceptance, Default of Acceptance

(1) The delivery is ex warehouse, where the place of performance for the delivery and any subsequent performance is. At the request and expense of the buyer, the goods will be shipped to another destination (consignment purchase). Unless otherwise agreed, we are entitled to determine the nature of the shipment (in particular transport company, shipping route, packaging).

(2) The risk of accidental loss and accidental deterioration of the goods shall pass to the buyer at the latest upon handover. However, in the case of consignment purchase, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass to the forwarder, the carrier or the person or institution otherwise responsible for carrying out the consignment. Insofar as an acceptance has been agreed, this shall be decisive for the transfer of risk. In this respect, the duty to inspect and to reprimand in § 377 HGB applies. If the buyer omits the advertisement regulated there, then the product is considered as approved, unless it concerns a defect, which was not recognizable with the investigation. This does not apply if we have fraudulently concealed a defect. Incidentally, the statutory provisions of the contract of employment law apply accordingly to an agreed acceptance. The transfer or acceptance is the same if the buyer is in default of acceptance.

(3) If the buyer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the buyer is responsible, we shall be entitled to demand compensation for the resulting damage including additional expenses (for example storage costs). For this we charge a price-based compensation of a maximum of 5% or a maximum of 10% for the case of final non-acceptance per calendar week starting with the delivery date or - in the absence of a delivery period - with the notification of readiness for shipment of the goods. Proof of higher damages and our statutory claims (in particular compensation for additional expenditure, reasonable compensation, termination) shall remain unaffected; the lump sum is however to be counted on further money claims. The buyer is entitled to prove that we have incurred no or only a significantly lower damage than the above flat rate.

(4) The buyer has the possibility of collection at the following business hours and at the direct pick-up point (Monday to Friday from 8:00 am to 3:00 pm except on public holidays.) The buyer has to inform us at least two working days before pickup.

§ 6 Prices and Terms of Payment

(1) Unless otherwise agreed in individual cases, our current prices shall apply at the time of conclusion of the contract, ex warehouse, plus the statutory value added tax applicable on the day of invoicing. (2) In the case of consignment purchase (§ 5 para. 1), the buyer shall bear the transport costs ex warehouse and the costs of any transport insurance desired by the buyer. Any duties, fees, taxes and other public charges shall be borne by the buyer. (3) The purchase price is due and payable immediately without deduction from the date of invoice and delivery or acceptance of the goods. However, we are entitled at any time, even in the context of an ongoing business relationship, to carry out a delivery in whole or in part only in advance. We declare a corresponding reservation at the latest with the order confirmation. (4) For orders from buyers resident or domiciled abroad or for reasonable grounds for a risk of payment default, we reserve the right to deliver only after receipt of the purchase price plus shipping costs (prepayment reservation). If we make use of the advance payment reservation, we will inform the buyer immediately. In this case, the delivery period starts with payment of the purchase price and shipping costs.

(5) Upon expiry of the above payment period, the buyer is in default. The purchase price is subject to interest during the default at the applicable statutory default interest rate. We reserve the right to assert further damages caused by delay. For merchants, our claim to the commercial maturity interest (§ 353 HGB) remains unaffected.

(5) The Buyer shall only be entitled to offsetting rights if his counterclaims have been legally established, are undisputed, linked to our principal claim in a synallagmatic manner or recognized by us. A right of retention is excluded, unless the counterclaim of the buyer comes from the same contractual relationship and is undisputed or legally established. To assert the right, a written notice to us is required. In case of deficiencies of the delivery, the counter-rights of the buyer remain in accordance with. § 8 para. 6 sentence 2 of these Terms untouched.

(6) If after conclusion of the contract recognizable (eg by application for opening insolvency proceedings) that our claim to the purchase price is jeopardized by lack of performance of the buyer, we are in accordance with the statutory provisions for refusal and - if necessary after deadline - to resign authorized by the contract (§ 321 BGB). In contracts for the production of unacceptable items (custom-made), we can declare the resignation immediately; the statutory provisions on the dispensability of the deadline remain unaffected.

§ 7 Retention of title

(1) We reserve ownership of the goods sold until full payment of all our current and future claims under the purchase contract and an ongoing business relationship (secured claims).

(2) The goods subject to retention of title may not be pledged to third parties or transferred as collateral before complete payment of the secured claims. The buyer must notify us immediately in writing if an application for the opening of insolvency proceedings is filed or if third party access (eg seizure) takes place on the goods belonging to us.

(3) In case of breach of contract by the purchaser, in particular in the event of non-payment of the due purchase price, we are entitled to withdraw from the contract in accordance with the statutory provisions and / or to demand the goods based on the retention of title. The request for publication does not at the same time include the explanation of the resignation; we are rather entitled to demand only the goods and to reserve the right of withdrawal. If the buyer does not pay the due purchase price, we may only assert these rights if we have unsuccessfully set a reasonable deadline for payment to the buyer or if such a deadline is dispensable according to the statutory provisions. (4) Der Käufer ist bis auf Widerruf gemäß unten (c) befugt, die unter Eigentumsvorbehalt stehenden Waren im ordnungsgemäßen Geschäftsgang weiter zu veräußern und/oder zu verarbeiten. In diesem Fall gelten ergänzend die nachfolgenden Bestimmungen.

(a) Retention of title extends to the full value of products resulting from the processing, mixing or combination of our goods, and we shall be deemed to be the manufacturer. If the ownership rights remain with processing, mixing or combination with goods of third parties, we acquire co-ownership in proportion of the invoice values of the processed, mixed or connected goods. In addition, the same applies to the resulting product as to the goods delivered under retention of title.

(b) The purchaser hereby assigns to us the claims arising from the resale of the goods or the product against third parties as a whole or in the amount of our possible co-ownership share in accordance with the preceding paragraph. We accept the assignment. The duties of the buyer mentioned in paragraph 2 also apply with regard to the assigned claims.

(c) For the collection of the claim the buyer remains authorized beside us. We undertake not to collect the claim as long as the buyer fulfills his payment obligations to us, there is no defect of his efficiency and we do not exercise the reservation of title by exercising a right according to Art. Paragraph 3 assert. But if this is the case, we can request that the buyer give us the assigned one claims and their debtor announces, makes all information required for collection, hands over the related documents and informs the debtors (third parties) of the assignment. In addition, in this case, we are entitled to revoke the purchaser's authority to resell and process the goods subject to retention of title. (d) If the realizable value of the securities exceeds our claims by more than 10%, we will, at the request of the buyer, release securities of our choice.

§ 8 claims of the buyer

(1) For the rights of the buyer in case of material and legal defects (including wrong and short delivery as well as improper installation or faulty assembly instructions), the statutory provisions, unless otherwise stated below. In all cases, the statutory special provisions remain unaffected on final delivery of the unprocessed goods to a consumer, even if they have further processed them (supplier recourse in accordance with §§ 478 ff BGB). Claims arising from supplier recourse are excluded if the defective goods are accepted by the buyer or another contractor, e.g. by incorporation into another product, was further processed.

(2) The basis of our liability for defects is above all the agreement made on the nature of the goods. As agreement on the condition of the goods, only our product descriptions that are the subject of the individual contract apply.

(3) Insofar as the condition has not been agreed upon, it shall be judged according to the legal regulation whether or not there is a defect (§ 434 (1) p. 2 and 3 BGB). For public statements of the manufacturer or other third parties (for example, advertising statements), we assume no liability.

(4) The claims of the buyer for defects presuppose that he has complied with his statutory inspection and complaint obligations (§§ 377, 381 HGB). If there is a defect in the delivery, the examination or at any later time, we must be notified immediately in writing. In any case, obvious defects must be reported in writing within five (5) working days from the date of delivery and any defects that can not be identified during the investigation within the same period from discovery. If the buyer fails to properly examine and / or report a defect, our liability for the defect that is not or is not notified in a timely or improper manner is excluded under statutory provisions.

(5) If the delivered item is defective, we can first choose whether we provide supplementary performance by rectification of the defect (rectification) or by delivery of a defect-free item (replacement). Our right to refuse supplementary performance under statutory conditions remains unaffected.

(6) We are entitled to make the subsequent performance owed dependent on the buyer paying the purchase price due. However, the buyer is entitled to retain part of the purchase price which is reasonable in relation to the defect.

(7) The buyer must give us the time and opportunity required for the owed supplementary performance, in particular to hand over the rejected goods for examination purposes. In case of replacement, the buyer has to return the defective item according to the legal regulations. The supplementary performance does not include the removal of the defective item or the reinstallation, if we were originally not obliged to install it.

(8) The expenses necessary for the purpose of testing and supplementary performance, in particular transport, travel, labor and material costs as well as any removal and installation costs shall be borne or reimbursed in accordance with the statutory provisions, if there is actually a defect. Otherwise, we may demand compensation from the buyer for the costs arising from the unjustified removal of the defect (in particular inspection and transport costs), unless the lack of defect was not apparent to the buyer.

(9) In urgent cases, e.g. If the operating safety is endangered or the damage is disproportionately damaged, the buyer has the right to remedy the defect himself and to demand compensation from us for any objectively required expenses. We are to be informed immediately of such a self-performance, if possible beforehand. The right to self-assertion does not exist if we were entitled to refuse a corresponding supplementary performance according to the statutory provisions.

(10) If the supplementary performance has failed or if a reasonable period to be set by the Buyer for the supplementary performance has expired unsuccessfully or is unnecessary in accordance with the statutory provisions, the Buyer may withdraw from the purchase contract or reduce the purchase price. In a minor defect, however, there is no right of withdrawal.

(11) Claims by the purchaser for damages or reimbursement of futile expenses exist even in the case of defects only in accordance with § 8 and are otherwise excluded.

§ 9 Other liability

(1) Unless otherwise stated in these GTC, including the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with statutory provisions.

(2) We shall be liable for damages - irrespective of the legal grounds - in the context of fault liability for intent and gross negligence. In the case of ordinary negligence, we are liable only subject to a milder standard of liability according to legal regulations (for example, for care in your own affairs) a) for damage resulting from injury to life, limb or health, b) for damages resulting from a significant breach of a material contractual obligation (obligation the fulfillment of which makes the proper execution of the contract possible in the first place and whose compliance the contracting party regularly relies on and can trust); however, in this case our liability is limited to compensation for foreseeable, typically occurring damage.

(3) The liability limitations resulting from para. 2 also apply to breaches of duty by or for the benefit of persons whose fault we are responsible for under statutory provisions. They do not apply if we fraudulently concealed a defect or assumed a guarantee for the quality of the goods and for claims of the buyer under the Product Liability Act. (4) Due to a breach of duty that does not exist in a defect, the buyer can only resign or terminate if we are responsible for the breach of duty. A free right of termination of the buyer (in particular according to §§ 651, 649 BGB) is excluded. Incidentally, the legal requirements and legal consequences apply.

§ 10 statute of limitations

(1) Notwithstanding Section 438 (1) No. 3 BGB (German Civil Code), the general limitation period for claims based on material defects and defects of title is one (1) year from the date of delivery. Insofar as an acceptance has been agreed, the statute of limitations begins with the acceptance.

(2) If the goods are, however, a construction or a thing that has been used for a building in accordance with its customary use and has caused its defectiveness (building material), the limitation period is 5 years from the date of delivery (§ 438 para. 1 no. 2 BGB). Further statutory special regulations regarding the statute of limitations remain unaffected (in particular, § 438 para. 1 no. 1, para. 3, §§ 444, 445b BGB).

(3) The above limitation periods of the purchase right also apply to contractual and non-contractual claims for damages of the buyer, based on a defect of the goods, unless the application of the regular statutory limitation (§§ 195, 199 BGB) would in individual cases to a shorter limitation period cause damage claims of the buyer acc. However, § 9 (2) sentence 1 and sentence 2 (a) as well as according to the Product Liability Act expire only after the statutory limitation periods.

§ 11 Privacy

(1) We collect and store the data necessary for the transaction of the buyer. When processing the personal data of the buyer, we observe the legal provisions. Further details can be found in the privacy policy available in our online offer at (<https://www.nuerka.de/datenschutzerklärung>).

(2) For the rest, the statutory data protection provisions apply, in particular the General Data Protection Regulation (DS-GVO), the Federal Data Protection Act (BDSG) and the Telemedia Act (TMG).

§ 12 Choice of law and jurisdiction

1) For these terms and conditions and the contractual relationship between us and the buyer, the law of the Federal Republic of Germany applies to the exclusion of international uniform law, in particular the UN Sales Convention.

(2) If the buyer is a merchant i.S.d. Commercial Code, legal entity under public law or a special fund under public law, is exclusive - also the international place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship - our registered office in Nuremberg. The same applies if the buyer is an entrepreneur i.S.v. § 14 BGB is. However, in all cases we are also entitled to bring action at the place of performance of the delivery obligation in accordance with these GTC or a priority individual agreement or at the general place of jurisdiction of the buyer. Priority laws, especially exclusive jurisdictions, remain unaffected.

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