

General terms and conditions (GTC)

Version 01/2019

Preamble

The basis of a permanent and remaining business relationship is not the general terms and conditions, but a faithful cooperation and mutual reliance. However, we are obliged to clarify certain paragraphs here-after different or in completion to the legal stipulations with our partners.

§ 1 Scope of application

1. These terms and conditions exclusively apply to companies, legal entities under public law or special funds under public law within the meaning of Section 310 Paragraph 1 BGB. Conditions of the purchaser/customer that contradict or deviate from our terms and conditions will only be recognized if we expressly agree to their validity in writing.
2. These terms and conditions also apply for all future businesses with the purchaser/customer, in so far as this relates to legal trades of a similar kind.

§ 2 Quotation and contract conclusion

If an order is to be considered as a quotation as an offer in accordance with Section 145 BGB, we can accept it within two weeks.

§ 3 Shared documents

For all shared documents to the purchaser/customer within the scope of order placement, such as e.g. proposals, calculations, drawings, sketches etc. we reserve the right of property or copyrights. These documents are confidential and may not be made available to Third Parties unless we expressly agree in writing to the purchaser/customer. Should we not return the quotation of the purchaser/customer within a delay of § 2, the documents must be returned to us immediately.

§ 4 Prices and Payment

1. Insofar nothing was agreed upon in written, our prices are valid ex works, excluding packing and net plus the VAT in the valid amount required. The costs of the packing will be separately invoiced.
2. The payment of the purchase price must be carried out exclusively onto the account IBAN: DE35 7205 1210 0006 3351 86 BIC: BYLADEM1AIC from Furtak & Salvenmoser GmbH. All prices are net prices incl. VAT if applicable and without deduction unless it is granted in a written cash discount.
3. Insofar as nothing else was agreed, the purchase price can be paid within 14 days after the invoice was issued. The delay interest amounting to 8% above the basic interest is calculated per year. The assertion of a higher damage caused by delay remains conserved.
4. Insofar as no fixed price agreement as made, we reserve the right to make reasonable price changes due to changes in wage, material and sales costs for deliveries made 3 months or later after the conclusion of the contract.

5. § 5 Right of retention

To make use of his right of retention, the purchaser is only authorized insofar as his counterclaim is based on the same contract relation.

§ 6 Time of supply

1. The start of the delivery time specified by us presupposes the timely and proper fulfillment of the purchaser/customer obligations. The exception of the unfulfilled contract remains reserved.
2. Should the purchaser be in delay with the acceptance or should it be his fault regarding certain obligations to cooperate, we are authorized to claim indemnification for the damages caused, including possible additional expenditures. We reserve the right to make further claims. If the above conditions are met, the risk of accidental loss or accidental deterioration of the purchased item is transferred to the customer at the point in time at which the customer is in default of acceptance or payment.
3. In the event of a delay in delivery caused by us not intentionally or through gross negligence, we are liable for each completed week of delay within the scope of lump sum compensation for delay of 0.5% of the delivery value, but not more than 5% of the delivery value.
4. Further legal claims and rights of the purchaser/customer remain untouched due to a delay of delivery.

§ 7 Transfer of risk during shipping

If the goods are sent to the purchaser at the request of the purchaser, the risk of accidental loss or accidental deterioration of the goods is transferred to the purchaser when they are sent to the purchaser, at the latest when they leave the factory / warehouse. This applies regardless of whether the goods are dispatched from the place of performance or who bears the freight costs.

§ 8 Retention of Ownership

1. We reserve title to the delivered item until all claims from the delivery contract have been paid in full. This also applies to all future deliveries, even if we do not always expressly refer to them. We are entitled to take back the purchased item if the customer behaves contrary to the contract.
2. If ownership has not yet passed to him, the customer is obliged to treat the purchased item with care. In particular, he is obliged to insure them adequately at replacement value at his own expense against e. g. theft, fire and water damage. If maintenance and inspection work must be carried out, the customer must carry this out in good time at his own expense. If ownership has not yet passed, the customer must inform us immediately in text form if the delivered item is seized or exposed to other interventions by third parties. If the third party is unable to reimburse us for the judicial and extrajudicial costs of a lawsuit in accordance with § 771 ZPO, the customer is liable for the loss we incur.
3. The customer is entitled to resell the reserved goods in the normal course of business. The purchaser hereby assigns to us the claims against the customer from the resale of the reserved goods in the amount of the final invoice amount agreed with us (including VAT). This assignment applies regardless of whether the purchased item has been resold without or after processing. The customer remains authorized to collect the claim even after the assignment. Our authorization to collect the claim ourselves remains unaffected. However, we will not collect the claim as long as the customer fulfills his payment obligations from the proceeds received, is not in default of payment and, in particular, no application has been made to open insolvency proceedings or payments have been suspended.
4. The treatment and processing or transformation of the purchased item by the customer is always carried out in our name and on our behalf. In this case, the purchaser's entitlement to the purchased item continues with the remodeled item. If the purchased item is processed with other items that do not belong to us, we acquire joint ownership of the new item in the ratio of the objective value of our purchased item to the other processed items at the time of processing. The same applies in the event of mixing. If the mixing takes place in such a way that the purchaser's item is to be regarded as the main item, it is agreed that the purchaser shall transfer proportional co-ownership to us and keep the resulting sole or co-ownership for us. To secure our claims against the customer, the customer also assigns to us such claims that arise against a third party through the connection of the reserved goods with a property; we already accept this assignment.
5. We undertake to release the securities to which we are entitled at the request of the customer, insofar as their value exceeds the claims to be secured by more than 20%.

§ 9 Warranty and notification of defects as well as recourse / manufacturer recourse

1. The warranty rights of the purchaser assume that he has met his obligations of investigation and complaint orderly as per § 377 HGB.
2. Claims for defect elapse after 12 months when the goods were supplied by our purchaser. The requirements for compensation for damages for purpose and rough visualization as well as injuries of live, body and health, which are based on an intentional or negligent breach of duty of the user, the legal statute of limitation will apply.
3. Insofar as the law acc. to § 438 par. n. 2 BGB (buildings and material for buildings), § 445 b BGB (claim to recourse to) and § 634 a paragraph 1 BGB (construction deficiencies) longer terms, which have to be prescribed, these periods will apply. Before returning the goods, you must contact us for agreement purpose.
4. Should the supplied goods in spite of the care taken show deficiencies, which did already exist at the moment of transfer of risk, we will supply the goods subject to a notification of defects after our selection or supply spare goods. There is always an opportunity to fulfill within an adequate period of time. The claims for recourse remain unchanged by the regulation above without any limitations.
5. Should the supplementary performance fail, the buyer can - without prejudice to possible claims for compensation - refrain from the contract or reduce remuneration.
6. Deficiency claims do not only exist in the case of insignificant deviations from an agreed condition, in the case of insignificant negative influence of the usage, the natural use or wear-out such as damages, which come up after transfer of danger due to defective or negligent treatment, excessive demands, inappropriate operation means, defective site work, inappropriate building sites or due to particular external influences, which are not assumed as per the contract. Should the buyer or a Third Party carry out work of repair or modification, this work and its consequences coming along are not submitted to claims for defects.

7. Demands of the purchaser due to the purpose of fulfillment require expenses, particularly transportation, path, work and material costs, which are excluded, insofar as the expenses should be augmented, as the goods supplied by us were subsequently transported to another place than the location of the buyer, unless the transportation corresponds to its intended use.
8. Recourse claims of the purchaser only exist in so far, as the purchaser has not made any agreements with his buyer exceeding the legally binding claims for defects. Paragraph 6 applies to the scope of the recourse entitlement of the purchaser against the supplier.

§ 10 Miscellaneous

1. This contract and the overall legal relationships of the parties are submitted to the rights of the Federal Republic of Germany excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
2. The place of performance and the exclusive place of jurisdiction and for all disputes of this contract is our headquarter, insofar as the order acknowledgment does not show other information. The language is German.
3. All agreements made between the parties for contract execution are fixed in written in this contract.