

Conditions of Sale for Export Deliveries

I. Term of Validity

1. All our deliveries and services (hereinafter short: deliveries), also prospective, take place solely under our following terms and conditions of delivery and payment. Additional and differing terms of the purchaser are only valid, if we have specifically agreed to those with the purchaser. Such an agreement is to be put down in writing.
2. Our terms are only valid for those, who are carrying out their commercial or selfemployed activity upon conclusion of a legal transaction with us (entrepreneur within the meaning of §14 German Civil Code)

II. Conclusion of Contract, Conditions of our Products

1. Our quotations are without obligation and on open offer. A contract with us is only effective upon receipt of our order confirmation in writing or we start with the deliveries.
2. Our quotation, our order confirmation in writing as well as these terms are decisive for the contents of contract. Other agreements for implementation of the contract, especially subsequent changes, additions or subagreements are only contents of contract if we have specifically agreed to these with the purchaser. Such agreements are to be put down in writing. We reserve ourselves the right to deviate from illustrations and descriptions, to correct printing errors and mistakes as well as to make technical changes and improvements on the products.
3. Only those features and characteristics stated in our quotation or our order confirmation are part of the agreed condition of our products. Other or additional features and characteristics are only part of the agreed condition if we specifically agree those as such with the purchaser. Such agreements on condition are to be put down in writing.
4. Declarations on condition and durability of the product, with which we grant additional rights to the purchaser irrespectively of legal claims in a case of guarantee, only represent a guarantee on condition and durability within the meaning of § 443 German Civil Code, if we specifically described it as a guarantee. The rights of the purchaser from the guarantee result only from the guarantee declaration. The guarantee declaration is to be put down in writing.

III. Delivery, Passing of Risk

1. Our deliveries are ex works Bremen, Zum Falsch 36, Germany (INCOTERMS 2010).
2. Part shipments are permissible, as long as it can reasonably be expected of the purchaser.
3. The risk of accidental sinking or accidental damage of the product is passing to the purchaser at that moment in which we hand over the product to the shipping agent, the common carrier or a person or institution destined for carrying out the shipment, however, at the latest with the leaving of our company or warehouse. If the product is ready for shipment and the shipment is delayed for reasons which we have not to answer for, the risk is passing with the receipt of the shipping advice. This also applies if the delivery was agreed to be 'freight-free'.
4. Damage on goods in transit must be reported immediately to the postal services, railway services or the shipping agent.

IV. Terms of Delivery, Difficulties in Delivery, Rights of Rescission

1. Our terms of delivery are valid ex warehouse Bremen, Germany.
2. In case of force majeure (unforeseen circumstances and incidents incurred through no fault of our own, which could not have been avoided by exercising the ordinary diligence of a businessman, e.g. strikes, war, fire, difficulties in shipment, material deficiencies, measures taken by authorities), our obligation to deliver is suspended for the time of their duration and extend of their effect, even if we are already in default of delivery.
3. Provided that we have finalised a congruent covering transaction with our sub-suppliers in time, the date of delivery stated by us is subject to a punctual and correct delivery by our sub-suppliers.
4. In cases of items IV. 2 and 3, we are entitled to recede from the contract, if we have informed the purchaser immediately about the occurrence of the force majeure in cases of item IV. 2 or about the delayed or incorrect supply in cases of item IV. 3 and refund the purchaser any return services made. We are particularly obliged to give information to the purchaser and refund him immediately in accordance with sentence 1.
5. If we delay the delivery due to justifiable reasons, we are only liable according to the German law, subject to limitations of liability of the following item VIII.

V. Prices and Payments

1. Our prices are net prices (plus VAT) ex works Bremen, Zum Falsch 36, Germany

(INCOTERMS 2010) including packing, unless we have specifically agreed otherwise with the purchaser.

2. Any supply of products to a German delivery address will incur VAT at the current rate even if the products are for subsequent export. For shipments to another EC member state, VAT will not be charged, providing that the purchaser supplies a valid EC VAT number for his business. The supply of products to a non-EC member state will be carried out without charging VAT.
3. The prices shown in our catalogues or price lists as valid on conclusion of the contract shall apply. We reserve the right to change our catalogue prices if we inform the purchaser about the price change in due time before conclusion of the contract. Furthermore, we reserve the right to change our prices accordingly, if our production costs and delivery costs increase due to no fault of our own (e.g. increases in tariff, increases in price of materials, tax increases, etc.) after conclusion of the contract and we inform the purchaser about the price increase in due time before delivery.
4. The minimum order value is 200.00 € net.
5. Deliveries are made ex works Bremen, Zum Falsch 36, Germany (INCOTERMS 2010). The purchaser pays carriage charges for the return of packing materials which we take back.
6. Payments have to be effected in advance, via bank transfer in Euro to our bank account no. 1/050 558 at Commerzbank AG (IBAN: DE27 2904 0090 0105 0558 00; SWIFT: COBADEFF290), Bremen, Germany. All bank charges and expenses are to be paid by the purchaser.
7. We do not accept drafts and/or cheques.
8. If it is noticeable that our requests for payment are endangered due to non-payments of the purchaser, all outstanding debts from the whole business relationship with the purchaser will become due immediately, as far as our deliveries have already been carried out. This also applies to cheques already accepted by us. An endangering exists if information from a bank or a private credit agency suggests the credit-worthiness of the purchaser. The same applies if the purchaser defaults on payments of at least 2 bills. In this case, we are also entitled to grant a reasonable extension in which the purchaser chooses to either return service or give security without delay to ensure outstanding deliveries. After unsuccessful passing of the extension, we can recede from the contract. If payments are suspended or the purchaser is heavily indebted, granting an extension is unnecessary. For future deliveries which have not occurred yet, we can demand cash on delivery or cash before delivery.
9. If the purchaser fails to pay on a due date, we are entitled to interest for default according to the German law.
10. The purchaser can only offset with uncontested and due claims or with stated valid claims. This also applies to the right of retention.
11. To surrender a claim made against us which is not an outstanding debt, our agreement is required to be valid.

VI. Returns

1. We do not take back faultless products, unless we have specifically agreed to the returns beforehand. The purchaser receives a credit note for the returned products, less a cost sharing of 20% of the product's net value. The purchaser cannot demand a refund of the purchase price. The purchaser has to pay the costs for returning the product.
2. Products that are not included in our catalogues as well as products that have been modified or manufactured according to a customer's specification are excluded from the option to return as stated under above item 1. This also applies to rechargeable batteries, batteries, lamp inserts, books, videos, CDs, data carriers and software.

VII. Rights and Obligations of the Purchaser in Case of Defects

1. The purchaser has to examine the product immediately on delivery. Recognisable defects must be claimed immediately after delivery, but within 10 working days at the latest. Concealed defects must be claimed immediately after discovery. Generally, both the recognisable defect and the concealed defect have to be declared in writing unless the time limit for the notification cannot be kept by a written notification. If the purchaser fails to examine the product and to notify the defect immediately, the purchaser cannot refer to the defect.
2. In case of justified claims received in due time, the purchaser is entitled to the rights at defects, but under the following terms:
 - a) If the defect is in a condition or durability of our product, for which we have granted additional rights to the purchaser in a separate written guarantee agreement, according to item II. 4., the purchaser is entitled to the rights of the separate guarantee agreement, irrespectively of his legal rights, in case of a guarantee claim.
 - b) If the defect is not part of any guarantee within the meaning of items VII 2. a) and if the defect is only a slight deviation from an agreed condition within the meaning of item II. 3., the purchaser has only the right to an appropriate reduction.

If no condition has been agreed, the same applies at only a slight deviation of that condition which is common at products of the same kind and which the purchaser can expect according to the kind of product, if the product is suitable for the application assumed in the contract or otherwise customary.

c) If there is a considerable deviation in the condition within the meaning of item VII. 2. b), the claims of the purchaser in case of a defect are restricted to the right of subsequent fulfilment in the first instance. It is our option to choose between repair and subsequent delivery. If the subsequent fulfilment fails, if we refuse it or it cannot reasonably be expected of the purchaser, the purchaser is entitled to his usual legal claims in case of a defect.

d) If our expenses increase in case of subsequent fulfilment, because the product is at another place as the location of the purchaser or another place as the directed application, the purchaser has to refund us for the increased expenses.

e) In case the faulty item has been installed into another device or attached to one according to its intended use, we are only obliged within the scope of supplementary performance to refund the customer for any costs arising from removing the faulty item and installing or mounting the repaired or non-defective item delivered to a maximum amount of 50% of the gross sales price if these measures were necessary. Thus, § 439 paragraph 3 does not apply.

f) Claims for damages by the purchaser due to a defect are excluded, unless the defect is caused by wilful or grossly negligent behaviour by our legal representatives, debtor's agents or us, it was fraudulently concealed or is covered by a guarantee accepted by us within the meaning of item II. 4, which entitles the purchaser in case of a guarantee to claim for damages as set out in the separate guarantee agreement.

g) If only a few of the products sold or individual parts of a sold product are defect, the purchaser's right to rescind is restricted to the defect product or the defect part. This does not apply if the defect product or the defect part cannot be separated from the remaining products or parts without damage or loss of function or it cannot reasonably be expected of the purchaser. The purchaser is obliged to present the reasons why it cannot reasonably be expected of him.

VIII. Limitations of Liability, Exclusion of Rescission of Contract

1. We are in any case liable for culpable damage to life, body and health as well as according to the German law for product liability.

2. At the violation of an essential contractual obligation (so called cardinal obligations), we are basically liable unrestrictedly for any damage at intent or gross negligence. At ordinary negligence it is restricted to the replacement of the foreseeable damage typical for this contract.

3. In all other cases, claims for damages against us are excluded, no matter on which legal ground, as long as there is no wilful or grossly negligent breach of duty by our legal representatives, our debtor's agents or us. In case of gross negligence, our liability is limited to the foreseeable damage typical for this contract.

4. Rights of the purchaser to rescind a contract due to existing breach of duty unjustifiable by us not consisting of a defect of the product are excluded.

5. As far as our liability is excluded or restricted according to the sections above, this also applies to the liability of our debtor's agents and performance assistants.

6. As far as we have granted a guarantee within the meaning of item II. 4, the legal claims as well as the claims of the purchaser from the guarantee agreement are unaffected by the above limitations of liability.

IX. Conditional Sale

1. We retain title to products (ownership) until all outstanding debts are settled (including all outstanding debts from current accounts), which we are entitled to from the purchaser on every legal ground now and in future.

2. The processing or remodelling of our products by the purchaser is always done for us. If our products are remodelled, inseparably mixed or connected with items not belonging to us, we obtain a joint ownership on the new item in the relation of the value of our products for the value of the other processed item at the time of processing, remodelling, mixing or connecting. Is the other thing to be recognised as the main item, it will be agreed now, that the purchaser transfers joint ownership to us proportionately. We accept the transfer of joint ownership. The purchaser keeps our (jointly owned) property without charge. The same applies to the developing product from the processing as for our products delivered on conditional sale.

3. The purchaser is entitled to process or sell the products on conditional sale in regular business dealings, as long as his payments to us are not at default. Pledges or security transfers are unlawful. Claims from the resale of the product (including all outstanding debts from the current account), insurance claims as well as claims against third parties due to damage, vandalism, theft or loss of the product are transferred to us now as security. We accept this transfer. If we are only entitled to a joint ownership on the reserved products, the advance transfer is limited to the part of the claim which corresponds to the joint ownership (on the basis of the amount on the invoice). At the resale of the product, the purchaser has to reserve the ownership against the customers until full payment of the purchase price. The purchaser is only prohibited from reselling the product to third parties, if the outstanding purchase price is subject to a transfer prohibition.

4. We authorise the purchaser until cancelled, to collect himself the outstanding debts which are transferred to us. This authority to collect can be cancelled, if the purchaser does not carry out regular payments to us or the outstanding claims seem to be endangered by non-payments of the purchaser. On demand, the purchaser has to inform us of the debtors. If the purchaser transfers his outstanding claims within the scope of a real factoring, he has to notify us of this. The claim for payment against the factor acquired through the transfer is transferred to us at the value of the claim to be secured.

5. With access of third parties to the reserved product, the purchaser points out to our ownership and informs us immediately. Our costs of intervention are paid by the purchaser, whom we transfer the claim for refund of costs against the third party without delay against payment of the costs of intervention.

6. The purchaser is entitled to demand the surrender of claims inasmuch as the value of our securities exceeds more than 10% of the claims to be secured. We choose the claims to be surrendered.

7. If the law of the country, which the product is delivered to or the product is located in, does not allow a conditional sale in accordance with the regulations above, but the law entitles the seller to reserve and grant similar real rights on the item delivered for securing his claims, such rights count for us as reserved and granted to us by the customer upon entering the contract. The customer is obliged to assist all measures which we want to take for securing our right of ownership or instead of another right on the reserved product. At exports we can also demand that the customer submits a bank guarantee for securing all outstanding claims.

X. Terms of Limitations

1. Claims of the purchaser due to a defect of the product become invalid by prescription in one year. Claims of the purchaser due to a defect of the product, on which the return of the product can be demanded in a real right of a third party or exists in another right which can be registered on a property become invalid by prescription in three years.

2. Other contractual claims of the purchaser due to breach of duty become invalid by prescription in one year.

3. Claims of the purchaser from a guarantee on condition or durability within the meaning of item II. 4 become invalid by prescription in one year; the beginning of the prescription depends on the legal situation. If one guarantee agreement contains a longer period of guarantee than 1 year, the term of limitation starts with discovering the defect, as long as the defect was discovered within the period of guarantee.

4. Contrary to the items X. 1-3, the legal terms of limitation are valid for the following claims of the purchaser:

a) Claims for damages due to a defect from a culpable damage to life, the body, the health or a violation of a considerable contractual obligation as well as due to any other damage which are based on wilful or grossly negligent breach of duty by our legal representatives, debtor's agents or us.

b) Claims for refund of expenditure in accordance with §478 para. 2 German Civil Code as well as

c) Claims due to fraudulent concealment of a defect.

5. The legal regulations for prescriptions are valid for the rights of the purchaser to rescind a contract due to breach of duty justifiable by us which is not a defect.

6. Our claims against the purchaser become invalid by prescription according to the German law.

XI. Applicable Law, Place of Settlement, Jurisdiction

1. The contract falls strictly under the German law.

2. Place of settlement, also for payments of the purchaser is Bremen, Germany.

3. If the purchaser is a businessman, the jurisdiction for both parties is Bremen, Germany, for any immediate or mediate disputes arising.

4. Jurisdiction for all disputes from the contractual relationship is Bremen, Germany, also for border crossing deliveries (Art. 17 of the European agreement about the jurisdiction and the execution of judgements in civil matters and business matters from 27. September 1968). However, we also have the right to sue the purchaser at this common place of jurisdiction.

The data resulting from the business transactions are saved as business files.