

General Terms and Conditions of Sale

§ 1 General, Scope of Application

- Our terms and conditions of sale apply exclusively. We do not accept any terms and conditions of the customer that contradict or deviate from our Terms and conditions of sale, unless we have expressly agreed to their validity in writing. The regulations on distance selling in business dealings with consumers do not apply to the business relationship with entrepreneurs, even not correspondingly. Our conditions of sale also apply if, although we are aware of opposing conditions or a customer's differing conditions, we make the delivery to the customer without reservation.
- All agreements made between us and the customer for the purpose of executing this contract are set out in writing in this contract. Any amendments and additions to the contract must be made in writing in order to be legally valid. Other agreements, in particular guarantees, amendments and ancillary agreements, are only effective if we expressly agree to them in writing.
- Our terms of sale only apply to entrepreneurs within the range of § 14 BGB, legal entities under public law or a special fund under public law.
- Our Terms and Conditions of Purchase also apply to all future transactions with the customer. The terms of delivery shall be accepted by the Customer upon placing the order, but no later than upon receipt of the first delivery, and shall apply for the entire duration of the business relationship.
- We are entitled to assign the claims arising from our business relationship.
- If one of the aforesaid conditions should be or become invalid, this will not affect the validity of the remaining conditions.

§ 2 Offer, Offer Documents

- Offers qualified as an order in accordance with § 145 of the German Civil Code (BGB), can be accepted by us within a period of two weeks. The contract is only concluded with our written order confirmation; if no order confirmation is sent, the contract is concluded by delivery.
- Our offers are subject to change without notice and subject to self-delivery, so far as we supply components manufactured by third parties. Delivery times and delivery dates as well as quantitative, dimensional, weight and quality specifications are only approximately agreed. Commercially customary deviations are permissible.
- We reserve the right to the ownership of and the copyright to figures, drawings, calculations and other documents. This also applies to such written documents that are marked as „confidential“. Any transfer to third parties requires our express prior written consent.

§ 3 Prices and Payment Terms

- Unless otherwise stated in the order confirmation, our prices are valid from the delivery warehouse selected by us without installation, training or other ancillary services. The prices include the standard commercial packaging of the delivered goods, but do not include the costs and ancillary costs of shipping such as postage, freight, delivery fees, etc.; these costs are invoiced separately.
- Our prices exclude VAT, which shall be charged at the statutory rate as of the day on which the invoice is issued, and which shall be listed as a separate line on the invoice.
- If not arranged differently in our confirmation of order, net price (without deductions) is due within 30 days from the date of billing. The statutory regulations on default on payment apply.
- The customer is only entitled to set-offs should their counterclaims be legally effective, uncontested or recognised by us. In addition, Buyer may only exercise a withholding right if his counterclaim is based on the same contract.
- The customer may not assign claims from the business relationship to third parties. § 354a HGB remains unaffected.
- The minimum order value per order is EUR 1,000.
- Checks or bills of exchange are only accepted by express prior written agreement and only on account of performance. All costs associated with them shall be borne by the customer.
- Upon delay in payment or in the event of justified concern about a significant deterioration in the Customer's financial situation or insolvency, we may suspend delivery or, at our discretion, demand immediate advance payment of all claims – including those not yet due – including deferred or corresponding securities. If Customers fail to comply with the request for advance payment or security within a reasonable period to be set by us, we shall be entitled to withdraw from all contracts and claim damages.

§ 4 Delivery Time

- Delivery periods begin after receipt of all documents required for the execution of the order, the down payment and the timely provision of materials, insofar as these have been agreed. The delivery deadline is considered to have been met when the ready-for-dispatch notification is given, if the dispatch is delayed or is not possible through no fault of TSS. We reserve the right to claim the defence of non performance of contract.
- If an agreed delivery period is not met as a result of our own fault, the customer is in any case obliged to set a reasonable grace period.
- Partial deliveries by us are permissible, as far as reasonable.
- Our commitment to deliver is subject to our correct and timely self-delivery unless we are responsible for the deficient or late self-delivery. If subcontractors do not deliver to us at all or only partially, despite the fact that we have concluded subcontractor contracts with due diligence, through no fault of our own, we shall be entitled to withdraw from the contract with the Customer. Our possible liability is determined in accordance with § 7.
- If the customer is in default of acceptance or is otherwise in breach of his obligation to contribute, we are entitled to claim damages for any loss that might thus have been incurred, including additional expenditure. Any other claims will remain unaffected.
- If the requirements of § 4 para. (5) are met, the risk of accidental loss or accidental deterioration of the purchased item shall pass to the customer at the time when the customer is in default of acceptance or debtor.
- Events beyond our control authorise us to extend the delivery period by a length of time corresponding to the duration of the event and a reasonable initiation period, or in respect of the portion of the contract not yet fulfilled to withdraw from the contract either in whole or in part. Events beyond our control include strikes, lockouts or other unforeseen circumstances such as interruptions in operations, including rejects and re-working, which make punctual delivery impossible in spite of our reasonable efforts. Force majeure is equivalent to a strike, lockout or unforeseeable, unavoidable circumstances, e.g. unforeseeable operational disruptions or transport delays or interruptions, unforeseeable shortage of raw materials or energy, which make it impossible for us to deliver on time despite reasonable efforts. This also applies when the above-mentioned hindrances occur during a period of default or in the operations of one of our contractors or suppliers. If we fail to provide such declaration, the contractual partner may rescind the contract. If we do not declare ourselves, the customer may withdraw from the unfulfilled part of the contract.
- We will notify the customer immediately if a case of force majeure, as set out in paragraph 7, occurs. We have to keep impairments of the customer as low as possible.

§ 5 Passage of Risk, Packaging costs

- Unless otherwise stated in the order confirmation, delivery from the delivery warehouse is agreed.
- Unless otherwise agreed, we select packaging, shipping method and shipping method. We are entitled to commission one of the consignors usually selected by us for our mail order business on the usual terms agreed with them.
- The risk shall also pass to the customer upon leaving the delivery plant in the case of carriage paid delivery. In the event of delays in dispatch for which the customer is responsible, the risk shall already pass upon notification of readiness for dispatch.
- In the event of default of acceptance by the customer, we are entitled to store the goods at the customer's expense. If we store the goods ourselves, we are entitled to storage costs in the amount of 0.5% of the invoice amount of the stored goods per commenced calendar week. The assertion of higher storage costs against proof remains reserved.
- Special agreements shall apply for the return of packaging.

§ 6 Claims for Defects

- The customer's warranty claims require that he has fulfilled his inspection and complaint obligations pursuant to § 377 HGB (German Commercial Code).
- For defective goods, we shall be entitled to choose between correction of faults or taking back the defective goods against delivery of faultless goods. In the event of correction, we can request, at our discretion, that the defective product be sent to us for reworking or exchange with subsequent return – at our expense – or that the Customer keeps the defective product ready and the reworking or exchange is carried out by us there. We shall bear the expenses (in particular transport, travel, labour and material costs) required for the purpose of correction. This does not apply to increased expenses arising from the transfer of goods to a place other than the place of residence or commercial establishment of the Customer after delivery, unless the movement corresponded to the intended use of the goods.

- In the event the subsequent delivery should be defective, too, the buyer may demand reduction or rescission according to legal provisions. Customers cannot assert any rights to subsequent delivery, repair, withdrawal and/or damages should the value or suitability of the delivered goods be only insignificantly reduced.
- Any claims of the buyer will become time-barred after 12 months upon delivery of the goods.
- The limitation period in the case of a delivery recourse according to §§ 478, 479 BGB remains unaffected; it is five years from delivery of the purchased item. Recourse claims of the customer in the case of the sale of consumer goods (§ 478 BGB), which go beyond the legal claims of the customers due to an agreement between the customer and his customers, are excluded.

§ 7 General Limitations of Liability

- We shall only be liable for damages or reimbursement of expenses if we, our executives or vicarious agents are guilty of intent, gross negligence, or injury to life, limb or health.
- Liability irrespective of fault in accordance with the Product Liability Act as well as liability for the fulfilment of a quality guarantee shall remain unaffected.
- Liability for culpable breach of essential contractual obligations shall also remain unaffected; in this respect – except in the cases of § 7 para. (1) – liability shall be limited to foreseeable damage typical of the contract. Essential contractual obligations are understood to mean the basic, elementary obligations arising from the contractual relationship, which are particularly important for the proper execution or fulfilment of the contract or have a significant influence on the relationship of trust between the parties, in particular the fulfilment of delivery obligations and important information obligations.
- If the Purchaser is entitled to a claim for damages instead of the performance, our liability is, also within the framework of paragraph (3), limited to the compensation for the foreseeable, typically occurring damage.
- A change in the burden of proof to the detriment of the customer is not connected with the above regulations.
- Any further liability for damages than foreseen above is excluded – irrespective of the legal nature of the asserted claim. This is in particular valid for compensation claims due to faults on the occasion of the conclusion of the Contract, due to other violations of duty, or due to tortious claims for compensation for damage in accordance with § 823 of the German Civil Code (BGB).
- The limitation in accordance with sub-section (1) does also apply if in lieu of a claim for damages the customer demands the reimbursement of useless expenditures.
- As far as liability for damages towards us is excluded or limited, this shall also apply with regard to personal liability for damages of our employees, workers, staff, employee representatives and vicarious agents.

§ 8 Retention of Title

- We reserve the ownership of the object of sale until all payments arising from the delivery contract have come in. In the event of breach of contract on the part of the Customer, in particular default in payment, as well as imminent cessation of payments, insolvency or negative information that indicates a significant deterioration in the financial situation of the customer, we shall be entitled to take back the delivered goods. Any repossession will also result in our withdrawal from the contract. We are entitled to the resale of the goods taken back; the proceeds will be offset with the amount to be paid by the customer after having deducted the cost of resale. The provisions of the German Insolvency Code remain unaffected. The customer is obliged to handle the object of purchase with care and is obliged in particular to insure it at its replacement value at his own expense against damage by fire, water and theft.
- In the event of seizures or other interventions by third parties, the customer must notify us immediately in writing by sending us the documents available to him (such as seizure protocols, etc.), so that we can file a third-party objection claim in accordance with § 771 ZPO and point out our security rights to third parties. If the third party is unable to refund court and out-of-court costs for an action as per § 771 ZPO, the customer is liable for the resulting loss.
- The customer is entitled to resell the purchased goods in the ordinary course of business; however, already now he transfers all claims to the amount of the invoice final amount (including VAT) of our claim to us, that arises from reselling the goods to his customers or third parties, independently from the fact whether the goods have been resold after further processing or without processing. The customer remains authorised to collect this claim even after the assignment. Our authority to collect the claim ourselves remains unaffected. However we undertake to not collect the claims as long as the customer meets his/her payment obligations using the proceeds received is not in default of payment and no application for composition or insolvency proceedings has been filed or payments suspended. However, if this is the case, we can demand that the customer informs us of the assigned claims and their debtors, provides all information required for collection, hands over the associated documents and informs the debtors (third parties) of the assignment.
- The processing or transformation of the purchased object shall always be carried out for us. If the object of sale is processed with other objects that do not belong to us, we are co-owners of the new object at the ratio of the object of sale's value at the time of processing (final invoiced amount, including VAT) to the other processed objects. Besides, the same shall apply to the object resulting from the processing as to the purchase item that was delivered under reservation.

§ 9 Drafts / Clichés / Documents

- We retain sole execution and copyright rights to designs, documents, illustrations, drawings and other documents from us. If the customer provides templates and ideas, we receive a joint copyright to the extent that the template or design was designed by us.
- If no order is concluded, the customer is obliged to return all documents handed over to him, including any copies made, without delay. Digital reproductions must be permanently destroyed.
- In the provision of templates and ideas, the customer indemnifies us from any claims by third parties asserting rights thereto.
- The designs, re-drawings, clichés and the like made by us remain our property, even if the production costs have been charged to the customer.

§ 10 Industrial Property Rights and Defects of Title

- If we have to deliver according to drawings, models, samples or using provided parts of the customer, the customer guarantees that the property rights of third parties in the country of destination of the goods are not violated. We will inform the customer of known rights, but we are not obliged to do our own research. The customer must indemnify us from third-party claims upon first request and pay compensation for the damage incurred. If we are prohibited from producing or delivering by a third party on the basis of an intellectual property right belonging to him, we are entitled – without checking the legal situation – to stop the work until the legal situation has been clarified by the customer and the third party. Should it no longer be reasonable for us to continue the order due to the delay, we shall be entitled to withdraw from the contract.
- Drawings and samples provided to us that have not led to the order will be returned on request; otherwise we are entitled to destroy them three months after the submission of the offer. This obligation applies to the customer accordingly. The person entitled to destruction must inform the contractual partner in good time in advance of his intention to destroy.
- We are entitled to the property rights, copyrights and, if applicable, industrial property rights, in particular all rights of use and exploitation of the models, forms and devices, designs and drawings designed by us or by third parties on our behalf. Upon request, the customer must immediately return the documents, forms, samples or models, including any copies made, to us.
- Should there be any other legal defects, § 6 shall apply mutatis mutandis.

§ 11 Food Safety and Recyclables

- If a product is to be used for contact with foodstuffs, the suitability of the material for the specific foodstuff must be checked in advance by the customer on his own responsibility.
- Recycled raw materials are carefully selected by us. Nevertheless, regenerated plastics can be subject to major fluctuations in surface quality, colour, purity, odour and physical or chemical properties from batch to batch; this does not entitle the customer to complain to us about defects.

§ 12 Place of Jurisdiction – Place of Performance

- If the customer is an entrepreneur within the meaning of § 14 BGB, a legal entity under public law or a special fund under public law, our registered office is the place of jurisdiction, but we are entitled to sue the customer at his registered office.
- The law of the Federal Republic of Germany, excluding the UN Sales Convention, applies.
- Unless otherwise stated in an order confirmation, our place of business is the place of performance for delivery and payment.