

§ 1 - Scope, general provisions

1. These delivery and payment terms apply to all of our deliveries and services to entrepreneurs within the meaning of BGB § 14.
2. Divergent terms and conditions of business and divergent agreements are only binding if they are acknowledged by us in writing. They likewise do not become a part of an agreement through our silence or our delivery.
3. The conditions are also applicable to ongoing and future business relationships.
4. Substances, mixtures and products under the Chemicals Act are released only to re-sellers, professional users, and public research, investigation and teaching institutions (Chemicals Prohibition Ordinance) (*Chemikalienverbotsordnung*) (ChemVerbotsV). Our contract partners must also observe the requirements of the Chemicals Prohibition Ordinance, in particular with regard to release of the substances, mixtures and products delivered by us.

§ 2 - Offers, offering documents, formation of contracts

1. Our offers are binding if we issue them in writing and without any reservations.
2. We may accept an order within 4 weeks of receiving it. Here, the contents of an order become binding if they are confirmed by us in writing or we fulfill the order by delivery of the goods.
3. We only need to guarantee storage for orders on call if we are committed to this in writing. If orders on call are agreed to, the quantities indicated must be accepted within one year of the conclusion of the agreement. Otherwise we may give the contract party 4 weeks' notice to make a call. If the notice period expires without any call having been made, we may rescind an agreement and demand the agreed compensation, after deduction of any expenses saved.
4. We reserve title to and copyright over images, drawings, calculations and other documents. They may not be made available to third parties. This applies particularly to written documents that are marked "confidential." The customer requires our express written consent prior to their disclosure.

§ 3 - Payment, prices, offsets

1. Our prices are to be understood to be ex factory, packaging only, plus the respectively applicable statutory value added tax. If the cost factors (production material, energy, consumables, wages and salary) relevant to pricing materially change in the period between the conclusion of the agreement and the contractually agreed time of delivery or acceptance, in order to balance out such cost increases we are authorized to request the contract partner's agreement to new prices, altering the prices offered or confirmed. If no agreement is reached, we may rescind the agreement. If the cost factors specified in sentence 1 are reduced, the contract partner, applying the preceding rule by analogy, is entitled to have a corresponding price reduction agreed to and, failing agreement, to rescind. As meant by sentence 2, a



change in cost factors is material if a cost difference of more than 10 % has come about between the conclusion of the agreement and the time of delivery or acceptance.

2. If no agreement has been made on prices, the billing is done at the price valid on the date of delivery.
3. If we have undertaken the job of placement or assembly and if nothing is agreed to the contrary, in addition to the agreed compensation the contract partner is to bear all required incidental expenses, including travel expenses, costs of transporting instruments and personal luggage, and daily allowances.
4. Absent an agreement otherwise, the purchase price is due, without deduction, within 14 days of the invoice date.
5. Cash discounts require separate written agreement.
6. In the event of late payment, we are entitled to the payment of a 40-euro flat fee. This also applies if the delayed payment claim involves an installment payment or other deferred payment. In addition, upon a late payment we may charge late payment interest in the amount of the credit costs we ourselves are to pay, but at a minimum 9 percent above the base interest rate; the right to claim additional damages is expressly reserved. The flat fee in sentence 1 is to be credited towards any damages owed for delay, insofar as the damage is justified in the costs of litigation.
7. Claiming a lien based on earlier or other transactions in the ongoing business relationship is barred; offsetting a counterclaim is permissible only insofar as the latter is undisputed or legally final.

§ 4 – Delivery time, scheduled dates, time limits

1. Scheduled dates and delivery times are only binding insofar as they are offered or confirmed in writing by us. This also applies to scheduled call dates. Adherence to the scheduled dates presupposes timely fulfillment of any duties of cooperation incumbent on the customer; otherwise the dates agreed to are extended.
2. In the event that we delay in performing, the contract partner's damages from the delay are limited to typical, foreseeable damages. No compensation is paid, in particular, for loss of profit or the costs of production down time.
3. If at the request of the contract partner shipment or delivery is delayed by more than one month after notification that shipment is ready to be made, we may charge the contract partner a storage fee of 0.5 % of the price of the item to be delivered for each month or portion thereof, but a maximum of 5 % overall, unless we are able to prove higher storage costs. The contract partner may put forward proof that no storage costs arose at all or were incurred in an amount significantly lower than the flat fee.
4. Labor disputes or unforeseeable, extraordinary events such as sovereign actions, traffic disruptions or other occurrences that lie outside our area of influence and for which we are not responsible fully discharge us from our duty of delivery for as long as its effects last or in the event of impossibility.



§ 5 – Passage of risk of loss

1. Except as otherwise agreed, delivery ex factory is agreed to. Shipment is for the customer's account and at the customer's risk. If the customer so desires, delivery will be covered by transportation insurance. Costs incurred in this regard are to be borne by the customer.
2. If an acceptance is to take place, this shall control the passage of risk of loss. It must take place promptly upon the scheduled date of acceptance or, in the alternative, after we indicate that acceptance is ready to take place. Upon a delay in acceptance as the result of circumstances for which we are not responsible, the risk of loss passes to the customer on the date notice was given of the readiness for acceptance.
3. Insofar as no mandatory provisions of the Packaging Regulation or other legal rules stand in the way, the packaging/containers needed for the shipment of other deliveries are billed at the original cost price and are neither taken back nor credited.

§ 6 – Notice of defects, warranty, scope of liability

1. The obligations under §§ 377, 381 paragraph II of the German Commercial Code (*Handelsgesetzbuch*) (HGB) apply with the proviso that the customer must report all identifiable defects, shortfalls and incorrect deliveries in writing within 5 business days of delivery, but in any event before processing or incorporation. Transportation damages are to be reported to the seller in writing without delay. With deliveries by rail, by vehicles of commercial short-distance or long-distance haulers or by other modes and transport, the customer must carry out the required formalities with the carrier. No complaints may be made over normal commercial usage and shrinkage.
2. Upon a timely, justified complaint due to defective goods within the meaning of § 434 of the German Civil Code (*Bürgerliches Gesetzbuch*) (BGB), the customer is entitled to statutory warranty rights, excluding claims for damages. Agreements on quality are to be explicitly designated as such. A reference to DIN norms basically includes the more specific product designation and provides no basis for any warranty by us unless a warranty was expressly agreed to.
3. The warranty does not extend to natural wear and tear or to damages that arise following the passage of risk of loss as a result of erroneous or negligent handling, excessive demands, unsuitable operating materials, defective construction work, an improper building foundation or due to particular external influences. If improper alterations, installation or repair work are undertaken by the contract partner or third parties, there is no warranty on them or on the consequences arising therefrom. If there are objective indications of one of the aforesaid circumstances, in particular of an unprofessional action taken, the contract partner must prove that they had no influence of any kind on the delivery with which fault has been found. We may thereafter bring forward evidence to the contrary.
4. The contract partner's assertion of warranty claims further presupposes that it has observed the prescribed maintenance intervals, carried out the maintenance work properly and professionally and provides proof thereof. The contract partner's



warranty rights for the consistency of coatings, connections and piping, as well as auxiliary units, further presupposes that the contract party, upon giving the order, notifies us in writing, without being asked, of the composition of the media to be employed, their modes of reaction and temperatures and operating conditions.

5. Warranty claims by the contract partner are time-barred one year after the item was delivered or the work was accepted. An acceptance is also acceptance pursuant to § 5 (2). This period does not apply insofar as the law does not permit curtailment of the time periods specified in BGB §§ 438, 634 a.
6. Our duty to pay compensation is limited to foreseeable damages
7. This is without prejudice to the contractor's liability under the German Product Liability Act (*Produkthaftungsgesetz*) (ProdHaftG).
8. We do not acknowledge contractual penalties.
9. Except as otherwise specified in what follows, in connection with the contractual warranty for damages the contractor, except for damages for injury to life, limb or health, is liable only for willful misconduct and gross negligence, including willful misconduct and gross negligence by its representatives and vicarious agents. Liability for simple or ordinary negligence is excluded unless it involves the breach of an essential contract duty within the meaning of the case law of the German Federal Court of Justice. Insofar as the aforesaid disclaimer of liability does not take effect due to breach of an essential contract duty, the contractor is liable only for typical, foreseeable contract damages. Further claims by the customer are excluded. The foregoing limitations or disclaimers of liability do not apply to breach of the pre-contractual duties of notification and disclosure.

§ 7 – Reservations of title

1. Until payment of the purchase price and retirement of all claims existing under the business relationship and claims still arising in connection with the object sold, the items delivered, as goods subject to a reservation of title, remain our property. The placement of individual claims in a revolving account or the drawing of a balance and its acknowledgment does not undo the reservation of title. If payment of the purchase price by the customer establishes liability on our part on a draft, the reservation of title is not extinguished before payment of the draft by the customer as drawee. Upon a default in payment by the customer, following a warning we are authorized to retake possession of the goods subject to the reservation of title and the customer is obligated to make restitution.
2. If the customer processes goods subject to a reservation of title into new movable goods, the processing takes place without our being obligated thereby; the new goods become our property. When they are processed with goods not belonging to us, we acquire co-ownership of the new goods in the ratio of the value of the goods subject to the reservation of title to the other goods at the time of processing. If goods subject to a reservation of title are combined, mixed or commingled with goods not belonging to us under §§ 947, 948 of the Civil Code, we become a co-owner in accordance with statutory provisions. If the customer acquires sole ownership through combination, admixture or commingling, it hereby transfers co-ownership to us in the ratio of the value of the goods subject to the reservation of title to the other goods at the time of combination, admixture or commingling. In these cases, the customer, at no charge, is to safeguard the goods of which we are owners or co-



owners, which are likewise deemed goods subject to the reservation of title within the meaning of the provisions which follow.

3. If goods subject to a reservation of title are sold by the customer, alone or together with goods that belong to us, the customer hereby assigns the claim arising from the re-sale in the value of the goods subject to the reservation of title, with all rights and priority ahead of the rest; we accept this assignment, effective immediately. The value of the goods subject to a reservation of title is our invoice amount plus a 10 % security surcharge which, however, shall not be included insofar as there are opposing third-party rights. If the resold goods subject to a reservation of title are co-owned by us, the assignment of claims extends to the amount corresponding to the value of our share of the co-owned property. Subsection 1, sentence 2 is applicable *mutatis mutandis* to the extended reservation of title; the *ex ante* assignment under § 3, subsection 1 and 3, extends to the claim for the balance as well.
4. If goods subject to a reservation of title are incorporated as an essential component of a third party's property, the customer hereby assigns us the claims for compensation, in the value of the goods subject to the reservation of title, against the third party or the party concerned, together with all ancillary rights including a right to be granted an equitable mortgage, with priority ahead of the rest. We accept this assignment, effective immediately.
Subsection 3, sentences 2 and 3, is applicable *mutatis mutandis*.
5. If goods subject to a reservation of title are incorporated by the customer as an essential component of the customer's property, the customer hereby assigns the claims arising from commercial sale of the property, or of rights over the real property, in the value of the goods subject to the reservation of title, together with all ancillary rights and with priority ahead of the rest; we accept this assignment, effective immediately. Subsection 3, sentences 2 and 3, is applicable *mutatis mutandis*.
6. The customer is authorized to resell, use or incorporate goods subject to a reservation of title only in the ordinary, proper course of business and only provided that the claims as set out in subsections 3, 4 and 5 in fact pass to us. The customer is not authorized to make other dispositions of goods subject to a reservation of title, in particular pledges or transfers by way of security.
7. Subject to revocation, we authorize the customer to collect the claims assigned pursuant to subsections 3, 4 and 5. We shall make no use of our own collection authority insofar as the customer honors its payment obligations, including to third parties. Upon our request, the customer shall name the debtors on an assigned claim and notify them of the assignment; we are also authorized to notify the debtors of the assignment ourselves.
8. If the value of the collateral we have exceeds the total of our claims by more than 20 %, we are obligated, at the customer's request, to release collateral of our choosing *pro tanto*. The customer must notify us without delay of an attachment or impairment of our rights by third parties.
9. If the customer fails to honor its payment obligations or if a petition is made for commencement of insolvency proceedings with regard to the customer's estate, the customer, following a warning, must surrender the goods subject to a reservation of title. We may, however, request surrender on the basis of the reservation of title only if we have rescinded the agreement. The Customer shall promptly inform us of execution measures by third parties against goods subject to a reservation of title or assigned claims, handing over the documents needed to oppose these measures.



10. The right to resell, use or incorporate goods subject to a reservation of title, and the authorization to collect assigned claims, terminate upon a suspension of payments, petition in insolvency and commencement of proceedings for the making of a statutory declaration of insolvency; a debit authorization also terminates upon the protest of a check or draft.

§ 8 – Place of jurisdiction

1. If the prerequisites are present for a choice of forum agreement under § 38 of the German Code of Civil Procedure (*Zivilprozessordnung*) (ZPO), the place of jurisdiction for all claims of the contracting parties is our registered office; however, we may also sue the customer in the court of its place of domicile.
2. The law of the Federal Republic of Germany shall apply, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

§ 9 – German Federal Data Protection Act

The customer permits computer processing and storage of data needed in connection with order processing and billing (German Federal Data Protection Act (*Bundesdatenschutzgesetz*) (BDSG) §§ 4, 4 a). The invoice (delivery slip) is simultaneously deemed notification for purposes of § 33 of the Federal Data Protection Act.

