

# **General Terms and Conditions of Sale and Delivery**

## **Scope**

The following conditions apply only to companies, legal entities under public law or special funds under public law within the meaning of Section 310 Paragraph 1 of the German Civil Code (BGB).

## **§ 1 Application**

(1) Any terms and conditions that deviate from or contradict our terms and conditions of sale will not be recognized by us unless we have expressly agreed to them in writing. Our terms and conditions of sale also apply if we carry out delivery to the customer without reservation, even if we are aware of conflicting or deviating terms and conditions of the customer.

(2) These terms and conditions of sale also apply to future transactions in ongoing business relationships, even if no express reference is made to them, provided that they were previously provided to the customer in connection with an order confirmed by the customer.

## **§ 2 Offer, Acceptance, Scope of Delivery Obligation**

(1) All agreements made between us and the customer for the execution of this contract are set out in writing in this contract.

(2) If the order qualifies as an offer pursuant to § 145 BGB, we can accept it within two weeks.

(3) We reserve all proprietary and copyright rights to sketches, illustrations, drawings, calculations, and other documents. This also applies to written documents marked "confidential." The customer/purchaser is prohibited from disclosing them to third parties without our express written consent. If the order is not placed with us, these documents must be returned to us without being requested.

## **§ 3 Third-party intellectual property rights**

For deliveries made according to the customer's drawing or sample, the customer assumes responsibility for ensuring that third-party intellectual property rights are not infringed.

We assume no obligation to investigate or verify in this respect, nor any liability. The client is obligated to indemnify us against any third-party claims arising from intellectual property infringements for which he is responsible.

## **§ 4 Prices, Payment**

(1) Unless otherwise stated in the order confirmation, our prices are "EXW Lennestadt", excluding packaging, customs duties and insurance; these will be invoiced separately unless they are expressly marked as binding or include a specific acceptance period.

(2) The statutory value added tax is not included in our prices; it will be shown separately on the invoice at the legally applicable rate on the date of invoicing.

(3) The calculation is done in EURO. Unless expressly agreed otherwise, payments are due within the following payment periods.

### For goods deliveries:

30 days net

### For tooling/ equipment costs :

30% discount based on design template - immediately without deduction

60% discount for first sample and EMPB presentation - immediately without deduction,

10% upon release of EMPB - immediately without deduction, release must take place within 10 days.

regarding the payment of default interest and the consequences of late payment apply .

## **§ 5 Tools and accessories**

### (1) Side parts

Unless otherwise agreed, the customer shall supply all necessary components free of charge and in sufficient quantity to "DDP Lennestadt". A surplus of 10% above the ordered quantity must be provided to cover production downtime.

### (2) Tools

Even if the customer contributes to the cost of the tools, these remain our property, without prejudice to any design protection claims the customer may have. The tools will be used exclusively for deliveries to the customer as long as the customer fulfills their acceptance and payment obligations. The storage period expires three years after the last delivery.

Samples provided as a basis for delivery serve only as an approximate guide. If deliveries are made according to drawings or other specifications provided by the customer, and this infringes the intellectual property rights of third parties, the customer shall indemnify us against all claims. In the event of a breach of contract by the customer, their intellectual property rights shall not prevent us from using the goods in accordance with the contract.

If a customer cancels an order for tooling during production or before completion of the ordered partial series, the customer is liable for all tooling costs incurred up to the point of cancellation, plus lost profit for the affected order, without prejudice to any further claims on our part. In this case, lost profit is to be compensated at a flat rate of 4% of the net sales price. The customer retains the right to prove that a lower lost profit actually occurred. We reserve the right to prove a higher lost profit in individual cases.

## **§ 6 Offsetting, Retention**

The client is only entitled to assert rights of retention based on counterclaims arising from the same contractual relationship.

## **§ 7 Delivery**

(1) The start of the delivery time we have specified is contingent upon the clarification of all technical issues.

(2) Our ability to meet our delivery obligations is contingent upon the timely and proper fulfillment of the customer's obligations. We reserve the right to assert the defense of non-performance of contract.

(3) In the event of default of acceptance or other culpable breach of cooperation obligations on the part of the customer, we are entitled to compensation for the resulting damages, including any additional expenses. Further claims remain reserved. In this case, the risk of accidental loss or accidental deterioration of the goods passes to the customer at the time of the default of acceptance or other breach of cooperation obligations.

(4) Delivery dates are decisive for the time of delivery ex works. They are non-binding unless expressly agreed otherwise. We are liable in accordance with statutory provisions insofar as the underlying purchase agreement is a fixed-date transaction within the meaning of Section 323 Paragraph 2 No. 2 of the German Civil Code (BGB) or Section 376 of the German Commercial Code (HGB). We are also liable in accordance with statutory provisions if, as a consequence of a delay in delivery for which we are responsible, the customer is entitled to assert that their interest in further performance of the contract has ceased.

(5) Events of force majeure will result in a reasonable extension of the delivery period and/or entitle us to withdraw from the contract in whole or in part with respect to the unfulfilled portion. Force majeure includes strikes, lockouts, or unforeseeable and unavoidable circumstances, such as operational disruptions or the failure or late delivery of goods to us by our suppliers, which render timely delivery impossible despite reasonable efforts and through no fault of our own; we bear the burden of proof in this regard. This also applies if the aforementioned impediments occur during a delay or at a subcontractor.

The client may request that we declare within two weeks whether we intend to withdraw from the contract or deliver within a reasonable grace period. If we fail to respond, the client may withdraw from the unfulfilled portion of the contract.

We undertake to notify the client immediately if a force majeure event, as described in paragraph 1, occurs. We will do our utmost to minimize any disruption to the client.

(6) Partial deliveries are generally permitted, provided they do not cause significant, unagreed-upon additional costs. Each partial delivery is considered a separate transaction.

If delivery on demand is agreed, we have the right, unless otherwise agreed, to deliver and invoice the completed goods after a maximum of 6 months, even if the customer has not yet made a request.

If orders are stopped, suspended or cancelled, the quantities already in production will be delivered and must be paid for by the customer.

If the client does not take full delivery of a fixed quantity ordered, we are entitled to charge a reasonable surcharge for the small quantity.

## **§ 8 Packaging**

Packaging is carried out at our discretion and is charged at cost and is not returnable unless we are obligated to take it back under the Packaging Ordinance.

## **§ 9 Transfer of Risk, Dispatch**

(1) Unless otherwise stated in the order confirmation, delivery is agreed to be "EXW Lennestadt". At the express request of the customer, the goods will be shipped "EXW Lennestadt" at the customer's expense. In this case, the risk of accidental loss or damage to the goods passes to the customer at the time of dispatch.

(2) Unless the method of shipment is prescribed or agreed otherwise, it will be carried out at our discretion.

(3) If the customer so desires, we will insure the shipment with transport insurance; the customer shall bear the associated costs. Insurance of the goods and/or the shipment will only be provided at the express request of the customer.

## **§ 10 Retention of Title Protection**

- (1) We retain title to the goods until all payments due under the delivery contract have been received. In the event of a breach of contract by the customer, particularly in the case of late payment, we are entitled to repossess the goods. Repossession of the goods constitutes a withdrawal from the contract. After repossession, we are authorized to sell the goods, and the proceeds of the sale, less reasonable costs of sale, will be credited against the customer's outstanding liabilities.
- (2) The client is obligated to treat the purchased item with care; in particular, they are obligated to insure it adequately at their own expense against fire, water, and theft damage for its full replacement value. If maintenance and inspection work is required, the client must carry it out promptly at their own expense.
- (3) In the event of attachments or other interventions by third parties, the customer must notify us immediately in writing so that we can file a lawsuit pursuant to Section 771 of the German Code of Civil Procedure (ZPO). If the third party is unable to reimburse us for the court and out-of-court costs of a lawsuit pursuant to Section 771 of the ZPO, the customer is liable for the resulting loss.
- (4) The customer is entitled to resell the purchased goods in the ordinary course of business; however, the customer hereby assigns to us all claims against its customers or third parties arising from such resale, up to the total invoice amount (including VAT), regardless of whether the goods are resold in their original state or after processing. The customer remains authorized to collect these claims even after assignment. Our right to collect the claims ourselves remains unaffected. However, we undertake not to collect the claims as long as the customer fulfills its payment obligations from the proceeds received, is not in default of payment, and in particular, no application for the commencement of composition or insolvency proceedings has been filed or payments have been suspended. If, however, this is the case, we may demand that the customer disclose to us the assigned claims and their debtors, provide all information necessary for collection, hand over the relevant documents, and notify the debtors (third parties) of the assignment.
- (5) Any processing or transformation of the purchased goods by the customer is always carried out on our behalf. If the purchased goods are processed with other items not belonging to us, we acquire co-ownership of the new item in proportion to the value of the purchased goods (final invoice amount, including VAT) relative to the other processed items at the time of processing. The same provisions apply to the item created through processing as to the purchased goods delivered under reservation of title.
- (6) If the purchased goods are inseparably mixed with other items not belonging to us, we acquire co-ownership of the new item in proportion to the value of the purchased goods (final invoice amount, including VAT) relative to the other mixed items at the time of mixing. If the mixing occurs in such a way that the customer's item is considered the principal item, it is agreed that the customer transfers proportionate co-ownership to us. The customer holds the resulting sole or co-ownership in trust for us.

- (7) The customer also assigns to us, as security for our claims against him, any claims against a third party arising from the connection of the purchased item with a property.
- (8) We undertake to release the securities to which we are entitled at the customer's request to the extent that the realizable value of our securities exceeds the secured claims by more than 10%; the selection of the securities to be released is at our discretion.

## **§ 11 Credit Basis**

The prerequisite for our obligation to deliver is the customer's creditworthiness. If, after conclusion of the contract, we become aware of facts that give rise to doubts in this regard, in particular a significant deterioration of the customer's financial situation (enforcement proceedings, cessation of payments, insolvency, dissolution of the business, transfer of the business, pledging or assignment of goods, inventory or receivables as security, etc.), or if the customer is in default of payments due, we are entitled to demand advance payments, security or cash payment without regard to any conflicting prior agreements.

## **§ 12 Liability for Defects**

- (1) The customer's warranty claims require that the customer has properly complied with his obligations to inspect and give notice of defects pursuant to Section 377 of the German Commercial Code (HGB).
- (2) If the purchased item is defective, the customer is entitled, at their discretion, to subsequent performance in the form of either repair or delivery of a new, defect-free item. In the case of repair or replacement, we are obligated to bear all expenses necessary for the purpose of subsequent performance, in particular transport, travel, labor, and material costs, unless these costs are increased because the purchased item was moved to a location other than the place of performance.
- (3) If the customer incurs expenses for removal and installation, as well as for attaching the purchased item to another item, as part of the supplementary performance, in accordance with the nature of the purchased item and its respective contractual purpose, we are obligated to reimburse the customer for these necessary expenses. However, this only applies if the defect was not yet apparent at that time or was not discovered due to gross negligence on the part of the customer.
- (4) If the subsequent performance fails, the customer is entitled, at his discretion, to demand either withdrawal from the contract or a reduction in price.
- (5) We are liable in accordance with statutory provisions if the customer asserts claims for damages based on intent or gross negligence, including intent or gross negligence on the part of our representatives or agents. Unless we are accused of intentional breach of

contract, our liability for damages is limited to foreseeable damages that typically occur.

- (6) We are liable in accordance with statutory provisions if we culpably breach a material contractual obligation; however, even in this case, liability for damages is limited to the foreseeable, typically occurring damage.
- (7) Furthermore, insofar as the customer is entitled to compensation for damages instead of performance due to a negligent breach of duty, our liability is limited to compensation for foreseeable, typically occurring damages.
- (8) Liability for culpable injury to life, body or health remains unaffected; this also applies to mandatory liability under the Product Liability Act.
- (9) Unless otherwise stipulated above, liability is excluded.
- (10) The limitation period for claims based on defects is 24 months, calculated from the transfer of risk. This does not apply if the purchased item is typically used for a building and caused the defect.
- (11) The statutory rule concerning the limitation period in the case of a supplier's recourse claim pursuant to Section 445b of the German Civil Code (BGB) remains unaffected.

### **§ 13 Liability**

(1) Any further liability for damages beyond that provided for in Section 12 is excluded, irrespective of the legal nature of the claim asserted. This applies in particular to claims for damages arising from culpa in contrahendo (fault in contract formation), other breaches of duty, or tortious claims for compensation for property damage pursuant to Section 823 of the German Civil Code (BGB).

(2) The limitation under paragraph (1) shall also apply if the customer, instead of claiming damages for non-performance, demands compensation for wasted expenses.

(3) To the extent that our liability for damages is excluded or limited, this also applies with regard to the personal liability for damages of our employees, workers, staff, representatives and agents.

### **§ 14 Applicable Law, Jurisdiction**

(1) This contract is governed by the laws of the Federal Republic of Germany (excluding the UN Convention on Contracts for the International Sale of Goods).

(2) The exclusive place of jurisdiction – including for international disputes – for all disputes arising out of or in connection with this contract or concerning its validity is our registered office in 57368 Lennestadt, Germany. However, we are also entitled in all cases to bring an action at a place of performance other than that specified in Section 14 Paragraph 2 of these Terms and Conditions of Sale or at the customer's registered office, provided that such court is a court of an EU member state or a contracting state of the Lugano II Convention. Mandatory statutory provisions, particularly those concerning exclusive jurisdiction, remain unaffected.

**Should one or more provisions be or become wholly or partially invalid, the validity of the remaining provisions shall not be affected. The same applies in the event of a gap in the regulations. The parties shall replace any invalid provision with a valid provision that most closely approximates the economic purpose of the invalid provision.**

**Alfred Schnüttgen GmbH**  
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As of Mai 2026