



General Terms and Conditions of Delivery and Payment

Scope

1. These terms and conditions of sale apply for every delivery and framework contract (in the following referred to as "Contract") and all individual contracts and/or provisions within a contract (in the following referred to as "Individual Contract") with companies, legal entities under public law and special assets under public law (in the following referred to as "Partner").

Our deliveries and services are provided solely based on the following conditions.

General terms and conditions of the partner not explicitly recognized by us are not valid.

General provisions

2. The contractual partners shall confirm oral agreements immediately in detail in writing.
3. Orders shall only be binding upon our confirmation of the order.
4. Information included in brochures and catalogues are industry-standard approximate values unless they have been explicitly designated by us as binding.
5. We are entitled to reject acceptance of an order of the partner, if it becomes obvious, that our payment claim from the individual contract would be endangered by a lack of performance of the partner during acceptance of the order. This is the case in particular then, if and to the extent that the sum insured provided to us by our trade credit insurer to secure our claims against the partner would be exceeded upon acceptance of the order or if our deductible for any loss of receivables of the partner is increased by our trade credit insurer after conclusion of this contract by more than 10 percentage points compared to the deductible at the time of conclusion of this contract and the reasons for the increase in the deductible lie within the sphere of the partner. This also applies accordingly in case of any extension of this contract. The same applies, notwithstanding the provision in clause 24, to the fulfillment of an order to which § 321 paragraph 1 sentence 2 and paragraph 2 BGB applies in addition.
6. We are furthermore entitled to terminate the contract without notice, if there is important reason to do so. An important reason applies in particular then, if it becomes obvious after conclusion of the contract, that our payment claims under the contract are jeopardized by the partner's inability to pay and the partner does not assure their ability to perform within an appropriate period of time despite being requested to do so. Legal rights of termination and withdrawal and the rights according to clauses 24 and 34 remain unaffected.
7. If individual parts of these terms and conditions of sale are ineffective or become ineffective, the effectivity of the residual provisions shall not be affected by this.

Long term and call-off contracts, price adjustments

8. Unlimited contracts and contracts with a duration of more than 1 year can be terminated with a notice period of 6 months.
9. If, in the case of long-term contracts (contracts with a term of more than 12 months and open-ended contracts), there is a significant change in wage, material or energy costs, each contracting party shall be entitled to negotiate an appropriate adjustment of the price taking these factors into account.
10. In the case of call-off delivery contracts, unless otherwise agreed, we must be notified of binding quantities by call-off at least 3 months before the delivery date.

Additional costs caused by a delayed call-off or subsequent changes to the call-off in terms of time or quantity by our partner shall be borne by the partner, unless the partner is not responsible for the delay or subsequent change; our calculation shall be decisive in this respect.

Confidentiality

11. Each contractual partner shall use all documents (including also samples, models and data) and knowledge that they receive via the business relationship only for commonly pursued purposes and keep them confidential with the same diligence like respective own documents and knowledge towards third parties, if the other contractual partner designates them as confidential or if they have an obvious interest to keep them secret.

This obligation starts from initial receipt of the documents or knowledge and ends 36 months after the end of the business relationship.

12. The obligation does not apply to documents and knowledge that are generally known or that have already been known to the contractual partner at the time of receipt without them being obligated to keep them secret, or that are transferred subsequently by a third party entitled to transfer or that are developed by the receiving contractual partner without processing documents or knowledge to be kept confidential by the other contractual partner.

Drawings and descriptions

13. If a contractual partner provides the other with drawings or technical documents on the goods to be delivered or on their production, they remain the property of the providing contractual partner.

Samples and means of production

14. The costs of production for samples and means of production (tools, molds and templates etc.) shall be invoiced, as far as nothing else had been agreed, separately from the goods to be delivered. This also applies for means of production that have to be replaced due to wear and tear.
15. The costs for the maintenance and proper storage as well as the risk of damage or destruction of means of production shall be born by us.
16. If the partner suspends collaboration during the production period of the samples or means of production or if they end it, all production costs arisen until then will be at their expense.
17. The means of production remain in our possession at least until the delivery contract has been processed, even if the partner has paid for them. After that, the partner is entitled to claim the means of production, if a agreeable settlement has been achieved on the date of issue and the partner has met their contractual obligations in full scope.
18. We keep the means of production for three years without incurring any costs after the last delivery to our partner. After that, we request our partner in writing, to submit their comments within 6 weeks on their further use. Our obligation to store ends, if no comments are submitted within 6 weeks or no further order is made.
19. Customer-related means of production may be used by us for deliveries to third parties only with prior written agreement by our partner.

Pricing

20. Our prices are in Euro excluding value added tax, packing, freight, carriage and insurance.

Terms of payment

21. All invoices are due to be paid within 10 days from invoice date.

The customer agrees to receive invoices electronically. Electronic invoices shall be sent to the customer by email in PDF format.

22. If we have indisputably delivered partially faulty goods, our partner is nevertheless obliged to make payment for the faultless part, unless the partial delivery is of no interest to them.

Furthermore, the partner may offset claims for compensation for rectification of defects or completion costs; other counterclaims may only be offset, if they are legally established, ready for decision or undisputed. The partner shall also only have a right of retention or right to refuse performance within these limits.

23. If the target is exceeded, we shall be entitled to charge interest on arrears at the rate charged by the bank for overdraft facilities, but at least 8 percentage points above the respective prime rate of the European Central Bank.
24. In the event of late payment, we may, after notifying the partner in writing, suspend the fulfillment of our obligations until payment is received.
25. Bills of exchange and checks shall only be accepted by agreement and only on account of performance and on condition that they are discountable. Discount charges shall be calculated from the due date of the invoice amount. A guarantee for the timely presentation of bills of exchange and checks and for the collection of bill protest is excluded.

Delivery

26. As far as nothing else has been agreed, we deliver "ex factory". Decisive for compliance with the delivery date or the delivery period is the notification of readiness for dispatch or collection by us.
27. The delivery deadline starts with sending our purchase order and is extended appropriately, if the requirements of clause 52 apply.
28. Partial deliveries are allowed within acceptable scope. They shall be invoiced separately.
29. Within a tolerance of 10 percent of the total order amount, production-related excess or short deliveries are permissible. The total price shall change accordingly based on their scope.

Shipment and transfer of risk

30. Goods notified as ready for dispatch must be accepted by the partner without delay. Otherwise we shall be entitled to dispatch them at our own discretion or to store them at the partner's expense and risk.
31. In the absence of a special agreement, we shall choose the means and route of transportation.
32. The risk shall pass to the partner when the goods are handed over to the railroad, the forwarding agent or the carrier or when storage begins, but at the latest when the goods leave the factory or warehouse, even if we have assumed responsibility for delivery.

Delay in delivery

33. If we can foresee that the goods cannot be delivered within the delivery period, we will inform the partner immediately and in writing, we will also provide the reasons for this and, if possible, state the expected delivery date.
34. If the delivery is delayed due to a circumstance listed in clause 52 or due to an act or omission of the partner, an extension of the delivery period appropriate to the circumstances shall be granted.
35. The partner is only entitled to withdraw from the individual contract, if we are responsible for the failure to meet the delivery date and the partner has unsuccessfully set us a reasonable grace period.

Retention of title

36. We reserve title to the delivered goods until all claims arising from the business relationship with the partner have been fulfilled.
37. The partner is entitled to sell these goods in the ordinary course of business as long as the partner meets their obligations arising from the business relationship with us in good time. However, the partner may neither pledge the reserved goods nor assign them as security. The partner shall be obliged to secure our rights in the event of a credited resale of the reserved goods.

38. In the event of breaches of duty by the partner, in particular default in payment, we shall be entitled to withdraw from the individual contract and take back the goods after the unsuccessful expiry of a reasonable deadline set for the partner; the statutory provisions on the dispensability of setting a deadline shall remain unaffected. The partner is obliged to surrender the goods.
39. The partner hereby assigns to us as security all claims and rights arising from the sale or, if applicable, the leasing of goods to which we are entitled. We hereby accept the assignment.
40. Any processing or treatment of the goods subject to retention of title shall always be carried out by the partner on our behalf. If the reserved goods are processed or inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the invoice value of the reserved goods to the other processed or mixed items at the time of processing or mixing.
- If our goods are combined or inseparably mixed with other movable items to form a single item and if the other item is to be regarded as the main item, the partner shall transfer to us proportionate co-ownership insofar as the main item belongs to the partner. The partner shall hold the property or co-ownership for us. In all other respects, the same shall apply to the item created by processing or combining or mixing as to the reserved goods.
41. The partner must inform us immediately of any enforcement measures taken by third parties against the reserved goods, the claims assigned to us or other securities, handing over the documents necessary for an intervention. This shall also apply to impairments of any other kind.
42. If the value of the existing securities exceeds the secured claims by more than 20 percent in total, we shall be obliged to release securities to this extent at the partner's request.

Material defects

43. The quality of the goods shall be based exclusively on the agreed technical delivery specifications. If we have to deliver according to drawings, specifications, samples etc. of our partner, the latter shall assume the risk of suitability for the intended purpose. Decisive for the contractual condition of the goods is the time of the transfer of risk in accordance with clause 27.
- 43.a. In our deliveries, we comply with the applicable legal regulations of the European Union and the Federal Republic of Germany, e.g. the REACH Regulation (Regulation EC No. 1907/2006), the Electrical and Electronic Equipment Act (ElektroG) and the Electrical and Electronic Equipment Substances Ordinance (ElektroStoffV) as national implementations of Directives 2002/96/EC (WEEE) and the End-of-Life Vehicles Ordinance (AltfahrzeugV) as national implementation of EU Directive 2000/53/EC.
- We shall inform the partner immediately of any relevant changes to the goods, their deliverability, usability or quality, in particular those caused by the REACH Regulation, and shall coordinate suitable measures with the partner in individual cases.
44. We shall not be liable for material defects caused by unsuitable or improper use, faulty assembly or commissioning by the partner or third parties, normal wear and tear, faulty or negligent handling, nor for the consequences of improper modifications or repair work carried out by the partner or third parties without our consent. The same applies to defects that only insignificantly reduce the value or suitability of the goods.
45. Claims for material defects shall lapse after 12 months. This does not apply, if the law prescribes longer periods, in particular for defects in a building and for goods that have been used for a building in accordance with their normal use and have caused its defectiveness. Sentence 1 shall also not apply to damages resulting from injury to life, body or health and in the event of intent or gross negligence or any other breach of material contractual obligations (i.e. obligations whose fulfillment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely) of our legal representatives or executives.
46. If an acceptance of the goods or an initial sample inspection has been agreed, the notification of defects which the partner could have detected during a careful acceptance or initial sample inspection is excluded.
47. We must be given the opportunity to determine the defect complained of. Rejected goods must be returned to us immediately upon request; we shall bear the transportation costs, if the complaint is justified.

If the partner does not comply with these obligations or makes changes to the goods already complained about without our consent, the partner shall lose any claims for material defects.

48. In the event of justified, timely notification of defects, we shall, at our discretion, either repair the defective goods or supply a faultless replacement.
49. If we do not fulfill these obligations or do not fulfill them in accordance with the contract within a reasonable period of time, the partner may set us a final deadline in writing within which we must fulfill our obligations. After the unsuccessful expiry of this deadline, the partner may demand a reduction in the price, withdraw from the contract or carry out the necessary rectification themselves or have it carried out by a third party at our expense and risk. If the rectification was successfully carried out by the partner or a third party, all claims of the partner shall be settled with reimbursement of the necessary costs incurred by the partner. Reimbursement of costs is excluded, if the expenses increase because the goods have been moved to another location after our delivery, unless this corresponds to the intended use of the goods.
50. The partner's statutory rights of recourse against us shall only exist to the extent that the partner has not made any agreements with their customer that go beyond the statutory claims for defects.

Other claims, liability

51. Unless otherwise stated below, other and further claims of the partner against us are excluded. This applies in particular to claims for damages for breach of obligations arising from the contractual relationship and from tort. We are therefore not liable for damages that have not occurred to the delivered goods themselves. In particular, we are not liable for loss of profit or other financial losses of the partner.
52. The above limitations of liability shall not apply in the event of intent, gross negligence on the part of our legal representatives or executives or in the event of culpable breach of material contractual obligations, i.e. obligations whose fulfillment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely. In the event of culpable breach of material contractual obligations, we shall only be liable - except in cases of intent or gross negligence on the part of our legal representatives or executives - for reasonably foreseeable damage typical of the contract.
53. Furthermore, the limitation of liability shall not apply in cases in which liability exists under the Product Liability Act for personal injury or property damage to privately used objects in the event of defects in the delivered goods. It shall also not apply in the event of injury to life, limb or health and in the absence of warranted characteristics, if and insofar as the purpose of the warranty was precisely to protect the partner against damage that did not occur to the delivered goods themselves.
54. Insofar as our liability is excluded or limited, this shall also apply to the personal liability of our employees, workers, staff, legal representatives and vicarious agents.
55. The statutory regulations on the burden of proof remain unaffected by this.

Force majeure

56. Force majeure, labor disputes, unrest, official measures, non-delivery by our suppliers and other unforeseeable, unavoidable and serious events shall release the contracting parties from their performance obligations for the duration of the disruption and to the extent of their effect. This also applies, if these events occur at a time when the affected contractual partner is in default, unless the delay was caused intentionally or through gross negligence. The contractual partners are obliged to provide the necessary information without delay within the scope of what is reasonable and to adapt their obligations to the changed circumstances in good faith.

Place of performance, place of jurisdiction and applicable law

57. Unless otherwise stated in the order confirmation, our registered office is the place of performance.

58. The place of jurisdiction for all legal disputes, including in the context of a bill of exchange and check process, is our registered office. We are also entitled to take legal action at the partner's registered office.
59. The contractual relationship shall be governed exclusively by the law of the Federal Republic of Germany.

The application of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (CISG - "Vienna Sales Convention") is excluded.

Westfälische Drahtindustrie GmbH
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