

General Terms / Conditions of Sale Fischer & Plath GmbH

§ 1 Scope

1. Unless expressly otherwise agreed, our supplies and services shall be subject to these General Terms and Conditions of Sale.
2. These Terms shall also apply to any and all future business deals, even if not expressly agreed again.
3. Any of the Customer's terms and conditions inconsistent with our General Terms and Conditions of Sale shall only apply subject to our express written consent.

§ 2 Commercial Proposal – Quote Documentation

1. Any order by the Customer shall be deemed to be a binding commercial proposal which we may accept within one week either by sending an order confirmation or by delivering the goods. Any previously quotes submitted by us shall be deemed to be without engagement.
2. Any measures, dates, or other specifications of goods or services shall not be binding, unless expressly agreed in writing.
3. We reserve all property and copy rights as to any illustrations, drawings, calculations or other documents provided. The Customer shall not disclose any such documents without our express written consent.

§ 3 Delivery and Performance Times

1. Delivery times shall only be deemed agreed if expressly confirmed in writing.
2. Delivery times shall commence as of the date of our order confirmation, however not prior to the clear specification of all order details and the submission of any documentation that might be required.
Delivery times shall be deemed to have been complied with as of our on-time ready-for-dispatch notice, should the goods be impossible to be dispatched on time with no fault of ours.
3. For any terms and dates not expressly specified as fixed in the order confirmation, the Customer may fix us a reasonable period of delivery and/or performance within two weeks of their expiry. We may then be in default no earlier than after the expiry of the said grace period.
4. Without prejudice to our claims arising from the Customer's default, any terms and dates shall be deemed extended by any period of time during which the Customer fails to meet its obligation toward us.
5. We shall be entitled to any partial delivery and performance the Customer may reasonably be expected to accept.
6. The Customer shall have the right to withdraw from the contract after the unsuccessful expiry of two grace periods, unless the impediment is only of temporary nature and beyond our control and the Customer may reasonably be expected to accept the postponement of the date of performance.
7. If the Customer has a contractual or statutory right of withdrawal and we fix a reasonable time limit for the Customer to exercise such right, then the right of withdrawal shall be deemed expired unless the withdrawal is notified within the fixed time limit.

§ 4 Prices

1. Only the prices specified in our order confirmation shall apply. Any additional performance shall be billed separately.
2. Our prices are quoted net excluding value added tax, the applicable statutory amount of which the Customer shall pay in addition.
3. Unless expressly otherwise agreed, our prices are quoted ex our works. Freight charges, any costs for packaging exceeding what is customary in trade, public taxes and duties shall be at the Customer's expense.
4. Supply contracts with a term exceeding 15 months shall in addition be subject to the proviso that in case of a change in wages and/or material costs we shall have the right starting with the 5th month after signing the contract to accordingly adapt our prices to any such higher and/or reduced costs. Should any such difference from the agreed price amount to more than 20%, the party concerned shall have the right to withdraw from the contract with a 3 months' written notice.

§ 5 Shipment and Passing of Risk

1. Unless expressly otherwise agreed, shipment and transport shall be at the Customer's risk. The risk shall pass to the Customer as soon as the goods to be shipped are handed over to the carrier.
2. In case of delayed shipment for reasons to be put down to the Customer, the risk of accidental deterioration and accidental loss shall be deemed to have passed to the Customer as of the ready-for-dispatch notice. Any storage costs after the risk has passed shall be at the Customer's expense, without prejudice to further claims.
3. If the Customer is in default of acceptance, we shall have the right to claim damages for any expenses incurred by us. The risk of accidental deterioration and accidental loss shall pass to the Customer as of the occurrence of a default of acceptance.
4. If so requested by the buyer, we will insure the goods to be shipped against any and all shipment-related risks at the buyer's expense.

§ 6 Payment

1. The invoice amount shall be due immediately upon receipt of the invoice. For any payment made within 10 days, we shall grant a 2% discount. Otherwise, the net amount shall be payable to us within 30 days.
2. If the Customer is in default of payment, we shall be entitled to the statutory interest for default as provided by Section 288 of the German Civil Code [*BGB*].
3. We shall be entitled to damages for any documented higher damage due to delay.
4. Retention of payment for or offsetting with any counterclaims of the Customer's shall not be acceptable, unless such counterclaims are undisputed or based on a final court decision.

§ 7 Reservation of Title

1. We reserve the property of all goods supplied (reserved goods) until the satisfaction of any and all claims arising on whatsoever legal grounds from the contract that the supply of goods is based on.
2. The Customer shall handle any goods supplied with care; the Customer shall in particular sufficiently insure any such goods at replacement value against fire, water and theft risk at its own expense. The Customer shall perform any maintenance and inspection work required on time and at its own expense.

If the Customer processes, combines or mixes any reserved goods with other items, we shall have the right of joint ownership of the newly created item at the ratio of the invoice value of the reserved goods to the value of the other items used. In case of expiry of our property by processing, combining or mixing, the Customer hereunder assigns his rights of ownership of the newly created stock or item to the extent of the value of the reserved goods and shall store same free of charge on our behalf.

3. The Customer shall have the right to process, combine and mix with other goods, or resell the reserved goods. Any other disposal of the reserved goods shall be prohibited. In case of attachment or other encroachment by third parties, the Customer shall immediately notify us in writing so we may bring an action under Section 771 of the Code of Civil Procedure [ZPO]. If and to the extent to which such third party is unable to reimburse us for any court fees and other costs incurred for an action under Section 771 of the Code of Civil Procedure [ZPO], the Customer shall be liable for any loss suffered by us.
4. If the Customer allows its buyer time to pay the purchase price, it shall reserve the property of the reserved goods towards such buyer on the same conditions we reserved the property upon delivery of the reserved goods. Failing this, the Customer shall not be authorised to resell the said goods.
5. The Customer hereunder assigns to us any and all of its claims arising from the resale of the reserved goods. They shall serve as security to the same extent as the reserved goods. The Customer shall neither be entitled nor authorised to resell any reserved goods, unless it is ensured that any claims arising to the Customer from such resale shall devolve to us.
6. If the reserved goods are resold by the Customer for a total price together with any goods not supplied by us, the claim arising from such resale shall be assigned to us to the extent of the invoice value of our reserved goods resold in each individual case.
7. If the assigned claim is incorporated in a current account, the Customer hereunder assigns to us a portion of the balance including the final balance from the current account the amount of which is equivalent to the amount of such claim.
8. Until recalled by us, the Customer shall have the authorisation to collect any receivables assigned to us. We shall have the right to recall such authorisation whenever the Customer fails to duly honour its obligations to pay arising from the business relationship with us. If the conditions for recalling the authorisation are given, the Customer shall immediately upon our request notify us of any claims assigned and their debtors, provide all information necessary for collecting the receivables, provide us with the relate documentation and notify the debtor of the assignment. We shall also have the right to notify the debtor of the assignment on our own part.

§ 8 Liability for Defects

1. Any rejected goods shall be returned to us for examination in the original or a comparable packaging. In case of a justified and on-time notice of defects, we shall remove any defects by way of supplementary performance at our discretion either by remedying the defect or by delivering goods free from defects. In doing so, we shall only bear any necessary costs incurred for the supplementary performance.
2. We shall have the right to refuse supplementary performance if so provided by law. Supplementary performance may be refused also in case the Customer has not returned the rejected goods to us upon our request.
3. The Customer may withdraw from the contract or request a reduced compensation under statutory provisions, however no earlier than after the unsuccessful expiry of two reasonable grace periods for supplementary performance set by the Customer, unless the fixing of a period for supplementary performance is dispensable under statutory provisions. If withdrawing, the Customer shall be liable for deterioration, loss and non-utilisation in case of wilful intent or any kind of negligence.
4. In case of fraudulent concealment of a defect or in case of warranted properties in terms of Section 444 of the German Civil Code [*BGB*] (the seller representing and warranting that the object of purchase at the time the risk passes has defined properties and that the seller shall be liable for any consequences of an absence of such properties regardless of negligence or fault), the Customer's rights shall solely be subject to the relevant statutory provisions.
5. Any information on our products including but not limited to the illustrations, drawings, weight, measure and performance specifications contained in our offers and printed materials is based on approximations and average values. Any such information is no warrant of properties, but a description or labelling of the goods.
6. Unless expressly limited or otherwise agreed in the order confirmation, the tolerances customary in the trade shall be acceptable.
7. Any warranty for defects in the goods supplied caused by normal wear shall be excluded. Any goods sold as downgraded or second-hand materials shall be exempt from any buyer's claims for defects.
8. No warranty shall apply if our operating or maintenance instructions are not complied with, deliveries or services are modified, parts are replaced or consumables are used in non-compliance with original specifications, unless the Customer may prove that a given defect was not caused by any of the foregoing.
9. If the Customer is a trader it shall be obliged to give notice of any defects in writing or by fax.
10. The time bar for any warranty claims shall be 12 months (24 months for consumers). This shall not apply to any of the Customer's claims for damages due to damage to body or health caused by any defect we are responsible for, or due to wilful intent or gross negligence on our part.

§ 9 Limitation of Liability

1. In case of breach of obligation, defective delivery or tort, we shall be liable for damages and reimbursement of expenses – notwithstanding any further conditions of liability agreed by contract or provided by law – only in case of wilful intent, gross negligence as well as slightly negligent material breach of contract (breach of contract compromising the achievement of the purpose of the contract). Our liability in case of slightly negligent material breach of contract shall however be limited to the damage typical for the contract to be expected when signing the contract.

2. For any damage due to delay caused by slight negligence, our liability shall be limited to a maximum of 5% of the purchase price agreed with us.
3. The exclusions and limitations of liability set forth in sections 1 and 2 above shall not apply in case of warranted properties in terms of Section 444 of the German Civil Code [*BGB*], in case of fraudulent concealment of a defect, in case of damages due to damage to life, body or health, as well as in case of compulsory liability under product liability laws.
4. Any claims for damages against us based on whatsoever legal grounds shall become time-barred no later than one year (two years for consumers) after delivery of the goods to the Customer, in case of tort liability after becoming aware or grossly negligent failure to become aware of the circumstances justifying the claim and the person liable.
5. The clauses set forth in this article shall not apply in case of liability for wilful intent or gross negligence and in the cases specified in section 3 above. If the Customer is a distributor for the goods supplied to it and the end customer of the goods is a consumer, the time-bar period for any right of withdrawal of the Customer's against us shall be subject to the relevant statutory provisions.

§ 10 Place of Jurisdiction – Place of Performance, Miscellaneous

1. If the Customer is a trader, the place of our registered office shall be the place of jurisdiction. We shall however have the right to bring any action against the Customer also at its place of jurisdiction.
2. These Terms and Conditions shall be governed by the laws of the Federal Republic of Germany. Any application of the United Nations Convention on Contracts for the International Sale of Goods as well as the referral regulations under German international private law shall be excluded.
3. Unless otherwise specified in the order confirmation, the place of performance shall be the place of our registered office.
4. Should all or part of any of the provisions of these Terms and Conditions be invalid or void, the validity of the remaining provisions and/or remaining parts of such provisions shall be unaffected.