



GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

 MADE IN GERMANY

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1. SCOPE

1.1

These general terms and conditions of sale and delivery apply to all our fields of activity, in particular to the delivery of goods.

1.2

These general terms and conditions of sale and delivery exclusively apply to our relationship with the customer. They also apply to any future business as well as to any business contacts with the customer, such as commencing contractual negotiations or initiating an agreement, even if the terms and conditions are not expressly agreed or pointed out again. We hereby expressly object to the application of the customer's general ordering or purchasing terms and conditions.

1.3

These general terms and conditions of sale and performance rescind previous agreements and earlier versions of our sale and performance terms and conditions.

1.4

If, in individual cases, a contractual obligation to individuals or companies is established, which are not to become a contractual party themselves, the limitations of liability in these general terms and conditions of sale and performance also apply to these entities insofar as these general terms and conditions of sale and performance were included when the contractual obligation was established with that third party. This is the case in particular if the third party acquired or already possessed knowledge of these general terms and conditions of sale and performance when the contractual obligation was established.

1.5

The customer receiving our performances and deliveries is seen as accepting the application of these general terms and conditions of sale and delivery.

2. CONTRACT CONCLUSION

2.1

Our quotations are non-obligatory and non-binding, unless something else was agreed.

2.2

We are only bound by an order after it has been confirmed in writing by means of an order confirmation or when we start executing the order.

3. DELIVERY TERMS

3.1

Our written quotation and/or our order confirmation is authoritative for the scope of our delivery or performance. Supplementary agreements and changes require our written confirmation. If our quotation or order confirmation was based on information provided by the customer (data, figures, illustrations, drawings, system requirements, etc.), our quotation is only binding if this information was correct. If, after contract conclusion, the order proves not to be executable according to the information provided by the customer, we are entitled to annul the agreement unless the customer is willing to accept our suggested workaround and to bear any actually arising additional costs.

3.2

We are entitled to perform partial deliveries where reasonably appropriate, for any deliveries and performances. We are entitled to assign subcontractors to fulfil our contractual obligations.

3.3

As soon as we become aware of the customer's insufficient financial capacity, we are entitled to render deliveries of goods and performances only against advance payment or a security deposit. Our right to withdraw from individual agreements, which may already be concluded in individual cases, remains unaffected unless the customer renders an advance payment or safety deposit within an adequate extension period.

3.4

Delivery and performance periods and dates are always the best possible information, but generally non-binding. The beginning of the delivery period as well as maintaining bindingly agreed delivery dates presupposes that the customer (i) renders on time and properly the cooperation they are responsible for; (ii) provides all the required documents; and (iii) makes any agreed advance payments.

3.5

Unless otherwise agreed in writing, our deliveries are always "ex works" (EXW Incoterms 2020). The risk of loss or deterioration of the goods transfers to the customer when the goods are handed over for dispatch; this also applies to partial deliveries. In case of shipping delays for reasons on the part of the customer, the risk is already transferred to the customer when the goods are reported as ready for dispatch.

3.6

In case of force majeure or other circumstances that are exceptional or arise through no fault of our own, we are not considered to be behind schedule. In that case, we are entitled to withdraw from the agreement even if we are already behind schedule. In particular, we are not considered to be behind schedule in case of delivery delays if they were caused by our supplier's incorrect or late delivery we are not responsible for. In case of temporary hindrances, the delivery and performance periods are extended or the delivery and performance dates are postponed by the duration of the hindrance plus a reasonable starting period.

3.7

If we are contractually obligated to perform preliminary work, we can refuse the performance we are responsible for if, after contract conclusion, it becomes apparent that our claim for return service is endangered by the customer's insufficient financial capacity. This is the case in particular if the return service we are owed is endangered because of the customer's poor financial circumstances or other impending performance hindrances, such as from export or import bans, wars, insolvency of suppliers or sick leave of necessary employees.

4. PRICES, COSTS, TRANSFER OF RISK, PERFORMANCE SCOPE

4.1

Our prices are net prices and our deliveries are always "ex works" (EXW Incoterms 2020) unless otherwise agreed in writing.

4.2

If a performance period of more than four months between the time of order confirmation and execution of the performance has been agreed, we are entitled to transfer to the customer the commensurate cost increases incurred to us in the meantime because of higher prices. The same applies if a performance period of under four months has been agreed but we are only able to render the performance after more than four months after order confirmation for reasons the customer is responsible for.

4.3

A transport insurance for goods to be sent is only concluded if expressly requested. In such a case, the transport insurance is concluded on behalf and at the expense of the customer.

5. PAYMENT TERMS

5.1

Unless contractually agreed otherwise, our demand is due without any discount 30 days after receipt of the delivery and/or after complete rendering of our performance.

5.2

Without express agreement, the customer is not entitled to apply deductions.

5.3

If the customer is in arrears, they are to refund us the accruing delay damage, in particular interest at a rate of 9 percentage points above the base interest rate. If (i) the customer is in arrears for longer than 14 days with paying a due amount or partial amount; (ii) the customer violates the obligations resulting from a reservation of title; or (iii) the return service we are owed is endangered because of the customer's poor financial circumstances, the entire rest of all open demands is immediately due for payment.

5.4

Payment by bills of exchange or bills of acceptance is only permitted if expressly agreed and then only applies to payments. Insofar as it incurs any additional costs, they are to be borne by the customer.

5.5

Our remuneration claims can only be cleared with undisputed or legally established demands. The same applies to executing a right of retention. Otherwise, the customer is only entitled to exercise a right of retention insofar as it is based on the same contractual relationship.

5.6

The assignment of demands against us by the customer requires our prior consent, which we refuse only for good cause.

6. RETENTION OF TITLE

6.1

Until full payment of all our current and future demands from the concluded agreement and from an ongoing business relationship (secured demands), we reserve the right of ownership to the delivered goods.

6.2

The goods under retention of title may only be pledged to third parties or assigned as collateral security after full payment of the secured demands. The customer is to inform us without delay in textual or written form if and insofar as third parties are accessing goods belonging to us.

6.3

If the customer behaves contrary to the contract, in particular in case the due sales price is not paid, we are entitled to, according to statutory regulations, withdraw from the agreement and/or to demand the return of the goods on the basis of retention of title. The demand for return does not include a declaration of withdrawal; rather, we are entitled to only demand the return of the goods while reserving the right of withdrawal. If the customer fails to pay the due purchase price, we may only exercise these rights if we have previously set the customer an adequate period for payment, which lapsed fruitlessly, or if such a deadline is dispensable according to statutory regulations.

6.4

The customer is authorised to resell and/or process the goods under retention of title during proper course of business. In this case, the following provisions apply additionally.

6.4.1

The retention of title covers the full value of the products resulting from processing, mixing or combining our goods, and we count as the manufacturer. If a third-party property right remains in force in case of processing, mixing or combining with third-party goods, we assume co-ownership at the ratio of the invoice values of the processed, mixed or combined goods. Otherwise, the same applies to the resulting product as to the goods delivered under retention of title.

6.4.2

According to the above paragraph, the customer herewith assigns to us as a security, in total or amounting to a co-ownership share we may have, the demands against third parties arising from the resale of the goods or of the product. We accept the assignment. The customer's duties specified in Clause A, Sect. 6, No. 2 above also apply in consideration of the assigned demands.

6.4.3

In order to collect the demand, the customer remains authorised besides us. We undertake not to collect the demand as long as (i) the customer fulfils their payment obligations against us; (ii) does not fail to pay in due time; (iii) has not applied to file for insolvency proceedings; and (iv) there is no other defect of their performance. If this is the case however, we may demand that (i) the customer state the assigned demands and their debtors; (ii) provide all required information for collection; (iii) hand over the associated documents; and (iv) inform the debtors (third parties) about the assignment.

6.4.4

If the achievable value of the securities exceeds our demands by more than 10% we will, on the customer's request, release securities of our choosing.

6.5

The customer must handle the reserved goods with the appropriate care. Upon our request, the customer must sufficiently insure the reserved goods at their own cost against fire, water and theft damages to their new value. In case maintenance and service are required, the customer must perform them on time at their own expense.

6.6

Insofar as the validity of this retention of title depends on its registration, e.g., in public registers in the customer's country of residence, we are entitled to and authorised by the customer, to effect this registration at the customer's expense. The customer is obligated to render free of charge any contributions necessary on their part for this registration.

7. CUSTOMER'S DUTY OF COOPERATION AND INFORMATION

7.1

The customer is to support us and our employees to a reasonable, customary extent. Insofar as we must render project work or services through our employees in the customer's company, supporting our request may include the provision of rooms and workplaces with PCs and telephones, whose costs are borne by the customer.

7.2

The customer is to provide us with materials, information and data we need to render our performances. Data and data carriers must be technically flawless. Insofar as special statutory or operational safety provisions apply at the customer's place of business, the customer is to point them out to us prior to our rendering of performance.

Customer instructions to our employees about the specific way of rendering our performance are excluded unless instructions are necessary in connection with safety requirements and operating regulations at the customer's place of business. Instructions on specific issues about work or services we are to render are not to be given to the employee we have assigned the task to but to the contacts we have named for the project. We always independently decide about necessary actions for our performance obligations.

7.3

The customer is to directly communicate to us at contract conclusion their valid VAT identification number assigned to them by a member state of the European Union. The customer is to also inform us at all times about changes to their VAT identification number. If we are harmed because the customer failed to communicate their VAT identification number or it is incorrect or incomplete, in particular if this results in an omission of tax exemption for cross-EU deliveries according to Sect. 4 Clause 1 lit b), 6a UstG (German Value Added Tax Act), the customer has the duty to compensate us for the damage. This applies only insofar as the customer is responsible for the breach of duty.

8. GUARANTEE, GENERAL LIABILITY

8.1

The limitation period for claims for defects of our deliveries and performances is one year from the statutory commencement of that period. After the end of that year we may in particular also refuse subsequent fulfilment without entitling the customer to any claims for reduction, withdrawal or compensation arising against us. This limitation period shortening does not extend to compensation claims other than those for refused subsequent fulfilment and it generally does not extend to claims for malicious non-disclosure of the defect.

8.2

Customer claims for subsequent fulfilment for defects of the performance or delivery to be rendered by us exist according to the following terms:

8.2.1

In case the delivered object is defective, we may first choose whether we perform subsequent fulfilment by rectifying the defect (rework) or by delivering a faultless object (replacement delivery). The right to refuse the chosen kind of subsequent fulfilment in keeping with statutory requirements remains unaffected.

8.2.2

We are entitled to make the owed subsequent fulfilment dependent on the customer's paying the due purchase price. The customer is, however, entitled to retain an appropriate portion of the purchase price in relation to the defect.

8.2.3

The customer is to give us the time and opportunity required for this owed subsequent fulfilment; in particular, to hand over the criticised goods for testing purposes. In the event of a replacement delivery, the customer is to return the defective object to us according to statutory provisions.

8.2.4

We bear the expenses, in particular, transport, road, labour and material costs required for testing and subsequent fulfilment if there is an actual defect.

8.2.4.1

If the customer has installed the defective good, in accordance with its kind and designated use, in another object or attached it to another object, we are obligated in the course of subsequent fulfilment to refund the customer the required expenses for removing the defective object and for installing or attaching the subsequently fulfilled or delivered defect-free object. Sect. 442 Para. 1 German Civil Code (BGB) is to be

applied under the proviso that for the knowledge of the customer, installation or attachment of the defective object by the customer takes the place of contract conclusion.

8.2.4.2

The expenses of subsequent fulfilment arising from the purchased object having been taken, after delivery, to a place other than the customer's place of residence or place of business, are borne by the customer.

8.2.4.3

If a customer's request for defect removal proves not to be justified, we may demand the customer to refund us the resulting costs.

8.3

The customer may only claim compensation:

8.3.1

For damage based on:

- an intentional or grossly negligent breach of duty on our part; or
- an intentional or grossly negligent breach of duty of one of our legal representatives, executives or vicarious agents and which are neither material contractual duties nor primary or secondary obligations in connection with defects of our deliveries or performances.

8.3.2

For damage based on an intentional or negligent breach of material contractual duties on our part, of one of our legal representatives, executives or vicarious agents. Material contractual duties in terms of sub-paragraphs 3.1 and 3.2 above are obligations whose fulfilment enables proper execution of the agreement and can be trusted by the customer.

8.3.3

Furthermore, we are liable for damage because of a negligent or intentional breach of duties in connection with defects of our delivery or performance (subsequent fulfilment or secondary obligations); and

8.3.4

For damage in the scope of protection of a guarantee (assurance) or a composition or durability guarantee we have expressly given.

8.4

In case of an ordinary negligent breach of a material contractual duty, the amount of liability is limited to the damage typically to be expected and foreseeable to us at contract conclusion if proper care is applied.

8.5

Customer claims for compensation in case of an ordinary negligent breach of a material contractual duty lapse within one year after commencement of the statutory limitation period. This excludes damage from injury to life, body or health.

8.6

Claims for compensation against us from statutory liability, such as according to the product liability law, as well as from a breach of life, body or health, remain unaffected from the above regulations and exist to the statutory extent within statutory periods.

8.7

Otherwise, the customer's rights according to Sections 445a, 445b and 478 BGB in case that action is taken against the customer or their buyers in a delivery chain, remain unaffected under the proviso of the regulations below:

8.7.1

The customer bears the burden of proof that the expenses for subsequent fulfilment were required and that they would not have been able to refuse their buyer subsequent fulfilment according to Sect. 439 Para. 4 BGB or perform subsequent fulfilment more cheaply.

8.7.2

The claim from Sect. 445a Para. 1 BGB lapses according to Sect. 445b Para. 1 BGB two years from delivery by us to the customer. This period also applies if a longer period applied according to Sect. 438 BGB.

8.7.3

The limitation period of the customer claims against us determined in Sect. 437 and 445a Para. 1 BGB for the defect of a sold, newly produced object starts no sooner than two months after the date when the customer has fulfilled their purchaser's claims insofar as the claims had not yet lapsed in the relationship between the customer and their buyer. This expiry suspension ends no later than five years after the date when we delivered the object to the customer.

8.8

If the customer is a merchant in terms of the German Commercial Code (HGB), the following applies additionally:

Customer claims for defects, in particular claims for subsequent fulfilment, recourse, withdrawal from the agreement, reduction and compensation, presuppose that the customer has fulfilled their statutory duties of inspection and complaint (Sect. 377, 381 HGB). If a defect is discovered during an inspection or later, we are to be notified without delay in textual or written form. A notification is deemed to be without delay if it is made within 14 days after discovering the defect. In order to comply with this time frame, the timely sending of this notification suffices. Regardless of this duty of inspection and complaint, the customer is to notify obvious defects (including wrong or short deliveries) within 14 days after delivery in textual or written form. In order to comply with this time frame, the timely sending of this notification also suffices. If the customer fails to perform a proper inspection and/or to notify a defect, our liability for the unnotified defect is excluded. This does not apply if we have maliciously hidden the defect.

9. CUSTOMISED GOODS

If we produce customised goods, in particular unique products, functional models or prototypes, on behalf of the customer, these goods may be used, without our express consent, solely for internal research purposes, but not commercially. If the customer uses them commercially without our express consent and if, as a consequence, national or international or government safety regulations or product liability rules are breached, the customer is to indemnify us of resulting third party claims. In cases of liability based on culpability this only applies if the customer is culpable. If the cause of damage is within the customer's sphere of responsibility, they will bear the burden of proof in that respect.

10. CONFIDENTIALITY

10.1

The customer and we ("the parties") undertake to, during the term of the agreement, maintain secrecy of any information which becomes accessible in connection with the agreement and is classified as confidential or recognisable as confidential because of other circumstances ("confidential information"), and neither to capture them nor to forward them to third parties or utilise them in any way unless there is prior express written consent or it is necessary to achieve the contractual purpose. All business secrets are also subject to the confidentiality obligation. Any information in terms of Sect. 2 Clause 1 GeschGehG (Business Secrets Act) is considered a business secret. This confidentiality obligation remains in place for a further five years after complete fulfilment or finalisation of the order.

10.2

The parties undertake to protect business secrets in terms of Sect. 2 Clause 1 GeschGehG as well as other confidential information of the other party from third-party obtainment by using means of concealment that are appropriate for the circumstances. The means of concealment are to correspond at least with the customary care as well as the level of protection that the relevant party uses for their own business secrets of the same category.

10.3

Exempt from this is confidential information which

- either party already knew before the commencement of contractual negotiations or which were communicated by third parties as not confidential unless they themselves violate confidentiality obligations;
- the parties developed independently of each other;
- are or become publicly known without the parties' fault or assistance; or
- are to be disclosed because of statutory obligations or government or judicial orders.

In the latter case, the disclosing party is to inform the other party without delay before disclosure. If either party refers to one of the above exceptions, it bears the burden of proof. Further statutory obligations of confidentiality remain unaffected.

11. MISCELLANEOUS: PLACE OF FULFILMENT, PLACE OF JURISDICTION, APPLICABLE LAW, DATA PROCESSING, SEVERABILITY CLAUSE

11.1

Place of fulfilment and sole place of jurisdiction for any and all disputes arising between the parties from the contractual relationship is Stuttgart, Germany, insofar as the customer (i) is a merchant, legal person under public law or a special fund under public law; (ii) has no general place of jurisdiction in the Federal Republic of Germany; or (iii) moves their place of jurisdiction abroad. As an exception to this, we are also entitled to take recourse against the customer at their general place of jurisdiction.

A merchant is any business person entered in the commercial register or operating a commercial enterprise and requiring a commercially furnished place of business. The customer's general place of jurisdiction is abroad if their headquarters are abroad.

11.2

The customer knows that data from trading, including personal data, must be stored and, in the course of business requirements, processed and shared with third parties. The customer agrees to this data collection and processing.

11.3

In the event that a provision of these general terms and conditions of delivery and payment or a provision of other agreements is or becomes ineffective, the effectiveness of all the remaining provisions or agreements remains unaffected.

11.4

German law with the exclusion of the UN law on the sale of goods (CISG) applies to the contractual and other legal relationships with our customer.



MORCHER® GmbH

Kapuzinerweg 12
70374 Stuttgart
GERMANY

Phone +49 (0) 711 / 95 320 - 0
Fax +49 (0) 711 / 95 320 - 80

E-Mail info@morcher.com
Web www.morcher.com

