

General terms and conditions of business/sale and delivery for EBCT (vendor) and overseas customers (purchaser) with seat or headquarters outside of Germany:

1. Validity and conclusion of contract

1.1 All offers, agreements, deliveries, and services are governed implicitly by these general terms and conditions. They stand implicitly in their respective current version as a contract governing this and future purchases or delivery of movable goods by the same purchaser, without the vendor having to restate the terms of sale. The general terms and conditions of sale are recognized by the purchaser through the order confirmation, or at the latest through acceptance of delivery.

1.2 Amendments or supplements to these conditions require the written confirmation of the vendor to be made valid.

1.3 These general terms and conditions shall apply exclusively. Diverging, conflicting or supplementary general terms and conditions of business of the vendor shall become part of the agreement only after written consent. This requirement of consent applies always without exception, for example also in cases where the vendor with prior knowledge of the general terms and conditions of the purchaser completes a delivery to the purchaser without reservations.

1.4 Offers made by the vendor are strictly subject to change, in other words, they represent a non-committal request for the purchaser to place an order. The order of the goods by the purchaser shall be deemed a binding contract. The contract is concluded upon the written acceptance of the purchaser's order. The content of the contract is restricted to the specified goods and services contained in the vendor's order confirmation. Legally relevant declarations and notifications, which are to be submitted towards us by the Buyer after conclusion of the contract (e.g. setting of deadlines, notifications of defects, declaration of cancellation or reduction), require the written form in order to be valid.

2. Deliveries

2.1 Delivery and performance times of the vendor are according to the best judgment on the basis of the delivery situation. Information given is to be considered as approximate, unless a binding fixed date has been specifically agreed upon. Our obligation to comply with the delivery deadline is subject to punctual and correct delivery by our own suppliers.

2.2 The compliance with our delivery commitment is further subject to the timely and orderly completion of the obligations of the purchaser. We reserve the defense of non-performance of the contract.

2.3 If the buyer is in default of acceptance or if he violates culpably other cooperation obligation, then the vendor is entitled to demand compensation for any damage he incurs in this respect, including any additional expenses. All further claims or rights are reserved.

2.4 If the circumstances defined in sub-clause 2.3 arise, the risk of accidental loss or deterioration of the contract goods shall be transferred to the purchaser at the point in time at which he fell into arrears or debt.

2.5 In the case of individually agreed delivery times, these shall be extended reasonably in case of force majeure and in case of all other hindrances not covered for by the vendor, and which considerably affect the delivery or the performance, especially in case of natural disasters, sovereign interventions, or employment conflicts.

2.6 The compliance with delivery time by the vendor is subject to the premise that all questions regarding amount, quality, specifications and technical queries about the goods have been completely cleared, that all relevant official permits and licenses have been issued and that the purchaser has prepared and presented all documents, payments and securities to the vendor in due time.

2.7 In case of non-punctual delivery by the vendor, the purchaser shall not exercise his guarantee rights with regards to delivery times with a fruitless expiry of a delivery extension. A delivery extension must be reasonable and at of least 14 days.

2.8 The purchaser can assert a right to damages on the grounds of delay in delivery, only when this was caused by intent or culpable negligence on behalf of the vendor, or if the vendor has violated an essential contractual obligation. (Obligation, the satisfaction of which only enables the proper execution of the contract at all and with which the contractual partner relies and may as a rule rely on its compliance) In this case our liability is however limited to the reimbursement of the foreseeable, typically occurring damages. Negligence on the part of our representative or vicarious agent can be attributed to us.

2.9 In cases of premeditation or culpable negligence, the vendor's liability shall however be limited to a compensation for predictable damages which can typically be expected to occur. If the delay is due to a culpable violation of an essential contractual violation through simple negligence then the liability of the vendor is restricted to the value of the shipment.

2.10 The vendor has no obligation to pay damages if he can disencumber himself with regards to art.79 CISG (UN-Convention on Contracts for the International Sale of Goods), or if he can provide proof that the company internal performance impediment was caused neither by him nor by an employee, and also not through negligence ignored. Furthermore interpretation of contract terms customary shall be governed by the Incoterms 2010, including the supplements valid at the time when the contract was concluded.

3. Shipping and Transfer of Risk

3.1 Unless explicitly stated otherwise in the order confirmation, all deliveries are agreed to be ex-works (EXW according to Incoterms 2010)

3.2 A shipment is always, unless explicitly otherwise agreed upon, at the risk of the purchaser. The purchaser will carry the shipment costs. Insurances will only be organized by the vendor if the purchaser so requires it, and at the cost of the purchaser.

3.3 Partial deliveries are permitted. Acceptance of the shipment cannot be refused because of the absence of individual parts of a shipment or because of minor complaints, unless such absence or complaint considerably impairs the use of the goods.

3.4 The risk transfers to the purchaser, as soon as the goods leave the operating and control area of the vendor. This is the case when the goods leave the vendors business premises or factory, or are made available to the buyer there, or handed to a shipper or a supplier. Unless however divergent delivery terms have been agreed upon, these deliveries are governed by the transfer of risk according to Incoterms 2010.

4. Acceptance of Goods and Reporting of Defects

4.1 The purchaser is required, to accept the goods and after delivery immediately and without delay, i.e. culpable delay, and as long as it remains possible within the range of normal business practices, to inspect the goods for any defects or damage. Random sampling should be undertaken where appropriate. Identified and recognizable damages are to be reported to the vendor in the written form. Otherwise the goods will be considered to be acceptable.

4.2 Hidden defects which are not found upon an immediate examination of the goods, are to be reported to the vendor immediately after discovery.

4.3 Non-observation by the purchaser of the obligation to check and give notice of defects will void any and all warranty claims for those deficiencies.

5. Price, Payment and Packaging

5.1 The purchase price is due, unless agreed otherwise, at the point in time in which the transfer in risk from vendor to purchaser takes place. The buyer shall pay the agreed purchase price without delay upon the goods being made available ex-works, by the vendor.

5.2 In cases where delivery has been arranged, then the purchase price is to be paid by the purchaser in full in advance.

5.3 In cases where a delivery has been agreed upon, it is to be considered Free Carrier (FCA Incoterms 2010), inclusive of packaging appropriate for that type of transport. Customs charges, consular fees and any other taxes, deductions and charges etc. which are payable pursuant to any foreign laws outside of Germany, as well as any costs associated therewith, shall be borne by the purchaser.

5.4 Delivery and packaging costs are to be carried by the purchaser.

5.5 If the requirements of the vendor are jeopardized through the purchasers failure to perform, or if the credit insurance of the vendor limits the credit limit of the purchaser, to the point that the order volume is not adequately insured, then the vendor is entitled to request appropriate collateral, or advance payment of the full purchase price. The vendor holds the right, according Art.63 and Art.64 CISG, or through other legal reasons, to withdraw from the contract. The vendor can demand compensation according to the conditions of Art.61, par.1, lit b CISG.

6. Warranty

6.1 The warranty does not apply to damages caused by wrongful handling during transport and storage after the transfer of risk has taken place.

6.2 The warranty period is restricted to one year. This period begins at the point in time of the transfer of risk.

6.3 The agreed characteristics of the merchandise are the vendor's product descriptions, as long as these are included in the contract. The assumption of a guarantee must be explicitly stipulated as such in writing. Insofar as nothing has been agreed to the contrary, product information, samples and specimens constitute only a product and quality description or only approximate indications of quality, dimensions, weight, flavour and colour of a product. No guarantee can be made for these.

6.4 In cases where the delivered merchandise is defective, and the vendor accepts the responsibility or the guarantee thereof, then the purchaser is entitled to demand correction or replacement delivery. The purchaser remains free to choose, if he should make use of his guarantee rights when all the statutory prerequisites are fulfilled. Should the purchaser choose to withdraw from the contract then he can make no claim for further compensation for the defect, except where the vendor has offered a contractual guarantee for the quality of the merchandise.

6.5 To the extent it is not stated differently below (par. 6.6 and par. 6.7) the purchaser is not entitled to any further claims irrespective of their legal grounds. The vendor is not liable for damages caused by reworking of merchandise with obvious deficiencies. The vendor does not accept liability in particular for damages that have not happened to the delivered item itself. Furthermore the vendor accepts no liability for loss of profit or other financial damages of the purchaser.

6.6 The aforesaid liability disclaimer does not cover cases where damages are caused by culpable negligence. It also does not apply in cases where the vendor has guaranteed the quality of the goods or services.

6.7 In cases where damages are a result of culpable negligence or a negligence of a cardinal obligation, then the liability of the vendor is limited to typical contractual and foreseeable damages.

7. Limitation of Liability

7.1 The vendor's liability for compensation, except in the cases mentioned in par.2.5 and 2.6 as well as in par. 6.5-6.7, is notwithstanding the legal nature of the asserted claim. The liability exclusion or limitation of liability does not apply to damages resulting in loss of life, personal injury or injury to health.

7.2 The provision in 7.1 does not apply to claims arising out of product liability.

7.3 Insofar as claims arising from product liability according to German law § 823 BGB are not covered by 6.6 and 6.7 then the liability of the vendor is limited to the sum of the product liability insurance as regulated by the German General Terms of Liability Insurance(AHB)

7.4 The provision in 7.1 does not apply in cases of intentional breach of duty. In the situation where a breach of duty occurs due to culpable negligence, or to culpable violation of an essential contractual obligation (Obligations, the satisfaction of which enable a correct and proper execution of the contract and upon which the contractual partners rely upon and may as a rule rely on its compliance) or a cardinal obligation, then the liability is limited to typical contractual and foreseeable damages.

7.5 Insofar as the liability of the vendor is excluded or limited, then this will also apply to the personal liability of the vendor's vicarious agents.

8. Reservation of Title

8.1 All deliveries take place subject to reservation of title with the following expansions.

8.2 The delivered merchandise remains the property of the vendor until such time as the purchaser has paid all claims arising from the business arrangement, also those arising in the future and in particular any current account balances. The purchaser shall hold the goods in custody for the vendor at no charge and is obligated to insure the merchandise against all possible insurable damage (particularly against fire, water, theft, storm, third-party liability etc.) The purchaser assigns his insurance claims to the vendor in advance, who in turn accepts this assignment.

8.3 If the goods are reshaped or reprocessed and this onto parts to which the conditional vendor has no reservation of title, then the vendor has in turn partaken in a part-ownership of these products. The same goes for the situation where the vendors merchandise is mixed with goods from another producer.

8.4 All future claims by the buyer resulting from the re-sale of the goods under reservation of title, will be appropriated proportionately according to ownership, to the vendor irrespective of the goods in question being further processed or not and also of the goods being resold to one or more purchaser. The vendor accepts this assignment. The claims so assigned serve as collateral against the conditional seller to the sum of the value of the sold goods. In the situation where the goods subject to retention of title, are sold by the buyer together with goods belonging to another vendor, whether prior to or after processing, the assignment of the purchase price claim shall only apply to the value of the goods subject to retention of title.

8.5 The buyer is only authorized to resell the conditional goods in number 4, under the condition that the claim to the selling price from the resale of the merchandise under reservation of title be assigned to the vendor. The purchaser is not entitled to any other dispositions about the merchandise under reservation of title, especially pledging and the transfer of ownership for security. The buyer pledges to inform the vendor immediately in writing of all third party claims and foreclosure measures against the goods under reservation of title and to provide all documentation necessary for any intervention. The buyer will also inform the third party concerned about the reservation of ownership by the vendor.

8.6 The vendor empowers the buyer, reserving the right to revoke, to collect the receivables resulting from a resale. The buyer will not exercise his right to exact these claims as long as the Purchaser duly complies with his obligations towards payment and is not in default. Upon request the vendor is required to inform the purchaser of the identity of the debtor and to show him the cessation of right. The vendor is empowered to show the debtor the cessation of right in the name of the purchaser.

8.7 If the value of the existing securities provided by the purchaser exceeds the secured claim by more than 20%,then the vendor is obliged to release securities according to the purchasers request and choice. With the full payment of all claims resulting from the business transaction the ownership of the merchandise and ceded rights is transferred to the purchaser.

9. Written Form

Contacts, alterations in contracts and other legally relevant declarations of intent must be in writing.

10. Applicable law

The legal relationship of the contractual parties shall be governed by the UN sales law (CSIG) dated 20 April 1980. In cases where no regulation has been made under UN law then German law shall apply excluding provisions made by German international private law.

11. Place of fulfilment, court of jurisdiction, concluding conditions

11.1 Place of fulfillment is the seat of activity of the vendor in Heidelberg Germany. Place of payment is Heidelberg Germany. Court of jurisdiction for all disputes arising from the contractual relationship will be the court responsible for the seat of the vendor. The vendor is nevertheless also entitled to sue the purchaser at the court of jurisdiction responsible for the purchaser.

11.2 Should one or more of these terms be or become void or invalid, then this will have no effect on the validity of the other terms. Terms according to UN sales law which are closest to the term which has become invalid shall apply in the place of the invalid term.