

Conditions of Delivery

for Business Transactions with Contractors

- 1 Recognition of the Conditions of Delivery**
- 1.1 These delivery conditions from the supplier apply to all completed contracts regarding the sale, manufacture and processing of goods between the purchaser and the supplier. They also apply to all future business relations, even those not explicitly agreed upon. Inconsistent conditions of the purchaser which are not specifically recognised by the supplier are not binding on the supplier, even if the supplier does not explicitly disagree.
- 1.2 All offers not explicitly identified as binding are subject to confirmation. We reserve the right to make reasonable technical changes, as well as changes in form, colour and/or material.
- 1.3 Contracts which are not signed by both contract partners are not considered complete until a written confirmation is received from the supplier. Additions, amendments, subsidiary agreements and verbal agreements are only effective if confirmed in writing by the supplier.
- 1.4 The details and illustrations contained in the brochures and catalogues are approximate values customary in a particular trade, unless they are specifically identified by us as binding.
- 2 Delivery**
- 2.1 The agreed delivery times are only approximate. It begins from the time the supplier has all information and clearances from the purchaser, in case these are required, or on the date of contract confirmation. The delivery time is considered to be in compliance if the merchandise left the factory, completely or partially, at the agreed time or, if shipment is not possible, the readiness for dispatch has been notified to the purchaser. In the case of delayed delivery, an appropriate time extension must be set. Partial deliveries must be accepted.
- 2.2 Changes made to the contract by the purchaser, which influence the time of delivery, can extend it appropriately. These changes shall not delay the completion of the contract by more than three months.
- 2.3 Merchandise ordered on-call must be collected within 12 months after confirmation of contract. The binding delivery amounts must be given in writing at least two months before the delivery date.
- 2.4 If we can foresee that the goods cannot be delivered within the delivery period, we will inform the partner immediately and in writing, inform him/her of the reasons for this and, if possible, state the expected delivery date. If delivery is delayed due to force majeure or due to an act or omission of the partner, an extension of the delivery period appropriate to the circumstances will be granted. The partner is only entitled to withdraw from an individual contract if we are responsible for the failure to meet the delivery date and the partner has unsuccessfully set a reasonable extension. **Force majeure**, labour disputes, unrest, official measures, **failure to deliver by our suppliers** and other unforeseeable, unavoidable and serious events shall release the contracting parties from their obligations to perform for the duration of the disturbance and to the extent of their effects. This shall also apply if these events occur at a time when the affected contractual partner is in default, unless this default was caused intentionally or through gross negligence. The contractual partners are obliged to provide the necessary information immediately within the scope of what is reasonable and to adapt their obligations to the changed circumstances in good faith.
- 2.5 The right to correct and prompt self-supply is reserved. This is valid only if the failed delivery is not caused by us and a congruent hedging transaction has been finalised with our vendor. The supplier will immediately inform the purchaser of the unavailability of the materials to be delivered and, if he wishes to cancel the contract, the cancellation right should be immediately executed. In the case of cancellation, the supplier will immediately provide the purchaser with an appropriate reciprocation.
- 2.6 If, after the finalisation of a contract, the supplier determines that he cannot manufacture or process the ordered materials due to technical reasons, he may rescind the contract. The supplier will immediately inform the purchaser of the technical difficulties and exercise his right to rescind the contract. In the case of cancellation, the supplier will immediately provide the purchaser with an appropriate refund. Claims for damages by the purchaser, according to Point 11 of these delivery conditions, are barred, i.e. limited.
- 3 Price Setting**
- 3.1 If a considerable change of certain cost factors, particularly the cost of salaries, pre-material, energy or freight, occurs six months after completion of the contract, but before delivery of the merchandise, the agreed-upon price can be adjusted to a reasonable extent, according to the influence of the standard cost factors.
- 3.2 All prices are in EUROS, plus sales tax.
- 3.3 The proofs prepared by the supplier, as well as supplies such as films, stereotypes, tools and forms, remain the property of the supplier and will not be released, even if the purchaser is partially invoiced for the manufacturing costs.
- 3.4 Every change in proofs requires the preparation of new graphics and films. Should the purchaser carry out a change outside the given contract, the supplier will invoice the prime costs without prior notice.
- 3.5 Surplus or short deliveries caused by production are allowable within a tolerance of 10 % of the total contract amount. The total price will be altered according to the extent of the discrepancy.
- 3.6 If the supplier allows the purchaser to cancel an already awarded contract, the purchaser must reimburse the costs of contract completion, including an approximate accrued agent provision, as well as the lost profit to the supplier.
- 4 Payment Terms**
- 4.1 If not otherwise agreed-upon, all invoices are to be paid within 30 days from the invoice date. If payment is made within eight days by 100% advanced payment, or by COD deliveries, a 2% discount will be given, as long as the purchaser is not behind in the payment for other merchandise.
- 4.2 After expiration of the period agreed on in Point 4.1, the purchaser is in default of payment. During the delay, the purchaser must pay interest on the debt with eight percent points per annum above the current basic interest rate. The assertion of a demonstrably higher damage caused by delay remains possible. Five euros will be invoiced for every late payment reminder. For each order placed, the purchaser is obliged to provide exact information regarding legal form and legal representation of his business. If the information is incomplete or unclear, the purchaser is obliged to bear the costs incurred in obtaining information from the Commercial Registry, and/or Trade Register, regardless of the occurrence of delay.
- 4.3 If there is no satisfactory credit information available regarding the purchaser with whom no business connection exists, doubt exists as to the purchaser's ability to pay, or if the supplier has already had to request a late-payment notice, the supplier is entitled to request complete payment of the gross purchase value in advance.
- 4.4 If, after completion of the contract, a considerable deterioration of the purchaser's financial situation occurs, the supplier can demand pre-payment within a reasonable term and refuse service until pre-payment is made. In both cases (4.4 and 4.5), by refusal of the purchaser or expiry of the deadline, the supplier is authorised to request compensation and to withdraw from the contract due to non-fulfilment.
- 4.5 By non-acceptance of the contract, particularly by omission of a cooperative action, or by untimely manufacturing release of the proofs after expiration date, the purchaser is obliged to make good the damages, irrespective of any advanced rights from § 642 BGB.
- 4.6 The purchaser can only accumulate claims approved by the supplier or legally determined. He is entitled to a lien only if his counterclaim is based on the same contractual relationship.
- 5 Shipment and Transfer of Perils**
- 5.1 The delivery takes place ex works (EXW) (according to INCOTERMS 2000). The shipping and packaging costs will be invoiced separately.
- 5.2 The supplier reserves the right choose the mode of dispatch.
- 6 Infringement of Trademark Rights**
- 6.1 If the trademark of a third party is violated during the preparation of the merchandise, due to design, sample or other details of the purchaser, the third party releases the supplier of all claims.
- 6.2 Advertising
The supplier is entitled to advertise with the ordered products for his own use and to make reference to the name and the logo of the purchaser.
- 7 Retention of Title**
- 7.1 The supplier retains ownership of the merchandise until all requirements of the current business connection are completed.
In the case of breach of duty by the purchaser, particularly delayed payment, the supplier is authorised to demand, without a deadline, the release of the merchandise and/or to withdraw from the contract. The purchaser is required to release the merchandise. In case the delivered merchandise is reclaimed, there is no declaration of withdrawal from the supplier, unless explicitly declared.
- 8 Corrected Deductions and Samples**
- 8.1 It is the purchaser's responsibility to ensure a prompt release. The release of goods must occur no later than 4 weeks after the template is corrected.
- 8.2 The supplier is not liable for any errors after the release of the provided proofs, or the release of samples through the purchaser, i.e. through the waiver of the purchaser of the proofs.
- 9 Guarantee and Defective Material Claims**
- 9.1 The quality of the merchandise is planned exclusively according to the quality ordered. The purchaser assumes the risk of adequacy for the planned usage.
- 9.2 Insignificant deviations in the colour may occur in the case of print- and/or surface colours, according to template, sample or colour specification.
- 9.3 A light burr formation in metal- and synthetic signs is technically caused and not indicative of any flaw.
- 9.4 The supplier manufacturers within measurement- and pressure tolerances according to DIN mittel (German Industrial Standard).
- 9.5 If the purchaser approved the series production based on a design or sample, the criticism of such defects, which the purchaser could have determined by careful examination of the design or sample, is ruled out.
- 9.6 In as much as the merchandise shows defects, the supplier has the right, according to his choice, to rectify the problem by improving the defect, or to deliver merchandise free of defects (later completion). He is only obliged to later completion, if the purchaser has paid an appropriate portion of reimbursement, in consideration of the defect.
- 9.7 If later completion fails, the purchaser has no right to withdraw over a minor contract violation, particularly over insignificant defects.
- 9.8 The purchaser is obliged to examine merchandise immediately upon delivery, and immediately notify in writing of defects, otherwise the assertion of claims due to defects of merchandise is barred. The timely dispatch is sufficient to meet the deadline. The purchaser bears the full burden of proof for all presuppositions of claim, particularly for the defect itself, for the time of determination of the defect and for the timeliness of the notice of defects.
- 9.9 If the purchaser requests the cancellation of the contract due to a defect after failed late-completion, he is not entitled to any claim for damages due to the defect.
- 9.10 If the purchaser requests damages due to a defect after failed late-completion, the merchandise remains with the purchaser, if this is reasonable. The compensation for damages is limited to the difference between the purchase price and value of the defective merchandise. This is not valid if the supplier caused the contract damage intentionally or was grossly negligent.
- 9.11 Defective material claims become time-barred 12 months after delivery of the merchandise.
- 9.12 The purchaser is obliged to notify the supplier immediately, in writing, of each defect or instance of loss in detail, so that support from the purchaser enables elimination of the defect by the supplier.
- 9.13 Return of merchandise is only permissible with prior agreement.
- 10 Contractor Recourse of the Purchaser**
- If the purchaser makes use of his right to recourse according to §§ 437, 478 BGB and if in turn the supplier is entitled to claims against his supplier, said supplier agrees to forfeit these claims to the purchaser at this point. The purchaser is then obliged to assert all the claim against the pre-suppliers until the time a legally binding judicial decision is made. The supplier can only be drawn on if the claim against the pre-suppliers is not enforceable, or enforceable by law. During the enforcement of the retired claim of the purchaser against the pre-suppliers, the limitation of claim by the purchaser against the supplier is inhibited.
- 11 Liability**
- 11.1 The supplier is not liable for slightly negligent damages to insignificant contract obligations. In the case of slightly negligent damages to substantial contract obligations, the liability of the supplier is limited to the predictable, average damages, typical of the contract, according to the type of merchandise. These terms are also valid for the legal representative and executing aides of the supplier.
- 11.2 The preceding liability limitations do not affect claims according to the product liability law, nor to additional bodily- and health damages, or the loss of life to the supplier.
- 12 Place of Delivery, Area of Jurisdiction and Applicable Right**
- 12.1 Place of delivery for all obligations from the contract relationship is the administrative centre of the supplier and for all legal arguments - also in the framework of a change- or check process - the court at the administrative centre of the supplier is responsible if the purchaser is a merchant, one who is registered as a merchant, a legal person under public law, or a public-legal separate estate.
- 12.2 The law of the Federal Republic of Germany is to be exclusively used in the contractual relations (BGB and HGB). The application of the Convention of the United Nations from 11. April 1980 over contracts regarding the purchase of merchandise (CISG „Wiener Kaufrecht“ – Vienna Purchasing Right) is barred.
- 12.3 If individual terms of these general delivery conditions are, or should become, legally ineffective for any reason, the validity of the remaining terms will not be affected.