

# Sale and Delivery Conditions

## 1. Scope

All current and future deliveries and services provided to our contractual partners (hereinafter "Customer") shall be carried out exclusively on the basis of these General Terms and Conditions in accordance with the agreement concluded between us and the Customer. We do not recognise any contrary GTC or differing conditions of the Customer unless we have explicitly agreed to their validity in writing. Our GTC also apply if we carry out a delivery without reservations with knowledge of any contrary conditions or of conditions of the Customer that differ from our General Terms and Conditions. Our GTC apply both to consumers and to companies, unless a differentiation is made in the relevant clause.

We must point out that depending on the service to be provided, additional external service, assembly, construction and planning conditions (see [www.isw-technik.de/broschueren/geschaeftsbedingungen](http://www.isw-technik.de/broschueren/geschaeftsbedingungen)) may apply that supplement these Sale and Delivery Conditions. If you do not have our supplementary conditions, we will send these to you on request.

## 2. Quotation and Conclusion of an Agreement

Our quotations are non-binding; these remain valid for a maximum of thirty (30) calendar days. A Customer order is a binding offer that we can accept within thirty (30) days. All agreements with regard to our deliveries and services that are not provided in writing shall only be legally effective on provision of our confirmation provided in writing or by fax. Unilateral transactional declarations that relate to the contractual relationship, in particular notices of termination, shall only be effective in writing; a written declaration may also be transmitted by fax.

Disclosures about the object of the delivery or service (for example, weights, dimensions, practical value, capacity, tolerances and technical data) as well as presentations of the same, are descriptions or identifications of the delivery or service. A stricter liability may only be derived from these if we have explicitly guaranteed their binding nature in writing. Customary deviations and deviations that are carried out on the basis of legal regulations or that are technical improvements are permissible, insofar as these do not impair usability for the contractual purpose.

We reserve all ownership rights and copyrights to quotations and cost estimates given by us, to tools, aids, patterns, samples, illustrations, descriptions, models, calculations, majorities of data sets (also insofar as these originate from different orders) and other documents that originate from us or third parties and that are provided to the Customer. The Customer must not make these objects accessible to third parties, neither as such nor their contents, nor disclose these, use these themselves nor allow their use by third parties, nor duplicate these. The Customer must return these objects and any copies in full on our request, if the Customer no longer requires these for orderly business or if negotiations did not lead to the conclusion of an agreement. This also applies to those written documents that are labelled as confidential.

In the event transactions are concluded within the scope of electronic business, section 312 i (1) no. 1 to 3 and 2 BGB shall not apply unless the Customer is a consumer in accordance with the BGB.

## 3. Billing, offsetting, payment arrears

Our prices only apply to the agreed scope of services and delivery. Additional and special services shall be billed separately.

Our invoices are net plus Value-Added Tax and are due for payment immediately and payable without deductions, net cash, provided nothing to the contrary has been agreed. The deduction of any discount requires a special agreement. The dispatch weight is authoritative for billing. Value-Added Tax is included for consumers.

If a delivery or service is carried out in accordance with the agreement more than four (4) months after the conclusion of the relevant agreement and the prices of our upstream suppliers, the costs we incur (e.g. freight and wages) or the taxes payable by us rise or new taxes are introduced, or if our prices rise in general, we shall be entitled to adjust the price accordingly, unless the price had been explicitly confirmed as a fixed price. The price rise will be reported before the execution of the service and before the claim to payment comes into force.

The Customer may only offset our receivables if the counterclaim has been recognised by us, is undisputed or has been legally established. This does not apply to other counterclaims if these are synallagmatically linked to the offset main receivable. If the Customer is a business person, they shall only be authorised to exercise a right of retention if their counterclaim relates to the same contractual relationship.

In the event of payment arrears as well as justified doubts with regard to the solvency or creditworthiness of the Customer, we shall be authorised – notwithstanding our other rights – to demand prepayment for deliveries that have not yet been carried out and to make all claims from the business relationship due for immediate payment. Our delivery obligations shall lapse as long as the Customer is in arrears with a due payment.

## 4. Storage / Shipping

The risks of storage shall be borne by the Customer. If the Customer is a business person, this also applies to the risks of transport. The place of performance for delivery agreements and contracts for work and materials with Customers that are business persons is Wiesbaden. This also applies if part-deliveries are provided or if we have assumed other services (e.g. shipping or delivery) without any obligation to perform. Unloading and taking goods into storage is the Customer's affair.

If shipping or handover is delayed as a result of circumstances caused by the Customer, risks shall be transferred to the Customer on the date the goods are ready for shipment. Any storage costs incurred after the transfer of risks shall be borne by the Customer.

In the event the Customer arranges collection from the delivery point themselves, the Customer or its agent shall be responsible for loading the vehicle. Compliance with hazardous goods regulations is required in this connection. In the event of deliveries of bulk goods, the Customer must ensure the flawless condition of tanks or other storage receptacles and the connection of the filling lines to the receiving system on their own responsibility.

If our employees assist during loading or tank procedures, they act solely at the risk of the Customer and not as our vicarious agents.

All rules that relate to shipping apply accordingly if delivery is carried out by third-party carrier companies, if any liability of ours can be derived from their conduct. Third-party liability remains unaffected.

Any increase in freight costs after the conclusion of the agreement, as well as any extra costs incurred due to a prevention or delay of the transport due to circumstances for which we are not responsible, shall be borne by the Customer. If

we take back merchandise in full or in part the Customer shall bear the costs thus incurred without any regard to the grounds for the return.

We shall only insure the consignment against theft, breakage, transport, fire or water damage, or other insurable risks at the explicit request of the Customer and at their costs.

## 5. Force Majeure

Cases of force majeure and other incidents that are not foreseeable at the point in time the agreement is concluded (in particular for example natural disasters, geological changes and effects, orders from higher authorities, sabotage, operational disruptions, late deliveries or malfunctions of upstream suppliers, energy or commodity shortages, transport disruptions, severe weather, quarantines, epidemics, pandemics or regional medical crises, as well as strikes, lockouts, riots, conflicts, insurrection, civil disobedience, armed conflicts, terrorism or war (or a direct imminent threat from these and official orders), for which we are not responsible, shall free us from the obligation to deliver or perform for the duration of the disruption and in the scope of its effects. In these cases, the performance of the agreement shall extend by a time frame in accordance with the effects. Any claims to compensation shall be excluded.

Each contracting party is obliged to notify the other party without delay after the occurrence of a case of force majeure, including all details.

## 6. Liability for defects

a) If the Customer is a consumer, in the event of a defect we shall be liable pursuant to statutory regulations, insofar as no limitations result from the following. The consumer must report any obvious defects to us within two weeks of the appearance of the defect. If the report is not made within the aforementioned deadline warranty rights shall expire. This shall not apply if we fraudulently concealed the defect or if a warranty was assumed for the properties and condition of the item.

b) If the Customer is a business person, in the event of a defect we reserve the right to select the type of supplementary performance. The Customer shall check after delivery or provision without delay whether the object delivered or the service provided is suitable for the contractually agreed properties and condition and for the planned purpose of use. Otherwise, the regulations of section 377 HGB apply.

c) If the Customer is a consumer, the period of limitations for claims for defects on the delivery of new items shall be two years and on the delivery of used items, one year. The period commences on the transfer of risks. This does not apply if claims to compensation due to defects are involved. Section 7 applies to claims to compensation due to a defect.

d) Under the exclusion of any further rights of the Customer, we shall at our choice for defects reported in good time rectify delivered objects or services provided or subsequently deliver defect-free objects or subsequently provide improved services (supplementary performance). If rectification fails more than twice, the Customer may, in consultation with us, pursuant to the further proviso of statutory provisions, lower the payment (reduction) or, if a construction performance is not the object of the defect liability and/or a reduction would not be reasonable for the Customer in consideration of their interests, withdraw from the agreement at their choice. The provisions of section 282 and 283 BGB remain unaffected.

e) Merchandise subject to complaint may only be returned with our explicit agreement. In the event of justified complaints, we will pay the costs of the cheapest shipping method.

f) The Customer will not receive any guarantees in the legal sense from us.

g) The warranty shall lapse if the Customer has carried out any unauthorised changes or processing on the object delivered, unless the Customer proves that the defect in question was aggravated neither in full nor in part by such a change.

## 7. Liability for damage

a) Our liability for contractual breaches of obligations, compensation in addition to performance, compensation instead of performance, regardless of the legal grounds, in particular due to defects based on tort, is limited to intent or gross negligence. This does not apply in the event of the death, personal injury to or injury to health of the Customer, claims as a result of material breaches of obligations, i.e. of obligations that result from the nature of the agreement and the breach of which endangers the achievement of the purpose of the agreement, as well as compensation for losses caused by delays (section 286 BGB). In this regard we shall be liable pursuant to statutory provisions.

The preceding disclaimer also applies to breaches of obligations caused by minor negligence of our vicarious agents.

Otherwise, we shall only be liable if we culpably breach material contractual obligations or have fraudulently concealed a defect or have assumed a warranty for the properties and condition of the delivery or service or in cases of death, personal injury or injury to health.

However, claims to compensation for the negligent breach of material contractual obligations is limited to foreseeable losses typical for the agreement.

b) Liability for delays shall be determined pursuant to paragraph e) and liability for impossibility pursuant to paragraph f).

c) Our mandatory liability pursuant to the provisions of the German Product Liability Act, as well as our liability to reimburse futile expenses pursuant to section 284 BGB, remains unaffected by the rules in paragraphs a) and b).

d) Insofar as our liability is excluded or is restricted, this also applies with regard to the personal liability of all our employees, workers, representatives and vicarious agents. This also applies to the liability regulations in the following paragraphs e) and f).

e) If we fall into delivery delays, in cases of intent or gross negligence by us or of our legal representatives or of our vicarious agents we shall be liable pursuant to statutory provisions.

In other cases of delivery days our liability to pay compensation in addition to performance shall be limited to 10% and to pay compensation instead of performance to 20% of the value of the delivery.

Any further claims of the Customer are excluded – including after the expiry of any deadline set for us to perform.

f) If delivery is impossible the Customer shall be entitled to demand compensation pursuant to statutory provisions. However, any claims of the Customer to compensation in addition to or instead of performance are limited to 10% of that part of the delivery that cannot be used as a result of impossibility.

Any further claims of the Customer as a result of the impossibility of the delivery are excluded.

The preceding limitations of liability do not apply in cases of liability due to intent, gross negligence or due to death, personal injury or injury to health. The rights of the Customer to withdraw from the agreement and to refund any futile expenses pursuant to section 284 BGB remain unaffected.

## 8. Period of limitations

Claims for contractual breaches of obligation for which we are responsible shall be subject to a period of limitations of one year. This does not apply to breaches of obligations committed intentionally or with gross negligence, or to claims for defects made by the Customer as per section 438 (1) 2 and section 634 a (1) 2 BGB, or to losses caused by death, personal injury or injury to health. The rights of a consumer pursuant to section 475 BGB remain unaffected.

## 9. Retention of title

For agreements with consumers, we retain ownership of all objects supplied by us until the agreed price has been paid in full. If the Customer is a business person, we retain ownership of all objects supplied by us until the fulfillment of all receivables from the Customer resulting from the business relationship, including if payment has already been made for the concrete delivery item/concrete service.

Our reservation also extends to any new products that result from any processing of reserved goods. In the event of any processing, compounding or mixing with items that do not belong to us we shall acquire co-ownership in proportion to the invoice amount of our reserved goods to the invoice amounts of the other materials.

As long as the Customer is prepared and is in a position to meet its obligations towards us properly, they may dispose of merchandise that is our property or co-property in the course of orderly business. The following applies in detail:

a) If the Customer defers the purchase price to their customers, the Customer may retain ownership to the changed merchandise towards these customers. Without this reservation the Customer is not authorised to dispose of the reserved goods.

b) If the Customer is a business person, in the event of any further sale/letting of reserved goods, in order to fulfil all our claims they now assign the receivables resulting from the specified transactions, including bills and crossed cheques, from their customer to us as security.

In the event of the disposal of merchandise to which we hold co-ownership, the assignment is limited to the proportion of the receivables that corresponds to our co-ownership. In the event of any processing of reserved goods, their reshaping or compounding with another item, we acquire direct ownership of the manufactured item. These shall be deemed to be reserved goods. The Customer shall only be empowered further to sell or otherwise use the reserved Goods if it is ensured that the resulting receivables are transferred to us up to the fulfillment of all our claims.

c) If the assigned receivable is taken into a current account, a Customer that is a business person now assigns a part of the balance that corresponds to the amount of this receivable (including the corresponding part of the final balance) from the current account to us. If interim balances are drawn up and it is agreed that these are carried forward, the receivable to which we are entitled in accordance with the preceding regulation from the interim balance for the next balance shall be treated as assigned to us.

d) A Customer that is a business person is empowered, until our revocation, to collect the receivables assigned to us as long as they meet their payment obligations.

As long as ownership is reserved, the Customer shall, as far as they are able, treat reserved goods with care and safeguard these, as well as to carry out any necessary and usual inspection, maintenance and servicing work at their costs. During the period of reservation of title, the Customer is not permitted either to pledge or to assign reserved goods as security. Any access made by third parties to reserved goods, such as by means of attachment or seizure, as well as any damage to or destruction of reserved goods, shall be reported to us in writing or by fax without delay. The Customer shall bear all the costs that are required to cancel such access and to reacquire the reserved goods, insofar as these cannot be collected from third parties.

In the event of any breach by the Customer of the obligation to treat reserved goods with care, or of any other duties of care by the Customer, or any arrears in payment of secured receivables, we shall be entitled to repossess the reserved goods. Such a repossession shall only be deemed to be a withdrawal from the agreement if we declare this in writing. After any repossession we shall be authorised to exploitation whereby the proceeds from the Customer's payables less appropriate exploitation costs shall be charged. The same applies in all other cases of conduct of the Customer that is in breach of contract.

If the realisable value of the security exceeds our receivables to be secured by more than 20%, we shall at the request of the Customer and at our election release the securities to which we are entitled to a corresponding extent.

If the reservation of title is not permissible or is only permissible to a limited extent in accordance with the statutory provisions applicable in the Customer's country, our aforementioned rights shall be limited to the legally permissible extent.

## 10. Transfer of risks

If the Customer is a business person, the risks of accidental loss shall be transferred to the Customer on handover to the transport person. This also applies if we have assumed other services (e.g. shipping or delivery) without any explicit obligation to perform.

## 11. General Provisions

German law applies exclusively to all the legal relationships between us and the Customer. Any applicability of UN sale of goods conventions is excluded.

The exclusive court of jurisdiction for agreements with merchants, legal entities under public law or quasi-autonomous special public entities is Wiesbaden. Statutory provisions about exclusive courts of jurisdiction remain unaffected by this regulation.