

General Terms and Conditions of Sale (GTC) for commercial transactions between companies (Status: 01. Januar 2024) - Germany

**Innovation and Digital Solutions
with Heart, SME- and IT-Practice**



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1 Scope of application

1.1 These General Terms and Conditions of Sale (GTCS) apply to all our business relationships with our customers ("Buyer"). The General Terms and Conditions of Sale shall only apply if the Buyer is an entrepreneur (Section 14 BGB), a legal entity under public law or a special fund under public law within the meaning of Section 310 (1) BGB.

1.2 Our General Terms and Conditions of Sale shall apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of the Buyer shall only become part of the contract if and insofar as we have expressly agreed to their validity. This requirement of consent shall also apply if the Buyer refers to its General Terms and Conditions of Business in the context of the order and we have not expressly objected to the General Terms and Conditions of Business.

1.3 These General Terms and Conditions of Sale apply to contracts for the sale and/or delivery of movable goods ("Goods"). It is irrelevant whether we manufacture the goods ourselves or purchase them from suppliers (§§ 433, 650 BGB). Unless otherwise agreed, the General Terms and Conditions of Sale in the version valid at the time of the Buyer's order or in the version last communicated to him in text form shall also apply as a framework agreement for similar future contracts, without us as the Seller having to refer to them again on a case-by-case basis (note: as a precautionary measure, the General Terms and Conditions of Sale should always be attached to the order confirmation).

1.4 Individual agreements made with the Buyer in individual cases (including collateral agreements, supplements and amendments) and information in our order confirmation shall take precedence over these General Terms and Conditions of Sale. Subject to proof to the contrary, a written contract or our written confirmation shall be decisive for the content of such agreements.

1.5 Legally relevant declarations and notifications by the Buyer with regard to the contract (e.g. notifications of defects, setting of deadlines, withdrawal or reduction) must be made in writing, i.e. in written and text form (e.g. letter, e-mail, fax). Further statutory formal requirements and further evidence (if necessary in case of doubt about the legitimacy of the declaring party) remain unaffected.

1.6 If references are made to the validity of statutory provisions, it should be noted that these are for clarification purposes only. The statutory provisions shall apply - even if no corresponding clarification has been made - to the extent that they are not amended or excluded by the General Terms and Conditions of Sale.

2 Offer and conclusion of contract

2.1 Our offers are subject to change and non-binding. This shall also apply if we have provided the Buyer with catalogs, technical documentation (e.g. drawings, plans, calculations, references to DIN standards) and other product descriptions or documents (including in electronic form). We reserve ownership rights and copyrights to all documents provided to the Buyer in connection with the order placement. These documents may not be made accessible to third parties unless we give the Buyer our express written consent to do so.

2.2 The order of the goods by the Buyer is a non-binding contractual offer in accordance with § 145 BGB. In the event that nothing to the contrary results from the order, we shall be entitled to accept this contractual offer within two weeks of its receipt by us.

2.3 Acceptance of the contract offer by the Buyer can be declared either in writing (e.g. by an order confirmation) or by delivery of the goods to the Buyer. In the event that we as the seller do not accept the buyer's offer within the period specified in clause 2.2, any documents sent to the buyer must be returned to us immediately.

3 Prices and payment agreements

3.1 Unless otherwise agreed in writing in individual cases, our current prices at the time of conclusion of the contract shall apply ex warehouse, plus statutory VAT. The costs of packaging shall be invoiced separately. Unless a fixed price agreement has been made, we reserve the right to make reasonable price changes due to changes in wage, material and distribution costs for deliveries made 3 months or more after conclusion of the contract.



3.2 In the context of a sales shipment, the buyer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the buyer. In the event that we do not invoice the transportation costs incurred in the individual case, we shall charge the same according to expenditure including transportation insurance. Any customs duties, fees, taxes and other public charges shall be borne by the Buyer.

3.3 Payment of the purchase price must be made exclusively to the account specified in the invoice. The deduction of a discount is only permitted if a special written agreement has been made.

3.4 Unless otherwise agreed, the purchase price shall be due and payable within fourteen days of invoicing and delivery or acceptance of the goods. However, we are entitled at any time, even in the context of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. We shall declare a corresponding reservation at the latest with the order confirmation.

3.5 The Buyer shall be in default if the above payment period expires. During the period of default, interest shall be charged on the purchase price at the applicable statutory default interest rate pursuant to Section 288 (2) BGB (German Civil Code) at a rate of nine percentage points above the respective prime rate (see Appendix 1). We reserve the right to assert further claims for damages caused by default. Our claim against merchants for commercial maturity interest in accordance with § 353 HGB remains unaffected.

3.6 If it is foreseeable after conclusion of the contract that our claim to payment of the purchase price is jeopardized due to the Buyer's inability to pay (e.g. due to an application for the opening of insolvency proceedings), we shall be entitled to refuse performance in accordance with the statutory provisions and, if necessary after setting a deadline, to withdraw from the contract (Section 321 BGB). In the case of contracts for which the manufacture of non-fungible items (custom-made products) is owed, we may declare our withdrawal immediately. The statutory provisions on the dispensability of setting a deadline shall remain unaffected in this respect.

4. rights of retention

The Buyer shall only be entitled to rights of set-off or retention in the event that his claim has been legally established or is undisputed and his counterclaim is based on the same contractual relationship. In the event that defects occur within the scope of the delivery, the Buyer's counter-rights, in particular in accordance with Section 8.6 sentence 2 of these General Terms and Conditions of Sale, shall remain unaffected.

5 Delivery period and delay in delivery

5.1 The delivery period shall be agreed individually or specified by us upon acceptance of the order.

5.2 In the event that we are unable to meet contractually agreed delivery deadlines for reasons for which we are not responsible, we shall inform the Buyer of this circumstance without delay and at the same time notify the Buyer of the expected or new delivery deadline. If a delayed delivery cannot be made due to non-availability of the service even within the newly announced delivery period, we are entitled to withdraw from the contract in whole or in part; we must immediately reimburse any consideration already provided by the buyer (in the form of the purchase price payment). The non-availability of the service is given, for example, if our supplier has not delivered to us on time, if we have concluded a congruent hedging transaction, if there are other disruptions in the supply chain (for example due to force majeure) or if we are not obliged to procure in individual cases.

5.3 Whether we as the seller are in default of delivery shall be determined in accordance with the statutory provisions. However, the prerequisite for a delay in delivery by us as the seller is a reminder from the buyer. In the event that there is a delay in delivery, the buyer may claim lump-sum compensation for the damage caused by the delay. The liquidated damages shall amount to 0.5% of the net price (delivery value) for each completed calendar week of delay, but shall not exceed a total of 5% of the delivery value of the goods delivered late. We reserve the right to prove that the Buyer has suffered no damage or only less damage than the above lump sum.

5.4 The rights of the Buyer pursuant to Section 9 of these General Terms and Conditions of Sale and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

6 Delivery, transfer of risk, acceptance, default of acceptance

6.1 Delivery shall be ex warehouse. The warehouse is also the place of performance for the delivery and the place for any subsequent performance. In the event that the buyer wishes to have the goods sent to another destination (sale to destination), he shall bear the costs of shipment. In the event that nothing has been contractually agreed, we may determine the type of shipment (packaging, shipping route, transport company) ourselves.

6.2 The risk of accidental loss and accidental deterioration shall pass to the Buyer when the goods are handed over to the Buyer. In the case of a sale involving the carriage of goods, the risk of accidental loss of the goods, accidental deterioration of the goods and the risk of delay shall pass to the Buyer upon delivery of the goods to the forwarding agent or carrier. In the event that acceptance of the goods is contractually agreed, this shall be decisive for the transfer of risk. Further statutory provisions of the law on contracts for work and services shall remain unaffected. If the Buyer is in default of acceptance, this shall be deemed equivalent to handover or acceptance of the goods.

6.3 In the event that the Buyer is in default of acceptance or our delivery is delayed for other reasons for which the Buyer is responsible, we shall have a claim against the Buyer for compensation for the damage incurred, including additional expenses (e.g. storage costs). If this is the case, we shall invoice the buyer accordingly. Statutory claims on our part (reimbursement of additional expenses, reasonable compensation, termination) and proof of higher damages shall remain unaffected.

6.4 Proof of higher damages and our statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination) shall remain unaffected; however, the lump sum shall be offset against further monetary claims. However, the Buyer reserves the right to prove that we have suffered no loss at all or only a significantly lower loss than the above lump sum.

7 Retention of title

7.1 We reserve title to the delivered goods until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims).

7.2 The goods subject to retention of title may not be pledged to third parties or assigned as security until the secured claims have been paid in full. The buyer must inform us immediately in writing in the event that an application is made to open insolvency proceedings or if third parties seize the goods belonging to us (e.g. seizures). Insofar as the third party is not in a position to reimburse us for the judicial and extrajudicial costs of an action pursuant to § 771 ZPO (German Code of Civil Procedure), the Buyer shall be liable for the costs incurred by us.

7.3 In the event of a breach of contract by the Buyer, in particular in the event of non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of the retention of title. The demand for return does not at the same time include a declaration of withdrawal; rather, we are entitled to demand only the return of the goods and reserve the right to withdraw from the contract. In the event that the buyer does not pay the purchase price due, we must have set the buyer a reasonable deadline for payment without success before asserting these rights. This shall only apply if such a deadline is not dispensable under the statutory provisions.

7.4 Until revoked in accordance with clause 7.4.c, the Buyer is authorized to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition:

(a) The products of our goods resulting from combination, mixing or processing shall be subject to retention of title at their full value, whereby we shall be deemed to be the manufacturer. In the event that, in the event of combination, mixing or processing with the goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the combined, mixed or processed goods. In all other respects, the same shall apply to the resulting product as to the goods delivered subject to retention of title. The purchaser also assigns to us for security purposes such claims against a third party which accrue to him through the combination of the goods subject to retention of title with a property. In this case, we accept the assignment.

b) The Buyer hereby assigns to us for security purposes the claims against third parties arising from the resale of the goods or the product in the amount of the final invoice amount agreed with us (including VAT) in total or in the amount of our possible co-ownership share pursuant to Section 7.4.a. We accept the assignment. We accept the assignment. The obligations of the Buyer listed in Section 7.2 shall also apply in consideration of the assigned claims.

c) The Buyer shall remain authorized to collect the claim in addition to us. As long as the Buyer meets his payment obligations to us, there is no deficiency in the Buyer's ability to pay and we do not assert the retention of title by exercising a right in accordance with clause 7.3, we undertake not to collect the claim. If we assert the exercise of a right pursuant to Section 7.3, we may demand that the Buyer disclose the assigned claims and their debtors and that the Buyer provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. Furthermore, we shall be entitled to revoke the Buyer's authorization to resell and process the goods subject to retention of title.

d) In the event that the realizable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the Buyer's request.

7.5 The buyer is obliged to treat the purchased item with care as long as ownership has not yet been transferred to him. In particular, he is obliged to insure it adequately at his own expense against theft, fire and water damage at replacement value (note: only permissible for the sale of high-value goods). If maintenance and inspection work has to be carried out, the buyer must carry this out in good time at his own expense.

8 Claims for defects of the buyer

8.1 The statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly/installation or defective instructions), unless otherwise specified below. This shall not affect the statutory provisions on the sale of consumer goods (Sections 474 et seq. BGB) and the Buyer's rights arising from separately issued guarantees, in particular from the manufacturer.

8.2 Agreements that we have made with purchasers regarding the quality and intended use of the goods (including accessories and instructions) regularly form the basis of our liability for defects under the warranty. A quality agreement includes all product descriptions and manufacturer's specifications that are the subject of the individual contract or were made public by us (in particular in catalogs or on our Internet homepage) at the time the contract was concluded. In the event that no quality has been agreed, it must be assessed in accordance with the provisions of Section 434 (3) BGB whether a defect exists. Against this background, it should be noted that public statements made by the manufacturer in the context of advertising or on the label of the goods take precedence over statements made by other third parties.

8.3 For goods with digital elements or other digital content, it should be noted that we are only obliged to provide and update the digital content insofar as this expressly results from a quality agreement in accordance with Section 8.2. We accept no liability for public statements made by the manufacturer or other third parties.

8.4 We shall not be liable for defects which the Buyer is aware of or grossly negligently unaware of upon conclusion of the contract in accordance with Section 442 BGB.

8.5 Claims for defects on the part of the Buyer shall only exist if the Buyer has complied with its statutory inspection and notification obligations (§§ 377, 381 HGB). If the goods are building materials or other goods intended for installation or other further processing, an inspection must be carried out immediately before processing. We must be notified immediately in writing if a defect is discovered during delivery, inspection or at a later date. Obvious defects must be reported in writing within 5 working days of delivery and non-apparent defects within the same period of time from discovery of the defects. In the event that the buyer fails to fulfill or does not fulfill his obligation to properly inspect and/or report defects, we shall not be liable for the defect that was not reported or not reported on time or not reported properly in accordance with the statutory provisions. If the goods were intended for fitting, mounting or installation, this shall also apply if the defect only became apparent after the corresponding processing as a result of non-compliance with or breach of one of these obligations. In this case, the Buyer shall not be entitled to any claims for compensation for the "installation and removal costs".

8.6 If the delivered goods are defective, we as the seller shall be entitled to choose whether we provide subsequent performance by remedying the defect (subsequent improvement) or by delivering a defect-free item (subsequent delivery). In the event that the type of subsequent performance chosen by us is unreasonable for the buyer in the individual case, he may refuse it. However, we reserve the right to refuse subsequent performance under the statutory conditions. In addition, we are entitled to make the subsequent performance to be provided by us dependent on the Buyer paying the purchase price due. However, the Buyer shall be entitled to retain a reasonable part of the purchase price in proportion to the defect.

8.7 The Buyer shall grant us the necessary time and opportunity for the subsequent performance to be rendered. In particular, the Buyer must hand over to us the item for which he has asserted a defect for inspection purposes. In the event that we make a subsequent delivery of a defect-free item, the buyer must return the defective item to us in accordance with the statutory provisions. However, the buyer is not entitled to a claim for return.

8.8 Unless we have contractually committed ourselves to this, the subsequent performance does not include the removal, removal or disassembly of the defective item or the installation, attachment or installation of a defect-free item. This does not affect the buyer's claims for reimbursement of the "installation and removal costs".

8.9 We will reimburse the expenses necessary for inspection purposes and for subsequent performance (transport, labor and material costs and, if applicable, removal and installation costs) in accordance with the statutory provisions and these General Terms and Conditions of Sale in the event that a defect exists. However, we can demand reimbursement from the buyer for costs incurred due to an unjustified request for defect rectification in the event that the buyer knew or could have recognized that there was actually no defect.



8.10 The buyer has the right to rectify the defect himself and to demand reimbursement of the objectively necessary expenses for this if there is an urgent case (e.g. in the event of a risk in relation to operational safety or to prevent disproportionate damage). The buyer must inform us immediately in the event of self-performance. In the event that we are entitled to refuse subsequent performance in accordance with the statutory provisions, the buyer has no right to perform the defect himself.

8.11 The buyer can withdraw from the purchase contract or reduce the purchase price in accordance with the statutory provisions if a deadline set by the buyer for subsequent performance has expired without success or is dispensable according to the statutory provisions. In the event of a non-significant defect, however, the buyer has no right of withdrawal.

8.12 Claims by the buyer for reimbursement of expenses in accordance with Section 445a Paragraph 1 of the German Civil Code are excluded, unless the last contract in the supply chain is a purchase of consumer goods (Sections 478, 474 of the German Civil Code) or a consumer contract for the provision of digital products (Sections 445c Sentence 2, 327 Paragraph 5, 327u of the German Civil Code).

8.13 Claims for damages or claims for reimbursement of wasted expenditure by the buyer (Section 284 of the German Civil Code) exist even if a defect exists only in accordance with Sections 9 and 10.

9. Limitation period

9.1 The general limitation period for claims resulting from material or legal defects is one year from delivery, in deviation from Section 438 Paragraph 1 No. 3 of the German Civil Code. In the event that acceptance has been contractually agreed, the limitation period begins with acceptance.

9.2 The limitation period is 5 years from delivery in accordance with the statutory regulation (Section 438 Paragraph 1 No. 2 of the German Civil Code) in the event that the goods are a building or an item that has been used for a building in accordance with its usual use and has caused its defectiveness (building material). This applies subject to the other special statutory provisions on limitation (in particular Section 438 Paragraph 1 No. 1, Paragraph 3, Sections 444, 445b BGB)

9.3 The above limitation periods under the law of purchase also apply to contractual and non-contractual claims for damages by the buyer that are based on a defect in the goods, unless the application of the regular statutory limitation period according to Sections 195, 199 BGB would lead to a shorter limitation period in individual cases. Claims for damages by the buyer according to Sections 10.1 and 10.2.a) as well as those under the Product Liability Act expire exclusively according to the statutory limitation periods.

10. Other liability

10.1 Unless otherwise stated in these General Terms and Conditions of Sale, including the following provisions, we as the seller are liable for breaches of contractual and non-contractual obligations in accordance with the statutory provisions.

10.2 Within the scope of liability based on fault, we are liable for damages, regardless of the legal basis, only in the event of intent and gross negligence. In the event of simple negligence, we are liable, subject to statutory limitations of liability (e.g. care in one's own affairs; insignificant breach of duty), only:

a) for damages resulting from injury to life, body or health,

b) for damages resulting from the breach of an essential contractual obligation (obligations whose fulfillment makes the proper execution of the contract possible in the first place and on whose compliance the contractual partner relies and may rely). In this case, however, our liability is limited to compensation for foreseeable, typically occurring damage.

10.3 The liability limitations resulting from section 10.2 also apply to third parties and in the event of breaches of duty by persons whose fault we are responsible for according to statutory provisions. If a defect was fraudulently concealed and a guarantee for the quality of the goods was given, the liability limitations do not apply. This also applies to claims of the buyer under the Product Liability Act.

10.4 The buyer can withdraw or terminate the contract due to a breach of duty that does not result from a defect only if we as the seller are responsible for the breach of duty.

10.5 The buyer's right of termination (in particular according to §§ 650, 648 BGB) is excluded. Otherwise, the statutory requirements and legal consequences apply.

11. Choice of law and place of jurisdiction

11.1 These General Terms and Conditions of Sale and the contractual relationship between us as the seller and the buyer are subject to the law of the Federal Republic of Germany, excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.



11.2 If the buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, our place of business in Konstanz is the exclusive and international place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. The same applies if the buyer is an entrepreneur within the meaning of Section 14 of the German Civil Code.

11.3 We are also entitled to file a lawsuit at the place of performance of the delivery obligation in accordance with these General Terms and Conditions of Sale or a priority individual agreement or at the general place of jurisdiction of the buyer. Priority statutory provisions (exclusive places of jurisdiction) remain unaffected by this.

Appendix 1: Notes

The form assumes that the General Terms and Conditions of Sale (GTC) are used exclusively with entrepreneurs within the meaning of Section 14 of the German Commercial Code. In this respect, there is generally greater scope for designing general terms and conditions than is the case with the purchase of consumer goods under Section 475 of the German Civil Code, which is already largely mandatory in individual contracts. The General Terms and Conditions of Sale are designed in such a way that they can be used by both manufacturers and intermediaries. This also applies to products (including digital ones) intended for sale to (end) consumers. The General Terms and Conditions of Sale are detailed in their design and must therefore be adapted to each individual case.

If the user of the General Terms and Conditions of Sale regularly enters into contracts with entrepreneurs and consumers, care should be taken to ensure that either separate forms are used or that the use of general terms and conditions is dispensed with altogether with consumers.

The 2022 reform of the law of obligations based on the implementation of the Digital Content Directive (DIRL) and the Goods Sales Directive (WKRL) focuses entirely on the purchase of consumer goods or the provision of digital products to consumers. In the event that general sales law and questions of recourse in the supply chain are affected, this will be taken into account at the appropriate point in the General Terms and Conditions of Sale and the respective notes (in particular on liability for defects).

Warranty periods

The warranty period for purchase and work contracts is 2 years. The warranty period can be shortened by general terms and conditions as follows:

Movable items other than building materials

New:

- Buyer is a consumer: 2 years
- Buyer is a business owner: 1 year

Used:

- Buyer is a consumer: 1 year
- Buyer is a business owner: none

Building materials (if installed)

New: 5 years

Used

- Buyer is a consumer: 1 year
- Buyer is a business owner: none

Reimbursement of expenses for subsequent performance

The seller must bear the expenses required for the purpose of subsequent performance (e.g. transport, travel, labor and material costs) in accordance with Section 439 Paragraph 2 of the German Civil Code (BGB). This obligation may not be excluded by general terms and conditions.

Liability for defects - Seller must bear removal and installation costs

The statutory provision for subsequent performance in accordance with Section 439 Paragraph 3 Sentence 1 of the German Civil Code (BGB). stipulates that the seller is obliged, as part of the subsequent performance, to reimburse the buyer for the necessary expenses for the removal and installation or attachment of the defect-free item if the buyer has installed the defective item in another item or attached it to another item in accordance with its type and intended use. According to Section 445a of the German Civil Code (BGB), the seller can also take recourse against his supplier. However, the seller is only liable if the buyer acted in good faith. The buyer's rights are therefore excluded if the buyer knew about the defect at the time of installation or did not know about it due to gross negligence.



Changes in warranty law

The statutory innovations in the context of the warranty law for material defects through the implementation of the DIRM and WKRL on January 1, 2022 focus entirely on consumer contracts. In business transactions, despite the equal status of the subjective and objective concepts of error now stipulated in Section 434 of the German Civil Code (BGB) and the lack of clarity of the regulations in detail, there are no serious changes compared to the previous legal situation. In particular, B2B still has the option of making specific (even negative) quality agreements that deviate from the objective quality standard, which can also relate to the assumed use of the product. Special features, particularly with regard to liability for goods with digital elements in the supply chain, are taken into account.

Restriction to subsequent performance

In the case of a defective item, the buyer can choose to demand the removal of the defect or the delivery of a defect-free item or, if the conditions are met, compensation for damages. Only if subsequent performance is unsuccessful, not possible or unreasonable can the buyer - secondarily - assert warranty rights. The clause assigns the right to choose the type of subsequent performance to the seller, in deviation from Section 439 Paragraph 1 of the German Civil Code. The main argument in favor of the admissibility of the right to choose is that the seller or the manufacturer he regularly engages is closer to the matter than the buyer, which is why the contractor's right to choose in the case of a work contract (Section 635 Paragraph 1 of the German Civil Code) is even provided for by law. This model can also be applied to purchase contracts between entrepreneurs, within the scope of what is reasonable.

Limitations of liability

Any exclusion or limitation of liability for damages resulting from injury to life, body or health that are based on an intentional or negligent breach of duty by the user or an intentional or negligent breach of duty by a legal representative or vicarious agent of the user is ineffective.

Amount of default interest

From the start of the default, the buyer owes the seller default interest in addition to the purchase price. If a consumer is involved in the purchase contract, either as a buyer or as a seller, the interest rate is 5% above the base interest rate. For purchase contracts between entrepreneurs, the interest rate is 9% above the base interest rate.

The current base interest rates can be found at the Bundesbank (<http://www.bundesbank.de/>).

Source: <https://www.ihk-muenchen.de/de/Service/Recht-und-Steuern/Vertragsrecht/mustervertraege/allgemeine-verkaufsbedingungen-agb.html>