

General Terms and Conditions of Sale and Payment of Delius GmbH & Co. KG

I. General

1. All deliveries of goods and any provision of services shall be subject to the terms and conditions set out below. The same shall apply to all future transactions of this kind, even if the present terms and conditions are not explicitly referred to in connection with such transactions.
2. Any purchase terms or other general terms and conditions of the other party – hereinafter referred to as the customer - are expressly opposed herewith. Such terms will not be binding for us, even if we fail to explicitly reject them when concluding an agreement.

II. Offers

1. All our proposals shall be subject to change without notice.
2. Any statements made by our representatives as well as statements made verbally shall require our written confirmation to become effective.

III. Prices

1. All prices are subject to any applicable taxes and customs duties. Except as otherwise agreed, all prices are ex works in Germany [EXW Bielefeld], excluding packaging and freight.
2. In the event that a delivery period of more than four months has been agreed and that prices have risen in the meantime, we shall be entitled to charge the customer accordingly for any increase of costs resulting from higher prices for material, production, assembly, staff, delivery and similar items.

IV. Delivery period/delivery

1. The specified periods of delivery are approximate dates only. Fixed business terms must be expressly agreed.
2. WE reserve the right to correct and punctual self-deliveries. We shall not be answerable for delayed, omitted or non-conforming deliveries insofar as such delayed, omitted or non-conforming deliveries are attributable to our own suppliers without any fault on our part. We will inform the customer about such difficulties immediately.
3. In the event of a delay in delivery caused by acts of God, riot, strike, lockout, raw material shortage or equipment failures that are beyond our control or occurring at our suppliers' plants, the period of delivery shall be extended by no less than the period of time required to remedy the fault to the extent that such fault affects the production or delivery of the delivery item. We will immediately notify the customer as to the beginning and end of such hindrances. In the event of permanent equipment failure caused by acts of God, riot, strike, lockout, raw material shortage or equipment failures that are beyond our control or in the event that we have, through no fault of our own, failed to receive deliveries from our own suppliers, the customer and we shall also be entitled to rescind the agreement wholly or partially, all claims for damages shall be excluded. Any performances must be immediately paid in case the contract is rescinded. The contractual party who decides to rescind the contract according to these rules must announce this two weeks beforehand. Permanent operating disturbances in the sense put forward above may be assumed when they last longer than five weeks.
4. Claims for compensation regarding delay in delivery can only be submitted according to the conditions of section V.2.
5. Reasonable partial shipments shall be permitted. Partial shipments shall be invoiced on the basis of the value of each partial shipment and paid by the customer according to the provisions of Section VIII.1 below.
6. Transport risk shall always be assumed by the customer, even if we should exceptionally deliver free house.
7. Deliveries exceeding or lacking up to 10% of the amount ordered are admissible.

V. Claims based on defects / indemnity

1. Insofar as we are committed to posterior fulfilment, this will be done through corrective action or new delivery, at our discretion. § 377 HGB is not affected by this. This particularly means that any complaint is excluded insofar as the goods were further used, e.g. cut to shape, although it has faults which have not been eliminated. Small deviations in quality, colour, width, weight, equipment or design, which are technically impossible to avoid, are not defects. This also is true for usual commercial deviations, unless delivery exactly according to a given sample was agreed. Replaced parts become our property. In case of elimination of defects, we shall be committed to assume all expenditures related to the elimination of the defects, especially transport, trajectory, work and material costs, insofar these were not increased due to the fact that the purchased items was not transferred to another place than that which was agreed to contractually. Furthermore, the customer is entitled to all other legal claims concerning the rescinding of the contract and reduction of value, insofar as the legal conditions for this are fulfilled. Claims for indemnity only will be valid within the limits of the following provision.
2. In the event of culpable breach of a contractual obligation (so-called cardinal commitment), we will be liable to indemnities, however only to the amount of the typically occurring and foreseeable damage, if nothing else has been agreed for the following. Cardinal commitments are such which allow the correct implementation of the contract, and to the keeping of which the customer is normally entitled; furthermore those, the infringement of which may endanger correct contract implementation. The customer will be entitled to indemnities according to legal provisions without limit, when these are based on
 - injury to life, bodily injury or to health, caused by wilful or gross negligence breach of duty on the part of ourselves, any of our legal representatives or legal assistants, or
 - wilful or gross negligence breach by ourselves, any of our legal representatives or our legal assistants, or
 - on the law concerning product liability, or
 - based on the infringement of a supply guarantee or any other guarantee given by us.

No further claims for indemnity will be accepted against us, our legal representatives and persons assisting us, as well as persons assisting us in the implementation, whatever legal reason they may be based on. The legal obligations of providing proof remain.

VI. Statutory limitation of claims based on defects

- The customer's claims based on defects shall expire by limitation within one year unless
1. the product delivered by us is an item integrated within a building in accordance with that product's habitual manner of use, constituting the cause for the defectiveness of that building, or
 2. unless the claims are for compensation of expense under Section 479 of the BGB, or
 3. the defect is based on an intentional or malicious breach of duty through ourselves or one of our legal representatives or persons assisting us in the contract implementation.

In the cases listed in subparagraphs 1. to 3. and for any claims for damages shall be subject to legal periods of limitation. The same will apply for warranties assumed by us or for any purchase risk assumed by us. The legal provisions on suspension, interruption of the running of the statute of limitations, and on the renewed beginning of the statute of limitations shall remain effective.

VII. Reservation of Ownership

1. We reserve the right of ownership to all goods delivered by us ("Reserved Goods") until full payment of the purchase price and until all our claims resulting from the business relation, independently of the legal reason, including agreements signed at a later time, have been paid.
2. The customer shall be entitled to process on resell the objected goods in the ordinary course of business, provided, however, he is not in default regarding his duties toward us or does not suspend payments. In particular, the following shall apply:
 - a) Any processing or finishing of the objected goods shall not be binding for us in our capacity as manufacturer of the goods pursuant to Section 950 of the BGB. Processing or finishing of the objected goods shall not give the customer a right of ownership to the new goods if the objected goods are processed, commingled or combined or amalgamated with other objects, we shall acquire co-ownership in the resulting new product in proportion with the relation between the invoice value of our objected goods and the total value. The provisions applicable to the objected goods shall equally apply to co-owner's shares that have been created under the above provisions.
 - b) The customer herewith assigns to us all claims from the resale or other form of disposal, including without limitation from work performance contracts, together with all ancillary rights and covering also our co-owner's shares to the extent that the objected goods have been processed, commingled or combined, or that the goods are solidly integrated. Insofar as the objected goods have been processed, commingled or combined or solidly integrated, we are entitled to a co-ownership from this cession to the relation between the invoice value of our objected goods and the invoice value of the product corresponding to a prime rate fraction of the resale. If our objected goods are sold by the customer together with other goods not delivered by us, we shall be entitled to receive from the customer a prime rate part of the claims from the resale for the amount of the invoice value of our objected goods. If the customer sells the claim within the scope of a factoring transaction, he will herewith assign to us the substitute claim against the factor. If the customer subjects the claim resulting from the resale to a mutual accounts relationship with his own customer, the customer herewith assigns to us his claims from the mutual accounts relationship to the amount of the invoice value of the objected goods.
 - c) We herewith accept the above assignments.
 - d) The customer shall be entitled to resale only if he in his turn reserves right of ownership until full payment of his claims from the resale.
 - e) The customer shall be entitled to collect the claims assigned to us until revoked by us. The authorisation to collect claims shall cease when revoked; revocation shall be effected if the customer gets into arrears or in case of a deterioration of his economic situation, which would endanger our claims, or if he suspends payment. In that case we shall have the customer's authorisation to notify customers of the assignment and to collect the claim ourselves.
 - f) The customer must submit to us upon request a detailed of claims due to the customer, including the names and addresses of his customers, the amount of each of the claims, the invoice date etc., and to provide us with all information and documents required for the assertion of the claims assigned to us and to permit us to verify any information provided.
 - g) The objected goods or the claims assigned may not be pledged or transferred by way of security. Any seizure must be communicated to us without delay, specifying the name of the attaching creditor.
3. If the value of the security due to us exceeds the total of our claims against the customer by more than 10%, we shall release the exceeding amount at customer's request.
4. The customer shall keep the objected goods in safe custody for us, free of charge. He will insure the objected goods on the usual scale against the usual risks such as fire, theft, flooding. The customer herewith assigns to us his claims for any compensation due to him from any insurance agency or other obligors for the damages mentioned above to the amount of our claims. We accept the above assignments.

VIII. Payment/prohibition of setoff/ right of retention

1. Our invoices shall be payable immediately and without deduction. The same shall apply to invoices for partial shipments in accordance with Section IV.5 hereof. No agreed discounts are not acceptable. If a discount has been agreed, the invoice date will be considered as the beginning of the discount period, if nothing else has been agreed. The discount period is considered to have been fulfilled when the owed amount has been paid into our account, at the latest on the last day of the discount period.
2. In case of default in payment, the customer shall be liable to payment of interest on arrears to the amount of 12%, however not less than the legal interest rate in accordance with Section 288 of the BGB. Where the interest payable in accordance with the foregoing sentence exceeds the legal interest rate, the customer shall be free to provide evidence that delayed performance has caused no damage or less damage than alleged. The assertion of higher claims for damage caused by delayed performance has caused no damage or less damage than alleged. We retain for ourselves the right of asserting higher claims for damage caused by delayed payments.
3. If the customer defaults on payment - for whatsoever legal reason - all receivables shall become payable immediately by the customer.
4. In the event that the customer suffers a major deterioration in his financial circumstances, thus putting at risk our claim against the customer, we shall be entitled to demand payment in advance or reasonable security. The above shall be effective also in the event that such circumstances have already existed at the time of the conclusion of the contract and are disclosed only after its conclusion. If no prepayments or security are provided within the period of grace notwithstanding an extension of the original term and a notification of default, we shall be entitled to cancel the agreement and to claim damages for non-performance.
5. The customer shall not be entitled to set off claims against counterclaims unless such counterclaims are undisputable or have been legally corroborated. The customer is not entitled to claim a right of retention, unless this is based on the same contractual relationship, §320 BGB, or if the counterclaims are undisputable or have been legally corroborated.

IX. Place of Performance/ Jurisdiction

1. Place of fulfilment shall be our domicile.
2. If the customer is a businessman if he is a public legal person or having public legal special assets, or if the customer has no general place of jurisdiction in Germany, the place of jurisdiction shall be Bielefeld.
We shall also be entitled to take legal action against the customer at his general place of jurisdiction.

X. Applicable law

The contractual relationship between ourselves and the customer shall be subject to the material law of Germany, like between two parties residing in Germany, excluding the UN Sales Convention (CISG).