

General terms and conditions of business (AGBs)

1. Scope of application of these General Terms and Conditions

These General Terms and Conditions only shall apply in all business relations with the customer. Any terms and conditions of the customer which are at variance with or deviate from these General Terms and Conditions shall not apply unless we agree to them in any particular case. Performance of a contract without reservation by us, despite our having knowledge of customer's terms and conditions which are at variance with or deviate from these now being set forth, shall not be interpreted as implying any acceptance on our part of such terms and conditions of the customer. Also in such case, these General Terms and Conditions only shall apply.

2. Applicable law

All legal relationships between ourselves and the customer and also these General Terms and Conditions shall be governed exclusively by German law.

3. Customer's rights; warranty

In the case of any breach of obligations by the seller, which shall also include defective delivery of goods, the customer shall have the rights granted to him by the German Civil Code (BGB). The customer shall initially only have the right to follow-up performance, i.e., at his option, the right to remedy of defects or to delivery of defect-free goods. The costs arising in connection with follow-up performance, in particular transport, labour and material costs, shall be borne by the seller. The right to follow-up performance shall be excluded if the costs therefor would be unreasonably high. In the case of follow-up performance in the form of delivery of defect-free goods, the seller can demand return of the defective goods. The customer may deem remedy to have failed only after the second attempt. Only when follow-up performance has failed may the customer cancel the contract or reduce the purchase price and also claim damages or compensation for any expenses incurred to no avail. In addition to the aforesaid rights, the customer shall also have the rights arising from any warranty, on the terms and conditions stated therein and against whomever it was granted by - who may also be the manufacturer -, which may additionally exist.

4. Period for making declaration in case of warranty claims

If after follow-up performance has failed the customer declares that he claims cancellation of contract or a reduction in price, he must also, on the seller's request, declare within a period of two months whether he also intends to claim damages or compensation for costs incurred. Should the customer allow the aforesaid period to pass without making any such declaration, he shall lose the right to claim damages or compensation for costs incurred. If after follow-up performance has failed the customer only declares that he claims damages or compensation for costs incurred, he must, on the seller's request, declare within a period of two months whether he wishes to keep the delivered goods or to return them. Should the customer allow the aforesaid period to pass without making any such declaration, he shall lose the right to return the goods.

5. Limitation and exclusion of liability

Insofar as these General Terms and Conditions exclude or limit liability, such exclusion or limitation shall also apply to the personal liability of servants and vicarious agents as well as commercial agents. In the case of material defects, we shall only be liable for wilful intent or gross negligence except where the defect has been deliberately concealed, warranty has been given for the quality of the item or the defect has been caused by a grossly negligent or wilful breach of obligation. Liability is, however, assumed in all cases for claims arising from injury to life and limb or damage to health. Also in other cases our liability shall only be limited to wilful intent and gross negligence except in cases of claims for injury to life and limb or damage to health or a duty to indemnify has been undertaken in the form of a warranty.

6. Reservation of title

The delivered goods shall only become the property of the customer when the latter has paid the price for the goods concerned in full.

7. Special provisions for consumers

The following provisions shall only apply to consumers. A consumer is deemed to be any natural person who enters into a legal transaction for a purpose which cannot be attributed either to commercial or professional employment activity of that person.

7.1. Applicable law

The provision stated above relating to applicable law, Point 2., shall be without prejudice to any mandatory provisions of the law of the country in which the customer has his or her usual place of abode, provided the customer did the legal acts establishing the legal relationship between the parties in the said country.

7.2. Unrestricted right of return

In the event that the contract is concluded using telecommunication means, i.e. means of communication which can be used for initiating or concluding a contract without the simultaneous physical presence of the parties to such contract, in particular letters, catalogues, telephone calls, facsimiles or emails as well as radio, tele- and media services, the customer shall have an unrestricted right of return. He may declare his intention to return the goods within a period of two weeks from receipt thereof in text form to the seller or simply return the goods to the seller, whereby the aforesaid period shall be deemed to have been complied with if the declaration or the goods are sent off in good time. If the goods cannot be sent as a package, it shall be sufficient for the customer to request the seller to take back the goods. The customer shall be required to pay compensation for any deterioration in the goods caused by use of the goods in the intended manner except insofar as the deterioration is solely due to examination of the goods.

7.3. Warranty periods

The customer may avail himself of warranty rights within the periods laid down in the law, i.e. in the case of defects to the movable items sold hereunder within a period of two years. The period shall start on delivery of the goods to the customer. In the case of used goods, the warranty period shall be only one year instead of two. In the event of defects occurring within a period of 6 months from delivery of the goods to the customer it will be assumed that they were already present at the time of delivery, provided the customer notifies the seller of them as soon as they are discovered. This notification must also have been made within a period of at most 8 months from delivery of the goods to the customer.

8. Special provisions for other persons, especially business persons and registered traders

The following provisions apply only to persons who are not consumers.

8.1. Applicable law

Application of the UN Convention on the International Sale of Goods of 11 April 1988 is excluded.

8.2. Place of performance and legal venue

The place of performance shall be Bad Kreuznach. The legal venue for all disputes arising between the parties where the customer is a registered trader, a legal entity under public law or a special asset fund under public law shall be Bad Kreuznach.

8.3. Limitations and exclusion of warranty

Any claims against the manufacturer or supplier are hereby assigned to the customer. In the case of any claims, the customer shall first have a duty to assert them against the manufacturer or supplier. He may only have recourse to the seller if and insofar as he has sought to assert his claims against the manufacturer or supplier at law, but without success. In this case, however, the customer shall also have a duty to assign his warranty claims back to the seller. Used goods shall be sold to the exclusion of all warranty unless a warranty on the goods is given. In the case of goods being taken back by the customer by way of accommodation towards his customers, the customer shall have no recourse to the seller.

8.4. Duty to notify defects; warranty periods

Where the purchase constitutes a commercial transaction for both parties, the customer shall have a duty to examine the goods immediately after delivery to him by the seller, insofar as this is convenient in the ordinary course of business, and, should any defect be found, to notify the seller thereof without delay. Should the customer fail to make such notification, the goods shall be deemed acceptable except in cases of defects which were not identifiable during examination.

Should such defect become apparent at a later date, notification of it must be made immediately after discovery; otherwise, the goods shall be deemed acceptable, notwithstanding the defect. The latter shall apply also and in particular in cases where the customer has resold the goods and is then required to take back a newly manufactured good because it is defective or is required to reduce the purchase price in cases where the end purchaser in a supply chain is a consumer. The statutory warranty periods shall apply. Where, in exceptional cases, the customer has warranty claims in respect of used goods (see Point 8.3. above), the warranty period shall be one year.

8.5. (Broadened and extended) reservation of title; processing clause

By way of supplement to Point 6., delivered goods shall only become the property of the customer when the latter has paid not only the price for the delivered goods in full but has also settled all claims arising from an ongoing business relationship between the parties, insofar as such claims arose from the supply of goods. The customer shall, however, be entitled to transfer of title to delivered goods as soon as and insofar as the purchase price of the delivered goods exceeds 50 % of the total value of the claims arising from the ongoing business relationship; the choice of securities to be transferred shall rest with the seller (broadened reservation of title). Any processing or refashioning of the goods before the transfer of title following payment (see foregoing paragraph) shall in all cases be done for the party reserving title. If the goods are combined with other goods to create a new good, the party reserving title shall acquire title to the new good in the same proportion as the value of the delivered goods to the value of the other goods combined at the time of combination. If the party reserving title acquires (co-)title to the new good in this way, he shall transfer this (co-)title to the new good to the customer after payment of the delivered goods; to this end, agreement is hereby expressly given to transfer of title on condition of payment. Even if, due to the reservation of title, the customer has not acquired title to the goods, he is nevertheless entitled to resell the goods in the ordinary course of business. In return, he now hereby already assigns to the seller all claims, including value added tax, accruing to him from such resale or on any other legal grounds against his customers or any third parties. The customer is, however, only authorised to collect such claims insofar as he continues to fulfil his payment obligations in the agreed manner, is not in default with any payments, has not ceased payments and no petition in bankruptcy has been filed by or against him. In the case of any of the latter circumstances, the customer shall, on request, provide all information and documentation needed to collect the assigned claims and notify the debtors concerned (third parties, customer's customers) of the assignment. (extended reservation of title)

9. Severability clause

Should any of the provisions of these General Terms and Conditions be or become wholly or partially invalid, this shall not affect the continued existence and validity of the legal relationship between the parties hereto or of the other provisions of these General Terms and Conditions. The same shall also apply to any other individual contractual terms and conditions. In any case of the aforesaid kind, the parties undertake to agree, in place of the invalid provision, a provision which is legally valid and which as far as possible enables the economic purpose intended by the invalid provision to be achieved, taking into account the interests expressed in the existing legal relationship. Only where such amendment is not legally possible shall the statutory provisions apply.