

§ 1 - Applicability -

1. Our Terms and Conditions are applicable only to companies pursuant to Article 310 of the German Civil Code.
2. The following Terms and Conditions of Sales and Delivery apply to all our contracts, deliveries and other services, provided that they are not amended or excluded with our express written permission. In particular, they also apply if we make a delivery/performance a service without reservation in full knowledge of conflicting terms and conditions on the part of our customer. The general terms and conditions of our contractual partner apply only if we confirm this in writing.
3. Our Terms and Conditions also apply to all future contracts, deliveries and services, even if the text is not re-sent to our contractual partner with our quote or order confirmation.

§ 2 - Quotation and conclusion of the contract -

1. Our quotes are subject to change without notice. Contracts and other agreements become legally binding only once we have provided written confirmation or on delivery of the goods/performance of the service.

2. All agreements made between us and our customer must be recorded in writing when the contract is concluded.

Any agreements made between our employees or representatives and our customer during or after the conclusion of a contract require our written confirmation in order to be valid; our employees' and representatives' power of representation is limited in this respect.

§ 3 - Prices, price increases and payment -

1. Our prices are free domicile plus statutory VAT; the VAT rate applied is always the rate valid on the day of the delivery or on the day that the service is performed.
2. If our base prices increase between the date of the conclusion of the contract and the execution of the contract for orders that must be executed later than four months after the conclusion of the contract, or that are unable to be completed earlier than four months after the conclusion of the contract for reasons attributable to our customers, we are entitled to increase the price agreed in the contract in proportion to the corresponding increase in the respective purchase price. In the case of contracts for the performance of a continuing obligation, we are entitled to exercise this right even if the period between the conclusion of the contract and the performance of the contract is less than four months.
3. We reserve the right to deliver only upon receipt of payment of the agreed prices. In all other cases, unless otherwise expressly agreed in writing, our invoices must be paid in full immediately upon receipt of our deliveries or services.
4. Our invoices are deemed to have been accepted if an objection has not been raised by our customer within 30 days of receiving the invoice. We will alert the customer to this fact on every invoice.
5. We are entitled to charge interest at a rate of 8% above the current base rate as of the date that the payment is due without giving any further reminders. Further entitlements—in particular, on account of a delay on the part of our contractual partner—remain unaffected.
6. The offsetting of any counterclaims that are contested by us and not established as legally valid is not permitted. The assertion of a right of retention due to claims that are not related to the same contractual relationship is not permitted if these claims are not accepted by us and are not established as legally valid.
7. Our customer may withhold payments on account of a notice of defects only if the validity of the claim can be established without doubt and only to an extent that is proportionate to the respective defects.

§ 4 - Deterioration of contractual partner's financial situation -

1. Should one of the following incidents described occur or should an incident that had already occurred at the time the contract was concluded only become apparent following the conclusion of the contract, we are entitled to request our customers to pay the agreed prices in advance. This applies to the following incidents:

If judicial or extrajudicial insolvency proceedings or legal composition proceedings regarding the assets of our contract partner are initiated, or if the initiation of such proceedings is refused due to insufficient assets, or if there is a written credit report from a bank or credit agency that details the poor financial situation of our contractual partner.

2. If our contractual partner fails to comply with our legitimate request for advance payment within a reasonable period of grace granted by us, despite being made aware by us that we will refuse the acceptance of any further services by the contractual partner once the period has expired, we are entitled to withdraw from the contract or to request compensation in lieu of performance — this applies only to the part of the contract that has not yet been performed by us.

§ 5 - Transport and passing of risk, insurance -

1. The risk will pass to our customer upon dispatch of the goods in each case, irrespective of the location from which the goods are dispatched, and even if delivery free of transportation charges and/or installation have been agreed as an exception. This does not apply if shipping or installation is carried out by our own employees and if the fault lies with these employees.

2. We will decide whether goods will be delivered by train, post, a shipping company or by our own heavy goods vehicles. The goods will be shipped in suitable packaging material as chosen by us.

3. We will, only at the request of our contractual partner and at its expense, insure the delivery item against any insurable risk requested by our contractual partner, in particular against theft and damages in transit.

Any instances of damage in transit must be reported to us without delay. Moreover, the recipient must ensure that the shipper is made aware of these claims and reservations at the time of the delivery.

4. If the dispatch is delayed at the contractual partner's request or for reasons attributable to the contractual partner, the goods will be stored at the expense and risk of the contractual partner. In this event, the risk will pass to our customer upon our notification that the goods are ready for dispatch.

5. We are entitled to make part deliveries and to invoice each delivery separately.

6. If we are obligated to take back packaging, our contractual partner will bear the costs incurred for returning the used packaging.

§ 6 - Terms of delivery, purchase on demand -

1. Terms and dates of delivery are deemed to be legally binding only when they have been confirmed by us in writing.

2. A performance period specified only in terms of its length will begin at the end of the day on which agreement is reached on all details relating to the contents of the agreement, no earlier than the date on which the order is accepted by us, but not before all required documents, approvals and permits have been obtained by the ordering party and not before the ordering party has settled any outstanding payments.

3. A term or date of delivery is deemed to have been observed when the goods have been dispatched by us or, in cases where the goods cannot or are not meant to be dispatched, when we have sent notification of readiness for dispatch before the term of delivery or delivery date has passed.

4. Terms of delivery will be extended—even if already subject to delay—in the case of force majeure or in the event of any unforeseeable hindrances for which we are not responsible, insofar as such hindrances have a demonstrable effect on the delivery of the goods sold.

Strikes and lockouts in the context of this paragraph are classed as hindrances for which we are not responsible. In these cases, the above provisions apply even if the delaying circumstances occur at our suppliers or at their sub-suppliers.

If such delivery delays exceed six weeks, our contractual partner is entitled to withdraw from the contract to the exclusion of any further claims.

5. Terms of delivery will be extended by the length of time for which the customer is delayed in fulfilling its obligations—in the context of an ongoing business relationship, also those obligations resulting from other contracts—or by the length of time for which the customer does not meet the requirements that it is obligated to meet in order for work to be started or continued, particularly if the customer fails to provide the required documents, plans or other specifications. Our contractual partner will bear the burden of proving that the requirements have been met and that the required documents, plans or specifications have been provided.

6. Orders on call will only be accepted with an acceptance period. Unless the exact acceptance period has been indicated, the term will end three months following the conclusion of the contract. During this period, more or less equal quantities of the goods must be accepted each month.

If the goods are not accepted within the agreed timeframe, we are entitled to deliver the manufactured goods without further notice or store them at the customer's expense. In addition, we are entitled to grant our customer a grace period to complete acceptance on the condition that we will refuse the acceptance of the goods in the event of this period expiring without the goods being accepted. If the grace period expires without the goods being accepted, we are entitled to withdraw from the contract and terminate our delivery obligation, and to request compensation in lieu of performance — this applies only to the part of the contract that has not yet been performed by us.

7. If the customer fails to arrange the delivery schedule for the goods within one month following the expiry of the agreed period for this task to be completed at the latest, or within one month following our request to arrange the delivery schedule at the latest if no such agreement exists, we are entitled to arrange the delivery schedule and deliver the goods as we see fit.

In addition, we are entitled to grant our customer a grace period for arranging the delivery schedule on the condition that we will refuse the acceptance of the goods in the event of this period expiring without result. If the grace period expires without result, we are entitled to withdraw from the contract and terminate our delivery commitment or to request compensation in lieu of performance — this applies only to the part of the contract that has not been performed by us.

§ 7 - Statement on choice of rights after setting a deadline for supplementary performance -

In all cases where our customer has set a deadline for supplementary performance due to our failure to deliver or our failure to complete the delivery properly and this deadline has elapsed, we are entitled to request that the customer inform us within a reasonable period whether it intends to continue to assert a claim for performance/supplementary performance despite the expiry of the deadline, or whether it intends to exercise any other rights available to it at its discretion. If our customer fails to give notice to this effect within the reasonable period granted to it, the right to performance/supplementary performance will be excluded. If our customer informs us within the reasonable period granted to it that it intends to continue to assert a claim for performance/supplementary performance, it is at liberty to set another deadline and to exercise its other rights if this deadline elapses without result.

§ 8 - Delay, exclusion of duty to perform -

If we are delayed in making a delivery or if our duty to perform is excluded pursuant to Article 275 of the German Civil Code, we are liable for compensation subject to the conditions and to the extent set out in Article 12, Point 4 only; however the following additional conditions apply:

1. If we are delayed in making a delivery and there is only a minor case of negligence on our part, any claims made by our customer for damages are limited to a flat-rate compensation for delayed completion to the amount of 1% of the value of the goods to be delivered for each complete week of the delay and a maximum of 8% of the value of the goods to be delivered. We reserve the right to prove that the delay in delivery caused no or only minor damage.

2. In the event of delayed performance by us, our customer is entitled to claim compensation in lieu of performance only if it set us an appropriate grace period for delivery of at least four weeks prior to this. Our customer reserves the right to set us an appropriate deadline of less than four weeks if, in that particular case, a grace period for delivery of at least four weeks is unreasonable for the customer.

3. As a basic principle, the customer's right to withdraw from the contract and right to claim for compensation are limited to the part of the contract not yet performed, unless the customer no longer has a reasonable interest in the part of the contract that has been performed.

4. Claims made against us for damages due to a delay or the exclusion of the duty to perform pursuant to Article 275 of the German Civil Code expire by limitation at the end of one year following the beginning of the statutory limitation period.

5. The preceding provisions do not apply if the claim involves damages resulting from loss of life, bodily injury, damage to health or the restriction of our contractual partner's freedom, or if damage is caused as a result of an intentional or grossly negligent breach of duty by us or by one of our legal representatives or vicarious agents. Moreover, these provisions do not apply in the event of a delay if a transaction for delivery by a fixed date has been agreed.

§ 9 - Default of acceptance by our contractual partner -

1. If our contractual partner defaults the acceptance of our services, either in full or in part, then we are entitled, following the expiry of a reasonable grace period set by us without result, to either withdraw from the contract or to request compensation in lieu of performance on the condition that we will refuse acceptance of our services by the customer if the time limit expires — this applies only to the section of the contract that has not yet been performed by us.

Default of acceptance by our customer does not affect our statutory rights.

2. The customer must reimburse us for any storage costs, warehouse rent and insurance costs incurred by us for any goods that are due for acceptance but have not been accepted. However, we are not obligated to insure stored items.

3. If the delivery of goods is delayed at the customer's request or if the customer is delayed in accepting the goods, we are entitled, once a month has passed following our notification to the customer that the goods are ready for delivery, to charge a storage fee to the amount of 0.5% of the invoice amount for each month or part thereof that the delay occurs. We also reserve the right to claim for any damages incurred in excess of this amount.

§ 10 - Cancellation of orders, return of goods, compensation in lieu of performance -

If we agree to the cancellation of a confirmed order at our customer's request, or if we take back goods delivered by us for reasons not attributable to us, thus releasing the customer from his duty to accept delivery and effect payment, or if we are entitled to claim for compensation in lieu of performance, we can request 20% of the proportion of the contract price that corresponds to the part of the delivery item concerned as compensation without having to provide proof, whereby our customer reserves the right to prove that no or only minor damage has been incurred. Our right to claim for any damages incurred in excess of this amount remains unaffected.

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§ 11 - Goods description, items exceeding or not meeting requirements -

1. Unless agreed otherwise, the goods to be delivered by us comply with the testing and appraisal clause for polyethylene films (LDPE) and products made from this material set out by the GKV (*Gesamtverband Kunststoffverarbeitende Industrie e.V.* — German association for the plastics processing industry) filed at the German Federal Institute for Materials Research and Testing in Berlin.

2. Pictures, dimensions, weights, information about colouring and the surface appearance and other quality specifications contained in catalogues, brochures, price lists, product specifications, drawings or other documents are merely approximate values in line with the industry standard. Our samples and prototypes merely provide an approximate indication of quality, dimensions and other properties. Our specifications regarding the dimensions, properties and intended purpose of our products are intended as a description only and do not constitute any guarantee or assurance of properties.

3. If required for technical reasons, we reserve the right to deliver ordered goods that vary in terms of appearance, dimensions or other properties. We will notify our customers of such changes. In this regard, our customer is not entitled to make guarantee claims if and insofar as the changes do not significantly impair the usability of the products for it.

4. We reserve the right to deliver up to 10% below or above the quantity ordered, as well as goods that deviate in terms of their dimensions, weight, appearance and quality specifications, provided that these changes do not significantly impair the usability of the delivered goods.

§ 12 - Liability for defects and compensation -

1. Any claims made by our customer on the basis of a faulty item presuppose that the customer has fulfilled its obligation to duly inspect and raise an objection in accordance with Article 377 of the German Commercial Code, and that the customer has raised this objection in writing. If our customer fails to duly raise an objection in good time, it will no longer be entitled to assert a claim based on the circumstances intended to be reported, unless we had acted maliciously.

2. The customer's right to assert a claim due to faults with the goods supplied by us expires by limitation at the end of a year following delivery of the goods. However, the statutory period of limitation applies to claims for compensation and reimbursement of expenses as set out in Article 437, Point 3 of the German Civil Code if the damage results from a loss of life, bodily injury, damage to health or the restriction of our contractual partner's freedom, or if the damage is the result of an intentional or grossly negligent breach of duty by us or by one of our legal representatives or vicarious agents.

The statutory period of limitation also applies if we have maliciously concealed the defect.

In cases where Articles 478 and 479 of the German Civil Code apply, the provisions set out in these articles apply. However, for claims for damages, the preceding Clauses 1, 2 and 3 also apply.

3. Our customer's rights with regard to faulty items are governed by the statutory provisions with the condition that our customer has set us an appropriate deadline of at least four weeks for supplementary performance. Our customer reserves the right to set us an appropriate deadline of less than four weeks if, in this particular case, a grace period for supplementary performance of at least four weeks is unreasonable for the customer.

The grace period for supplementary performance will under no circumstances begin until our customer has returned the faulty goods to us. We will bear the costs for the return in this situation. If only some of the goods supplied by us are faulty, our contractual partner's right to withdraw from the contract or to request compensation in lieu of performance is limited to those items that are faulty, unless this restriction is unfeasible or unreasonable for our contractual partner.

Claims for damages asserted by our contractual partner as a result of defects in the delivery or service provided are limited to the extent outlined in Point 4 below.

4. Our liability for damage resulting from loss of life, bodily injury, damage to health or the restriction of our contractual partner's freedom is neither excluded nor restricted if this damage is attributable to culpable neglect of duty.

We will only be liable for other damages incurred by our contractual partner if these damages are the result of an intentional or grossly negligent breach of duty by us or by one of our legal representatives or vicarious agents.

We will only be liable for damage caused by a minor case of negligence on our part if it involves a breach of fundamental contractual obligations, and if it is limited to that which is typical and reasonably foreseeable in this type of contract.

In all other cases, our contractual partner's right to assert claims for damages due to neglect of duty or tort or on the basis of other legal ground is excluded.

The preceding liability limitations do not apply to the failure to provide guaranteed characteristics if and insofar as the guarantee was designed to protect the contractual partner against damage that does not originate from the actual goods supplied.

To the extent that our liability is excluded or restricted, this also applies to the personal liability of our salaried employees, hourly workers, associates and vicarious agents.

In any event, the preceding liability exclusions also apply to consequential damage.

However, the preceding liability exclusions do not apply to claims pursuant to the German Product Liability Act.

§ 13 - Manufacturer's liability -

Our contractual partner indemnifies us from all claims for damages asserted against us by third parties on the basis of provisions on tort or product liability or other provisions due to faults or defects in the goods manufactured or supplied by us or by our contractual partner, if such claims could also justifiably be made against our contractual partner or are only no longer applicable because they have since expired by limitation. Subject to these conditions, our contractual partner must also absolve us of the costs of any legal proceedings brought against us as a result of such claims.

Insofar as the claims made against us are substantiated or are only no longer applicable because they have since expired by limitation, we will have a right of recourse against our contractual partner on a pro rata basis, the scope and amount of which is governed by Article 254 of the German Civil Code.

Our right to recourse and to assert claims for damages in accordance with Articles 437, 440 and 478 of the German Civil Code or other legal grounds remain unaffected by the preceding provisions.

§ 14 - Reservation of title -

1. Until our customer has settled all outstanding bills to which we are entitled at present or in the future, our customer grants us the following collateral that we will release on request and at our discretion, insofar as its nominal value always exceeds our bills by more than 20%:

Delivered goods remain our property.

Processing or alterations are always carried out for as the manufacturer, but without any obligation on our part. If goods delivered by us are processed using items that are not our property, we will acquire joint ownership of the new item proportional to the invoice amount of the goods delivered by us in relation to the invoice amount of the other goods at the time of the processing. If our goods are connected with other moving items to form a single product, and if this product is to be considered as the principal product, our customer will transfer joint ownership to us on a pro rata basis, provided that this principal product is its property.

Any transfer required for the acquisition of ownership or joint ownership by us will be replaced by the agreement made in these Terms and Conditions to the effect that our customer will hold the product on our behalf as if it were borrowing the product or, if the customer does not own the product, the transfer will hereby be replaced by the assignment to us of the right to claim possession from the owner.

Products for which we hold either ownership or joint ownership pursuant to the above provisions are hereafter designated as goods subject to retention of title.

2. The customer is entitled to duly sell the goods subject to retention of title in the course of business or to combine these goods with goods owned by third parties. The customer will assign to us any receivables generated by selling or combining the goods subject to retention of title or by virtue of any other legal grounds relating to the goods subject to retention of title either in full or on a pro rata basis as of today in proportion to the joint ownership rights of the sold or processed item to which we are entitled. If such receivables are allocated to current accounts, this assignment will also comprise all balance claims. The assignment takes priority over all others.

We authorise the customer to collect the assigned receivables subject to revocation. The customer must pay us the sums collected without delay, insofar as and as soon as our receivables are due. If our receivables have not yet become due, the sums collected by the customer must be recorded separately.

Our authority to collect the receivables ourselves remains unaffected. However, we undertake not to collect the receivables ourselves as long as our customer complies with its obligation to pay with respect to the proceeds collected, is not overdue with payments and, in particular, as long as no application to initiate insolvency proceedings or legal composition proceedings is filed or if the customer has not stopped making payments. However, if this is the case, our customer undertakes to inform us of the assigned receivables and its debtors, to supply us with the corresponding documents, to give us the information required for collection and to inform the debtors of the assignment. We are entitled to inform the debtors of the assignment ourselves. In the event of cessation of payment, application for or the initiation of insolvency proceedings or judicial or extrajudicial legal composition proceedings, our customer's rights concerning the resale, processing, combination or installation of the goods subject to retention of title, and the authorisation to collect the assigned receivables will expire even without our revocation.

3. The customer must inform us immediately if third parties are able to access the goods subject to retention of title and the assigned receivables. The customer will bear any costs of resulting interventions or the associated legal defence.
4. The customer undertakes to handle goods subject to retention of title with care and, in particular, to adequately insure them at the replacement value against damages caused by fire, water and theft at its own expense.
5. In the event that the customer violates the contract—in particular, if it is overdue with payments—we are entitled to take back the goods subject to retention of title at the expense of the customer or to request the assignment of the customer's right to recover possession from third parties without having to withdraw from the contract beforehand or at the same time. In particular, our repossession or distraint of the goods subject to retention of title does not constitute a withdrawal from the contract on our part, unless we have expressly issued a statement to this effect in writing.
6. Should our reservation of title become invalid for deliveries abroad or for any other reason, or if we lose ownership of goods subject to retention of title for any reasons, our customer will undertake without delay to provide us with another security for the goods subject to retention of title or another means of securing our receivables that is in compliance with the laws applicable at the location of the customer's headquarters and that conforms as closely as possible to the reservation of title as defined by German law.

§ 15 - Ownership of documents, confidentiality -

1. Pictures, drawings, cost estimations, prototypes and samples remain our property. Our customer must not in any circumstances make such items available to third parties without our express permission. Our customer will undertake to pay us a contractual penalty to the amount of EUR 6000.00 each time that the aforementioned obligations are negligently violated. Our right to claim for any damages incurred in excess of the contractual penalty remains unaffected.
2. The contractual partners are mutually obligated to treat all commercial and technical information that they learn in the course of their collaboration and that is not available in the public domain as their own trade secrets and not to make such information available to third parties in any way or form. The contracting parties will undertake to pay a contractual penalty to the amount of EUR 6000.00 each time that the aforementioned obligations are negligently violated. The right to claim for any damages incurred in excess of the contractual penalty remains unaffected.

§ 16 - Trade mark rights -

1. If the goods are to be manufactured in line with drawings, prototypes or other specifications provided by the contractual partner, the contractual partner must ensure that the rights of third parties, in particular patents, utility patents and other trade mark rights and copyrights, are not violated. The ordering party indemnifies us from any claims asserted by third parties that may result from any violation of such rights. In addition, our contractual partner will bear all costs incurred by us as a result of third parties asserting claims for the violation of such rights and having to defend ourselves against these claims. The same applies to the use of prototypes, drafts, artworks etc. either created by us or ceded by our customer.
2. If our development work results in findings, solutions or techniques that are in any way subject to trade mark rights, we will be the sole proprietor of the right of ownership, copyright and right of use resulting from this, and we reserve the right to register the corresponding trade mark rights on our own behalf and in our name.

§ 17 - Assignment -

1. We are entitled to assign the claims against our customers to third parties without limitation.
2. Our customer is only entitled to assign claims asserted against us of any type with our written consent.

§ 18 - Place of fulfilment, place of jurisdiction, applicable law -

1. The place of fulfilment and the exclusive place of jurisdiction for deliveries, services and payments, including actions concerning cheques and bills of exchange, and for any disputes that may arise between the parties is Wipperfurth, Germany. However, we reserve the right to also bring an action against our customer at another place of jurisdiction that is applicable for the customer pursuant to Article 12 et seq. of the German Code of Civil Procedure.
2. The relationships between the contracting parties are governed exclusively by the law applicable in the Federal Republic of Germany to the exclusion of the international sale of goods law, in particular the United Nations Convention on Contracts for the International Sale of Goods and other international agreements on the standardisation of the sale of goods law.

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