

General Terms and Conditions sale/supply of OTTO – VERTRIEB GMBH & CO. KG

I. General

The following provisions apply if the buyer is entrepreneur within the meaning of § 14 German Civil Code (Bürgerliches Gesetzbuch, BGB).

1. Our deliveries, services and offers are made exclusively on basis of our General Terms and Conditions and also for all future business relationships, unless they are expressly agreed again. Contrary purchase conditions of the buyer are hereby contradicted. They will not be recognized even if we do not contradict them again after receipt.
2. Amendments to our Terms and Conditions are only valid if we confirm them in writing.
3. All agreements including any collateral agreements, confirmations, consultations or other declarations by our employees / representatives / vicarious agents are only legally binding if they are confirmed by us in writing. The fulfilment of the written form can be waived by us only in writing.

II. Conclusion of contract

The order shall only be considered as accepted if it is confirmed in writing by OTTO – VERTRIEB GMBH & CO. KG or executed immediately.

III. Scope of delivery

For the scope of delivery our order confirmation is decisive. Demands, changes etc. require the confirmation by OTTO – VERTRIEB GMBH & CO. KG in written or in text form.

IV. Delivery time/Delivery period/Default in delivery

1. Delivery times are not binding and under reservation of the correct, timely and sufficient self-delivery. The delivery period starts on the date of our order confirmation, but not before the full clarification of all technical and commercial details.
2. The delivery period is considered to be satisfied if the delivery item has left the factory by its expiry or if the readiness for dispatch has been notified.
3. The delivery period shall be extended appropriately in the event of industrial disputes, in particular strikes and lockouts, and in the event of unforeseen obstacles such as

Mobilization, war, riots, etc., even if they occur during a default in delivery. This shall also apply if these circumstances occur with subcontractors. A reasonable extension of the deadline shall also occur if governmental or other information by the buyer, which is needed for the execution of the delivery, is not received timely. The same applies to subsequent modifications to the order.

4. The occurrence of the default in delivery requires in any case a warning from the buyer. In addition, the statutory provisions apply.

V. Prices/Payments

1. Prices in Euro, plus statutory value-added tax, apply ex works excluding packaging and loading, unless otherwise agreed.
2. Unless otherwise agreed in writing, our invoices are immediately due and payable without any deduction.
3. In the event of default in payment by buyer, we are entitled to charge default interest in the amount of 9 percentage points above the respective base interest rate based on § 247 BGB. The assertion of further damages remains reserved. Furthermore, in case of default, any reductions, discounts, sales-, freight- and other benefits granted shall be cancelled. § 321 BGB applies.
4. Purchase orders of goods that are kept in stock on behalf of a buyer must be accepted up to the date stated in the order confirmation. If no acceptance is made by this deadline, the value of goods apparent from the order confirmation will be invoiced at the acceptance dates specified therein. The delivery of the ordered items in these cases takes place after receipt of the complete payment.
5. Specific, for a buyer customized materials for which there are no other customers can be invoiced to the buyer 6 months after completion of the order / storage.
6. Off-set and retention rights are only allowed to buyer if his counterclaims are undisputed, recognised by us or legally binding. For the assertion of a right of retention, the counterclaim must result out of the same legal relationship.

VI. Transfer of risk and acceptance

1. The risk shall pass to buyer upon dispatch ex works, even if freight-free delivery has been agreed. If the shipment is delayed as a result of circumstances for which the customer may be held responsible, the risk is transferred to the buyer from the date of readiness for shipment.
2. Transport route and -mode are determined by OTTO – VERTRIEB GMBH & CO. KG, unless otherwise agreed.

3. Delivered goods are, even if they have minor defects, to accept by the buyer without prejudice to the rights arising out of sect. VIII.. The buyer must call and accept the goods within 14 days of receipt of the notification of readiness for shipment. In the event of delayed acceptance or delayed retrieval by the buyer or a delay in delivery due to circumstances for which the buyer may be held responsible, we may request the purchase price immediately after the extension of time of 14 days, withdraw from the contract, refuse fulfilment and demand compensation for non-performance.

VII. Retention of title

1. OTTO – VERTRIEB GMBH & CO. KG reserves the ownership of the delivered goods until fulfilment of all, including future claims arising from the business relationship, in particular arising out of the current account relationship with the buyer. Any processing or finishing of the reserved goods (final product) is carried out by the buyer for OTTO – VERTRIEB GMBH & CO. KG without any obligations arising for OTTO – VERTRIEB GMBH & CO. KG. In the processing, combination, mixing or blending of the reserved goods with other goods, not belonging to the buyer, OTTO – VERTRIEB GMBH & CO. KG has co-ownership of the new thing in proportion to the value of the reserved goods to the other processed goods at the time of processing, combination, mixing or blending. If the buyer acquires the sole ownership of a new item, the parties agree that the customer grants OTTO – VERTRIEB GMBH & CO. KG co-ownership of the new item in proportion to the value of the processed or combined, mixed or blended retained goods and stores them free of charge for the supplier.
2. The buyer must notify us immediately in writing if the purchased goods are damaged, lost, impounded or otherwise exposed to third-party intervention. Insofar as the third party is unable to reimburse us for the judicial and extrajudicial costs of asserting our property, the customer is liable for the loss incurred.
3. OTTO – VERTRIEB GMBH & CO. KG is entitled to inspect the reserved goods in its ownership at any time at the place where they are located. The buyer is obliged to assure the goods and the end product against the risks of fire, water and theft and to prove to the supplier on request the conclusion of the insurance. For the sake of security, the customer assigns all claims against the insurance company resulting from the insurance of the goods and the final product to OTTO – VERTRIEB GMBH & CO. KG. OTTO – VERTRIEB GMBH & CO. KG accepts this assignment. The buyer is entitled to sell the goods in the ordinary course of business. He is not entitled to other dispositions of the goods or the final product, in particular their pledge or chattel mortgage.
4. All claims and rights arising from the resale or any other legal reason, in particular claims resulting from insurance and tort on the goods, the buyer now assigns for safety in full to OTTO – VERTRIEB GMBH & CO. KG. If the reserved goods are sold by the buyer - after processing / connection - together with goods not belonging to OTTO –

VERTRIEB GMBH & CO. KG, the customer hereby assigns the claims resulting from the resale in the amount of the value of the reserved goods with all supplementary rights and priority over all other debts. OTTO – VERTRIEB GMBH & CO. KG hereby accepts this assignment. OTTO – VERTRIEB GMBH & CO. KG authorizes the buyer to collect the transferred claims for the account of OTTO – VERTRIEB GMBH & CO. KG, but in his own name. The direct debit authorization can be revoked if the buyer does not meet his payment obligations properly.

5. Upon request of OTTO – VERTRIEB GMBH & CO. KG, the buyer shall announce the debtors of his claims assigned to OTTO – VERTRIEB GMBH & CO. KG and provide the information necessary for the assertion of the rights, hand over the necessary documents and permit to inspect his books and invoices. Upon request of OTTO – VERTRIEB GMBH & CO. KG, the buyer is also obliged to inform his debtor of the assignment of his claim to OTTO – VERTRIEB GMBH & CO. KG. In the event of default in payment by the buyer, in particular in the event of cessation of payment, application or opening of insolvency proceedings - as well as extrajudicial composition proceedings concerning the property of the buyer - the right to resale, processing or transformation as well as to the combination or mixture of the goods or their final product expires. In this case, the authorization to collect the assigned claims expires, too. OTTO – VERTRIEB GMBH & CO. KG is then entitled to request the immediate surrender of the goods not resold yet. If this claim for restitution is asserted, the buyer hereby irrevocably authorizes OTTO – VERTRIEB GMBH & CO. KG to take possession of the goods in his ownership and for this purpose to enter the place where the goods are located. In addition, OTTO – VERTRIEB GMBH & CO. KG is entitled to request the assignment of the claims for restitution of the buyer to third parties. The assertion of the retention of title shall not be deemed as withdrawal from the contract. In the revocation as well as in the seizure of the goods or the final product by OTTO – VERTRIEB GMBH & CO. KG is no resignation from the contract.
6. OTTO – VERTRIEB GMBH & CO. KG binds itself to release the securities to which it is entitled as far as their value exceeds the claims to be secured, insofar as these have not yet been paid, by more than 20%. The valuation of the securities is based on its achievable value (backup value).

VIII. Liability for defects

1. OTTO – VERTRIEB GMBH & CO. KG guarantees for a period of one year after the date of receipt of the supplied item / services that the supplied item / services are free of manufacturing defects and shortage of material or professionally executed and that written assured characteristics are met. The buyer must inform us about any defects in writing without delay, but at the latest within one week after receipt of the supplied item or our services. Defects that cannot be detected even through careful examination within this period must be reported to us in writing immediately after their discovery. Transport damages are to be documented immediately upon delivery and communicated to the charged carrier. Any notice of defects must always be made in

writing and specified. An insignificant deviation of the delivered goods from the agreed or customary condition does not justify claims for defects of the buyer.

2. Excluded from the warranty are damages and defects for which we are not responsible, in particular due to improper operation or service, unauthorized changes to the supplied item, other buyer-related disturbances or force majeure, as well as natural wear-and-tear.
3. The warranty is provided free of charge at our discretion by remedy or replacement or compensation. If the rectification or subsequent delivery or compensation fails after setting a reasonable deadline by the buyer, the buyer may, at his discretion, demand a reduction of the remuneration or declare the withdrawal from the contract. OTTO – VERTRIEB GMBH & CO. KG is only liable for the breach of essential contractual obligations. The liability is limited to the typically foreseeable damages in case of slight negligence.

The preceding clause does not apply if OTTO – VERTRIEB GMBH & CO. KG fraudulently concealed a defect or has given a guarantee for the condition of the thing and for claims of the customer because of injury to life, body or health, claims of the buyer under the Product Liability Act and claims for damages of the buyer for other Damage caused by a grossly negligent or intentional breach of duty by OTTO – VERTRIEB GMBH & CO. KG.

4. The right of the buyer to take recourse according to § 478 BGB for asserted warranty claims of his customers in relation to the deliveries made by OTTO – VERTRIEB GMBH & CO. KG, remains unaffected.
5. Deficiency claims become time-barred within one year from the delivery of the item.

IX. Copyrights/other documents and drawings

1. Drawings, drafts and other documents which are provided to the buyer in the contract initiation or contract performance are our intellectual property and may not be made available to third parties, duplicated or used for any purpose other than the agreed purpose without our express written approval. We are entitled to request the gratuitous publication of the aforementioned documents, including any copies, if the buyer no longer needs these documents or if we are aware of any misuse of these documents. A right of retention of the buyer is excluded.
2. The buyer accepts the fault-based liability that through the use of drawings, samples and models by us, rights of third parties are not violated. In the event that third parties, relying on property rights, in particular deny the production and delivery of such objects, we are entitled, without obligation to review the legal situation, to cease all further activity and to claim damages. In addition, the buyer must indemnify us against all disadvantages, in particular claims for damages by third parties, which affect us.

X. Validity / Performance / Jurisdiction

1. Should a provision of these General Terms and Conditions be or become ineffective, the other provisions shall be maintained. The corresponding provision is to be replaced by one that comes as close as possible to the wording, sense and purpose.
2. These General Terms and Conditions are subject exclusively to German law, to the exclusion of the UN Sales Convention / CISG as well as other regulations of foreign or international law.
3. Place of performance and jurisdiction for all deliveries, services and payments is the registered office of OTTO – VERTRIEB GMBH & CO. KG.

Date: 01.04.2019