

General terms and conditions of business of Gerlinger GmbH & Co. KG

1. General, area of applicability

- Our general terms and conditions of business shall only apply in relation to entrepreneurs, legal persons under public law or special funds under public law, as defined in § 310 Paragraph 1 of the German Civil Code (BGB).
- Our general terms and conditions of business shall apply exclusively; deviating, conflicting or supplementary terms and conditions of business of our customer (hereinafter referred to as „Buyer“) shall not be recognised by us, unless we have expressly agreed to their applicability in writing. Such agreement shall only apply in respect of the specific individual case, not for previous or future deliveries. The consent requirement shall also apply if we carry out the delivery without reservation in knowledge of the terms and conditions of business of the Buyer.
- Our general terms and conditions of business shall also apply to all future business transactions with the Buyer, even if these are not separately agreed again.

2. Conclusion of the contract

- Our offers shall be subject to confirmation, unless they are expressly stated as being binding or contain a specific acceptance deadline. A contract shall not come into existence until we have accepted or confirmed the order of the Buyer in writing or we have delivered the ordered goods.
- All agreements reached between ourselves and the Buyer on conclusion of the contract shall require written form. Our employees are not entitled to agree amendments or additions to the contract without complying with the written form requirement. Amendments or additions to the contract which are made orally or by telephone shall not become effective until written approval.

3. Prices, payment

- Our prices are ex-factory exclusive of packaging and delivery and are additionally subject to the respectively applicable value added tax.
- In case of contracts in accordance with which delivery is intended to take place more than two months following their conclusion, we reserve the right to amend our prices accordingly if cost increases take place following the time of conclusion of the agreement until performance of the contract, for example due to an increase in the price of materials or an increase in wages. On request, we shall provide proof to the Buyer in this respect.
- Unless otherwise agreed, invoices shall be due for payment within 30 days of the billing date without discount. An invoice shall only be deemed to have been paid once the full amount of the invoice value has been credited to the account stated in the invoice. Should we grant a discount to the Buyer in an individual case, the discount deduction shall not be applicable if outstanding invoices have not yet been settled.
- Also in case of provisions of the Buyer which state otherwise, we shall always be entitled to initially settle payments against previous debts of the Buyer. Should costs and interest have been accrued, we shall be entitled to set off the payment initially against the costs, then against the interest and finally against the principal service.
- Should the Buyer enter payment default, we shall be entitled to charge default interest of eight percentage points above the base rate of interest from the respective time. The right to assert further damages claims shall be retained.
- We shall be entitled to only perform or carry out any outstanding deliveries in consideration of an advance payment or provision of security if circumstances become known to us following conclusion of the contract which significantly reduce the creditworthiness of the Buyer and due to which the payment of our outstanding claims by the Buyer under the respective contractual relationship is endangered. Should it become apparent following conclusion of the contract that our payment claim is endangered due to inability to pay on the part of the Buyer, we shall be entitled to determine a reasonable deadline by which the Buyer must provide security. Following the fruitless expiry of the deadline, we shall be entitled to rescind the contract. This shall also apply if we are not obliged to provide pre-performance, but must carry out preparatory actions in order to carry out the order on time. In such cases, agreed delivery deadlines shall be extended by the amount of time it has taken to provide security.
The Buyer shall only be entitled to rights of set off if its counter claims are legally recognised by a court, are undisputed or have been recognised by us. In addition, the Buyer shall only be entitled to exercise a right of retention to the extent that its counter claim refers to the same contractual relationship.

4. Electronic invoicing via email

- The Buyer is in agreement that we will also forward invoices electronically via email to the email address of which the Buyer has notified us. In such a case, the Buyer shall waive the sending of invoice via post and shall ensure that all electronic forwarding of invoices can be properly carried out to the email address of which the Buyer has notified us. In particular, the Buyer shall adapt technical facilities such as filter programs or firewalls accordingly. Automated responses to us (such as absence notices) cannot be processed by us and shall not prevent a valid transmission of invoices.
- The Buyer shall immediately notify us of changes to the email address to which the invoice should be forwarded. In case of forwarding of invoices to the last email address notified by the Buyer, the invoice shall be deemed to have been received if the Buyer has not notified us of a change to its email address.
- The Buyer shall be entitled to revoke its agreement to the electronic forwarding of invoices via email at any time. Following receipt of the notice of revocation, the Buyer shall receive invoices via post in the future to the last known postal address. We shall be entitled at any time to change the forwarding of invoices by email to submission by post to the last known postal address.

5. Deliveries and deadlines

- Deadlines and dates shall only be binding if they have been expressly agreed in writing. The compliance with our delivery obligations shall require timely and proper fulfillment of the obligations of the Buyer, in particular the provision of advance payments and deposits, as well as the performance of co-operation actions of all kinds. Should the Buyer fail to comply with such obligations, the delivery time shall be extended by a reasonable period of time. This shall not apply if we are responsible for the delay.
- The delivery deadline shall be deemed to have been complied with by us if the goods have left the factory prior to its expiry or if we have provided notification to the Buyer of readiness for dispatch by its expiry, unless an obligation to bring or send is exceptionally agreed.
- We shall not incur liability for operational disruptions, impossibility of delivery or delivery delays should these be caused by force majeure (for example difficulties in the procurement of materials or energy, damage to machines and equipment, industrial disputes, measures by the authorities, transport disruptions, major accidents, war) or other events outside of our sphere of influence which were not foreseeable at the time of conclusion of the contract (for example lack of, incorrect or non-timely self delivery by suppliers or manufacturers) for which we are not responsible. Should these circumstances last for more than one month after the agreed delivery date, both contracting parties shall be entitled to rescind the contract.
- Partial deliveries shall be permitted to the extent that is reasonable.

6. Assumption of risk

- Unless otherwise agreed in individual cases, we deliver ex factory and thereby at the risk of the Buyer. Should we be obliged to ship the goods in exceptional cases, the risk of possible destruction and deterioration of the goods shall be assigned to the Buyer at the time of handover to the carrier, the haulier or other persons engaged in the dispatch of the goods, also if we bear the cost of shipping. Unless the Buyer specifies specific instructions, we shall be free to choose the type of dispatch and the means of transport. We will only conclude transportation insurance on the express instruction of the Buyer and at its expense.
- The risk of possible destruction and possible deterioration of the goods shall also be assigned to the Buyer if it enters acceptance default.

7. Reservation of ownership

- We shall retain ownership of the delivered goods until all claims under the business relationship with the Buyer (secured claims) have been fulfilled, should these have already existed at the time of conclusion of the contract. In case of ongoing invoicing, the retention of ownership shall be deemed to be security for the respective balance claim.
- The goods which are subject to this reservation of ownership may not be pledged to third parties or be provided as security until full payment of the secured claims has been made. In case of seizures or other third party attacks, the Buyer shall immediately inform us of such. Should the third party not be in the position to reimburse us in respect of the costs of in court or out of court actions, the Buyer shall incur liability in respect of the loss incurred.

- In case of breach of contract on the part of the Buyer, in particular in case of non-payment of the purchase price due, we shall be entitled, in accordance with the statutory regulations, to rescind the contract and/or demand return of the goods due to the reservation of ownership and rescission. Should the customer fail to pay the purchase price which is due, we shall only be able to assert the said rights if we have unsuccessfully set the Buyer a reasonable deadline for payment or if such a setting of a deadline is dispensable in accordance with the statutory regulations.
- The Buyer shall be entitled to sell on the object of delivery within the course of proper business dealings. However, the Buyer shall assign to us all claims which are accrued to it against its consumer or against third parties as a result of the subsequent sale. The Buyer shall also be entitled to collect the said claims following assignment. We shall be authorised to collect the claim ourselves, but obliged however not to do so if the Buyer complies with its payment obligations in relation to us, does not enter payment default or does not suspend payment, no application is filed for the opening of insolvency proceedings and no other incapacity to make payment is present. However, should this be the case, we shall be able to demand that the Buyer informs us of the assigned claims and their debtors, provides us with all information which is necessary for collection, hands over the relevant documents and notifies the debtors of the assignment.
- The processing of the goods which are subject to reservation of ownership by the Buyer shall always be carried out for us. If the retained goods are processed with other items that do not belong to us, we shall acquire co-ownership in the new item in the relationship of the invoice value of the goods to the other objects at the time of processing. Claims which are accrued by the Buyer against its consumers or third parties from the resale of the item connected to the processing shall be assigned to us by the Buyer at the time of conclusion of the contract as security. Should we have acquired co-ownership in the new item, the assignment shall apply to the amount of our co-ownership proportion. Otherwise, Number 7.4 shall apply accordingly in respect of the assigned claims.
- Should the goods which are subject to reservation of ownership be inseparably mixed or blended with other items which do not belong to us, so that these become a significant part of a unified item, we shall acquire co-ownership in the new item to the relationship of the value of the goods delivered by us to the other mixed items at the time of mixing. The same shall apply if the goods which are subject to reservation of ownership are inseparably combined with other items which do not belong to us. Should the mixing or combination take place in such a way that the item of the Buyer is to be considered as the principal item, the Buyer shall assign proportional co-ownership to us. The Buyer shall hold the acquired sole ownership or co-ownership for us. Claims which are accrued by the Buyer against its consumers or third parties from the resale of the mixed or combined items shall be assigned to us by the Buyer at the time of conclusion of the contract as security. Otherwise, Number 7.4 shall apply accordingly in respect of the assigned claims.
- The Buyer shall also assign the claims which it acquires against a third party in connection with the combination of the goods which are subject to reservation of ownership with land to us as security of our claims against the Buyer.
- We shall be obliged to release the securities to which we are entitled at the written request of the Buyer should the realisable value of the securities exceed the claims to be secured by more than ten percent; we shall be obliged to select the securities which are to be released.

8. Rights of the Buyer in case of defects

- The statutory regulations shall apply to the rights of the Buyer in case of material defects and defects of title (including wrong delivery and shortfall in delivery, as well as improper installation or defective assembly instructions), unless otherwise prescribed below.
- The basis of our liability for defects is the quality of the goods agreed in the contract (§ 434 Paragraph 1 Sentence 1 of the German Civil Code - BGB). Should the quality of the goods not have been contractually agreed, we shall provide a guarantee in respect of the delivered goods being suitable for customary use at the time of transfer of risk and demonstrating quality which is usual for items of the same kind and which the Buyer can expect in accordance with the type of the item (§ 434 Paragraph 1 Sentence 2 Number 2 of the German Civil Code - BGB). We shall only provide a guarantee in respect of the general suitability of our goods for proper use in respect of use which is presupposed in accordance with the contract (§ 434 Paragraph 1 Sentence 2 Number 1 of the German Civil Code - BGB). However, we shall not incur liability in respect of impairments of usability which are connected to the area of responsibility and risk of the Buyer (for example quality of the parts to be joined, subsequent encumbrances or special conditions in the processing of adhesive tape, adhesive and sealing compounds). The risk of use shall be borne by the Buyer to this extent, unless otherwise agreed in writing in individual cases.
- The Buyer shall inspect the delivered goods immediately following their arrival within the framework of proper business processes and, should a material defect be present (including wrong delivery and shortfall in delivery), the Buyer must immediately notify us of such in writing. Should the Buyer fail to comply with the above obligations, the delivery shall be deemed to have been approved. Should a defect become subsequently apparent, the defect must be notified to us in writing immediately following discovery, otherwise the delivery shall be deemed to have been approved. In both cases, the notice shall be deemed to have been immediate if it takes place within seven working days, whereby its timely sending shall suffice for compliance with the deadline. Deviations in terms of quantity, weight or number of items of up to three percent more or less cannot be objected to.
- Should the delivered object be defective, we shall be initially able to choose between correction of the defect (improvement) or the delivery of a defect-free object (replacement delivery) as supplementary performance. The Buyer shall give us the necessary time and opportunity to carry out the subsequent performance which we are obliged to perform, in particular the goods in respect of which the complaint has been made shall be handed over for inspection purposes. In case of replacement delivery, the customer shall return the defective object to us in accordance with the statutory regulations.
- The expenses which are necessary for the purpose of inspection and subsequent performance, in particular transportation, travel, work and material costs (but not removal and installation costs) shall be borne by us if a defect is actually present. However, should a request of the Buyer to deal with defects be shown to be unjustified, we shall be entitled to demand that the Buyer reimburses the costs incurred as a result.
- Should subsequent performance have failed or should a reasonable period of grace to be set by the Buyer have fruitlessly expired, or should this be dispensable in accordance with the statutory provisions, the Buyer shall be entitled to rescind the sales agreement or to reduce the purchase price. However, no right of rescission shall exist in relation to minor defects.
- Otherwise, the provisions in Number 9 shall apply in relation to damages claims and claims to reimbursement of futile expenses. Further claims or claims other than those regulated under Number 8 against us and our vicarious agents due to material defects shall be excluded.

9. Liability

- As a rule, damages claims against us shall only exist if we or our vicarious agents have acted intentionally or gross negligently. However, in case of breach of significant contractual obligations, we shall also incur liability in case of simple negligence. However, in such a case, our obligation to pay damages shall be limited to losses which are typical of the contract and which are foreseeable.
- The above-mentioned limitation of liability shall not apply in case of injury to life, body and health, as well as to claims under the German Product Liability Act (Produkthaftungsgesetz). The limitation of liability shall also not apply in case of liability connected to the fraudulent concealment of defects, as well as to the provision of a quality guarantee.
- Should our liability be excluded or limited, this shall also apply in respect of the personal liability of our workers, employees, representatives and vicarious agents.

10. Statute of limitation

- Defect claims on the part of the Buyer shall lapse twelve months after delivery of the goods. The statutory deadlines shall apply should we have provided a guarantee in respect of the quality of the goods, in case of fraudulent concealment of a defect, in case of injury to life, body or health, as well as in case of intentional or gross negligent breach of obligations. The same shall apply in respect of the recourse of the customer in accordance with §§ 478, 479 of the German Civil Code (BGB).

11. Place of jurisdiction, choice of law

- Should the Buyer be a merchant as defined in the German Commercial Code (Handelsgesetzbuch), a legal person under public law or a special fund under public law, the exclusive place of jurisdiction, also internationally, for all disputes arising directly or indirectly under the contractual relationship shall be Munich, Germany. However, we shall be entitled to also assert claims against the Buyer before the court in whose area of competence the place of business of the Buyer is located.
- German law shall apply to the contractual relationship, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).