

General Terms and Conditions for Sale and Delivery Jäkel GmbH & Co. KG – Edition 06/2014 -Companies

A) Conclusion of Contract, Payment, Retention of Title

I. Conclusion of Contract

1. Our sales, deliveries and other services are subject to the following Terms and Conditions. We hereby object to any deviating terms and conditions of the Buyer.
2. These Terms and Conditions apply to all our current and future businesses with the Buyer even if they are not expressly referred to in future deals.
3. Our offers are non-binding.

II. Payment

1. All our prices are quoted ex works Diemelstadt (EXW Incoterms 2000) exclusive VAT. If not otherwise stated in our confirmation of order, a payment deadline of 30 calendar days upon receipt of the invoice by the Buyer or upon delivery of the goods, whichever is later, applies. Payment has to be made without cash discount deductions and has to be at our disposal on the due date. Any offsetting of claims against the purchase price shall be permissible solely if and when the Buyer's counterclaims have been acknowledged by us or have been finally determined by a court. He only has a right of retention if the claims derive out of the same contractual relationship.
2. In case the payment term pursuant to sec. A) II. 1 is exceeded we will charge interest at the rate of 8 percentage points over the base rate. This will not affect our right to claim further damages.
3. If our payment claim is at risk due to circumstances which occurred subsequently and which show an inadequate creditworthiness of the Buyer, payment will become due after a respective notice from our side – independent of the payment term of any bills of exchange accepted as payment-, unless the Buyer provides prior security in the amount of our payment claim at risk.
4. In case of sec. A) II. 3. we have the right to refuse outstanding deliveries until complete payment or until an appropriate security has been provided. Any statutory rights of withdrawal will remain unaffected.
5. In case of withdrawal from the contract we are entitled to prohibit any processing of the delivered goods and to have them returned to us at the Buyer's expense.
6. Within the legal framework we are entitled to any off-set of our claims against the Buyer against all of the Buyer's claims against us independent of their legal grounds.

III. Retention of Title

1. We retain title of ownership to all delivered goods until full settlement of all our claims, including respective balance claims, deriving out of our business relations with the Buyer (reserved goods). This also applies to future or contingent claims, e.g. out of return bills of exchange.
2. In case of the Buyer processing the reserved goods together with other goods the Buyer already now transfers to us a share of co-ownership in the new item in the ratio of the invoice value of the reserved goods to the invoice value of the other goods, however not exceeding 150% of the invoice value of the reserved goods. Should such co-ownership not happen automatically the Buyer already now transfers to us as security his future co-ownership of the new item in the ratio and with the restriction mentioned above. The Buyer undertakes to store the new item for us at no costs. The provisions of sec. A) III.1. and sec. A) III. 3.-7. apply accordingly.
3. The Buyer may only resell the reserved goods in the ordinary course of business. Any claims out of the resale of the reserved goods or out of any other legal grounds (esp. insurance, tort) shall transfer to us in full as security until any and all our claims from the delivery of the goods have been paid in full. The Buyer is not entitled to any other disposal of the reserved goods. A resale for the purposes of this provision is also the use of the reserved goods for the performance of service contracts. No resale in the ordinary course of business can be assumed especially if the resale does not appropriately protect our above mentioned statutory and contractual rights. The right to resale or process the reserved goods expires as soon as the Buyer is in default or esp. in case of protest of a bill of exchange or when applying for the opening of insolvency proceedings.
4. If the reserved goods are resold by the Buyer together with other goods, the claim out of the resale will be transferred to us in the ratio of the invoice value of the reserved goods to the invoice value of the other goods. In case of resale of products in which we have co-ownership pursuant to sec. A) III.2. a claim corresponding to our co-ownership will be assigned to us.
5. The Buyer is entitled to collect claims out of the resale directly unless we revoke such authorization in cases of sec. A) II 3 and 4. Upon our request the Buyer shall inform his customers immediately about the assignment of the claims to us and provide us with all information and documents required for the collection of the claims. The Buyer is not authorized to assign the claims to third parties. This also applies to all kinds of factoring.
6. The Buyer has to inform us immediately about any garnishment or other interferences by third parties.
7. If and when the value of the existing securities provided to us according to this sec. III exceeds the value of our total claims from the business relationship with the Buyer by more than 20% we are obliged upon the Buyer's request to reassign securities of our own choice to this extent.

B) Contract Performance and Delivery

I. Delivery Periods, Delivery Dates

1. Delivery periods start on the date of our confirmation of order, however not before full clarification of all details of the order; this applies to delivery dates accordingly.
2. If the Buyer is in default with his contractual obligations, including joint or secondary obligations like issuance of a letter of credit, furnishing of certificates or prepayments we are entitled to a reasonable postponement of our delivery periods and dates in accordance with the requirements of our production processes. Other rights regarding the Buyer's default, esp. withdrawal from the contract and compensation for damages, remain unaffected.
3. The dispatching of the goods from the place mentioned in sec. A. II. 1, sentence 1 is relevant for the observance of the delivery periods and dates. If the

goods cannot be dispatched in time without our fault the delivery periods and dates are deemed to be complied with if the notice of the readiness for shipment has been issued in time.

II. Shipment and Transfer of Risk

1. For all deliveries the risk of goods being damaged or lost passes to the Buyer as soon as the goods have been dispatched from the place pursuant to sec. A. II. 1, sentence 1, even if freight paid delivery is stipulated.
2. If shipment is delayed without our fault the risk pursuant to sec. B. II. 1 passes to the Buyer on the day, on which the notice of the readiness for shipment was made to the Buyer independent of where the goods to be delivered are at that moment. From the moment of the passing of the risk and the place where the risk passes the goods to be delivered will only be insured against damages and losses if expressly requested by the Buyer and at the Buyer's costs.
3. If the Buyer is responsible for the delay of shipment, we are entitled to take all measures necessary for preservation of the goods based on equitable discretion (esp. storage) on the Buyer's account. The same applies if goods reported as ready for shipment are not called off within 4 days. The statutory provisions concerning default of acceptance remain unaffected.

III. Warranty

1. We are not liable for any defects of the goods supplied if those defects are caused by an irregular use, unauthorized modification or remediation or bad placement of the goods by the Buyer or a third party.
2. Obvious defects must be reported to us in writing together with forwarding the respective delivery note immediately after receipt of the goods, other defects immediately after discovery, otherwise the delivery will be deemed to be approved.
3. The Buyer can - at no costs and at his own choice - demand either subsequent improvement or substitute delivery of the defective parts (in the following „subsequent performance“). Parts being replaced will become our property. We are entitled to refuse the kind of subsequent performance chosen by the Buyer if it can only be done with disproportional efforts.
4. In case of subsequent performance we are obliged to bear all expenditures necessary.
5. The Buyer has to grant us at no cost sufficient time and opportunity for all necessary examinations or other measures and for the supply of spare parts or machinery as part of the subsequent performance.
6. If the subsequent performance fails or if we are not willing or able to perform or if it is delayed beyond a reasonable period, sec. B) III. 5. sentence 1, the Buyer has the choice to withdraw from the contract or reduce the purchase price.
7. We are only liable for damages based on defective goods, if
 - a. The damage is caused by a negligent (fahrlässig) or wilful (vorsätzlich) injury of the life or the body or health,
 - b. The damage has been caused by gross negligent behaviour (grobe Fahrlässigkeit) or wilful misconduct (Vorsatz) of us or one of our legal representatives or auxiliary or vicarious agents,
 - c. Fundamental contractual obligations have been violated the fulfilment of which only enables the proper performance of the contract and which can usually be trusted by the contract partner to be complied with (Kardinalpflichten); our liability is however restricted in the amount to the typically foreseeable damage at the time of concluding the contract, or
 - d. If we have given a guarantee regarding the condition of the goods.

Any liability according to the Product Liability Act (Produkthaftungsgesetz), if applicable, remains unaffected.

8. The limitation period for warranty claims is one year starting in accordance with the respective statutory provisions.

C) General Restriction of Liability

The restrictions of liability pursuant to sec. B III. 7. above apply to all statutory or contractual claims for damages of the Buyer against us accordingly; this also applies in case of wage labour.

D) Place of Performance, place of jurisdiction, applicable law

1. Place of performance and place of jurisdiction for both contract parties is Diemelstadt. This also applies to actions for assertion of a claim concerning the payment of a check or a claim arising out of a bill of exchange. However, we reserve our right to file a law suit at every other valid place of jurisdiction, e.g. at the main place of business of the Buyer.

2. These General Terms and Conditions including their interpretation are subject to the laws of the Federal Republic of Germany excluding the Convention of the International Sales of Goods of the United Nations of 11.04.1980. In case of any inconsistencies between the German and the English version of these General Terms and Conditions the German version shall prevail.

E) Amendment of the General Terms and Conditions

1. If necessary according to relevant laws or decrees or orders of national or international courts or authorities we are entitled to amend these General Terms and Conditions with immediate effect provided that the balance of interests between the parties at the time of conclusion of the contract will be retained.
2. We furthermore have the unilateral right to correct apparent incorrectness and spelling mistakes as well as to include amendments which are solely legally beneficial to the Buyer.
3. Any other amendments to the General Terms and Conditions are valid if the Buyer does not object to the amended version of the General Terms and Conditions within 4 weeks after its receipt.