

General Terms and Conditions for Sale and Delivery of Reflex Winkelmann GmbH

These General Terms and Conditions for the Sale and Delivery of Goods shall only apply to natural persons or entities, or the partnerships with legal personality acting in their commercial or self-employed capacity (entrepreneurs) at the time the contract is concluded and shall exclusively apply. As far as not otherwise agreed, the terms stated herein shall be decisive for all our deliveries and sales. Our terms of sale shall also be applicable for all future transactions with the customer:

I. General

1. Our terms of sale shall exclusively be applicable; customer's terms adverse to or deviating from our terms of sale shall not be acknowledged by us, unless we have explicitly given our written consent to the validity of said terms. Our terms of sale shall even be applicable in the event that we carry out customer's order without any reservations, although being aware of customer's adverse or deviating terms.
2. All agreements (verbal, by phone or telegraph, by e-mail or fax) made between us and customer in order to execute this contract are subject to our written confirmation to become effective; the same also applies to collateral agreements and other commitments.
3. Our conditions of sale shall also be applicable for all future transactions, in case of orders for goods to be delivered on demand, these apply to every request for delivery.
4. Orders confirmed by us can be cancelled by customer only for important reasons. The right of cancelling the agreement pursuant to statutory provisions and agreed terms shall not be affected. This applies particularly to orders for successive deliveries, framework agreements or orders for goods to be delivered on demand.
5. Our offer is subject to change. Customer's order shall be a binding offer. The contract is concluded by sending a written order confirmation within ten days as from receipt of the order or by sending the ordered goods to customer within said term acceptance). In case of orders for goods to be delivered on demand, customer undertakes to accept the delivery ten months after placing the order at the latest, unless another agreement has been made; customer's request for delivery needs to be made in due time, but at the latest four weeks before delivery.
6. Customer's rights resulting from this contractual relationship are not transferable. The provision of § 354a HGB (German Commercial Code) remains unaffected.
7. In the event that a provision of this contract is or becomes totally or partially ineffective, the validity of the rest of the contract shall not be affected by this.
8. All legal relationships shall exclusively be governed by German law, excluding the UN Convention on International Sale of Goods (CISG) dated 11 April 1980.

II. Intellectual Property Rights

1. The right of ownership and copyright of illustrations, drawings and calculations as well as of other documents are reserved; these must not be made accessible to third parties. This applies particularly to written documents which are designated as "confidential"; passing on said documents by customer to third parties is subject to our explicit written consent.
2. As far as we have to supply objects according to drawings, models, samples, tools, calculations or illustrations handed over to us by customer, the latter shall assume liability towards us that by the production and delivery of said objects no property rights of third parties are infringed.

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Geschäftsführer: Norbert Hülsmann, Volker Mauel

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In such a case we shall not be responsible to review whether the tools to be made by us and the objects to be produced by means of these tools infringe any protective rights of third parties at home or abroad; this falls rather within customer's exclusive scope of responsibility.

3. As far as we are prohibited by a third party – making reference to an intellectual property right which belongs to said party – from producing or supplying objects manufactured according to drawings, models, samples, calculations, illustrations or tools of customer, we shall be entitled – without any obligation to review the factual and legal situation – to stop the production and delivery, excluding any claims for damages on the part of customer, and to demand refund of the costs incurred and compensation for lost profit.
4. Customer undertakes to exempt us immediately on our request from any damage claims asserted by third parties. Customer shall make to us an adequate advance payment for all direct and indirect damages resulting from an infringement and assertion of possible protective rights, including the expenses for consultations and proceedings incurred by.
5. Samples or drawings made available to us will only be returned on request. In the event that no contract is concluded, we shall have the right to destroy samples and drawings at the end of three months after having passed the offer.

III. Prices and Payment

1. As far as not otherwise stated in the order confirmation, our prices are understood to be "ex works", excluding freight and packaging; this will separately invoiced. In case of freight free return of boxes and multi-use packaging, a credit note of 2/3 of the sum invoiced will be issued. The rent for hired railway-containers shall come to the account of customer.
2. Our prices are understood to be exclusive of the statutory value-added tax on the date of invoice; VAT shall exclusively be shown in the invoice.
3. In contracts with continuing obligations prices are subject to change. The prices are calculated on the basis of the price and discount structure negotiated in each case with customer. In the event of an increase of wages or prices for material at least three months after the date of the order confirmation, we shall be entitled to pass on the increased expenses for wages and/or material to customer, if they are not compensated by decreases of other costs reflected in the price structure. Accordingly we will pass on to the customer decreased expenses for wages and/or material. Customer shall furthermore accept that we are entitled to an increase of prices if the execution of the order requires – particularly in case of first supply – additional substantial production phases and tools which according to generally accepted codes of practice were unforeseeable and therefore not included in the pre-calculations being the basis for the stipulation of prices and negotiations as apparent to the customer. Price increases as defined by clauses 2 and 3 shall take place pursuant to sections 315, 316 of the German Civil Code (BGB). The customer in such a case has an extraordinary termination right with regard to work not yet performed. Work performed has to be reimbursed.
4. For lack of explicit written agreement, the payment has to be made to us net cash, i.e. without any deductions. Differing terms of payment are subject to written agreement with us. This applies in particular to longer periods for payment and to payment by bill or payments by bill / cheque. Cheques and bills shall only be accepted for the purpose of payment, invoicing all charges for collection and discount. No liability shall be assumed for presentation in due time and for protest. C.O.D. charges shall be borne by customer.
5. Cash discount shall only be granted in writing. As far as cash discount has been granted, this refers only to the price of the goods excluding additional expenses.

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6. If several debts are overdue, we shall have the right to determine the order of repayment.
7. As far as not otherwise stated in the order confirmation, our invoices fall due for payment immediately after receipt. 14 days after due date and receipt of invoice the customer comes in arrears. § 286 sect. 3 of the German Civil Code remains unaffected in other aspects.
8. In the event that customer fails to pay in due time, we shall be entitled to demand default interest exceeding by 8% the applicable basic interest rate as defined by section 247 of the German Civil Code. We shall have the right to assert a higher loss of interest which will have to be proved by us. Assertion of additional damages caused by delay is still reserved. Rebates and/or price reductions conceded for the respective payments shall not apply in case of default in payment and collection becoming necessary or in case of stopping payments.
9. All payments need to be made in Euro to us but not to our business agents.
10. Customer shall only be entitled to exercise a retention right or a setoff if the counterclaim is based on the same contractual relationship.

IV. Period of delivery

1. The delivery period stated by us shall only start to run provided that technical issues have been clarified with the customer and – if this has explicitly been stipulated – all agreed down payments have been received; it shall on no account start to run before receipt of all documents, drawings, calculations and components the customer has to provide and which are necessary for the execution of the order. In the event that pattern references need to be supplied, all delivery periods for the continued supply shall start to run on acceptance of the pattern reference.
2. Delivery periods stated by us shall only be binding if these are explicitly designated by us in writing to be binding. Obtaining supplies ourselves is a prerequisite for the observance of delivery periods. Information about emerging delays will be given by us immediately. In case the goods cannot be obtained or only partially and we are not responsible for this, we have the right to rescind the contract. We will inform the customer immediately and retribute any prepayments of the customer immediately.
3. Observance of our obligation to supply requires perfect fulfillment in due time of all obligations on the part of customer.
4. In the event that customer gets into default of acceptance or infringes other duties to cooperate, we shall be entitled to demand compensation for the damage caused to us, including possible additional expenditures. In such case, the risk of accidental loss or deterioration of the delivery object shall also pass to customer at the moment at which the latter gets into default of acceptance.
5. In the event of agreeing collection of the goods by customer himself or on his behalf, but collection does not take place within one week after advising the completion, we shall have the right to deliver the goods, charging customer with the expenses thereof; customer undertakes to accept the goods supplied by us. Customer shall get into default of acceptance at the latest at the moment of not accepting the goods supplied, according to N° 4.
6. Force Majeure exempts us from performance of the contract for the duration of the impediment; in the event of a duration of more than six months both parties shall have the right to cancel the contract. Force Majeure shall also include accidents and other causes non-foreseeable or avoidable by us which result in a postponement of our production start or a partial or complete stop of work, such as lack of material and/or fuel, problems of transport, difficulties in energy supply, disorders in the own enterprise or in an ancillary supplier firm, as well as delayed supply of raw materials, tools and machines for the ordered manufacturing.

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V. Passing of risks, Delivery

1. As far as not otherwise stated in the order confirmation, delivery is agreed to take place "ex works". We use to forward the goods at customer's expense and risk even in case of freight free delivery and transport by vehicles of our own firm.
2. Packaging and dispatch shall be made to the best of our discretion; we shall only be liable pursuant to N° VIII.
3. The goods and/or the transport thereof shall be insured by us according to customer's instruction and at customer's expense. Customer shall be responsible for the regulation of transport damages or losses.
4. Partial deliveries are permissible to an extent which is reasonable for customer, unless otherwise stated in our order confirmation. In case of a partial delivery contrary to the contract, a right to cancel the agreement shall only exist after the expiration of an appropriate period for performance or subsequent fulfillment and only as far as customer makes clear not to have any interest in a partial performance.
5. Customer must not export our products out of the EU without our previous written consent; this explicit consent is not required if the destination of the products coincides with customer's invoice address. Customer shall take care that this provision is accordingly observed by his own clients.

VI. Components supplied by or on behalf of the Buyer

1. In case additional parts and/or additional packaging (e.g. pallets or molded shells to be provided by customer) are supplied by customer, the latter undertakes to deliver these free of charge with a reserve in quantity of 5 – 10% for possible refuse or additional production, i. e. in due time, in perfect conditions and in such quantities that a continuous processing in our plant is possible.
2. In the event that said additional parts are not supplied in due time or in sufficient quantity, customer undertakes to refund additional costs incurred by this and to compensate the damages caused to us. In such cases we reserve the options to interrupt the production and to continue at a later time or, after timely having informed customer about our needs, to buy ahead on our own and to charge customer with the additional costs. In such case, all delivery periods shall be considered to have been cancelled.

VII. Warranties

1. Warranty shall be assumed by us for defects in performance.. We assume warranty for the functionality of our products in accordance with the conditions described in the attached instruction for use and provided proper assembly. In the event that no instruction for use was included into the delivery, this will subsequently be delivered to customer immediately on his request. Parts exposed to pressure need only to be checked for density in our plant if this has explicitly been agreed in writing, according to N° I.2).
2. Customer's warranty claims are subject to due fulfillment of his requirements to examine and to give notice of defects pursuant to section 377 of the Commercial Code; customer himself shall be responsible for all costs incurred by a receiving inspection. Apparent defects can only be objected to within seven days as from passing of risk to customer, i.e. in writing and exactly specifying the asserted defects. Other defects have to be objected immediately after their detection, at the longest 12 months as from passing of risk. Persons charged with the examination of defects are not entitled to the recognition of defects with effect against us.

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3. In the event that a deficiency claims turns out to be justified, we shall have the choice to render subsequent performance (elimination of the defects, substitute delivery) or to reduce the remuneration; in case of longlasting business relations the reduction of the remuneration can be made by issuing a credit note for defective goods. In case of subsequent service we undertake to bear all expenditures necessary for the elimination of the defects or of the substitute delivery, in particular the expenses for transport, fares, work or material, as far as these are not increased by a transport of the goods to a location other than the place of performance.
4. In case of failure of the subsequent performance, customer shall have the right – according to his choice – to cancel the contract or to reduce the remuneration by the amount by which the defect diminishes the value of the defective object, compared to the remuneration. The subsequent performance shall be considered to have failed after two unsuccessful attempts.
5. In the event of customer asserting claims because of a quality missing although having been guaranteed by us, we shall be liable pursuant to the statutory provisions. Guarantee undertakings are only given by us in writing and designated as such. As for the rest, we shall only be liable pursuant to N° VIII.
6. Goods, which are acknowledged by us to be defective, are to be returned to us on our request.
7. In case of faulty deliveries, customer undertakes to pay the undisputed and faultless part of the delivery plus expenses for transport and packaging as well as the proportionate VAT.
8. Claims relating to defects shall become statute-barred within 24 months after transfer of risk. This period does not apply, if in case of § 438 section 1 no. 2 German Civil Code (buildings and goods integrated in buildings), § 479 section 1 (delivery regress) the statutes regulate longer periods and in cases where we can be charged with malice or intent, non-fulfilment of a durability guarantee or damages to life, limb or health.

VIII. Total liability

1. We shall basically be liable for compensation of damages towards customer only as far as we are responsible for a default in performance. We shall only assume responsibility for,
 - a) infringement of essential contractual duties (duties which endanger to the achievement of the contract purpose) at least resulting from simple negligence,
 - b) infringement with intent or by gross negligence of contractual duties which are not essential,
 - c) the culpable violation of life, body and health,
 - d) defects which have maliciously been concealed by us or which we have guaranteed not to exist,
 - e) defects of the object of the delivery, as far as liability is assumed pursuant to the law of product liability for personal injuries or property damages of objects which are used for private purposes.
2. As far as no gross negligence of the general management or of executive employees is concerned, the obligation to compensate damages shall be limited in events according to section VIII. 1a) or b) to the damage which is foreseeable and typical of the contract.
3. Customer shall only be entitled to demand compensation for damages after having sent to us a registered letter granting an adequate grace period for performance or subsequent performance; said grace period shall at least be of four weeks. The same applies to the right of cancelling the contract.

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4. As far as our liability is excluded or limited, the same applies also to the personal liability of our employees, colleagues, agents and persons employed in performing the contractual obligations.
5. All contractual claims for damages shall become statute-barred within 24 months after transfer of risk. This period does not apply, if in case of § 438 section 1 no. 2 German Civil Code (buildings and goods integrated in buildings), § 479 section 1 (delivery regress) the statutes regulate longer periods and in cases where we can be charged with malice or intent, non-fulfilment of a durability guarantee or damages to life, limb or health.

IX. Tools

1. The expenses for tools, which are possibly stated in our offer or in our order confirmation, only show a part of the labor and material costs, which are actually to be apportioned to the expenses for tools, and have therefore to be considered as target prices. By payment of said quota of the tool expenses, customer shall not acquire property of and claim to the acquisition of property of the tools. These shall rather remain in our property and in our possession.

X. Reservation of title and security interests

1. We reserve title of the goods of delivery until complete payment of all accounts receivable to which we are entitled now or in future as a result of the business relationship with customer.
2. In case of acting in breach of the contract on the part of customer, and in particular in case of default in payment, we shall be entitled to take back the goods. Taking back the goods shall not mean cancellation of the contract by us, unless this has explicitly been declared by us in writing. Seizure of the goods by us under distress shall always mean cancellation of the contract. After taking back the goods, we shall have the right to make use thereof. The proceeds resulting from the utilization need to be allowed on customer's outstanding liabilities, deducting adequate costs of the utilization.
3. Customer undertakes to treat the goods carefully; he is in particular obliged to insure these at own expense sufficiently at the original value against damages by fire, water and theft.
4. Customer is entitled to resale and further dispose of the goods in the normal course of business. The installation in soil or in buildings connected to plants or the utilization for fulfillment of other contracts for services or for work done and material supplied are equivalent to further disposal.
5. Even at this stage customer assigns to us at the sum of the total of the invoice (VAT included) agreed with us all accounts receivable achieved by further disposal to his subpurchasers or to third parties, irrespective whether the goods have been sold without or after having been processed. Customer shall be entitled to collection of said accounts receivable also after assignment. Our authorization to collect the account receivable ourselves shall not be affected by this. Nevertheless, we undertake not to collect the receivable as long as customer fulfils his payment obligations resulting from the proceeds collected, is not in default of payment and as long as no application for opening of an insolvency procedure has been filed or payments have been stopped. If this, however, should be the case, we can demand that customer discloses to us the assigned accounts receivable and the debtors thereof, gives all information necessary for collection and notifies debtor (third party) of the assignment.
6. Processing or reshaping of the goods by customer shall always be made for us; we shall in particular be considered as manufacturer as defined by section 950 of the Civil Code. Customer's expectant right to the goods shall be continued with the new or reshaped physical object.

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In the event that the goods are connected or processed with other physical objects not being our property, we shall acquire co-ownership of the new physical object in the proportion of the real value of our goods to the other connected or processed objects at the time of connection or processing. As for the rest, the same shall apply to the physical object resulting from connection or processing as to the goods supplied under reservation of title.

7. In the event that the physical object supplied is inseparably mixed with other objects not belonging to us, we shall acquire co-ownership of the new physical object in proportion of the real value of our physical object to the other mixed object at the time of mixture. If the mixture is made in such way that customer's physical object needs to be considered to be the main thing, it is deemed to be agreed that customer transfers to us co-ownership on a pro rata basis. Customer shall hold in custody for us the sole ownership or co-ownership, which has thus been created.
8. Customer shall also assign to us the receivables to secure our claims towards him resulting from the business relationship, which are created towards a third party by connection of the goods to a piece of property.
9. As far as customer is entitled to claims towards insurers or third parties as a result of damaging, diminution, loss or destruction of mortgaged property or for other reasons, customer undertakes to assign in advance to us said claims even at this stage.
10. Customer undertakes to inform us immediately in writing about seizures by third parties of reserved goods or assigned claims, in particular seizures under distress. In such case customer has to send to us immediately a copy of the bailiff's record and an affidavit about the identity of the goods seized under distress. As far as the third party is not in a position to refund to us the judicial or extrajudicial expenses of our prosecution or defence, in particular an action as defined by section 771 of the Civil Procedure Code, customer shall be liable towards us for the loss resulting from this.
11. On customer's request we undertake to release the securities to which we are entitled, as far as the realizable value of our securities exceeds the claims to be secured by more than 20% or the nominal value of the securities by more than 50%; the choice of the securities to be released is within our scope of responsibility.
12. In countries where a right similar to reservation does not exist, customer shall grant to us – where possible even at this stage, otherwise on first request – the comparable kind of security in the country concerned and shall cooperate in the additional measures, which are necessary to establish appropriate securities.

XI. Places of Jurisdiction and Performance

1. Exclusive place of jurisdiction shall be at the courts competent at our place of business; we shall nevertheless have the right to sue the customer also at his place of business or court of his place of residence.
2. As far as not otherwise stated in the order confirmation, our place of business is the place of performance for all obligations resulting from the contractual relationship.

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