

GENERAL TERMS AND CONDITIONS

of Pit Hoffmann GmbH & Co. KG



1) Scope

1.1 These General Terms and Conditions ("Ts & Cs") of Pit Hoffmann GmbH & Co. KG ("Seller") apply to all contracts on the delivery of goods which an entrepreneur ("Customer") and the Seller conclude by using remote communication means (e.g. telephone, fax, e-mail, letter) exclusively by individual communication pursuant to sec. 312(5)(1) of the *BGB* [German Civil Code]. Applicability of the Customer's own terms and conditions is hereby rejected, unless the Parties agree otherwise.

1.2 These Ts & Cs shall also apply exclusively if the Seller, being aware of the Customer's conflicting or deviating terms and conditions, delivers any goods subject to no special conditions.

1.3 "Entrepreneur" in terms of these Ts & Cs means a natural or legal person or a legal partnership exercising its commercial or independent professional activities when concluding a transaction.

2) Contract conclusion

The Customer may send a non-binding request for a quotation to the Seller by telephone, fax, e-mail, letter or an online contact form available on the Seller's website. Upon the Customer's request, the Seller shall send to the Customer, by e-mail, fax or letter, a binding offer for the sale of the goods previously selected by the Customer from the Seller's product range. The Customer may accept this offer by means of a declaration of acceptance towards the Seller submitted by fax, e-mail, letter or payment of the purchase price offered by the Seller within a reasonable acceptance period which the Seller specified in the offer, with the day of receiving the offer not being included to calculate that period. Acceptance by payment depends on the date of the Seller receiving the payment. If the last day of the offer acceptance deadline is a Saturday, a Sunday or an official public holiday at the Customer's registered office, that deadline shall end on the subsequent working day instead. If the Customer does not accept the Seller's offer within the above period, the latter shall no longer be bound by its offer and may freely dispose of the goods again.

3) Prices and payment terms

3.1 Prices stated by the Seller are net prices exclusive of statutory value-added tax. Packaging, shipping, loading and insurance costs (in particular transport insurance), customs duties and charges will be invoiced separately, if necessary.

3.2 The Seller's offer will indicate various payment options available to the Customer.

3.3 Deliveries to countries outside the European Union may lead to additional costs in individual cases for which the Seller is not responsible and which are to be borne by the Customer. These include, without limitation, money transfer costs from banks (e.g. transfer fees, exchange rate fees) or import duties and/or taxes (e.g. customs duties). Such costs may apply to the transfer of funds even if the goods are not delivered to a country outside the European Union, but the Customer makes the payment from a country outside the European Union.

3.4 If the Parties agreed upon advance payments by wire transfer, payment is due immediately after contract conclusion, unless they agreed on a later due date.

3.5 If "purchase on account" is selected as the payment method, the purchase price is due after the goods were delivered and invoiced. In this case, the purchase price is payable, without any deductions, within 14 (fourteen) days from invoice receipt, unless the Parties agreed otherwise. The Seller reserves the right to offer the "purchase on account" payment method only up to a certain order volume and to reject this payment method if that order volume is exceeded. The Seller also reserves the right to check the Customer's credit standing for purchases on account and to reject them in the case of negative credit standings.

3.6 When selecting the "direct debit" payment method, the invoice amount is due immediately upon contract conclusion.

When selecting "SEPA direct debit" as the payment method, the invoice amount is due after a SEPA direct debit mandate was issued, but not prior to the pre-notification period. Direct debits are collected once the ordered goods leave the Seller's warehouse, but not prior to the end of the pre-notification period. Pre-notification means any notification (e.g. invoice, policy, contract) of the Seller to the Customer announcing a debit by means of SEPA direct debit. If the Customer acts as a consumer, the pre-notification period is reduced to five days for initial debits and to two days for subsequent debits. If the Customer acts as an entrepreneur, the pre-notification period is reduced to one day for both initial and subsequent debits. The pre-notification period begins, for consumer, on the subsequent day and ends on the fifth day with initial debits or on the second day with subsequent debits and, for entrepreneurs, on the day following pre-notification. If the last day of the deadline is a Saturday, a Sunday or an official public holiday at the Customer's registered office, that deadline ends on the subsequent working day instead. If direct debiting is prevented due to a lack of funds or indication of incorrect bank details or if the Customer rejects such debits without being entitled to do so, the Customer shall bear all fees arising from chargebacks by the respective bank if it is responsible for this.

3.7 A payment is deemed to be received once the equivalent value was credited to one of the Seller's accounts. In the event of late payment, the Seller is entitled to default interest of 10 percentage points above the respective base lending rate; this shall not affect the Seller's other legal rights in the event of late payments by the Customer. If any payment claims are overdue, incoming payments shall initially be offset against any costs and interest and, subsequently, against the oldest payment claims.

3.8 Should costs increase for unforeseeable reasons (e.g. currency fluctuations, unexpected price increases of the suppliers etc.), the Seller may pass them on to the Customer, provided that the goods are to be delivered more than four months after contract conclusion.

4) Delivery and shipping terms

4.1 The goods will be delivered by shipping them to the delivery address indicated by the Customer, unless otherwise agreed.

4.2 The Seller may make partial deliveries insofar as this is acceptable for the Customer. In the case of permissible partial deliveries, the Seller may also issue partial invoices.

4.3 The Seller reserves the right to withdraw from the contract if its own suppliers make incorrect or non-compliant deliveries. This applies only if the Seller is not responsible for non-deliveries and if the Seller applied due care by concluding a hedging transaction with its supplier. The Seller will make all reasonable efforts to procure the goods. In the event of unavailability or only partial availability of the goods, the Customer will be informed immediately and any consideration will be immediately refunded.

4.4 The risk of accidental loss and accidental deterioration of the goods sold shall pass on to the Customer as soon as the Seller has handed the goods over to the forwarding agent, haulage contractor or any other person or institution commissioned with shipping the goods; this applies even if the Seller bears the transport costs. Only if the Customer requests and pays for transport insurance will the Seller take out such insurance.

4.5 If goods shipments to the Customer are delayed for reasons within the Customer's control, the risk shall be transferred already when the Customer is informed about the goods being ready for shipping. Any storage costs incurred after passing the risk shall be borne by the Customer.

5) Force majeure

In the event of force majeure affecting contract performance, the Seller may postpone deliveries for the period in which it is prevented from delivering and totally or partially withdraw from the contract in the event of longer-term delays, without this establishing any claims against the Seller. "Force majeure" here means all events which were unforeseeable for the Seller or which, even if they were foreseeable, are beyond the Seller's control and whose effect on contract performance cannot be prevented by reasonable efforts of the Seller; any legal claims of the Customer remain unaffected.

6) Delay in performance

6.1 In the event of delay in performance, the Customer shall have the legal right to withdraw from the contract only if the Seller is responsible for that delay.

6.2 In the event of default by the Seller, the Customer shall, at the Seller's request, indicate, within a reasonable period of time, whether it wishes to withdraw from the contract due to the delay of delivery or insists on performance.

6.3 If dispatch or delivery is delayed at the Customer's request by more than one month from notification of readiness for dispatch, the Seller may charge the Customer a storage fee of 0.5% of the price of the items to be delivered for each additional month or a part thereof, but not more than a total of 5%.

6.4 The Parties may provide evidence of higher or lower damage having occurred.

6.5 The above limitations of liability do not apply to cases of intent, malice, gross negligence or damage due to injuries to life, limb or health.

7) Delay of performance at the Customer's request

If goods dispatch or delivery is delayed at the Customer's request by more than one month from notification of readiness for dispatch, the Seller may charge the Customer a storage fee of 0.5% of the purchase price for each additional month or a part thereof, but not more than a total of 5% of the purchase price. The Parties may provide evidence of higher or lower damage having occurred.

8) Retention of title

8.1 The Seller reserves ownership of the delivered goods until the Customer has paid the purchase price in full. Furthermore, the Seller reserves ownership of the delivered goods until all its claims from the business relationship with the Customer have been fulfilled.

8.2 If the delivered goods are processed, the Seller is deemed the manufacturer and acquires ownership of the newly created goods. If other materials are used for processing, the Seller shall acquire ownership in the ratio of the invoice value of its goods to that of the other materials. If the Customer's item, resulting from the Seller's item being connected to and/or mixed with that of the Customer, is to be deemed as the main item, co-ownership of the item is transferred to the Seller in the ratio of the invoice value of the Seller's item to the invoice value or, if there is no invoice value, the market value of the main item; in these cases, the Customer is deemed a depositary.

8.3 The Customer may neither pledge nor assign by way of security any items subject to reservation of title. The Customer is entitled to reselling the goods in the ordinary course of business provided that the Customer effectively assigned to the Seller its claims against its own customers in connection with such resale and that the Customer transfers ownership to its customer subject to payment. By concluding the contract, the Customer assigns, by way of security, its claims against its customers relating to such disposals to the Seller, who accepts such assignment at the same time.

8.4 The Customer shall immediately inform the Seller about any access to the goods subject to the Seller's (co-)ownership or the claims it assigned to the Seller. It shall immediately pay to the Seller any amounts it assigned and collected, provided that the Seller's claim has become due for payment.

8.5 Insofar as the value of the Seller's security rights exceeds the value of secured claims by more than 10%,

the Seller shall release a corresponding proportion of the security rights at the Customer's request.

9) Liability for defects / warranty

If the purchased item is defective, statutory defect liability provisions apply.

10) Liability

The Seller is liable to the Customer for all claims for damages and compensation based on contracts, similar documents and legal, including tortious, claims, as provided below:

10.1 Regardless of the legal reason, the Seller is liable, without restrictions,

- for cases of intent or gross negligence;
- for intentional or negligent injuries to life, limb or health;
- based on promises of guarantee, unless otherwise specified in this respect; and
- due to mandatory liability, such as under the *Produkthaftungsgesetz* [German Product Liability Act].

10.2 If the Seller negligently violates essential contractual duties, liability is limited to foreseeable damage typical of this type of contract, unless liability is not limited in accordance with the above paragraph. "Essential contractual duties" means duties which the contract imposes on the Seller in terms of its content to fulfil the contractual purpose, which must be fulfilled for proper contract execution and on whose fulfillment the Customer may regularly rely.

10.3 In all other respects, liability of the Seller is excluded.

10.4 The above liability provisions also apply to the Seller's liability for its vicarious agents and legal representatives.

11) Limitation period

The Customer's claims against the Seller shall become time-barred – except for claims under the "Liability for defects / warranty" section – after one year from becoming aware of the facts justifying the claim, but not more than five years after rendering the services, unless unlimited liability is provided for under the above section.

12) Retention; assignment

12.1 The Customer has no right of retention or a right to refuse performance, unless the Seller fails to object to the underlying counterclaims or they are legally established.

12.2 The Customer is prohibited from assigning claims resulting from contracts concluded with the Customer, in particular from assigning the Customer's claims for defects.

13) Applicable law; venue; language of the contract

13.1 The laws of the Federal Republic of Germany apply to all legal relationships between the Parties, with the laws on the international purchase of movable goods being excluded.

13.2 If the Customer acts as an entrepreneur, a body corporate under German public law or a German public-law special fund having its registered office in the territory of the Federal Republic of Germany, the sole venue for all disputes arising from this Contract shall be the Seller's place of business. Should the Customer have its registered office outside the territory of the Federal Republic of Germany, the Seller's place of business shall be the exclusive venue for all disputes arising from this Contract if the contract or claims resulting therefrom can be attributed to the Customer's professional or commercial activities. In the above cases, the Seller may appeal to the courts at the Customer's registered office.

13.3 The language of the contract is German.