

General Terms and Conditions

§ 1 General – Area of Application

1. The General Terms and Conditions shall apply to all current and future business relationships.
2. **Consumers** for the purposes of the Terms and Conditions shall be natural persons with whom a business relationship is entered into without a commercial or independent professional activity being attributable to these persons.
Entrepreneurs for the purposes of these Terms and Conditions shall be natural or juridical persons or partnerships with legal status with whom a business relationship is entered into and who pursue a commercial or independent professional activity.
Customers for the purposes of the Terms and Conditions shall be both Consumers and Entrepreneurs.
3. Deviating, adverse or supplementary General Terms and Conditions shall not, even if these are known, become part of any contract unless their validity has been expressly approved in writing.

§ 2 Conclusion of Contract

1. Our offers shall not be binding. Technical alterations as well as alterations to form colour and/or weight shall be reserved as long as these are reasonable.
2. By ordering goods the Customer shall make a binding declaration that he wishes to acquire the ordered goods. We shall be entitled to accept the contractual offer contained in the order within two weeks of receipt of the order by us. Acceptance may be declared either in writing or by delivering the goods to the Customer.
3. Should the Consumer order the goods by electronic means, then we shall immediately confirm receipt of the order. Confirmation of receipt shall not represent any binding acceptance of the order. Confirmation of receipt may be combined with the declaration of acceptance.
4. Conclusion of contract shall take place under reservation of correct and timely delivery to us by our suppliers. This shall only apply in cases where non-delivery is not to be justified by us, in particular when a congruent covering transaction is being concluded with our supplier. The Customer shall immediately be informed of the non-availability of the service. The remuneration shall immediately be refunded.
5. Insofar as the Consumer orders the goods by electronic means, we shall store the text of the contract and, on request, email it to the Customer together with the present General Terms and Conditions.

§ 3 Reservation of Ownership

1. The Customer shall be obliged to handle the goods carefully. Insofar as maintenance and inspection work are required, the Customer must carry these out at his own expense at regular intervals.
2. The Customer shall be obliged to inform us immediately of any third-party access to the goods, for example if they are seized or damaged or destroyed. The Customer must inform us immediately if the goods change hands or if he changes his domicile.
3. In case of any violation of the contract by the Customer, in particular in case of any delay in payment or any violation of an obligation under numbers 2 and 3 of this provision, we shall be entitled to withdraw from the contract and demand the return of goods.
4. The Entrepreneur shall be entitled to resell the goods in the ordinary course of business. He shall already now assign to us to the total of the invoiced amount all claims against a third party, which arise to him through resale of the goods. We shall accept this assignment of claims. Following the assignment of claims, the Entrepreneur shall be authorized to collect the claims. We shall reserve the right to collect the claims ourselves as soon as the Entrepreneur fails to properly meet his financial obligations and defaults on payment.
5. Any treatment or processing of goods by the Entrepreneur shall always be carried out in our name and on our behalf. Should the processing be carried out with items that do not belong to us then we shall acquire co-ownership in the new goods, the value of the co-ownership being determined by the ratio of the value of the goods supplied by us to the value of the other processed items. This shall also apply if the goods are mixed with other items not belonging to us.

§ 4 Power of Revocation and Right of Return

1. Long distance sales contract with revocation clause
1. The Consumer shall have the right to revoke the contract within two weeks after receipt of goods. The revocation need not contain any reasons and shall be declared to the seller in text form or by returning the goods; a timely dispatch is sufficient to comply with the time limit.
2. When exercising the power of revocation, the Consumer shall be obliged to return the goods, if the goods can be sent by parcel post. The costs of returning the goods when exercising the right of revocation shall be borne by the Consumer, unless the goods supplied are not those ordered.
3. The Consumer shall compensate for any deterioration arising from an appropriate use of the goods. The Consumer may test the goods with care and attention. If the goods cannot be sold as “new” anymore because of usage beyond pure testing, any decrease in value shall be borne by the Consumer.

§ 5 Payment

1. The net purchasing price offered shall be binding. Statutory VAT shall be added to the net purchasing price. In the case of mail-order purchase, the flat-rate delivery charge indicated in the official price lists shall be added to the purchasing price. The Customer shall not incur any additional costs by using telecommunication means. The Customer may pay the purchasing price by bank transfer or by cheque. We reserve the right to deliver subject to payment in advance or cash on delivery.
2. The Customer shall be obliged to pay the net purchasing price plus statutory VAT within 30 days of receipt of goods. Following expiration of this term the Customer shall be in payment default. While in payment default, the Consumer must pay interest on the money owed at a rate of 5 % above base rate of interest. While in payment default, the Entrepreneur must pay interest on the money owed at a rate of 8 % above base rate of interest. With regard to the Entrepreneur we reserve the right to justify and demand higher default damage compensation.

3. The Customer shall have a right to offsetting only if his counter-claims have been established with legal force and approved by us. The Customer may exercise a right of retention only if his counter-claim is based on the same contractual relationship.

§ 6 Passing of Risk

1. If the buyer is an Entrepreneur the risk of accidental loss and accidental deterioration of the goods shall pass to the buyer on delivery, in the case of mail-order purchase on transfer of the goods to the haulier, the carrier or otherwise the person or establishment charged with carrying out the dispatch.
2. If the buyer is a Consumer the risk of accidental loss and accidental deterioration of the goods sold shall pass to the buyer on delivery of the goods also in the case of mail-order purchase.
3. The passing of risk shall remain unaffected if the buyer delays taking delivery of the goods.

§ 7 Warranty

1. If the buyer is an Entrepreneur we shall first choose to compensate for defective goods at our own discretion by subsequent improvement or substitute delivery.
2. If the buyer is a Consumer, he shall first be able to choose whether subsequent fulfilment should be in the form of subsequent improvement or substitute delivery. However, we shall be entitled to refuse the chosen type of subsequent fulfilment, if it can only be achieved at disproportionate costs and if the other type of subsequent fulfilment is not greatly disadvantageous to the Consumer.
3. If the subsequent fulfilment is not successful the Customer may in principle choose decrease in payment (reduction) or revocation of contract (withdrawal). However, in case of only a minor breach of contract, in particular in case of only minor defects, the Customer shall have no right of withdrawal from contract.
4. Entrepreneurs must notify us in writing of any obvious defects within two weeks of receipt of goods; otherwise the assertion of the warranty claim is excluded. The timely dispatch is sufficient for compliance with the time limit. The full burden of proof for all preconditions of claims shall lie with the Entrepreneur, in particular for the defect itself, for the point in time when the defect was discovered, and for the timeliness of the notice of defects. Consumers must notify us in writing of obvious defects within two months after discovery of the contract breaching condition of the goods. Whether the deadline has been observed shall depend on the point in time when the notification is received by us. If the Consumer fails to notify us the warranty rights shall lapse two months after his discovery of the defect. This shall not apply in case of malice on the part of the salesperson. The burden of proof for the point in time of the discovery of the defect shall lie with the Consumer. If the Consumer was persuaded to purchase the goods by incorrect manufacturer information, the burden of proof for his decision to purchase shall lie with him. In the case of used goods the burden of proof of defectiveness of the goods shall lie with the Consumer.
5. Should the Customer wish to withdraw from the contract on the grounds of a defect in title or a defect of quality after notification of subsequent fulfilment he shall not in addition be entitled to any compensation claim on the grounds of the defect. Should the Customer demand compensation after a failed subsequent fulfilment, the goods shall remain with the Customer if this is acceptable to him. Compensation is limited to the difference between purchasing price and the value of the defective goods. This shall not apply if the breach of contract was maliciously caused by us.
6. For Entrepreneurs the warranty period shall be one year from delivery of goods. For Consumers the period of limitation shall be two years from delivery of goods.
7. If the buyer is an Entrepreneur, only the manufacturer's product description shall in principle be deemed to be the agreed definition of the condition of the goods. Public pronouncements, recommendation or advertising by the manufacturer shall not in addition be regarded as a description of the condition of the goods conforming to the contract.
8. We shall not give any guarantees in the legal sense to the customer. The manufacturer's warranties shall not be affected by this.

§ 8 Limitations of Liability

1. In case of slightly negligent violations of duty our liability shall be restricted to the direct average damage that can be expected for the type of goods and is typical for the contract. This shall also apply in case of slightly negligent violations of duty by our legal representatives or vicarious agents.
Where Entrepreneurs are concerned we shall not be liable for a slightly negligent violation of inessential contractual duties.
2. The above limitations of liability shall not affect claims made by the Customer arising from product liability. Furthermore, the limitations of liability shall not apply to any bodily harm and injuries to health attributable to us.
3. Compensation claims by the Customer on the grounds of a defect shall become statute-barred after one year from delivery of goods. This shall not apply if we can be accused of gross negligence as well as in cases of bodily harm and injuries to health attributable to us.

§ 9 Final Provisions

1. The laws of the Federal Republic of Germany shall apply. The provisions of UN purchasing law shall not apply.
2. If the Customer is a business man, a public sector juridical person or a public sector special fund, our place of business shall be the exclusive place of jurisdiction for all disputes arising from this contract. The same shall apply if the Customer has no general place of jurisdiction in Germany or if his domicile or usual abode is not known at the time when an action is being brought.
3. The buyer's rights arising from this contract cannot be transferred. The invalidity of single provisions shall not affect the validity of the remaining ones. Should one or several of the provisions of these General Terms and Conditions be invalid or become invalid, this shall not affect the validity of the remaining ones. The invalid provision shall herewith already be replaced by a valid one that serves as far as possible the same legal and economic purpose.
4. DARCO (Europe) GmbH does not participate in consumer arbitration proceedings according to the Consumer Dispute Resolution Act.