

General terms and conditions of delivery

1. General

1. Exclusivity, inclusion and applicability of the General Terms and Conditions of Business, relationship to individual agreements

All legal transactions within the framework of our business with customers (consumers, companies, legal persons under public law, special funds under public law) are solely based on our General Terms and Conditions of Business.

If a customer is also a consumer, additional characteristics and variations apply and will be separately highlighted.

References to the validity of legal stipulations are only for clarification. Legal stipulations that are not directly amended or excluded by our General Terms and Conditions of Business are therefore valid without such clarification.

Individually concluded agreements with customers (including secondary agreements, supplements and amendments) also always take precedence over these General Terms and Conditions of Business. A written contract or our written confirmation determines the content of such agreements if no proof to the contrary is provided.

2. Definition of consumer / contractor

A consumer is a natural person who concludes legal transactions for a purpose that is neither part of his commercial nor independent professional activity (Section 13 of the German Civil Code).

A contractor is a natural or legal person or a partnership with legal capacity that concludes legal transactions by acting in a commercial or independent professional function (Section 14, Paragraph 1 of the German Civil Code).

3. Offers / conclusion of contract

All offers are subject to change without notice with regard to price and delivery options. Agreements concluded verbally, by phone or via representatives only become valid once they have been confirmed by us; this particularly applies to the guarantee of properties, illustrations, drawings, etc.; these are only approximate to scale, remain our property and may not be made accessible to third parties, in particular, competitors.

The contract only comes into effect with our order confirmation. Immediately upon receipt of the order confirmation, the customer must check its correctness, in particular, the technical data it contains, for compliance with his order.

II. Object of the contract / prices / payment conditions / exclusion of offsetting / exclusion of retention rights / payment default by the customer / international orders / agents and travelling sales staff

1. Object of the contract

The object of this contract is the sale of gabions, gabion baskets and accessories.

We reserve the right to make technical changes to the promised services, in particular, minor improvements, in as far as they are reasonable for the customer and take our interests into account. There must be a valid reason for this. Valid reasons are, for example, force majeure, changes in legal stipulations relating to permissions for building materials and structures and difficulties in procuring raw materials.

The minimum order value is EUR 50.00 net; lower order sums will be settled at this minimum order value.

2. Prices

Prices are quoted in Euro ex-factory excluding packaging, freight, customs duties, etc., plus value-added tax at the legally prescribed rate.

The prices valid according to our price lists on the date of delivery also apply to successive delivery contracts.

Special arrangement for consumers:

An increase in remuneration is excluded if the customer is a consumer and the delivery is to be provided within four months following the conclusion of the contract. This does not apply to goods that are delivered within the framework of continuing obligations.

3. Payment conditions

Our invoices are payable immediately without deduction unless an alternative agreement has been concluded with the customer. Payments by cheque are only provisionally accepted. Payments by bill of exchange are only permitted if this has been contractually agreed upon.

In principle, all existing receivables are sold and ceded to our factoring partner. Payments are therefore always made to our factoring partner in a way that relieves debt. Cash and advance payments are excluded from this.

Payments are only deemed to have been made on the day on which the invoice amount can be disbursed.

If we become aware of circumstances that give rise to serious doubts regarding the creditworthiness of a customer after the conclusion of the contract, we may, at our discretion and in deviation from the agreed terms of payment, demand advance payments or the provision of security.

4. Exclusion of offsetting

Offsetting against a counterclaim by the customer is excluded, except when the counterclaim is not disputed or has been legally validated by a court.

5. Exclusion of the right of retention / exclusion of the defence of non-performance of the contract

The customer does not have a right of retention due to a counterclaim and no defence of non-performance of the contract against our payment demand. This does not apply if we have already received part of the remuneration for a faulty service that corresponds to the value of the service, if a part of the remuneration is returned to us in our relationship with a subcontractor or if the counterclaim on which the right to withhold services or the defence of non-performance of the contract are based, has been or is about to be legally validated by a court.

Special regulations for consumers:

If the customer is a consumer, the right of retention and the right of defence of non-fulfilment of the contract are not excluded. The customer may claim these rights if the legal requirements (Section 273 and 320 of the German Civil Code) have been met.

6. Late payment by the customer

Late payment by the customer and our rights in such an event are determined by statutory regulations. If the customer is otherwise in arrears with payment of an invoice, all his liabilities shall become due immediately. We shall then demand cash payment in advance before delivering the still outstanding goods and waive the normal target date for payment. The same applies if bills of exchange or cheques are not honoured, payments are suspended or an application for opening insolvency proceedings has been submitted by the purchaser.

7. Foreign orders / representatives and travelling salespersons

If our factoring partner grants a limit, we only need to take action once the commercial credit insurance has been confirmed. If our factoring partner does not confirm a limit, individual contractual arrangements (advance payment) must be made.

Representatives and travelling salespersons are only entitled to accept payments upon presentation of a written power of attorney for collection.

III. Delivery / transfer of risk / delay in acceptance / return of goods as a gesture of goodwill

1. Type of dispatch / dispatch costs

We deliver ex-factory, i.e. we provide the goods at our warehouse ready for collection and the customer is responsible for collecting them at his own expense. We do not have to arrange the delivery or pay for the delivery of these goods. We will also send the goods to another place for an additional charge (sale by dispatch) at the request of the customer. Appropriate additional costs have to be paid if the delivery is made directly to the consumer at the request of the customer.

2. Delivery periods / obstacles to deliveries / late delivery and its consequences

The delivery period is stipulated in the purchasing contract. Stipulation of a delivery period does not imply that the delivery date agreed upon allows the customer to withdraw from the contract according to Section 323, Paragraph 2, Clause 2 of the German Civil Code.

The delivery period shall be deemed as having been adhered to if we have made the goods available at the factory or have sent a notification that they are ready for dispatch before the expiry of the delivery period.

Unforeseen events which are beyond our control and for which we are not responsible (non-availability of the service) result in a postponement of delivery for the duration of the delay. This applies, for example, to cases of force majeure, strikes, operational disruptions, actions taken by authorities, transport delays, difficulties in procuring raw materials.

We are entitled to withdraw from the purchase contract if these circumstances cause an obstacle that is of a non-temporary nature.

We will inform the customer immediately and in writing about the non-availability of the service. We will immediately reimburse our customer for the remuneration already paid in the event of our withdrawal from the contract.

The occurrence of a delay in delivery is determined according to the statutory provision in Section 286 of the German Civil Code. A reminder addressed to us by the customer is required in all cases. This reminder must be provided in writing.

Regarding the rights of a customer in the event of late delivery, we refer to VI. A) Clause 2 and VI. B) Clause 2.

3. Transfer of risks

The risk of accidental loss and accidental deterioration of the purchased item passes to the customer, at the latest, upon delivery, i.e. upon acceptance of the goods at our premises. If the customer is in default of acceptance, this transfer shall still be deemed to have taken place.

In the event of a sale by dispatch, the risks are transferred to the customer as soon as we have delivered the goods to the forwarding agent, the carrier or any other person or institution selected to carry out the shipment.

Special arrangement for consumers:

If the customer is a consumer in the event of a sale by dispatch, the risks of accidental loss and accidental deterioration shall only pass to the customer if he has commissioned the freight forwarder, carrier person or institution otherwise selected to carry out the shipment and if we have not designated this person or institution to the customer.

At the request of the customer, the goods shall be insured at the customer's expense.

4. Default of acceptance and its consequences

The customer will be in default of acceptance if he does not accept the service offered to him. The requirements and consequences of the default of acceptance depend on the legal stipulations. We may, in particular, demand compensation from the customer for additional expenses (e.g. storage costs for goods in a part of the warehouse specially set up for this purpose, referred to as a quarantine store).

Furthermore, we have a right of withdrawal according to the legal requirements.

If the customer is found to have failed in their obligation to cooperate in the acceptance of the service, we may furthermore claim damages according to the statutory requirements. In the event of non-acceptance, we may demand 15% of the order sum plus VAT as compensation, irrespective of any further claims, unless the customer proves that we have not incurred any damages or that the damages were significantly below this fixed rate.

5. Return of goods as a gesture of goodwill

Returns of goods as a gesture of goodwill can only take place by prior written agreement. The return costs are borne by the customer. A minimum processing fee for re-storage amounting to EUR 120.00 is due. The customer is entitled to prove that we have not incurred return costs or that these were substantially lower than this fixed rate.

IV. Retention of title

1. Simple retention of title

A simple retention of title is agreed upon in all cases. We retain ownership until the purchasing price for the delivered goods has been paid in full. The customer must treat the goods carefully until the purchasing price has been paid.

2. Extended retention of title in commercial transactions

In this case, a current account reservation (extended reservation of title) is in place in addition to 1. The retention of title does not expire as soon as the customer pays the purchasing price for the goods subject to the retention of title, but only when he has settled all claims resulting from this business relationship, in particular, when the balance has been settled.

3. Prolonged retention of title in commercial transactions

The customer is in this case entitled to resell the goods during the normal course of business. The customer hereby assigns to us his claims against his buyer resulting from the resale of the reserved goods. We hereby accept this assignment.

In addition to the customer, we are also entitled to collect the claim. However, we are obliged not to collect the claim as long as the customer does not violate his payment obligations and there is no evidence of his inability to pay. The customer must provide us with all information regarding the third-party debtor required for collection and the relevant documents and inform the third-party debtor of the assignment.

If the reserved goods are processed or transformed into a new item by the customer, then this is done in our name and on our behalf. We are deemed to be the manufacturer. The new goods become our property. The expectant right of the customer in the object of sale merely continues in the new object. If the reserved goods are processed with other objects that do not belong to us, we shall only acquire co-ownership in the new object at the ratio of the objective value of the reserved goods to that of the other processed objects at the time of processing. This applies accordingly when mixing occurs.

If the reserved goods are combined with a property so that they become an important part of the property (Section 946 of the Civil Code), the customer hereby assigns to us the claims against the third party that arise from it. We hereby accept this assignment. The provision regarding the collection of the claim according to IV Z. 3 Paragraph 2 applies accordingly.

4. Excess security clause

If the value of the existing securities exceeds the claim to be secured by more than 20%, the customer has a claim for an appropriate release against us.

5. Insurance obligation

The customer must insure the reserved goods against perishing/loss/damage at his own expense until they have been paid in full, subject to the provision that we are entitled to use the rights from the insurance to secure our claims.

The obligation to insure does not apply to objects with a value lower than EUR 1,000.00 excluding VAT.

The customer must provide us with appropriate evidence.

If the customer does not comply with this obligation, in spite of being requested to do so, or if he does not prove that he has taken out insurance, we shall be entitled to take out insurance at the customer's expense.

IV. Clause 6 remains unaffected.

6. Surrender of reserved ownership

In the event of conduct in breach of contract, in particular, non-payment of the purchase price due, and if the other legal requirements have also been met (appropriate period for performance or no such period required), we may withdraw from the purchasing contract and demand the return of the goods delivered by us. The obligation of restitution is determined by the statutory provisions.

7. Intervention in the reserved goods by third parties

In the event of the seizure or confiscation of the reserved goods or other dispositions or interventions by third parties concerning our rights in the reserved goods, the customer shall notify us immediately and do everything possible in cooperation with us to avert the risk. He shall provide us with documentation and information relating to the intervention. The customer shall assign claims to us at our request in as far as this is indicated for the protection of the reserved goods. The customer is obliged to compensate us for all damages and costs, including court and attorney fees, in accordance with the legal provisions if the conditions are met.

V. Devices on loan

Devices on loan must be treated appropriately and carefully by the customer. The care and insurance obligations of the goods delivered under retention of ownership apply accordingly. We are entitled to request the return of a device on loan at any time if no lending time has been agreed upon. If a customer is found to have violated their duty in this respect, we are entitled to claim appropriate damages in accordance with the statutory requirements. We can, furthermore, withdraw from the contract in accordance with the legal requirements and demand the return of devices on loan.

VI. Our liability towards the customer

We are only liable according to the following provisions (insofar as our liability for damages is excluded or limited, this shall also apply with regard to the personal liability for damages of our legal representatives and agents):

A) Towards consumers:

1. Warranty rights for defects (defect on transfer of risk):

- (1). The customer is entitled to his statutory warranty rights according to Section 437 of the German Civil Code in the event of material defects and defects of title.
- (2). The following applies to damage claims, irrespective of their legal basis:

We are liable without limitation for damages resulting from injury to life, limb or health due to our negligent breach of duty or due to intentional or negligent breach of duty by our legal representative or agent.

Furthermore, we are liable without limitation for any other damages resulting from grossly negligent breach of duty on our part or from intentional or grossly negligent breach of duty on the part of our legal representative or agent.

In the event of any other damage caused by us or our legal representatives or agents, we shall only be liable for breach of an essential contractual obligation and the amount of this liability shall be limited to the amount foreseeable and typical for this kind of contract at the time the contract was concluded. Essential contractual obligations are obligations that must be fulfilled to make due performance of the contract possible and on which the customer regularly relies or may rely on.

Claims according to the Product Liability Act are not affected (Section 14 of the Product Liability Act).

- (3). The warranty claims expire as follows:

The period of limitation for claims due to material defects and defects of title from the statutory commencement of the limitation period (delivery of goods) shall be:

2 years.

However, if the goods are objects that have been used in a construction in accordance with their typical use and that have caused the construction to be defective (building materials and components), the limitation period for defects of quality and defects of title from the statutory commencement of the limitation period shall be:

5 years.

If we have fraudulently concealed a defect, the warranty claims shall expire within the regular limitation period (Section 438 Paragraph 3 Page 1 of the German Civil Code). In the event of the 5-year period regulated in VI. A), Clause 1. (3.), the statute of limitations does not commence before the expiry of this period.

Specifically, the damage claims regulated in Clause 1. (2.) shall always expire within the statutory period of limitation.

Damage claims under the Product Liability Act only expire in accordance with the statutory limitation periods of the Product Liability Act.

2. Rights in the event of other breaches of duty:

- (1). In the event of other breaches of duty (e.g. non-performance, late performance, breach of duties of consideration), the rights of the customer are governed by the statutory provisions.
- (2). Specifically for damage claims, VI, Clause 1. (2.) apply accordingly.
- (3). The contracts expire in accordance with the statutory provisions.

B) Towards other customers who are not consumers:

1. Warranty rights for defects (defect on transfer of risk):

- (1.) The customer is obliged to investigate the goods and report defects in accordance with Section 377 of the German Commercial Code. Products are deemed to have been approved if the customer does not report any faults. The customer must report obvious defects immediately, but at the latest, within 14 days of the delivery of the goods.

Notification must be provided in writing. Timely dispatch of the notification is sufficient to retain the rights. We may not invoke Section 377 of German Commercial Code if we have fraudulently concealed a fault. The provisions regarding product liability and criminal liability claims for damages remain unaffected.

- (2.) In the event of a defect in the delivered goods that already existed at the time of the transfer of risk, we shall repair the goods or deliver replacement goods subject to Clause (1.). We shall in all cases be granted the opportunity to remedy the defect within a reasonable time. We shall be responsible for the rework expenses according to Section 439 Paragraph 2 and 3 of the German Civil Code. If the subsequent performance fails, the customer may withdraw from the contract or reduce the remuneration without prejudice to any claim for damages. Our right to refuse subsequent performance according to the statutory requirements remains unaffected.

(3). The provisions stipulated for consumers in VI. A), Clause 1. (2) apply accordingly to the claim for damages.

(4). The warranty claims expire as follows:

The period of limitation for claims due to material defects and defects of title from the statutory commencement of the limitation period (delivery of goods) shall be

1 year.

However, if the goods were used for a construction in accordance with their typical use and have caused it to be defective, the limitation period for defects of quality and defects of title from the statutory commencement of the limitation period shall be:

5 years.

If we have fraudulently concealed the defect, the warranty claims shall expire within the regular limitation period (Section 438 Paragraph 3 Page 1 of the German Civil Code). In the event of the 5-year period regulated under VI. B), Clause 1. (4), the limitation period shall not commence before the expiry of this period.

(5). The regulations on recourse according to Section 445a and Section 478 of the German Civil Code remain unaffected. The provisions regarding compensation for damages in B), Clause 1. (3) shall apply in this respect. B), Clause 1 (4.) shall apply to the limitation period. If the law prescribes longer periods in accordance with Section 445b of the German Civil Code, these periods shall apply.

(6). Claims according to the Product Liability Act are not affected. They only expire at the end of the period stipulated therein.

2. Rights in the event of other breaches of duty:

A), Clause 2 applies accordingly.

VII. Repairs

Repairs are in principle only performed at our plant. When we perform repair work, we are also entitled to perform work on the repair object that is only identified as necessary or useful at the time when the repair work is performed. We will obtain instructions from the customer if the scope of the additional work is unusually high.

VIII. Place of fulfilment, applicable law, place of jurisdiction

1. German law applies exclusively, with the exclusion of the international uniform law, in particular, the UN Convention on Contracts for the International Sale of Goods.

Special regulation for consumers:

The compulsory consumer protection law of the country of the customer's habitual residence shall also apply (Article 6, Paragraph 1, Paragraph 2, Sentence 2, Rome I Regulation).

2. In the event of contracts with merchants, legal entities under public law or special funds under public law, the sole place of jurisdiction shall be the court responsible for our registered office. Our registered office is also the place of fulfilment when the requirements of Sentence 1 are fulfilled.

IX. Severability clause

If these General Terms and Conditions of Business have not or have only partially been included in the contract, or if they are ineffective, this shall not affect the remaining terms of the contract. Insofar as the provisions have not become part of the contract or are ineffective, the content of the contract shall be governed by the statutory provisions. The contract shall be ineffective if adherence to it would constitute unreasonable hardship for one of the contracting parties even once the amendment according to Sentence 2 has been considered.

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