

Terms & Conditions of Delivery & Payment of Gütermann GmbH, Gutach-Breisgau

These Terms and Conditions shall only apply vis-à-vis business customers (b2b). They shall not apply visa-vis consumers (b2c).

The following Terms & Conditions apply exclusively to all offers made by us and to all contracts concluded with us at any present or future time. The customer's general terms of business shall only apply insofar as we agree to them in writing.

1. Formation of Contracts

- 1.1 Our offers are without obligation. A contract shall only be effected if we issue a written order confirmation or make the delivery. The content of the contract – in particular the scope of performance – shall be determined solely by our order confirmation. Amendments and supplements to the contract must be confirmed by us in writing.
- 1.2 Illustrations, specifications, drawings, and weights and measures stated in our brochures, pricelists, catalogues, colour cards and other documents relating to our offers, are subject to alteration, provided that such changes only immaterially alter the product, or enhance its quality, and can reasonably be expected by the customer.

2. Prices, Terms of Payment

- 2.1 Unless otherwise agreed, our prices are EXW, Incoterms 2010, including packaging and excluding shipping and insurance. Statutory turnover or value added taxes shall be additional.
- 2.2 In the case of delivery periods exceeding two months, we are entitled to increase or reduce the agreed prices accordingly, if subsequent to conclusion of the contract costs for wages and salaries or for supplies and raw materials have undergone substantial fluctuations for which we are not responsible. If a price increase is more than 5%, then the customer shall have the right to give written notice rescinding the contract within two weeks of being notified about the price increase.
- 2.3 Unless specifically agreed otherwise, payment must be made to our paying agent – without deduction and all charges paid – within 30 days of date of invoice. However, customers from outside Germany must effect payments without deduction within 20 days unless otherwise agreed. Payments shall only be deemed effected to the extent to which we are able to freely dispose over the funds at our bank. If payment dates are exceeded, we reserve the right to charge default interest at a rate of 9 percentage points over and above the base rate, in accordance with Sect. 247 of the Civil Code (BGB).
- 2.4 The customer may offset against our claims only those counterclaims which are undisputed or have been awarded to the customer with final and binding effect.

3. Delivery Periods

- 3.1 Delivery dates shall depend on the agreements made in each individual case. If dispatch is delayed through no fault of our own, the delivery date shall be deemed met if the product has been handed over for transport or is ready for shipment and the customer has been notified to this effect.
- 3.2 If we are unable to meet the delivery date for unforeseen or unavoidable reasons beyond our responsibility (operational breakdowns, strikes, lockouts, shortages in energy supplies, delays in deliveries of essential raw materials or supplies, etc.), then we shall immediately inform the customer to this effect. In any such case the delivery period shall be extended by the duration of the obstacle and its effects. This shall also apply if the obstacles occur at our own suppliers or during a delay already prevailing. If the obstacle is of not merely temporary nature, then both parties shall be entitled to withdraw from the contract. In the cases mentioned in this Section 3.2, any compensatory claims shall be excluded.
- 3.3 In the event of default in delivery, our liability shall be limited in cases of simple negligence to damages of 0,5% of the value of the order delivered late for each full week of delay, and a total maximum amount of 5% of said value. Claims for damages for non-performance pursuant to Section 7 shall remain unaffected. The customer must inform us on conclusion of the contract at the latest about any contractual penalties applying vis-à-vis its own customers.

4. Delivery, Packaging

- 4.1 Unless otherwise agreed, all deliveries are EXW our production plant or warehouse, Incoterms 2010. The risk of the products being accidentally destroyed or accidentally deteriorating shall pass to the customer as soon as the products have been handed over for transport. This shall apply irrespective of whether shipment is made from the place of performance and irrespective of who is paying the transport costs. If the customer is in default of acceptance, then risk shall pass on notification being issued that the products are ready for transport.
- 4.2 Partial deliveries shall be permissible up to a reasonable extent, provided the customer may reasonably be expected to accept them.
- 4.3 We shall take back transport packaging, sales packaging, and outer packaging at our place of business during normal business hours. The customer must pay the cost of disposal if it fails to return the packaging to us. The packaging shall be given back clean, devoid of foreign substances, and sorted into categories.

5. Retention of Title

- 5.1 Products delivered by us shall remain our property until all our claims created under the business relationship with the customer have been fully satisfied.

- 5.2 The customer is under obligation to label and store the reserved items separately. At its own expense, it shall insure them at replacement value against loss or damage. If we so request, the insurance policy and proof of payment of the premiums are to be sent to us for inspection. The customer here and now assigns to us its claims vis-à-vis the insurance company.
- 5.3 If any third party interferes with our reserved property, then the customer shall notify us without delay. The customer must pay all costs in order to eliminate the interference and restore the items we have delivered, insofar as these costs cannot be recovered from the third party.
- 5.4 Any processing of the reserved items effected by the customer shall be done on our behalf at all times, without creating any obligation on our side. If they are mixed or combined with other goods, we shall acquire co-ownership in the new goods to the extent of the invoiced value of the reserved items in relation to the other materials.
- 5.5 The customer is entitled to resell the reserved items during the ordinary course of business; however, it here and now assigns to us in advance and in full any receivables accruing to it vis-à-vis any customer or any third party on reselling the items or on using them in accordance with its customer's orders. We reserve the right to assign claims (receivables) to third parties (factoring).
- 5.6 The customer is entitled to collect the receivables assigned to us as long as it performs its payment obligations out of the proceeds taken.
- 5.7 If the customer ceases to perform its payment obligations, then we may revoke the authority to process or resell the items, and demand that the customer disclose to us the assigned receivables and the respective debtor in each case, provide us with all the information required for collection, hand over the relevant documents, and notify its debtors about the assignment. Taking back reserved items shall not be deemed withdrawal from the contract. If we declare withdrawal, then we shall be entitled to sell the items in the open market.
- 5.8 If the realisable value of the security to which we are entitled under the above provisions exceeds our claims by more than 10%, then at our own option we shall release items of security to this extent.
- 5.9 If under the laws of the country where the item is located retention of title is not permitted or is only permitted in a restricted form, then we may reserve other rights in the item in order to reasonably secure our claims. The customer shall cooperate in all and any measures (e.g. registrations) required in order to effectively implement the retention of title or the other rights substituting retention of title, and to safeguard these rights.

6. Claims for Defects

- 6.1 Defects must be reported to us in writing immediately, at the latest within 12 days of receipt of the products, and in the case of hidden defects at the latest within 3 days of their discovery. If

these deadlines are exceeded, then all rights and claims based on our liability for defects shall lapse. The period of limitation shall be 12 months after the passing of risk, provided we did not breach our obligations due to intent or gross negligence and did not fraudulently conceal the defect.

- 6.2 We shall only be responsible for the infringement of third party rights through the use of products outside Germany, if and when we agreed with customer such use or such use was to be expected upon the specific circumstances given at the time when the contract was made. In this case we shall only be liable to the extent that such use of the products was not conflicting with any foreign third party rights that we knew of at the time when the contract was made or should have known without gross negligence.
- 6.3 Deviations in quantity, colour, width, weight, finish, design or other characteristics, which are customary in trading are admissible, and shall not constitute a defect unless expressly and particularly agreed otherwise.
- 6.4 In the event of justified complaints, we shall replace the product or rectify the defect, at our option. If a replacement is likewise defective, or if rectification of the defect fails or is unjustly refused or delayed, then the customer may, on expiry of a reasonable period of grace, demand a reduction in the price or – in cases of material defects – withdraw from the contract and demand damages for non-performance in accordance with Section 7. We shall not assume any costs for supplementary performance incurred due to the purchased item having been moved to some place other than the customer's place of business.
- 6.5 If the defect is due to a faulty third-party product, then we shall be entitled to initially limit our liability to assigning those rights and claims based on liability for defects to which we are entitled vis-à-vis the supplier of the third-party product, unless obtaining satisfaction from the assigned claim or right fails or cannot be asserted for any other reasons. In this case, the customer shall again become entitled to the rights given in Section 6.4.

7. Liability

- 7.1 Compensatory claims of whatsoever nature against us shall be excluded if we, our legal representatives or vicarious agents have caused the damage due to simple negligence. This exclusion of liability does not apply in cases of bodily harm, or the assumption of a contractual guarantee (Garantie), or a breach of cardinal contractual obligations posing a threat to attainment of the contractual purpose. However, in these cases our liability shall be limited to the extent of the guarantee or – in the case of a negligent breach of cardinal contractual obligations – to foreseeable damage typical for the kind of contract. Claims under statutory product liability law shall remain unaffected.
- 7.2 Apart from claims based on liability for defects, under statutory product liability law, liability for intent, and liability for mortal injury, bodily harm or health damage, claims to damages shall

become statute-barred one year after the customer gained knowledge of the damage and the entitlement to compensation for it, or should have gained knowledge thereof without gross negligence.

- 7.3 We provide advice on application techniques to the best of our knowledge and with due diligence. However, any statements or information about the products' suitability and application do not release the customer from its obligation to do its own tests and trials for establishing the products' suitability for the intended processes and purposes.

8. Non-Disclosure, Rights of Use

- 8.1 The customer may only pass on or disclose to third parties the drawings, plans, illustrations, calculations, samples, technical documents and any know-how provided by us if we have given prior written consent to this being done. We expressly reserve all further rights.
- 8.2 In the case of deliveries made in accordance with the customer's drawings, models or specifications, the customer shall hold us harmless and indemnify us from all and any third-party claims based on intellectual or industrial property rights, insofar as such claims are based on the documents negligently provided by the customer. In the event of a breach of contract by the customer entitling us to realise the products we have delivered, the customer's intellectual or industrial property rights may not prevent realisation.

9. Final Provisions

- 9.1 This contract shall be governed by German law on exclusion of the UN Convention on Contracts for the International Sale of Goods as of April 11, 1980 (CISG).
- 9.2 Place of performance for all obligations of both contracting parties is Gutach-Breisgau.
- 9.3 The courts of law being competent at our place of business shall have jurisdiction for all and any legal disputes arising out of or in relation to the contract. However, we are also entitled to bring action at the customer's place of business.

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