
General Terms and Conditions of the company Mario Schaaf GmbH & Co. KG

§ 1 General

All our deliveries are based exclusively on the following terms and conditions. The validity of any conditions used by the Buyer is excluded even if we do not expressly object to such conditions and carry out the delivery without reservation. Deviations and additions by the Buyer shall only be effective with our express written confirmation; they shall only apply to the transaction for which they were made. In the context of ongoing business relationships, the following conditions apply to future contracts even if this is not expressly agreed in the future.

§ 2 Prices

1. All prices and price information are ex works, unpacked, uninsured, duty-free and without VAT.
2. Deliveries for which no explicit price agreement has been made shall be charged in EUROS at the prices valid on the day of delivery.
3. If unforeseen increases in material prices, wage costs, transport costs, taxes or levies occur between the conclusion of the contract and delivery, we are also entitled to make a price adjustment corresponding to these factors in the case of an express price agreement, if the Buyer is a merchant. If the adjusted price exceeds the agreed price by more than 5%, the Buyer is free to withdraw from the contract.

§ 3 Delivery and delivery time

1. Delivery dates and delivery periods are non-binding, unless expressly agreed otherwise in writing. In the event of subsequent contract changes, a delivery date must be agreed again. The delivery date is deemed to have been met if the goods have been kept ready at the factory at the time of delivery or have been brought for shipment or picked up.
2. If deadlines or dates are exceeded for reasons for which we are responsible more than to the extent customary in the industry, the Buyer is entitled to set a reasonable grace period in writing, after the fruitless expiry of which he can withdraw from the contract or claim damages in accordance with § 5.
3. The delivery period does not begin under any circumstances before the complete clarification of all the details of the desired execution. The execution of deliveries requires the timely granting of all necessary permits and approvals as well as the timely receipt of all documents to be delivered by the Buyer. If these requirements are not met for reasons for which we are not responsible, deadlines shall be extended accordingly.
4. The deadline is deemed to have been met if the operational consignment has been dispatched or picked up within the agreed deadline or on the agreed date.

If the shipment is delayed for reasons for which the Buyer was responsible, the deadline is also considered to have been met if we have notified the Buyer of the readiness for shipment within the agreed deadline.

5. If the non-compliance with a deadline is due to force majeure, mobilisation, war, riot, strike, lockout or other unforeseeable obstacles affecting our company, which are not our responsibility and occurred or became known to us after the conclusion of the contract, the deadline shall be extended appropriately.

6. This also applies in cases of unforeseeable events which affect the operation of our upstream supplier and for which neither they nor we are responsible; partial deliveries are permitted.

7. If purchase by the Customer in partial quantities within a certain period of time has been agreed, the Customer must distribute the purchase and the quantities purchased approximately evenly, in terms of both time and quantity. If the delivery is to be made in whole or in part on request, we are entitled to deliver within 4 weeks after the request has been made. If a complete request is not made within one year, we are entitled, at our discretion, either to withdraw from the contract or to demand immediate complete acceptance.

§ 4 Transfer of risk

1. Our products are shipped from our factory at the expense and risk of the Buyer.

2. We only take out transport insurance if the Buyer expressly wishes to do so; the costs incurred in this respect shall be borne by the Buyer.

§ 5 Compensation for damages due to delay and subsequent impossibility

1. Our liability for damages due to delay and subsequent impossibility is limited to the foreseeable damage.

2. If we are in default of delivery for reasons for which we are responsible, the Buyer is entitled to demand a lump-sum compensation for delay in the amount of 1% for each full week of delay, but a maximum of 5% of the invoice amount of the undelivered or delayed quantities. The assertion of further damages is excluded.

3. If, after we have fallen into arrears, the Buyer sets us a reasonable grace period with a threat of rejection, he is entitled to withdraw from the contract after the fruitless expiry of this grace period; the Buyer is only entitled to compensation for non-performance in the amount of the foreseeable damage if the delay is due to intent or gross negligence; otherwise, our liability for damages is limited to 50% of the invoice amount of the undelivered or delayed quantity. The invoice amount of the entire delivery quantity is taken as the basis if the partial fulfilment of the contract is of no interest to the Buyer as a result of the delay.

4. The above limitations of liability do not apply if a commercial fixed transaction has been agreed.

§ 6 Liability for material defects

1. The samples which are presented to the Purchaser at the request of the Supplier for testing are decisive for the quality and execution of the products. The reference to technical standards serves the description of services and is not to be interpreted as a guarantee of quality.
2. If the Supplier has advised the Purchaser outside of his contractual performance, he is only liable for the functionality and suitability of the delivery item with express prior assurance.
3. Notifications of defects must be made in writing immediately. In the case of hidden defects, the notification must be made immediately after detection. In both cases, unless otherwise agreed, all claims for defects expire twelve months after the transfer of risk. As far as the law according to § 138 Para. 1 No. 2 of the German Civil Code (BGB), 479 Para. 1 BGB and § 634a Para. 1 No. 2 BGB prescribes longer deadlines, these apply.
4. In the case of a justified notification of defects, whereby the samples released by the Purchaser in writing determine the expected quality and execution, the Supplier is obliged to subsequent performance. If he does not comply with this obligation within a reasonable period of time or if a repair fails despite repeated attempts, the Purchaser is entitled to reduce the purchase price or to withdraw from the contract. Further claims, in particular claims for reimbursement of expenses or claims for damages due to defect or consequential damage, exist only within the framework of the provisions of § 7. Replaced parts must be returned to the Supplier on request.
5. Unauthorised reworking and improper handling shall result in the loss of all claims for defects. Only in order to prevent disproportionately large damages or in case of delay in the removal of defects by the Supplier is the Purchaser entitled, after prior notification of the Supplier, to repair and demand compensation for the reasonable costs.
6. Normal wear and tear does not result in any warranty claims.
7. Rights of recourse in accordance with §§ 478, 479 BGB only exist if the claim was justified by the Purchaser and only to the extent permitted by law, but not for fair dealing regulations not agreed with the Supplier and require the person entitled to recourse to observe their own obligations, in particular the observance of the obligation to give notification of defects.

§ 7 General limitations of liability

In all cases in which, contrary to the above conditions, the Supplier is obliged to compensate for damages or expenses on the basis of contractual or legal claims, he is only liable if he, his executive employees or vicarious agents are guilty of intent, gross negligence, or injury to life, limb or health.

This does not affect the liability regardless of fault according to the Product Liability Act. The liability for the culpable violation of essential contractual obligations also remains unaffected; however, the liability is limited to the foreseeable, contract-typical damage. A change in the burden of proof to the detriment of the Purchaser is not connected with the above regulations.

§ 8 Obligations of the Buyer

If the goods are manufactured and delivered by the Buyer in a specially prescribed execution, the Buyer assumes the guarantee that the execution does not violate the rights of third parties, in particular patents, utility models and other property rights and copyrights. The Buyer is obliged to indemnify us from all claims of third parties which could arise from such an infringement.

§ 9 Invoicing and payment terms

1. The invoice is issued upon dispatch or collection. If the dispatch of ready-to-ship goods cannot take place for reasons which fall within the risk area of the Buyer, the invoice shall nevertheless be made and due.

2. Our invoices are due for payment within the framework of an agreed commercial credit at the latest within 30 days from the invoice date without any deduction. If the invoice amount is received by us within 10 days from the invoice date, the Buyer is entitled to deduct a 2% discount.

3. Upon maturity, we are entitled to demand maturity interest in accordance with the German Commercial Code (HGB) for mutual commercial transactions. If payment deadlines are exceeded, we are entitled to demand default interest in the amount of 5 percentage points above the base interest rate. For transactions in which no consumer is involved in the transaction, we are entitled to charge interest on arrears in the amount of 8 percentage points above the base interest rate.

4. Bills of exchange shall only be accepted by us on the basis of a special agreement. Bills of exchange or cheques are always accepted only on account of performance.

5. If there is a material deterioration in the financial circumstances of the Buyer, we are entitled to refuse further deliveries until all our claims, whether due or not, are settled or security is provided for them.

6. If there is a material deterioration in the financial circumstances of the Buyer, we are entitled to terminate all commodity loans and to demand that the Buyer immediately settle all outstanding claims from deliveries.

The same applies if the Buyer suspends his payments, applies for the opening of a judicial settlement or bankruptcy proceedings, the bankruptcy petition of a creditor is admitted and an order is issued according to § 106 KO or the Buyer asks his creditors for an out-of-court settlement.

7. The Buyer can only offset with undisputed or legally established claims; the same applies to a right of retention according to § 273 BGB for claims which are not based on the same contractual relationship.

§ 10 Retention of title

1. The goods delivered by us remain our property until full payment of all claims arising from the business relationship between us and the Buyer.
2. The Buyer is entitled to resell and/or process the reserved goods in a normal course of business, unless otherwise stated below. However, he is not permitted to pledge or transfer the goods by way of security.
3. When processing, mixing or combining the reserved goods with other goods or items not belonging to us, we are entitled to the resulting co-ownership share in the new item in the ratio of the factor value of the reserved goods to the other processed goods or items at the time of processing, mixing or combining.

If the Buyer acquires sole ownership of a new item, the contracting parties already agree that the Buyer grants us co-ownership of the new item in the ratio of the factor value of the processed, mixed or combined reserved goods to the factor value of the remaining processed goods or items. The labour costs, overheads and other imputed cost factors are not taken into account in the calculation of our co-ownership share.

The Buyer is obliged to disclose the calculation of his use of goods to us at any time at our request to determine our co-ownership share. A free safekeeping of the items in our co-ownership for us by the Buyer is already agreed now.

4. The Buyer hereby assigns to us by way of security all claims arising from the resale of our reserved goods in the amount of the purchase price agreed with us. We accept this assignment. We only agree to a resale if an effective transfer of claims can take place on the basis of the above declaration of assignment. If the reserved goods are resold together with other goods, regardless of whether this is without or after processing, mixing or combining, the advance assignment agreed above shall only apply in the amount of the factor value of the reserved goods, which is resold together with the other goods.

5. Until a revocation by us, the Buyer is authorised to collect the claims assigned to us in advance on our account in his own name.

The collection authorisation shall also expire without our express revocation if the Buyer no longer fulfils his obligations towards us or falls into financial collapse, in particular if a judicial settlement or bankruptcy procedure is requested or there is a fear that the amounts collected cannot be transferred to us.

6. In the case of payments in the cheque-bill-of-exchange procedure, our retention of title and security rights remain unaffected and remain in force until our liability from the bill of exchange or cheque has ended.

7. At our request, the Buyer is obliged to provide written information about the whereabouts of the goods subject to our retention of title rights at any time.

He is obliged to name other property owners as well as the debtors of the claims assigned to us, to provide us with all information required for collection on the assigned claims, to provide the documents required for collection, in particular the contractual documents and invoices, and to notify the debtor of the assignment at our request at any time. The Buyer has to provide us with assignment notices at any time. He is obliged to inform us immediately of any impairment or of our rights of retention of title or other securities, in particular of seizures.

8. In the event of a breach of contract by the Buyer, in particular in the event of default of payment with a claim arising from the business relationship, as well as if the Buyer falls into financial collapse, stops his payments, a judicial settlement or bankruptcy proceedings are filed against him or he asks his creditors for an out-of-court settlement, we may, without prejudice to our other rights, demand the immediate surrender of our property or, if necessary, the assignment of the Buyer's claims for surrender. The taking back of the purchased item by us does not constitute a withdrawal from the contract, unless we have expressly declared this in writing.

9. We undertake to release the securities to which we are entitled at the request of the Buyer to the extent that the value of our securities exceeds the claims to be secured by more than 20%; the selection of the securities to be released is our responsibility.

§ 11 Place of performance, place of jurisdiction, final provisions

1. The place of performance for all connections from this contract, in particular for the payment of the purchase price, as well as the place of jurisdiction is Möglingen, if the Buyer is a merchant within the meaning of § 38 para. 1 of the Code of Civil Procedure (ZPO). However, we are entitled to file a claim at the Buyer's registered office. The international jurisdiction of the German courts has been agreed with foreign buyers.

2. The law of the Federal Republic of Germany applies exclusively; however, the validity of the uniform UN Sales Law CISG is excluded.

3. Should individual provisions of these contractual terms and conditions be or become invalid, this shall not affect the validity of the remaining provisions.

Should a partial clause be ineffective, the effectiveness of the remaining clause remains unaffected if it is separable from the partial clause in terms of content, otherwise understandable in itself and results in a remaining meaningful regulation in the overall structure of the contract.