

GENERAL CONDITIONS FOR SALES, DELIVERIES, and PAYMENTS

Issued by Gummi-Welz GmbH & Co.KG Gummi-Kunststofftechnik-Schaumstoffe, Neu-Ulm, Germany

Issue 01-Aug-2016

I. Applicability

1. These general sales conditions apply to all (including future) contracts and other services. Conditions from the purchaser do not apply, even when we have not expressly objected to them after transmission to us.
2. Our offers are subject to change. Any agreements, in particular oral arrangements, commitments, guarantees, and other promises from our sales employees are binding only when confirmed in writing.
3. Documentation associated with the offer such as drawings, pictures, technical data, applicability of standards, as well as statements in advertisements are not specified properties, warranted characteristics, nor guarantees, unless they are expressly designated in writing as such.
4. Variations in the delivered products from offers, samples, test pieces, and/or preliminary deliveries are permitted in accordance with the stipulations of the respectively applicable DIN / EN standards, or otherwise relevant technical standards.

II. Prices

1. As long as nothing else has been agreed, our prices are to be understood as exclusive of packaging and "ex works" EXW (INCOTERMS®2010); the applicable taxes (VAT) are additional.
2. If the goods are to be packaged for delivery, we invoice the packaging at our own net price. In the scope of the legal regulations, we accept packaging that we deliver back, if they are received with freight prepaid from the purchaser within an appropriate period

III. Invoices and payment

1. Our invoices are due and payable within 30 days net, according to the date of the invoice. Payment must occur within this period, so that the amount required to fulfil the invoice is available to us on the due date at the latest. The purchaser becomes delinquent once 10 days have passed after the due date of our invoice, without the necessity of a reminder.
2. Invoices for minor orders (see III. 3.) and invoices for assembly or installation, repairs, forms and tooling costs are each due immediately.
3. For invoiced amounts less than € 200,00 Euro value of the goods exclusive of packing and taxes, we will bill an additional processing fee for minor orders, currently in the amount of € 15.00 Euro.
- 4a. The contracting party may deduct from our invoiced amounts only in case of undisputed, recognized, or judicially legally binding claims.
- 4b. A retaining lien may be exercised likewise only in case of undisputed, recognized, or judicially legally binding claims and only then when it relates to the same contractual relationship.
5. In case of late payments, at the latest in case of delinquency, we have the right to charge interest in the amount of the respective bank rates for overdraft loans, but at least in the amount of 8% over the 6-month EURIBOR interest rate. We reserve the right to claim further damages for such delinquency.
6. Once the contract is agreed upon, and it becomes apparent that our invoiced claims are endangered by insufficient payment capacity from the purchaser, we have the right in accordance with §321 BGB ("insecurity objection", see the German Civil Code). We then also have the right to demand immediate payment for all unexpired claims from the current business relationship with the purchaser, and to cancel the right to collections in accordance with Paragraph V/5. In case of delinquent payments, we additionally have the right to demand return of the goods after the expiration of a suitable grace period, as well as to forbid resale or reprocessing of delivered goods. This return does not cancel the contract. The purchaser may avoid all of these legal consequences by making payment or a security deposit in the amount of our endangered payment claims. The regulations for bankruptcy proceedings are not affected by the above conditions.
7. Any discounts offered always refer only to the invoiced value exclusive of freight, and presumes complete payment in advance for all of the purchaser's payable debts due at the instant of the discount.

IV. Delivery periods

1. Delivery periods and deadlines have been met when the goods to be delivered have left our location before the expiration date.
2. Delivery periods are extended by appropriate amounts by measures in the scope of employment conflicts, in particular during strikes or lockouts, as well as by the occurrence of unforeseeable impediments that lie outside of our influence, as long as such impediments significantly affect the production or delivery of the goods to be shipped. This also applies when the conditions occur for our suppliers. We shall notify the purchaser immediately about such conditions. These regulations apply accordingly for delivery deadlines. If the completion of the contract becomes unreasonable for one of the parties, they may withdraw from the contract.

V. Retention of ownership

1. All delivered goods remain our property (conditional goods) until all claims in the business relationship are fulfilled, regardless of the legal foundation, including conditional claims or ones that may develop in the future.
2. Production and processing of conditional goods occurs for us as manufacturer in the sense of §950 BGB (German Civil Code), without obliging us. The processed goods are considered conditional goods in the sense of Paragraph V/1. In case of processing, joining, or mixing the conditional goods with other goods by the purchaser, we have right to co-ownership of the new items according to the proportion of the invoiced value of the conditional goods to the invoiced value of the other goods used. If our ownership ceases through the joining or mixing, then the purchaser shall immediately transfer his or her rights of ownership of the new goods or item in the amount of the invoiced value of the conditional goods and store them at no charge on our behalf. The co-ownership rights generated here are treated as conditional goods in the sense of Paragraph V/1.
3. The purchaser may sell the conditional goods only within normal business transactions under his or her standard business conditions, and only as long as he or she is not delinquent, provided that the claims resulting from the re-sale are transferred to us in accordance with Paragraphs V/4 to V/6. The purchaser does not have the right to any other dispositions of the conditional goods.
4. The purchaser's claims from the re-sale of the conditional goods are already now transferred on us. They serve in the same extent as insurance as the conditional goods. If the conditional goods are sold by the purchaser together with other goods not from us, then the transfer of claims due to the re-sale applies only in the amount of the resale value of the respective conditional goods sold. In the case of re-sale of goods for which we hold co-ownership in accordance with Paragraph V/2, the transfer of claims applies in the amount of these co-owned portions.
5. The purchaser has the right to collect claims resulting from the resale up until our cancellation, which is permitted at any time. We shall exercise the right of cancellation only in the cases named in Paragraph III/4. Upon our demand, the purchaser is obligated to inform his or her customers immediately about the transfer to us – provided that we do not do so ourselves – and (also) to provide us with information and documentation required for the collection.
6. The purchaser must notify us immediately about any seizure or impediment due to third parties.
7. If the value of existing collaterals exceeds the total of the secured claims by more than 50%, then upon demand by the purchaser we are obligated to release collaterals according to our selection.

VI. Performance of deliveries

1. Risk for all transactions passes to the purchaser when the goods are transferred to a carrier or freight company, or at most when they leave the warehouse or (for third-party transactions) the shipping location, including for "carriage paid to" CPT and "free-carrier" FCA (INCOTERMS®2010) deliveries. The purchaser covers responsibility for and the cost of unloading. We arrange for insurance only at the request of (and payment by) the purchaser.
2. We are entitled to partial shipments of an appropriate size. For specially manufactured goods, short or excess delivery up to 10% of the contracted amount is permitted.
3. For upon call orders, we have the right to manufacture (or have manufactured) the entire amount ordered at once. Any requests for changes cannot be considered once the order is issued, unless this has been expressly agreed. Called orders and amounts may be honoured only within the scope of our delivery and/or manufacturing capacity, so long as no fixed agreement has been made. If the goods are not called for according to the contract, we have the right to invoice them as delivered once an appropriate grace period has passed.

VII. Liability for defects

1. In case of material defects or legal infractions that are not insignificant, we have (in addition to the legal provisions) the right to subsequent rectification as follows: We have the right to correct any defects two times. If the type of material or defect or other conditions results in that the subsequent rectification thereof has not yet failed, and this can be reasonably demanded of the contracting party, we have the right to additional corrections.
2. If the subsequent rectification has failed, the contracting party has the right to deduct or at his or her option to withdraw from the contract, and has the right to claim damage compensation according to the scope of the legal provisions.
3. The statutory period of limitation is 12 months.
4. The statutory period of limitation for the sale of used items is likewise 12 months.

VIII. General liability limitations

1. If our responsibility for damage compensation relates only to minor negligent violations of significant contractual responsibilities, we limit our liability for damage compensation (and that of our legal representatives or fulfilment agents) to the typical foreseeable damages that could result from the contract, unless the damages are related to loss of life, bodily harm, or health hazards.
2. If our responsibility for damage compensation relates only to minor negligent violations of insignificant ancillary responsibilities, we exclude our liability for damage compensation (and that of our legal representatives or fulfilment agents), unless the damages are related to loss of life, bodily harm, or health hazards.
3. In all cases of liability to damage compensation because of negligent violation of responsibilities, regardless of the legal basis, except in the case of claims under the product liability law, our liability for damage compensation will be limited to damages foreseeable by us.
4. We additionally exclude our liability to damage compensation (and that of our legal representatives or fulfilment agents) as long as a minor negligent violation of our contractual responsibilities whose type and consequences does not endanger the purpose of the contract, unless the damages are related to loss of life, bodily harm, or health hazards.
5. The purchaser cannot claim that the goods are defective as long as the he or she has not given us the opportunity to verify the defects, or in particular has not made the rejected goods or samples thereof available to us upon our request.
6. The provisions above are not applicable to claims under the product liability law.
7. If a claim is made against us for damage compensation due to manufacturer's liability according to §823 BGB ("basis for tort claims", see the German Civil Code), we limit our liability in addition to the aforementioned provisions to the remediation of our liability insurer. The coverage amount corresponds to the typical amounts for the damages / contracts / materials. As long as the insurance is not, or is not completely involved, our liability remains unaffected and limited to the amount of the insured total. If the insured amount is not typical for the damages / contracts / materials, we limit our liability in these cases to the typical total damages for the damages / contracts / materials.

IX. Copyright

1. We reserve ownership and copyright to price quotations, designs, drawings, and other documents; they may be made available to third parties only with our approval. Drawings and other documents associated with offers are to be returned upon request.
2. If we have delivered items according to drawings, models, patterns, or other documents provided by the purchaser, then the purchaser shall ensure that copyrights of third parties are not violated. In particular, if a third party denies us the manufacture or delivery of such types of items in relation to copyright, we have the right to cease any additional activity (without being obligated to confirm the legal basis), and to demand damage compensation for the purchaser's fault. The purchaser is in addition obligated to release us immediately from all related claims by third parties.

X. Test components, forms, and tools

1. If the purchaser is to provide components for completion of the order, these are to be delivered promptly, in good condition, and at no charge, with freight prepaid to the production location in the agreed-upon amount, or otherwise with an appropriate surplus amount to cover any defects. If this does not occur, any costs or consequences are the responsibility of the purchaser.
2. The manufacture of sample components including the costs for forms and tools are the responsibility of the purchaser.
3. All necessary forms, tools and other devices etc., produced or procured on behalf of the purchaser, remain our property, even if the purchaser has paid proportional tool costs to us. An exclusive purchase right cannot be granted if a customer has only paid proportional tool costs. If a purchaser pays for the full costs of development and production/procurement, the property of this tool and the exclusive purchase right of the products produced from this tool passes to him with completed payment.
4. If such devices become unusable before the agreed production amount is achieved, then the costs required for replacement are our responsibility. We are obligated to keep such types of devices available for at least two years after the last use.
5. Our liability for tools, forms, and other manufacturing devices provided by the purchaser is limited to the care as if they were our own. Costs for care and maintenance are the responsibility of the purchaser. Our responsibility for storage expires – independent from the purchaser's ownership rights – no later than two years after the last manufacture from the form or the tool.

XI. Place of fulfilment, place of jurisdiction, and legal basis to be used

1. Place of fulfilment for our deliveries is our location. The place of jurisdiction for businesspersons (German: "Kaufleute") is the location of our headquarters. We may also file suit against purchasers at their place of jurisdiction.
2. In addition to these conditions, German law applies to all legal relationships between us and the purchaser, excluding the regulations of the United Nations Convention dated 11-Apr-1980 on "Contracts for the International Sale of Goods" (CISG).

XII. Authoritative version

In case of doubt, the German version of these General Sales Conditions is binding.

Limited Partnership, Headquarters in Neu-Ulm, Germany, Business Register Memmingen, HRA 11603

Personally liable director: Welz GmbH, Headquarters in Neu-Ulm, Germany, Business Register Memmingen, HRB 13291

Chief Executive Officers: Horst Grein, Tobias Lexhaller