

General Terms of Sale B2B

Version 08/2019

I. Scope of application

1. The following Terms of Sale shall apply for all contracts concluded between the purchaser and us concerning the delivery of goods if the purchaser is a company (§ 14 German Civil Code [Bürgerlichesgesetzbuch, BGB]). These Terms also apply for all future contracts concerning the delivery of goods even if they are not expressly mentioned again. Conflicting terms of the purchaser that we do not expressly recognize are not binding for us even if we do not expressly contradict such terms. The following Terms of Sale shall also then apply if we carry out the purchaser's order without reservation and with knowledge of the contradictory or differing terms of the purchaser.
2. All agreements that were entered into between the purchaser and us for performing the purchase contracts are documented in writing in the contracts. The parties shall confirm all oral agreements in writing. If contracts are set out in both the German and also a foreign language, in the case of a dispute, the German language version is determinative.

II. Offer and contract conclusion

1. We can accept a purchaser's order that is to be qualified as an offer to conclude a purchase contract within two weeks—for an order in the Naber dealer portal, 5 working days—by transmitting an order confirmation or by sending ordered products within the same time limit. The purchaser is bound to the purchaser's order for this time period.
2. Our offers are subject to change and nonbinding unless we have expressly identified them as binding.
3. All oral and written information concerning possible applications and the suitability of all goods are carried out to the best of our knowledge. However, this information only represents our historical experience, which cannot be deemed to be consistently warranted. This information does not form the basis for any claims against us. In particular, the purchaser is not relieved of the duty of ensuring by means of the purchaser's own inspection that the goods are suitable for the purchaser's intended use.
4. We reserve all rights of ownership, copyright and other industrial property rights in images, calculations, drawings, sample books, catalogs and other documents. The purchaser may only transfer these to a third-party with our prior written consent irrespective of whether we have designated these items to be confidential.

III. Payment terms

1. All prices apply ex works without packaging and must be paid in Euros if not otherwise set out in our order confirmation. The statutory value added tax is not included in our prices. This will be separately disclosed in the invoice at the statutory amount on the date of invoicing.
2. The purchase price is due 10 days after the invoice is sent (invoice date) less a 2% discount, otherwise net (without discount) 30 days after the invoice date provided that no different payment target follows from the order confirmation. A payment is not deemed to have taken place until the funds are available for our use. In the event of payments by check, the payment is not deemed to have taken place until the check is cashed. For new customers we reserve the right to deliver against cash on delivery less a 2% discount. For orders with a value of goods up to € 50.00 net, a minimum quantity surcharge of € 5.00 will additionally be calculated. In the case of a contract included with an agreement of "advance payment", the purchase price is due 10 days after the invoice date.
3. If the purchaser is in default in making payment, the statutory provisions shall apply (§ 288 BGB).
4. The purchaser is only entitled to set-off, even if a notice of defects or counterclaims are asserted, if the counterclaims have been conclusively adjudicated or are undisputed. The purchaser is only authorized to exercise a right of retention if the counterclaim is based on the same contractual relationship.
5. We reserve the right to request payment security and/or advance payments.
6. If the purchaser is in default of payment or if there is reasonable doubt concerning purchaser's ability to pay, we are entitled to declare all claims against purchaser as due for payment and/or to retain as yet outstanding deliveries in their entirety or in part or to withdraw from the existing contracts entirely.

IV. Delivery and performance times, liability for delivery delays

1. Delivery dates or time limits that have not been expressly agreed to be binding are solely non-binding declarations. The delivery time stated by us shall not commence prior to complete clarification of the order and clarification of all technical questions. The purchaser must likewise properly and timely fulfill all obligations incumbent upon purchaser.
2. Force majeure cases, e.g. labor disputes, civil unrest as well as other unforeseeable damaging events for which we are not responsible, extend the delivery time period for the duration of the disruption insofar as the disruption demonstrably influences our ability to render the service. This also applies if these circumstances occur for our suppliers. If the disruption lasts for longer than four weeks subsequent to the expiration of the originally agreed scheduled date, each contracting party can withdraw from the contract. The withdrawal extends to the part of the contract not yet fulfilled, unless the partial performance to be provided is not usable by purchaser. No compensatory damage

claims accrue to the purchaser from this situation.

3. If the underlying purchase contract involves a transaction for delivery by a fixed date within the meaning of the BGB or the Commercial Code [Handelsgesetzbuch, HGB], we are liable according to the statutory provisions. The same applies if the purchaser is entitled, as a consequence of a delayed delivery for which we are responsible, to assert the discontinuation of his interest in the further fulfillment of the contract. In this case our liability is limited to the foreseeable, typically occurring damages if the delayed delivery is not based on an intentional violation of the contract for which we are responsible. We shall likewise be liable to the purchaser for delayed delivery according to the statutory provisions if this delay is based on an intentional or grossly negligent violation of the contract for which we are responsible. Our liability is limited to the foreseeable, typically occurring damages if the delayed delivery is not based on an intentional violation of the contract for which we are responsible. In any case the occurrence of a delay requires a reminder notice from purchaser.
4. Otherwise, in the event of a delivery delay for which we are responsible, purchaser can request a flat amount of compensation in the amount of 0.5 % of the value of goods to be delivered, however a maximum of no more than 5 % of the value of goods to be delivered.
5. Any further liability for a delivery delay for which we are responsible is precluded.
6. We are at all times entitled to make partial deliveries and carry out partial performance insofar as this is reasonable for the customer.
7. In the case of an agreement for "advance payment", we are not obligated to make the delivery until the funds invoiced are available for our use.

V. Transfer of risk, delay in acceptance, shipping/packaging

1. Loading and shipping are at the purchaser's risk. The regulations concerning a sale by delivery to a place other than the place of performance according to § 447 BGB shall apply even if the shipment is undertaken with our means of transport or by our employees.
2. We shall make every effort to take into consideration the wishes and interests of the purchaser with respect to the type of shipment and route; additional expenditures thereby required—also in the case of an agreed freight paid delivery—shall be at the purchaser's expense. A transportation insurance policy shall be concluded for the shipment if the purchaser expressly requests this with the order. The costs shall be billed to the purchaser and separately set out in the invoice.
3. We will not take back transportation packaging and all other packaging according to the packaging regulation; excepted from this are pallets. Purchaser must ensure the disposal of the packaging at its own expense.
4. If the shipment is delayed at the purchaser's request or due to the purchaser's fault, we will then store the goods at the expense and risk of purchaser. In this case a notice of readiness to dispatch is equivalent to shipment.
5. If the purchaser delays acceptance, we are then entitled to request compensation for the resulting damages and any additional expenditures. The same applies if the purchaser culpably violates duties of cooperation. With the occurrence of a delay in acceptance or the delayed payment of a debt on the part of the purchaser, the risk of accidental deterioration and loss of the goods passes to the purchaser.
6. We shall not assume any costs for returns that are not agreed with us in advance in writing or returns that are not expressly recognized as legitimate after evaluation of the reason for the return (e.g. incorrect delivery, defects, etc.). Should we incur costs for returns that are not agreed or not legitimate, we shall bill the purchaser/sender in the amount of the actually incurred third-party costs as well as our own costs.

VI. Warranty/liability

1. We do not assume any warranty for defects that arise due to natural wear and tear, faulty or negligent treatment, improper storage, inappropriate or improper use or nonobservance of the processing and use instructions. If the delivery takes place according to drawings, specifications, samples, etc. of purchaser, the purchaser assumes the risk of their suitability for the intended use.
2. The purchaser's claims for defects shall only exist if purchaser has properly complied with purchaser's duties of inspection and providing notice of defects. Therefore, purchaser is obligated to promptly provide notice of apparent defects in the goods upon receipt. In the case of hidden defects that purchaser cannot ascertain upon receipt of the goods, purchaser must promptly give notice of defects subsequent to their discovery.
3. In the case of a complaint, we are entitled at our option to request that purchaser send us the rejected goods for inspection or for subsequent performance or make the rejected goods available to us. We shall only bear the costs of this shipment in the case of a legitimate complaint.
4. In the case of a defect we are entitled to carry out the subsequent performance of our choice by means of a replacement delivery or by repairing the defective goods within a reasonable grace period. There is no duty of subsequent performance insofar as we are authorized to refuse subsequent performance on the basis of statutory provisions. In our selection of the type of subsequent performance, we must take into consideration the type of defect and the legitimate interests of the purchaser. We shall bear the expenses necessary for the purpose of subsequent performance.

We shall not bear the additional cost that arises thereby that the goods have been transported to a different location than the place of performance or the registered commercial offices of the ordering party unless this transport is in conformity with the intended use of the goods.

5. If the subsequent performance fails, purchaser can elect a decrease in the purchase price (reduction) or declare purchaser's withdrawal from the contract. If the purchaser withdraws from the contract, purchaser is not entitled to an additional claim for compensation for damages unless we are responsible for the defect due to intentional acts or gross negligence. If only part of the delivery of goods is defective, purchaser can only then withdraw from the entire contract if purchaser does not have any interest in the remaining part of the delivery.
6. Purchaser's claim for recourse by virtue of warranty claims and rights arising from consumer goods purchase contracts (§§ 474, 478 BGB), may only be asserted against us by purchaser to the extent that purchaser is obligated to satisfy warranty claims and rights towards purchaser's customers on the basis of statutory provisions. The claim for recourse against us is excluded to the extent that purchaser has a warranty or liability obligation towards purchaser's customers in the absence of a legal obligation, in particular, as a gesture of goodwill or on the basis of special assurances or guarantees of the purchaser.
7. The claims and rights owing to a defect in the goods may only be asserted by purchaser within the warranty period of twelve months after delivery of the goods. This does not apply for claims and rights for which longer notice periods are mandatorily prescribed according to § 438 paragraph 1 No. 2 BGB for construction, and objects for construction (construction materials) or according to § 445b BGB for the recourse claims of a company.
8. We are liable according to statutory provisions for damages to life, the body and health that are based on a negligent or intentional violation of duties by us or our legal representatives or our vicarious agents as well as for damages that are encompassed by liability under the Product Liability Act. We are liable according to statutory provisions for damages that are not comprehended by sentence 1 and that are based on intentional or grossly negligent contract violations as well as deceit by us, our legal representative or our vicarious agents. However, in this case the liability for compensatory damages is limited to foreseeable, typically occurring damages insofar as we, our legal representative or our vicarious agents did not act intentionally. To the extent that we have provided a guarantee of quality and/or durability with reference to the goods or parts thereof, we shall also be liable within the framework of this guarantee. However, for damages that are based on a lack of quality or durability as guaranteed, but that do not occur directly with regard to the goods, we are only then liable if the risk of such damages is obviously comprehended by the guarantee of quality and durability.
9. We are also liable for damages that are caused by simple negligence insofar as the negligence is related to the violation of those contractual obligations the observance of which are of particular importance for achieving the purpose of the contract (material obligations). In this case, however, our liability is restricted to typically foreseeable damages.
10. Any further liability is excluded without considering the legal nature of the claim asserted; this also applies in particular for tort claims, for claims for reimbursement of futile expenditures in place of performance, or for compensation claims for lost profits. Insofar as our liability is excluded or limited, this shall also apply for the personal liability of our personnel, employees, staff, representatives and vicarious agents.
11. Purchaser's compensatory damage claims on account of a defect are time-barred one year after delivery of the goods. This shall not apply in the case of injuries to life, the body, or health for which we, our legal representatives or our vicarious agents are at fault or if we or our legal representatives have acted in an intentional or grossly negligent manner, or if our ordinary vicarious agents have acted intentionally.
12. Our sales representatives and commercial agents are not authorized to make legally binding statements with regard to defects and warranty claims for us.

VII. Retention of Title

- 1.a) The delivered goods (goods subject to retention of title) remain our property (extended retention of title) until all claims are satisfied against the purchaser, including all outstanding balance claims from a current account to which we are entitled arising from the order and the entire business relationship.
- 1.b) To the extent that an extended retention of title is not applicable in the country in which the purchaser has its registered office, the delivered goods remain our property (ordinary retention of title) until all claims to which we are entitled against the purchaser from the respective order have been satisfied, including taxes, charges or transportation costs.
2. In the case of purchaser's conduct contrary to the contract, e.g. delayed payment, we are entitled to take back the goods subject to retention of title after setting a reasonable time limit in advance; if it is unnecessary to set a time limit according to the provisions of the law, we are also entitled to demand the return of the goods subject to a retention of title without a grace period. If we take back the goods subject to a retention of title, this represents a withdrawal from the contract. If we levy execution against the goods subject to a retention of title, this is a withdrawal from the contract. We are entitled to realize on the sale of the goods subject to a retention of title subsequent to taking them back. After deducting a reasonable amount for the cost of realizing the sale, the proceeds from the sale shall be settled against the amounts owed to us by purchaser.
3. Purchaser shall treat the goods subject to a retention of title with care and sufficiently insure these

goods at their original value against losses due to fire, water damage and theft. Maintenance and inspection work that become necessary must be timely carried out by purchaser at purchaser's expense.

4. The purchaser is authorized to sell and/or use the goods subject to a retention of title in the ordinary course of business as long as purchaser is not in default in payment. Pledging and transfers by way of security are impermissible. Claims arising from resale of the processed or unprocessed goods subject to a retention of title, or arising for another legal reason (insurance, unlawful acts) with respect to the goods subject to a retention of title (including all outstanding balance claims from a current account) are already transferred by purchaser to us as security in the amount of the final invoice amount (including VAT) for our claims against the purchaser; we hereby accept the assignment. We revocably authorize purchaser to collect the claims assigned to us in the name of purchaser and for purchaser's account. This collection authorization can be revoked at any time if purchaser does not properly comply with purchaser's payment obligations.
5. For the purpose of assigning this claim, purchaser is also not authorized to collect claims by way of factoring unless an obligation of the factoring party is at the same time created to directly effectuate payment of consideration to us in the amount of the claims for as long as our claims against the purchaser exist.
6. Processing or reshaping the goods subject to a retention of title by purchaser shall in any case be undertaken for us. If the goods subject to a retention of title are processed with other items not owned by us, we shall acquire joint ownership in the new item proportional to the value of the goods subject to a retention of title (final invoice amount including value added tax) along with the other processed items on the date of processing. The same shall apply for the new item emerging from the processing as for the goods subject to a retention of title. In the case of the inseparable combination of the goods subject to a retention of title with other items not owned by us, we shall acquire joint ownership in the new item proportional to the value of the goods subject to a retention of title (final invoice amount including value added tax) along with the other combined items on the date on which they are combined. If the purchaser's item is to be viewed as the primary item as a consequence of this combining, the purchaser and we agree that purchaser transfers proportional joint ownership to us in the item; we hereby accept this transfer. Purchaser shall preserve the sole or joint ownership in the item arising in this manner for us.
7. In the event of attachment by third parties against the goods subject to a retention of title, in particular, levies of execution, purchaser shall call attention to our ownership and immediately inform us so that we may enforce our rights of ownership. To the extent that the third-party is not in the position to reimburse us for the court and out-of-court expenses arising in this connection, purchaser is liable therefor.
8. We are obligated to release the security to which we are entitled to the extent that the realizable value of our security exceeds the claims to be secured by more than 10%; in so doing, the selection of the security to be released is at our discretion.

VIII. Images and dimensions

Images, technical information and dimensions in brochures and price lists shall not be deemed to be a binding agreement and not a promised characteristic. These only represent approximate values. Binding information can be provided in an individual case upon request. Special suitability may not be taken from the images and dimensions. We expressly reserve the right to make modifications.

IX. Place of performance, venue, applicable law

1. The place of performance for deliveries and payments (including actions regarding checks and bills of exchange), is, if not otherwise expressly specified, our registered office in Nordhorn.
2. The exclusive local jurisdiction and international court of competent jurisdiction is in the location of our registered office in Nordhorn (Germany). However, we are also authorized to sue the purchaser in purchaser's place of general jurisdiction (domicile or registered office).
3. The business relations between the contracting parties are regulated exclusively according to the law applicable in the Federal Republic of Germany excluding international private law (Introductory Statute to the Civil Code [Einführungsgesetz zum Bürgerlichen Gesetzbuch], EGBGB). The application of the UN Convention on Contracts for the International Sale of Goods is excluded.
4. Should a provision of these general Terms of Sale (or within the framework of other agreements) be or become invalid or unenforceable entirely or in part, this shall not affect the validity of all other provisions or agreements. The contracting parties hereby commit to replace the invalid or unenforceable provision or agreement with a valid or enforceable provision or agreement most closely in conformity with the commercial provisions.
5. The headings for the individual regulations of these delivery and payment terms only serve to provide a better orientation and do not have any independent substantive content and no legal significance.
6. The purchaser's data related to the business transactions with purchaser shall be processed according to the Federal Data Protection Act.

X. Precedence of the German version

If these Terms of Sale exist in different languages, the German version is solely decisive for clarifying questions of interpretation.

Naber GmbH

Managing Directors: Ingrid Naber, Hans-Joachim Naber and Lasse Naber