

General terms and conditions of delivery and payment of FRUTELIA & Letellier GmbH

I. Scope of validity

1. The following sales conditions apply to all contracts concluded between the buyer and Frutelia & Letellier GmbH regarding the supply of goods. They also apply to all future commercial relations, also if no additional express agreement is concluded in this regard. Deviating conditions of the buyer that are not explicitly recognised by us are non-binding for us, also if we do not expressly reject them. The following sales conditions also apply if we execute the buyer's order without reservation, despite our knowledge of the contrary or deviating conditions of the buyer.
2. The contracts contain a written record of all agreements concluded between the buyer and us for the purpose of executing the purchase contracts.
3. Individually concluded agreements between the contracting parties (also ancillary agreements, supplements and amendments) always take precedence over these terms and conditions of business.
4. Our offers are only directed at commercial purchasers. We do not supply to consumers in the sense of § 13 BGB.

II. Offer and contract conclusion

1. We are able to accept an order placed by the buyer, which is to be qualified as an offer to conclude a purchase agreement, within a period of two weeks by providing an order acceptance or by sending the ordered products within the same period.
2. Our offers are non-binding and subject to change, unless we expressly stipulate that they are binding in nature.
3. We reserve the property rights, copyrights and all other industrial rights to all images, calculations, drawings and other documents. The buyer is only permitted to pass these on to third parties with our written permission, irrespective of whether we have marked these as being confidential.

III. Payment terms

1. Our prices apply ex works, unless otherwise stated in the order confirmation. Our prices do not include the statutory value added tax. We will list this separately on the invoice at the statutory rate applicable on the date of invoicing.
2. A deduction for early payment is only permissible following conclusion of a separate written agreement between us and the buyer. The purchase price falls immediately payable net (without deductions) upon receipt of the invoice by the buyer, insofar as the order confirmation does not specify an alternative payment term. Payment is only deemed to have been received once we have access to the funds. In the event of payment by cheque, the payment is only deemed to have been received once the cheque has cleared.
3. If the buyer falls into arrears with a payment, the legal regulations apply.
4. The buyer is only entitled to offset payment amounts - also if complaints and counter-claims are invoked - if the counter-claims are legally validated, recognised by us or undisputed. The buyer is only entitled to exercise a right of retention if their counter-claim applies to the same contractual relationship.

IV. Delivery and performance period

1. Delivery deadlines and periods that have not been expressly agreed as binding are exclusively non-binding in nature. The buyer is equally required to fulfil all of his obligations in an orderly and timely manner.
2. If the fundamental purchase agreement is a firm deal in the sense of § 286 section 2 no. 4 BGB or § 376 HGB then we shall be liable according to the legal regulations. The same applies if the buyer is entitled to claim the discontinuance of their interest in the further fulfilment of the contract as a result of a delivery delay for which we are responsible. In this case our liability shall be limited to foreseeable, typically occurring damage if the delivery delay is not due to a deliberate infringement of the contract by us, whereby the culpability of our representatives or vicarious agents is also attributable to us.

We shall also be liable to the buyer for a delivery delay in accordance with the legal provisions if this is due to a deliberate or grossly negligent infringement of the contract for which we are responsible, whereby the culpability of our representatives or vicarious agents is also attributable to us. Our liability shall be limited to foreseeable, typically occurring damage if the delivery delay is not due to a deliberate infringement of the contract by us.

3. If a delivery delay for which we are responsible arises due to the culpable infringement of a significant contractual obligation - whereby the culpability of our representatives or vicarious agents is also attributable to us - then we shall be liable according to the legal regulations under the proviso that in this instance the liability for damages is restricted to foreseeable, typically occurring damage.

4. All further liability on our part for a delivery delay attributable to us is excluded. The further legal claims and rights of the buyer, which arise in addition to claims for damages due to a delivery delay attributable to us, remain unaffected.

5. We are entitled to supply partial deliveries and partial performance at any time, where this is reasonable for the customer.

6. If the customer is delayed in issuing acceptance, we are entitled to demand compensation for any damages and additional costs that arise in this regard. The same applies if the buyer infringes their obligations to cooperate. If the buyer's acceptance is delayed or a debtor's delay arises, the risk of accidental degradation or accidental loss shall pass to the buyer with the onset of the delay.

V. Transfer of risk, shipping, packaging

1. Loading and shipping are not insured and the buyer bears the risk. We shall endeavour to take into account the wishes and interests of the buyer with respect to the type of shipping and shipping route; any additional costs that arise as a result of this - also if free delivery has been agreed - shall be borne by the buyer.

2. We do not take transport packaging or any other packaging materials back in accordance with the terms of the packaging ordinance; exceptions to this are pallets. The buyer shall bear the costs for the disposal of the packaging.

3. If dispatch is delayed on the request or at the fault of the buyer then we shall store the goods at the cost and risk of the buyer. In this case the notification of readiness to dispatch is equivalent to dispatch.

4. We shall cover the delivery with transport insurance at the request of the buyer, whereby the buyer shall bear the cost of this.

VI. Material defects and defects of title, liability

1. The buyer's claims for defects shall only be upheld if the buyer has correctly fulfilled their inspection and notification obligations according to § 377 HGB.

2. In the event of a justified notification of defects, we are obligated – to the exclusion of the rights of the buyer to withdraw from the contract or to a reduction of the purchase price (discount) – to deliver supplementary performance, unless we are entitled to deny the provision of supplementary performance according to the legal regulations. The buyer is required to provide us with an appropriate period of grace in which to deliver supplementary performance. Supplementary performance can be delivered in the form of remedying the defect (rework) or through the provision of new replacement goods according to the buyer's preference. In the event of a defect remedy, we shall bear the necessary costs unless these are increased due to the object of the contract being located at a site other than the place of fulfilment. If the supplementary performance should be in vain then the buyer is entitled to demand a reduction of the purchase price (discount), or may opt to withdraw from the contract. The rework is deemed to have been in vain with the second attempt, insofar as further rework attempts are not appropriate and reasonable for the buyer due to the contract object. The buyer is only able to validate claims for compensation due to a defect on the basis of the following conditions, if the supplementary performance is deemed to have been in vain. The entitlement of the buyer to assert further claims for compensation on the basis of the following conditions remains unaffected.

3. The buyer's warranty claims fall time barred one year after delivery of the goods to the buyer, unless we have intentionally concealed the defect. In this case the legal regulations apply. Our obligations according to section VI point 4 and section VI point 5 remain unaffected.

4. We are obligated to take back the new goods or grant a reduction (discount) of the purchase price according to the legal regulations - also without the otherwise necessary period of grace - if the buyer's customer as the consumer of the sold and newly circulated goods (purchase of consumable goods) could demand that the buyer take back the goods or grant a reduction (discount) of the purchase price due to these goods being defective, or if the buyer could be subject to an equivalent resultant recourse claim. We are also obligated to reimburse the buyer's costs - in particular transport, travel, work and material costs - where the buyer incurs these in conjunction with the end user within the framework of supplementary performance due to a goods defect that was present at the time of risk transferral from us to the buyer. The entitlement is excluded if the buyer fails to correctly fulfil their inspection and notification obligations according to § 377 HGB.

5. The obligation per section VI point 4 is excluded insofar as the defect is due to advertising messages or other contractual agreements that do not originate from us, or if the buyer has provided the end user with a special guarantee. The obligation is also excluded if the buyer himself was not obligated to grant the warranty entitlements to the end user according to the legal regulations, or if the buyer did not make use of this objection in response to a claim submitted against him. This also applies if the buyer has accepted guarantees vis-à-vis the end user, which go beyond what is legally prescribed.

6. Irrespective of the following limitations of liability, we shall be liable in accordance with the legal regulations for damage to life, physical injury and harm to health where such damage is attributable to a negligent or deliberate infringement of obligations on our part, or on the part of our legal representatives or vicarious agents. Furthermore, we shall be liable for damages in accordance with the conditions of the Product Liability Law. In the case of damages that are not covered by clause 1 and which can be attributed to deliberate or grossly negligent contractual infringements or malice on our part, or on the part of our legal representatives or vicarious agents, we shall be liable in accordance with the legal regulations. However, in this case the liability for damages shall be limited to foreseeable and typically occurring damages, insofar as we or our legal representatives or vicarious agents have not acted with intent. If we have provided a guarantee of the properties and/or service life of the goods or parts thereof then we shall also be liable within the framework of this guarantee and to the extent of the same. In case of damages relating to failures of the guaranteed quality or durability of the goods, which do not immediately occur on the goods themselves, we shall only be liable if the risk of such damage is evidently covered by the quality and durability guarantee.

7. We shall also be liable for damages that we cause through a minor negligent breach of such contractual obligations as must be fulfilled in order to diligently fulfil the contract; and such contractual obligations, the fulfilment of which the buyer does and should be able to regularly depend upon. However, we shall only be liable insofar as the damages are both foreseeable and typically associated with the contract.

8. Further liability is excluded regardless of the legal nature of the asserted claim. This also applies in particular to actions in tort and claims for compensation for expenses incurred in vain in place of performance; our liability for this per section IV point 2 to section IV point 5 of this contract remains unaffected by this. Insofar as our liability for damages is excluded or limited, this also applies with regards to the personal liability of our employees, workers, staff, representatives and vicarious agents.

9. Claims for compensation on the part of the buyer as a result of defects fall time barred one year after delivery of the goods. This does not apply if we, our legal representatives or vicarious agents cause culpable damages to life, body or health, or if we, our legal representatives or vicarious agents act with intent or in a grossly negligent manner, or if our simple agents act with intent.

VII. Retention of title

1. The goods delivered (goods subject to the retention of title) remain our property until all amounts owed to us by the buyer - now and in the future - have been settled, including all demands relating to the current account balance. In the event of contractually infringing actions on the part of the buyer, e.g. payment arrears, we are entitled to take back goods subject to the retention of title after first granting an appropriate period of grace. If we take back goods subject to the retention of title then this constitutes withdrawal from the contract. If we seize goods subject to the retention of title then this constitutes withdrawal from the contract. We are entitled to utilise goods subject to the retention of title after taking these back. After deducting an appropriate amount for utilisation costs, the utilisation proceeds shall be offset against the amount owed to us by the buyer.

2. The buyer is entitled to sell and/or use the goods subject to the retention of title within the framework of an ordinary commercial transaction, if they are not in payment arrears. Pledging or transferring by way of security is impermissible. Any receivables (including all demands relating to the current account balance) arising from the goods subject to the retention of title due to their onward sale or on any other legal grounds (insurance, violation of tort) are hereby transferred to us in full by the buyer for security purposes; we hereby accept this transfer. We authorise the buyer on a revocable basis to collect the receivables transferred to us in their name and on their account. It is possible to withdraw the direct collection authorisation at any time if the buyer does not meet with their payment obligations in an orderly manner. Furthermore, the buyer is not authorised to transfer these receivables for the purpose of debt collection by means of factoring, unless the factor is instructed at the same time to effect payment directly to us per the amount of our receivables for as long as we still have claims for receivables outstanding against the buyer.

3. The buyer must inform us immediately of access to goods subject to the retention of title by third parties, in particular seizure, and must inform the third party of our proprietorship so that we can assert our rights of ownership. The buyer shall be liable to provide us with compensation, insofar as the third party is not in position to compensate us for legal and out-of-court costs that we incur in this regard.

4. We are obligated to release the securities to which we are entitled insofar as the realisable value of our securities exceeds the claims to be secured by more than 10 %; the selection of the securities to be released is incumbent on us.

VIII. Place of fulfilment, jurisdiction, applicable law

1. The place of fulfilment and jurisdiction for deliveries and payments (including cheque and bill of exchange suits), as well as all disputes arising between us and the buyer in relation to the purchase agreements concluded between us and the same shall be the place of our head office. However, we are also entitled to bring actions against the buyer at their place of residence and/or business.

2. The relationships between the contracting parties are regulated exclusively according to the law of the Federal Republic of Germany. The application of the UN Convention on Contracts for the Sale of International Goods is excluded.