

General Terms and Conditions of Sale and Delivery of Geo. Gleistein und Sohn GmbH Updated on 1st December 2015

I. Generally: scope

1. These General Terms and Conditions of Sale and Delivery (hereinafter referred to as AVL) are an element of all quotations and contracts about the deliveries and services of Geo. Gleistein und Sohn GmbH and of its affiliated companies (hereinafter referred to as sellers), which are agreed with the customers (hereinafter referred to as buyers) in current and future business relations. These AVL apply as accepted when the merchandise or service is accepted at the latest.
2. The AVL only apply vis-à-vis companies for the purposes of article 14, clause 1 of the German Civil Code (BGB).
3. Insofar as the seller's written declarations or written confirmations are required according to the AVL, the written form also applies as maintained if the declarations or confirmations are issued by e-mail, as a 'pdf' file or by fax.
4. These AVL will be included in all future contracts between the parties, even whenever no reference has been made to them expressly again yet. The buyer's General Terms and Conditions of Business do not become a contractual content, insofar as his terms and conditions contradict these conditions of purchase or they include regulations which diverge from the sense and purpose of these conditions of purchase.

II. Quotation: concluding the contract

1. The seller's quotations are subject to change without notice, insofar as nothing else will be declared by the seller in writing.
2. The information that is contained in the brochures and catalogues, like illustrations, drawings, information about weights and measures, represent the approximate values which are customary in the branch of business, insofar as they are not expressly described as binding by the seller.

III. Prices

Increased costs that are not the seller's responsibility (especially general increases of labour costs or material costs or both) justify him to increase the price reasonably if the delivery is intended to be made at least 4 weeks after concluding the contract, as well as in the case of a prolonged contractual relationship.

IV. Set-off

Rights of set-off are only vested in the buyer if his counterclaims have been established with legal force, or if they are undisputed or if they have been recognized by the seller. In addition, the buyer is only authorized to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.

V. Delivery

1. Periods and dates of delivery are always unbinding.
2. If a binding date of delivery is exceeded by more than 4 weeks, then the buyer is only entitled to assert the rights that are vested in him whenever he has granted the seller a period of grace of at least 7 calendar days.
3. The seller is entitled to make partial deliveries and to deliver more or less than the agreed quantity.
4. The seller is not responsible, even in the case of bindingly promised periods or dates, for delays in deliveries or services that occur on account of force majeure and events that make the delivery or service substantially more difficult or impossible: these especially include operational interruptions, strike, lockout, natural events, official or legal ordinances or blockage of traffic routes, even if they occur with the seller's suppliers. They entitle the seller to postpone the delivery or service by the duration of the hindrance plus a reasonable start-up period. The seller will inform the buyer immediately about the beginning and end of such a hindrance.
5. In the case of non-compliance with the period of grace that is set according to clause 2, the buyer can withdraw from the contract or demand compensatory damages. The claim for compensatory damages is limited to the reimbursement of proven extra costs (covering purchase). Apart from that, further claims for compensatory damages are excluded insofar as the matter does not concern the liability for damages arising from injury to life, limb or health. The seller will not pay compensatory damages because of non-fulfilment as a result of slight or simple negligence. The seller is only liable for gross negligence and (criminal) intent if the legally authorized representative or the seller's manager is to blame, or if the seller's other subcontractors have infringed the main duties or cardinal duties. Otherwise, the liability is limited to damages that can typically arise with business transactions that are made between the parties.

VII. Quality, warranty, customer's complaints and liability

1. Qualitative descriptions are orientated to German (DIN) or European (EN) standard regulations. The validity of non-European standard regulations requires to be agreed in writing. If German or European standard regulations do not exist, then the procedure that is customary in the branch of business at the place of fulfilment¹ is decisive.
2. Alterations of weight that are caused by climatic conditions, as well as divergences in the colour and purity which are caused by the nature of the raw material, do not entitle the buyer to make customer's complaints, refuse acceptance or assert claims for defects.
3. The buyer has to examine the delivery for quantity, contractually compliant quality and assured characteristics immediately after its arrival, in order to safeguard his claims for defects. Article 377 of the German Commercial Code (HGB) remains unaffected in the case of reciprocal trading transactions.
4. The seller can choose within the framework of subsequent fulfilment whether he remedies the defect or delivers a faultless article.
5. The seller is only liable for the deficiency of assured characteristics insofar as the assurance pursues the purpose of covering the buyer precisely against the occurred consequential damages arising from the absence of the characteristics. Solely referring to DIN or EN standards does not make the content an assured characteristic. Insofar as a specific quality is agreed or the seller assures specific characteristics, this does not mean that the goods are suitable for a utilization that is agreed between the buyer and his customers.
6. Claims for defects are time-barred after 12 months following the passage of risk: this does not apply insofar as the law does not permit any divergences from article 438, clause 1, no. 2 of the German Civil Code (buildings and items for buildings), article 479, clause 1 of the German Civil Code (claim for recourse) and article 634, clause 1, no. 2 of the German Civil Code (building defects).
7. Article VIII of the AVL applies to claims for compensatory damages.

VIII. Limitation of liability: compensatory damages

1. The buyer's claims for compensatory damages, irrespective of whatever reason and especially because of infringing duties arising from the contractual obligation and prohibited action, are excluded insofar as nothing else is regulated in the following text: that also applies especially to consequential damages and the buyer's claims for compensation of expenditure.
2. In the case of infringing essential contractual duties, the seller's liability is limited to the contractually typical, foreseeable damage.
3. The regulations concerning clauses 1 and 2 do not apply to compulsory liability, e.g., according to the German Product Liability Law, in the case of gross fault or because of injury to the life, limb and health. However, no alteration of the burden of proof to the buyer's disadvantage is connected as a result.

IX. REACH

In terms of REACH, Geo. Gleistein & Sohn GmbH is a downstream user and therefore not responsible for the registration and approval of the utilised materials and products.

Geo. Gleistein & Sohn GmbH has obligated its suppliers to comply fully with the REACH Regulation (Regulation (EC) No. 1907/2006). Our goods comply with the applicable legal provisions of the European Union and the Federal Republic of Germany.

We shall immediately inform buyers regarding any changes to the goods, their deliverability, their possible uses or quality – arising from the REACH Regulation.

Should goods being supplied by Geo. Gleistein & Sohn GmbH be intended for further processing by the purchaser and should special certification (such as CE or GS Certification) to be conducted, the purchaser is to inform Geo. Gleistein & Sohn GmbH of this fact at the point of enquiry and ordering.

The customer is exclusively liable for REACH conformity in instances where products or components have been provided by the customer and commissioned to be incorporated in the final product. This also applies to all CE-certified products from Gleistein.

X. Reservation of ownership

1. The seller reserves the ownership of the delivered merchandise (conditional commodities) until full payment of the purchase price. In the case of merchandise that the buyer purchases from the seller within the framework of a continuous business relationship, the seller reserves the ownership until payment of his entire debt claims against the buyer arising from the business relations, including the debt claims arising in future and also those arising from simultaneously made contracts or subsequently made contracts: this also applies whenever the seller's individual or collective debt claims have been included in a continuous invoice and the balance is recognized. In the case that the buyer defaults on payment, the seller is entitled to recover the merchandise after demanding payment and the buyer is obligated to hand them over to him.
2. If the conditional commodity is processed to produce a new portable item, then the processing takes place for the seller without him being obligated as a result: the new item becomes the seller's property." In the case that the conditional commodity is processed together with merchandise that does not belong to the seller, the seller will acquire joint ownership of the new item according to the ratio between the conditional commodity's invoiced value and the other merchandise at the time of processing. If the conditional commodities are not connected, blended or mixed with the merchandise that belongs to the seller according to articles 947 and 948 of the German Civil Code, then the seller will be the co-owner according to the legal conditions. If the buyer acquires sole ownership through connecting, blending or mixing, then he transfers co-ownership to the seller herewith according to the ratio between the conditional commodity's invoiced value and the other merchandise at the time of connecting, blending or mixing. In these cases, the buyer has to safeguard the item free of charge that the seller owns or co-owns, which also applies as a conditional commodity for the purposes of the aforementioned conditions.
3. If the conditional commodity is sold solely or together with the merchandise that does not belong to the seller, then the buyer assigns to the seller herewith the debt claims arising from the resale amounting to the conditional commodity's invoiced value with all subsidiary rights; the seller accepts the assignment herewith. If the resold conditional commodity is owned by the seller, then the assignment of debt claims includes the amount which corresponds to the seller's shared value of the co-ownership.
4. If the buyer has built the conditional commodity into a third party's parcel of real estate, ship, ship's structure or aircraft as an essential element, then the buyer assigns to the seller herewith the debt claims against the third party or whoever is concerned with the matter amounting to the conditional commodity's invoiced value with all subsidiary rights including those which arise from pledging security for a mortgage; the seller accepts the assignment. Clause 3, sentences 2 and 3 apply accordingly.
5. If the buyer has built the conditional commodity into a parcel of real estate, ship, ship's structure or aircraft as an essential element, then the buyer assigns to the seller herewith the debt claims arising from a sale of the parcel of real estate, of rights to real estate, of the ship, of the ship's structure or of the aircraft amounting to the conditional commodity's invoiced value with all subsidiary rights and with precedence over the rest; the seller accepts the assignment. Clause 3, sentences 2 and 3 apply accordingly.
6. The seller is entitled and authorized to resell, utilize or built in the conditional commodity only during the proper course of business and only provided that the debt claims actually pass to the seller for the purposes of clauses 3 to 5. The buyer is not entitled to other dispositions over the conditional commodities, especially mortgages or assignments of them as security.
7. The seller empowers the buyer to collect the assigned debt claims according to clauses 3 to 5, subject to revocation. The seller will not make any use of his own authority for collection, provided that the buyer fulfils his payment obligations. The buyer has to state the names and addresses of debtors of the assigned debt claims on demand, as well as give the information that is required for collecting these debt claims (like for example the debt claim's basis and debt claim's amount) and to notify the debtors of the assigned debt claims about the assignment; the seller is also empowered to notify the debtors about the assignment himself.
8. The buyer has to notify the seller immediately about third-party compulsory execution measures over the conditional commodities or over the assigned debt claims, subject to handing over the documents which are necessary for the counterclaim.
9. The right to resell, utilize or build in the conditional commodities and the empowerment to collect the assigned debt claims lapses when payments are suspended or an application is made to open insolvency proceedings over the buyer's assets; The empowerment for collection also lapses in the case of a protest about a cheque or bill of exchange: this does not apply to the insolvency administrator's rights.
10. If the value of the granted securities exceeds the debt claims (or if the down-payment and instalments are reduced as the case may be) by more than 20%, then the seller is obligated to give a refund or a release at his discretion in this respect. The ownership of the conditional commodity and the assigned debt claims pass to the buyer when all of the seller's debt claims arising from the business relations have been paid off.

XI. Place of fulfilment, place of jurisdiction and applicable law

1. The seller's head office (in Bremen) is the place of fulfilment and the place of jurisdiction for deliveries and payments (including protested cheques and bills of exchange) as well as for all disputes that arise between the contracting parties, insofar as the buyer is a businessman, a legal entity under public law or special assets under public law. Nevertheless, the seller is entitled to sue the buyer at his head office too.
2. The relations between the contracting parties are exclusively regulated according to the law applying in the Federal Republic of Germany (especially according to the regulations of the German Civil Code (BGB) and those of the German Commercial Code (HGB)). The applicability of the UN Purchase Law is excluded.

XII. Final conditions

If one or several of the AVL's conditions infringe(s) a legal prohibition, or if they are or become inoperative for other reasons, then the validity of the remaining conditions will not be affected because of that. A condition will then apply as agreed in place of the invalid provision, which approximates as closely as possible to what the economic interest and probable intentions of the contracting parties would have been, subject to considering the remaining operative conditions. The same thing applies to the presence of a contractual loophole.