

General Terms and Conditions of Sale and Delivery for the Companies of the Nüßing Group

I. General Provisions

1. The present General Terms and Conditions apply to all of our business relationships with our customers, in particular to all offers, contracts, deliveries and services.
Deviating General Terms and Conditions of the purchaser shall only apply if the seller expressly approves them.
2. Our GTC shall apply on an exclusive basis. Any deviating, opposing or supplementary General Terms and Conditions of the contractual partner shall become part of the contract only if and to the extent that we have expressly approved their validity. This approval requirement applies in any case and even if in spite of knowing the GTC of the contractual partner we perform a delivery to it without reservations. Individual agreements with the contractual partner which are affected in the individual case (incl. ancillary agreements, modifications and amendments) shall have priority in any case, and the content of such agreements shall be governed by a written contract or our written confirmation.
3. With the exception of managing directors or authorised representatives (*Prokuristen*), our agents and employees are not entitled to enter into agreements deviating from these GTC.
4. Legally relevant declarations and notices the purchaser has to issue to us after conclusion of the contract (e. g. setting deadlines, notices of defects, declarations of withdrawal or reduction) require the written form to be valid.

II. Offers and scope of delivery

1. Our offers and price lists are non-binding. The documents relating to the offer such as illustrations, drawings, weights and measurements are only approximate values, unless they are expressly defined as binding. If we provide the contractual partner with drawings or technical documents about the technical object to be delivered, they shall remain our property.
2. An order of the goods by the purchaser shall be deemed a binding offer to enter into a contract. The contract is concluded when we give written confirmation of acceptance of the order for the object of purchase described in detail within 2 weeks, or have delivered the object of purchase. We will notify a possible rejection of the order immediately after clarification of the availability.
3. If we sent an order confirmation to the contractual partner, whether on account of an oral or written order, the contractual partner shall immediately check any dimensions, quantities and technical data of the confirmed order. If necessary, the tolerances permissible according to the German Standard Building Contract Terms (*Verdingungsordnung für Bauleistungen*, VOB) have to be taken into account. There is a duty to carry out checks even if the dimensions and quantities as well as the technical data were determined by our sales representatives or with their assistance. With regard to the technical details, the contractual partner is obligated in case of emergency to consult us. If any differences occur to the order, we have to be informed immediately but within the abovementioned period of 2 weeks after receipt of the order confirmation at the latest.
4. Warranties of characteristics, ancillary agreements and modifications have to be confirmed by us in writing in order to be valid.
5. If the contractual partner is an entrepreneur, all building services including assembly shall be governed by the version of the VOB, Part B, which is valid at the time when the particular contract is finalised. We reserve the right to make changes to the design and form of the delivered item, provided that the delivered item is not materially changed, the intended use is not restricted and the changes are acceptable for the contractual partner.
6. If we become aware of any facts that give rise to justified doubts about the creditworthiness of the contractual partner only after conclusion of the contract without our culpability, we are entitled to demand adequate collaterals. If the contracting partner fails to provide the collaterals within a reasonable period of time, we are entitled to withdraw from the contract.

III. Prices, terms of payment

1. Any payments to us are generally due and payable upon issue of the invoice and delivery or acceptance of the goods. We are entitled in the individual case to request a down payment for the purchase price. This down payment shall be due and payable upon receipt of the invoice. Upon expiry of 14 days from the due dates mentioned above, the contractual partner will be in default.
2. Payments made by cheque and bill of exchange are admissible only upon special agreement. Their costs and charges as well as the risk of timely presentation and protest shall be fully borne by the contractual partner. Bills of exchange and cheques will always be accepted only on account of performance but not instead of performance. In case of a protest of a cheque or bill of exchange, we may demand immediate payment in cash concurrent to the return of the cheque or the bill of exchange.
3. We may modify our prices in accordance with the provisions below, if a period of more than four months lies between the conclusion of the contract and the agreed delivery date. If subsequently the wages, cost of materials or marketable cost prices increase until completion of the delivery, we are entitled to increase the price by a reasonable amount according to the cost increases. The contractual partner is only entitled to withdraw from the contract if the price increase considerably exceeds the increase of the general cost of living between the time when the order was placed and the delivery date. If the contractual partner is a merchant, a legal entity under public law or a special fund under public law, price changes according to the provision above are admissible if a period of more than six weeks lies between conclusion of the contract and the agreed delivery date.

4. Business transactions with entrepreneurs as defined in § 14 of the German Civil Code (BGB) are based on net prices (ex works) plus applicable value-added tax. The price calculation is based on the dimensions and measurements at the place of loading.
5. In the event of contracts of sale involving the carriage of goods (*Versendungsverkauf*), the Buyer shall bear the transport costs from the warehouse and the costs of transport insurance that may be desired by the Buyer. Unless we charge the transport costs actually incurred in the individual case, a transport cost flat rate (not including transport insurance) of € 30.00 is deemed agreed. Possible customs duties, charges, taxes and other public duties shall be borne by the contractual partner.
6. Reserving the right to assert claims for further damages, default interest will be due in the amount prescribed by law if the contractual partner is in default with its payment. Transactions in which the end consumers (§ 13 BGB) are not involved shall carry interest at 9 percentage points above the base rate, other transactions at 5 percentage points above the base rate. Our entitlement to claim commercial maturity interest (§ 353 of the German Commercial Code (HGB)) to merchants shall remain unaffected.
7. The contractual partner shall only be entitled to set-off rights if its counterclaims are legally established, undisputed or acknowledged by us. In addition, the contractual partner is only entitled to exercise a right of retention when its counterclaim is based on the same contractual relationship.
8. In deviation from §§ 363 and 367 of the BGB, payments of the contractual partner will be set off first against the earliest outstanding claim.
9. If the contractual partner fails to meet its payment obligations or fails to meet them within 2 weeks after their due date, we are entitled to declare the entire outstanding claim immediately payable. In such case, we are also entitled to claim immediate payment or the provision of a collateral for deliveries already made, and to request advance payments for all deliveries or services or parts thereof to be rendered yet.
10. We are entitled to assign our claims arising from the business relationship.

IV. Delivery time

1. The delivery period shall be individually agreed or indicated by us upon acceptance of the order. If we are unable to adhere to binding delivery times for reasons beyond our control (unavailability of performance), we will immediately inform the contractual partner and at the same time notify the expected new delivery period. If performance remains unavailable within the new delivery period, we are entitled to withdraw from the contract in whole or in part, and we will immediately reimburse the purchaser for any counter-performance already realised.
In case of delays caused by force majeure, labour disputes, unrest, official measures, non-performance on the part of our suppliers and in case of other unforeseeable, unavoidable and serious events, the delivery period shall be reasonably extended for the duration of the interference. We are obligated to make all reasonable efforts to provide the necessary information without delay and to adapt our obligations in good faith to the changed circumstances.
2. Partial deliveries are admissible to a reasonable extent and in case that they seem to be of advantage for the quick processing of the order.
3. In general the delivery is carried out ex warehouse, which is also the place of performance. At the request, risk and expense of the purchaser, the goods will be sent to another place of destination (contract of sale involving the carriage of goods, *Versendungskauf*). Unless agreed otherwise, we are entitled to determine the type of shipment (in particular the carrier, dispatch route, packaging) after due consideration. In the absence of any other agreement, the goods will be loaded and/or shipped uninsured. Upon their provision at the place of performance, the risk of accidental loss or accidental deterioration of the goods shall pass to the contractual partner, and the goods shall be loaded at the contractual partner's risk. However, in case of contract of sale involving the carriage of goods, the risk of accidental loss or accidental deterioration of the goods as well as the risk of delay shall pass already upon delivery of the goods to the carrier, the forwarding agent or any other person or entity determined to perform the shipment. If acceptance has been agreed, it shall be decisive for the passing of the risk. Apart from that, an agreed acceptance shall be governed by the statutory provisions of the law of contracts for work and labour (*Werkvertragsrecht*) accordingly. Handover or acceptance shall be equivalent to the purchaser's default of acceptance.
4. Default in delivery on our part shall be governed by the statutory provisions. In any case, a reminder setting a grace period of usually 14 days for performing the service is required, including a declaration that performance will be refused after expiry of the deadline. If we are guilty of slight negligence only, the damages shall be limited to the additional expenses incurred for a covering purchase or the provision of a replacement.
5. If the contractual partner is in default with acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the contractual partner is responsible, we are entitled to claim compensation for the resulting damage, including additional expenses (e. g. storage costs). We will charge a lump-sum compensation of 0.5% of the total invoice amount for each started calendar week for this, up to a maximum overall amount of 5% of the total invoice amount, starting at the agreed delivery date, or if no such agreement was made, upon notification that the goods are ready for dispatch. Proof of a higher loss and our statutory claims (in particular reimbursement of additional expenses, reasonable compensation and termination) remain unaffected. However, the lump sum shall be credited to any further monetary claims. The purchaser is entitled to prove that we did not incur any loss whatsoever, or only a much smaller loss than the lump sum mentioned above.

V. Notice of defects, warranty and guarantee

1. If we and the contractual partner have entered into a mutual commercial transaction, the contractual partner's claims for defects require that it has duly met its obligations to inspect the goods and give notice of defects owed according

to § 377 HGB. Minor deviations of the delivered goods from the agreed or customary quality do not create any rights of the contractual partner to claim defects.

2. The contractual partner shall inspect the received goods immediately after their receipt for defects, their quality and warranted characteristics. Obvious defects shall be notified to us in writing without delay, but within 7 calendar days at the latest. Otherwise the goods are deemed accepted, unless we or our vicarious agents have acted with fraudulent intent. The period shall start upon receipt of the goods by the contractual partner.
3. If the contractual partner identifies any defects of the goods, it must not dispose of them, i.e. they must not be shared, resold or processed, until an agreement has been reached as to how the complaint is to be settled, or an expert appointed by the Chamber of Commerce or ICC at the contractual partner's place of office has executed proceedings for the preservation of evidence. To that effect, the parties shall agree on an expert.
4. In case of possible defectiveness of the goods and in case of contracts for works and services of a possibly bad quality, the defect may be removed or replacement delivery may be carried out at our discretion. Repeated supplementary performance is admissible. If we are not willing or able to remove the defect or deliver a replacement, if it is delayed for more than a reasonable period of at least 2 weeks set to us, or if the removal of the defect or replacement delivery should fail in any other way or is unacceptable for us, the contractual partner is entitled at its discretion to withdraw from the contract or to reduce the purchase price accordingly. Claims for damages are excluded in accordance with paragraph VI. of these Terms and Conditions. The right according to § 634 no. 2 BGB (own removal of the defect with compensation for expenses) is excluded. The contractual partner shall set us a reasonable period of at least 2 weeks for subsequent performance. We shall only bear the reasonable expenses of subsequent performance up to the amount of the purchase price. Expenses of subsequent performance which are a result of the fact that the delivered goods are relocated to another place than the contractual partner's place of business shall be borne by the contractual partner.
5. The warranty shall not cover any damages resulting from normal wear and tear, faulty installation and assembly works, or incorrect commissioning, unless this is attributable to us, from faulty or negligent treatment or maintenance, inappropriate use as well as non-compliance with the assembly or operating instruction and of the relevant standards. The warranty does not extend to the normal wear of wearing parts. Wearing parts are all movable parts, all drive parts and tools. The warranty claims expire if the contractual partner or third parties perform modifications or maintenance works without our approval.
6. Warranty claims of the contractual partner shall fall under the statute of limitations one year after delivery of the goods, or in case of acceptance after acceptance of the work, provided that the contractual partner is no consumer as defined in § 13 BGB. For consumers, the statutory period of limitation shall apply. If subsequent performance is carried out within the scope of warranty obligations, this will not trigger a new start of the limitation period. If, however, the goods are a building or an object which has been used for a building in accordance with its customary use and has caused its defectiveness (building material), the limitation period according to the statutory regulations shall be five years from the date of delivery or acceptance. Special statutory provisions for third-party claims in rem for the restitution of property shall also remain unaffected, in case of fraudulent intent on our part and for claims arising from recourse against suppliers in case of final delivery to consumers.
7. In case of delivery recourse according to § 478 BGB (recourse of the contractual partner in case of claims for defects of a final consumer), the statutory rights of the contractual partner in case of defects shall apply without the restrictions of the claims for defects mentioned in the preceding provisions of this section of these GTC, with the exception of claims for damages. The contractual partner is not obligation to set us the grace period which is otherwise required for the defect claimed by the final consumer. Claims for damages shall be governed by paragraph VI. 1. of these GTC. The contractual partner's claim for reimbursement of expenses according to § 478 para. 2 BGB shall be governed by paragraph VI. 2. of these GTC accordingly.
8. Unless the contractual partner is a consumer as defined in § 13 BGB, it shall bear the full burden of proof for all prerequisites for asserting any claims, in particular for the defect itself, for the time when the defect was identified, and for the timely notification of the defect.

VI. Liability, withdrawal

1. Claims for damages against us and our officers, employees, workers, representatives and vicarious agents are excluded irrespective of their legal cause, in particular on the grounds of impossibility, default, poor performance, breach of contractual secondary obligations, other obligations arising from the contractual relationship, and tort. This shall not apply to damages resulting from injuries to life, body or health. The exclusion of liability shall not apply to such damages if they result from an intentional or grossly negligent breach of duty on our part or by our executives, if an material contractual duty (cardinal duty – in particular main contractual duty to perform) was violated, or if any other duty which is not classified as material contractual duty has been violated with intent or gross negligence by ordinary vicarious agents. If a material contractual duty was violated or in case of the intentional or grossly negligent violation of any other duty by ordinary vicarious agents, the liability amount shall be limited to the typically foreseeable damage. The exclusion of liability shall also not apply to claims under the Product Liability Act, as well as to claims covered by a guarantee provided by us. Paragraph IV. 4. of these GTC shall remain unaffected from the provisions of this paragraph VI. 1.
2. If the contractual partner claims from us instead of performance to reimburse it for the expenses incurred by it in reliance on the receipt of the services (§ 284 BGB), the amount of such expenses shall be limited to those expenses that would have been incurred by a reasonable third party.

3. If we are in breach of a duty not constituting defective performance on our part, the contractual partner shall be entitled to withdraw from the contract only if we are responsible for such breach of duty.

VII. Reservation of title

1. The supplied goods (reserved goods) shall remain our property until all claims have been fulfilled to which we are entitled from the purchaser and which arise from the purchase agreement and the current business relationship, regardless of whether they are current or will arise in the future, including all current account balance claims.
2. If the purchaser acts in violation of the contract, in particular if it gets in default with the settlement of a payment claim, we are entitled to take back the reserved goods after setting a reasonable grace period for performance. If we take back the reserved goods, this constitutes rescission of the contract. The transport costs incurred for the return shall be borne by the purchaser. It also constitutes rescission of the contract if we pledge the reserved goods. We are entitled to dispose of reserved goods we have taken back. The revenue from the disposal will be set off with the amounts owed by the purchaser, after deducting a reasonable amount for the costs of the disposal.
3. The goods subject to a reservation of title must not be pledged to third parties nor assigned by way of security before the secured claims have been fully settled. If the reserved goods are pledged by third parties or in case of any other interventions of third parties, the purchaser is obligated to state that the goods are our property, and shall immediately inform us in writing so that we are able to enforce our ownership rights. If the third party is unable to compensate us for the judicial or extrajudicial costs incurred in this connection, the purchaser shall be liable for these costs.
4. The purchaser is authorised to resell and/or process the goods which are subject to reservation of title in the proper course of business until such authorisation is revoked by us. In such a case, the provisions below shall apply in addition:
 - (a) The reservation of title extends to the products resulting from the processing, mixing or combination of our goods at their full value, and we shall be deemed to be the manufacturer. If the ownership rights of third parties remain in effect in case of processing, mixing or combination with third-party goods, we shall acquire joint ownership in proportion to the invoiced value of the processed, mixed or combined goods. Apart from that, the same shall apply to the resulting product as for the goods delivered under reservation of title.
 - (b) The purchaser assigns any claims against third parties resulting from a resale of the goods or the product in total or in the amount of our possible joint ownership share according to paragraph 4. (a) above to us as a collateral, and we accept the assignment. The obligations of the purchaser mentioned in paragraph 3. shall also apply in consideration of the assigned claims. If the purchaser has sold this claim under a genuine factoring agreement, it shall assign the claim taking its place against the factor to us, and we accept the assignment. If the claim from a resale is set by the purchaser on a current account relationship with its customer, the purchaser shall assign its claim under the current account relationship in the amount of the invoiced value of the reserved goods to us, and we accept the assignment.
 - (c) In addition, the purchaser shall also assign those claims with regard to the reserved goods which arise from another legal basis against its customers or third parties (in particular claims based on tort and claims for insurance benefits) by way of security to us in their full amount, and we accept the assignment.
 - (d) The purchaser remains authorised to collect the assigned claims also after the assignment until we revoke such authorisation. Our right to collect the claim ourselves shall remain unaffected thereof, however, we undertake not to collect this claim as long as the purchaser duly meets its obligations to us, in particular its payment obligations, is not in default with its payments, no application for the opening of insolvency proceedings has been filed, and there is no other deficiency of its performance capacity. However, if this is the case, we may request that the purchaser shall inform us on the assigned claims and their debtors, provides all information required for collection, hands over the associated documents, and informs the debtors (third parties) on the assignment.
 - (e) If a liability related to payment by way of a bill of exchange should accrue to us in connection with the payment of the purchase price by the purchaser, the reservation of title as well as the underlying claim from the delivery of goods shall not expire before the purchaser as the drawee honours the bill of exchange.
 - (f) If the realisable value of the collateral exceeds our claims by more than 10%, we shall upon request of the purchaser release collaterals of our choice.

VIII. Insurance of the reserved goods

1. The purchaser undertakes to take out and maintain insurance for the reserved goods at its own expense against the customary risks (fire, water, theft, damage, etc.) until expiry of the reservation of title. The sum insured shall be equal (at least) to the purchase price. The purchaser assigns all resulting present and future claims against the insurance company with immediate effect to us, and we accept the assignment. The purchaser shall inform the insurance company that we own the insured goods, that we are entitled to all rights resulting from the insurance contract, provided that they relate to the reserved goods, and that we take over only the rights but not the obligations of the insurance contract, with the proviso that the purchaser is not entitled to cancel the insurance contract without our approval.
2. At our request, the purchaser shall immediately provide us with all information on the insurance cover, and hand over all documents that may be required to claim the insurance benefits. Reliance on any right of retention is excluded with regard to the right to obtain information and recover possession. If the purchaser has not or not sufficiently taken out insurance, we are entitled to take out insurance at its risk and expense.

IX. Return

In case of the return of warehouse goods, a processing fee of 20% of the value of the goods shall be charged, but at least € 10.00.

The same processing fee shall apply for ordered goods, but at least those costs are estimated which the downstream supplier has charged, plus an administrative surcharge of 20% of the value of the goods. The return shall be effected only after our prior approval.

A return of custom-made products is excluded.

X. Data protection

The contractual partner is herewith informed that we process the personal data collected within the scope of the business relationship in accordance with the provisions of the Federal Data Protection Act.

XI. Place of jurisdiction / Place of performance

1. Unless otherwise stipulated in the contract or the order confirmation, our place of business in Verl shall be the place of performance.
2. Place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship, also within the scope of legal proceedings relating to a cheque or bill of exchange, shall be our place of business in Verl, provided that the contractual partner is a merchant, a legal entity under public law or a special fund under public law. However, we are also entitled to take legal action at the general place of jurisdiction of the contractual partner.
3. These GTC and all legal relationships between us and our contractual partner shall be governed by the law of the Federal Republic of Germany, excluding international uniform law, in particular UN sales law. Requirements and effects of the reservation of title under paragraph VII. are governed by the law of the place where the respective object is stored, if under that law the choice of German law would be inadmissible or invalid.

XII. Miscellaneous

1. The transfer of rights and obligations of the contractual partner under the contract concluded with us shall require our written approval to be valid.
2. If individual provisions should be or become invalid, or if there is any loophole in the contract, this shall not affect the validity of the other provisions.

This English version of the General Terms and Conditions is not binding and for convenience and information purposes only. In all cases, the German language version shall prevail.