



*Die Handschrift der Werbung*

## General Terms and Conditions (GTCs)

Valid as of: 1 October 2016

Our General Terms and Conditions (GTCs) are valid in the current version.  
uma Schreibgeräte Ullmann GmbH reserves the right to review the GTCs and, if need be, to amend them unilaterally.  
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## **General Conditions of Sale and Delivery**

### **Section 1 General information – scope of application**

1.1.

These Terms and Conditions apply to business transactions with companies.

1.2.

Only our terms and conditions apply. We do not accept any general terms and conditions of the Customer, which are contrary to our terms of business or deviate from them, unless we have expressly agreed to their validity in writing. Our terms and conditions also apply if we carry out, without any reservation, production or delivery to the Customer even in the knowledge that the Customer has conflicting terms that deviate from our terms and conditions.

### **Section 2 Offer – offer documents**

2.1.

Unless otherwise agreed upon, our offer is without obligation.

2.2.

If the order qualifies as an offer, we can accept it within two weeks.

2.3.

Orders will only materialise upon our written confirmation of the order. Only our order confirmation is decisive for the scope of the service contractually owed. Verbal agreements are only valid if they have been confirmed by us, in writing. This also applies in particular to supplementary agreements, amendments or subsidiary agreements. The properties specified in the order confirmation shall comprehensively define the characteristics of the delivery item. In particular, public statements made by us or third parties, such as the depiction of product properties, in public shall contain no descriptions of the delivery items that supplement or change the order confirmation. Minor colour differences between the catalogue images and image data in our online media are possible.

2.4.

We retain the ownership and copyright to illustrations, drawings, calculations and other documents. This also applies to such written documents, which are described as "Confidential". Prior to transferring them to third parties, the Customer requires our express written consent.

Tools for special models or tools for the finish of the writing instruments (photos) are our property. We undertake to use the purpose-built items for third parties only with the Customer's written permission.

Artwork, such as screens, print templates and etching stencils as well as films are our property. We are not obliged to store them at the end of the contract or to make them available to the Customer. We are entitled to destroy them after use.

### **Section 3 Lump-sum compensation in the event of a withdrawal from the contract**

3.1

If the Customer withdraws from the contract for reasons for which he is responsible, we shall charge a lump-sum compensation amount that is 20% of the net order sum. The assertion of any further damage is not excluded. The Customer is entitled to prove that no loss has occurred or that any loss is significantly lower than the lump sum.

### **Section 4 Prices – terms of payment – offsetting – right of withdrawal – assignment**

4.1.

Unless otherwise stated in the order confirmation, our prices shall be ex works, exclusive of packaging, plus the statutory value-added tax applicable at the time.

4.2.

Unless a fixed price agreement has been made, we reserve the right to change prices on account of changes in wage, material or distribution costs for deliveries made 3 months or later after contract conclusion. These costs will be proven to the Customer upon request.

4.3.

Any discount on account of prompt payment requires a special written agreement.

4.4.

Unless otherwise stated in the order confirmation, the invoice amount shall be payable net, without deduction, within 30 days from the date of the invoice. If the Customer is in default of payment, we are

entitled to claim interest on arrears at the rate of 9% above the respective base rate of the European Central Bank annually, plus a lump sum of €40 for a delay in payment.

4.5.

The Customer shall settle his payment obligations arising from the contract in euros.

4.6.

Our invoicing is done electronically. At the Customer's request, the invoice can also be sent by post.

4.7.

The Customer can only offset against counterclaims if these counterclaims are legally established or undisputed, or are in a strict synallagmatic relationship with the claim of the Customer. The Customer may also offset against contested counterclaims that are ready to be adjudicated upon. The right of set-off exists only insofar as no statutory set-off opposes it.

4.8.

Moreover, the Customer is entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship and it is a matter of an uncontested or legally established claim, or the claim exists because of a gross breach of contract by the user. Should any defects be present, the Customer is not entitled to a right of retention insofar as this is not proportionate to the defects and the probable costs of the supplementary performance (especially the correction of defects). The Customer shall not be entitled to assert claims and rights for defects of the works if the Customer has not made due payments and the amount due (including any payments made) is proportionate to the performances that have defects.

4.9.

The Customer may only assign claims arising from the contract with our consent.

## **Section 5 Partial deliveries – excess/shortfalls in quantities – withdrawal from the contract by the Customer – lump-sum compensation**

5.1.

We are entitled to perform partial deliveries and partial services within the agreed delivery periods.

5.2

We are entitled to make excess or short deliveries of printed goods, or goods otherwise individualised or custom-made, of up to 5% of the goods ordered. The Customer is obliged to accept the excess or short delivery. The purchase price increases or decreases in proportion to the additional or reduced performance. Delivery that is accurate as to quantity is possible against a surcharge of 3% of the value of the goods.

5.3

If the Customer withdraws from the contract for reasons for which he is responsible, we shall charge a lump-sum compensation amount of 20% of the net order sum. The assertion of any further damage is not excluded. The Customer is entitled to prove that no damage has been incurred or that any damage is significantly lower than the lump sum.

## **Section 6 Time of performance**

6.1.

The commencement of the time of performance stated by us presupposes the timely and proper fulfilment of the Customer's obligation to cooperate, in particular with regard to the clarification of all technical questions. This applies in particular in cases where the production of parts to be manufactured is agreed on the basis of plans and other documents supplied by the Customer. In such cases, delayed performance or non-compliance with the performance obligation on account of errors contained in these documents is not attributable to us. The defence of an unfulfilled contract is reserved.

6.2.

If the non-observance of deadlines is for reasons of *force majeure*, e.g. mobilisation, war, insurgence, or similar events not foreseen by the user, e.g. strike or lock-out, the period of performance is extended by the amount of time during which the event or its effects persisted.

6.3.

In the event of a delay in the performance, we shall be liable in cases of intent or gross negligence by ourselves, a representative, or a vicarious agent, in accordance with the statutory provisions. Furthermore, we shall be liable in the case of culpable injury to life, body or health in accordance with the legal provisions. In the event of gross negligence, however, our liability is limited to the foreseeable damage typical of the contract concerned. Beyond the cases in clause 1 and clause 2, our liability for delay shall be limited to a total of 5% of the value of the delivery/performance in case of compensation

on top of performance, and to a total of 15% of the value of the delivery/performance in the event of compensation instead of performance, which includes the reimbursement of wasted expenses. Any further claims of the Customer shall be excluded, even after the expiry of a period for performance that had been set for us. The limitation does not apply in the event of the culpable violation of essential contractual obligations. However, the claim for compensation on account of the culpable violation of essential contractual obligations is limited to the type of foreseeable damage typical of the contract concerned insofar as a further case in accordance with clause 1 is not given at the same time. The Customer's right to withdraw from the contract remains unaffected. The above provisions do not imply any change in the burden of proof to the detriment of the Customer.

6.4.

If the Customer is in default of acceptance or if he culpably violates other cooperation obligations, we are entitled to demand compensation for the damage incurred, including any possible additional expenses. In this case, the risk of accidental loss or the accidental deterioration of the goods shall also pass to the Customer at the time at which the latter is in default of acceptance. We reserve the right to assert further claims.

## **Section 7 Transfer of risk**

7.1.

Unless otherwise specified in the order confirmation, delivery is "ex works".

7.2.

If the goods are dispatched to the Customer at the Customer's request, the risk of the accidental loss or the accidental deterioration of the goods shall be transferred to the Customer upon dispatch to the Customer, at the latest upon leaving the factory/warehouse. This applies irrespective of whether the goods are dispatched from the place of performance or who bears the freight costs.

If the Customer so desires, we will cover the risks of delivery by taking out transport insurance. Costs incurred in this respect shall be borne by the Customer.

## **Section 8 Guarantee of defects**

8.1.

The Customer has to examine the goods as soon as we have delivered them, insofar as this is possible in accordance with proper business transactions, and, should a defect be detected, to inform us immediately. If the Customer omits to notify us, the goods shall be deemed to be approved, unless it is a matter of a defect that was not apparent during the inspection. If such a defect becomes evident at a later point in time, notification thereof must be made immediately after its discovery, otherwise, the goods shall also be deemed to be approved in respect of this defect; (Section 377 HGB [German Commercial Code]).

8.2.

In the event of a defect in performance being present, we are entitled, at our discretion, to supplementary performance in the form of remedial action or the manufacture of a new item. In the event of a remediation of a defect, we are obliged to bear all the costs required for the purpose of remedying the defect, in particular transport, travel, labour and material costs, provided they are not increased by the fact that the service or the product was taken to another location other than the place of performance, unless the transportation corresponds to its intended use.

8.3.

Only insofar as the supplementary performance fails is the Customer entitled, at his discretion, to declare his withdrawal from the contract or to demand a corresponding decrease in the compensation (reduction), without prejudice to any claims for damages.

8.4.

Claims for defects cannot be asserted in cases of insignificant deviations from the agreed quality, of only minor impairment of usefulness, natural wear and tear or damage arising after the passing of risk from faulty or negligent handling, excessive strain, unsuitable equipment, or from particular external influences not assumed under the contract. Claims based on defects attributable to improper modifications or repair work carried out by the Customer or by third parties and the consequences thereof shall likewise be excluded.

8.5.

The Customer's claims against us under a right of recourse against us pursuant to Section 478 of the German Civil Code (BGB) is limited to cases where the Customer has not concluded an agreement with his customers that goes beyond the scope of the statutory provisions governing claims based on defects. For the extent of the Customer's claim to recourse against us pursuant to Section 478(2) 2

BGB, subsection 6.2. applies correspondingly.

8.6.

The Customer's claims for damages on account of a defect in quality are excluded. This shall not apply in cases of intent or gross negligence on our part or on the part of a representative or vicarious agent or in the event of a culpable injury to our lives, body or health. In such cases, we shall be liable according to the statutory provisions. However, in the event of gross negligence, liability on our part is limited to the type of foreseeable damage typical of the contract concerned, unless another of the exceptional cases listed in clause 2 or 4 of this section is present. For the rest, we are only liable in accordance with the Product Liability Act, on account of the culpable violation of essential contractual obligations, or insofar as we have maliciously concealed the defect or have assumed a guarantee for the quality of the delivery item. However, the claim for damages for the infringement of essential contractual obligations is limited to the type of foreseeable damage typical of the contract concerned, unless another of the exceptional cases listed in clause 2 or clause 4 of this section exists. The above provision does not imply a change in the burden of proof to the disadvantage of the Customer.

## **Section 9 Other claims for damages**

9.1

In cases of intent or gross negligence on our part, or on the part of a representative or vicarious agent, or in the event of a culpable injury to our lives, body or health, we shall be liable in accordance with the statutory provisions. In the event of gross negligence, however, our liability is limited to foreseeable damage typical of the contract concerned, unless another of the exceptional cases listed in clause 1 or 3 of this section is present. For the rest, we are only liable in accordance with the Product Liability Act, on account of the culpable violation of essential contractual obligations, or insofar as we have maliciously concealed the defect or have assumed a guarantee for the quality of the delivery item. However, the claim for damages for the infringement of essential contractual obligations is limited to the type of foreseeable damage typical of the contract concerned, unless another of the exceptional cases listed in clause 2 or clause 4 of this section exists.

9.2.

The provisions of clause 1 above apply to all claims for damages (in particular for damages in addition to performance and compensation instead of performance), irrespective of the legal basis, in particular due to defects, the violation of obligations arising from the contractual relationship or tort. They also apply to the claim for the reimbursement of wasted expenditure. However, liability for delay is determined in accordance with item 4 of these provisions, liability for impossibility according to item 8 of these provisions.

9.3.

The above provision does not imply a change in the burden of proof to the Customer's disadvantage.

## **Section 10 Impossibility**

We are liable in the case of impossibility of delivery/performance in cases of intent or gross negligence on our part or on the part of a representative or vicarious agent as well as in case of culpable injury to life, body or health in accordance with the statutory regulations. In cases of gross negligence, however, our liability is limited to the type of foreseeable damage typical of the contract concerned, unless another of the exceptional cases listed in clause 1 is given. Beyond the cases of clause 1 and clause 2, our liability for impossibility with regard to damages and reimbursement of wasted expenditure is limited to a total of 10% of the value of the delivery/service. Further claims of the Customer arising account of impossibility of delivery are also excluded after the expiration of a time limit set by us for the performance. The Customer's right to cancel the contract remains unaffected. The above provision does not imply a change in the burden of proof to the Customer's disadvantage.

## **Section 11 Limitation of action**

11.1.

The period of limitation for claims and rights arising on account of defects of the services/delivery – for whatever legal reason – is one year. However, this does not apply in the case of Section 438(1)1 BGB (legal defect in immovable property), Section 438(1)2 BGB (buildings, a thing that has been used for a building), Section 479(1) BGB (entrepreneur's claims under a right of recourse) or Section 634 (1) No.

2 BGB (work whose result consists in the manufacture, maintenance or alteration of a thing or in the rendering of planning or monitoring services for this purpose). The cases excluded in sentence 2 above are subject to a period of limitation of three years.

11.2.

The period of limitation pursuant to clause 1 shall also apply to all claims for damages asserted against us which are connected with the defect, irrespective of the legal basis of the claim.

11.3.

The periods of limitation pursuant to subsection 9.1 shall be subject to the following conditions:

The periods of limitation do not generally apply in the case of intent or in the case of malicious concealment of a defect or insofar as we have assumed a guarantee for the nature of the contractual object.

Moreover, the periods of limitation for claims for damages do not apply in the case of gross negligent breach of duty, in the case of a culpable breach of essential contractual obligations not based on the delivery of a defective item or the provision of a defective work performance, in cases of a culpable injury to life, body or health or for claims asserted under the Product Liability Act (Produkthaftungsgesetz).

11.4.

The statute of limitations pursuant to all claims commences upon delivery, with work performance upon acceptance.

11.5.

Unless explicitly stated otherwise, the statutory provisions regarding the commencement of the statute of limitations, the suspension of the statute of limitations, the inhibition and the recommencement of time limits shall remain unaffected.

11.6.

The above provisions shall apply *mutatis mutandis* to claims for damages that are not related to a defect. For the limitation period, subsection 9.1. sentence 1 shall apply.

11.7.

The above provision does not imply a change in the burden of proof to the Customer's disadvantage.

## **Section 12 Reservation of proprietary rights**

12.1.

We reserve full proprietary rights concerning purchased goods until all payments arising from the delivery contract with the Customer have been received. In the event of a breach of contract by the Customer, in particular in the event of a delay in payment, we shall be entitled to take back the work after setting a deadline for the execution of the contractual action. In cases where the law does not provide for a deadline, we are entitled to take back the work without the prior setting of a deadline. The fact that we take back the work does not constitute a withdrawal from the contract, unless we have expressly stated this in writing.

When we pledge the work, it shall always be deemed as a withdrawal from the contract.

After having taken back the work, we shall be entitled to make full use of it; its value shall be credited to the Customer's account in order to reduce his liabilities, minus appropriate utilisation costs.

12.2.

The Customer is obliged to handle the work carefully; in particular, he is obliged to insure it at his own expense against fire, water and theft damage at his own expense, with the insured sum being adequate to cover the replacement value. If maintenance and inspection work is required, the Customer must carry it out in good time at his own expense.

12.3.

In the event of seizures or other interventions by third parties, the Customer has to notify us immediately in writing so that we can bring an action pursuant to Section 771 ZPO (Code of Civil Procedure). If the third party is not in a position to reimburse us the costs of an action pursuant to Section 771 ZPO, the Customer is liable for the loss incurred by us.

12.4.

The Customer is entitled to resell the work in the ordinary course of business; but he hereby already assigns to us all claims to the amount of the final invoice amount (including value-added tax) agreed with us, which arise from the resale vis-à-vis his customers or third parties, irrespective of whether the work has been resold without or after processing. The Customer is also authorised to collect this claim after assignment. Our authority to collect the claim itself remains unaffected. However, we undertake not to collect the claim as long as the Customer complies with his payment obligations arising from the revenue collected, is not in arrears with payment, and, in particular, no application for the opening of insolvency or settlement proceedings is made or the suspension of payments is present. Should this

be the case, however, we can demand that the Customer notify us of the assigned claims and their debtors, provide all the necessary information for collection, hand over the associated documents and notify the debtor (third party) of the assignment.

12.5.

The processing or alteration of the work by the Customer is always carried out on our behalf.

The right of the contracting party to the work continues with regard to the altered item. If the work is processed with other items not belonging to us, we acquire co-ownership of the new item in the ratio of the objective value of our work to the other processed items at the time of the processing.

In addition, the same rules shall apply to the product that has arisen through processing as for the purchased goods delivered under our reservation of proprietary rights.

12.6.

If the object of purchase is inseparably mixed with other objects not belonging to us, then we acquire co-ownership of the new object in the ratio of the objective value of our purchased object to the other mixed objects at the time of the mixing.

If the mixing is carried out in such a way that the Customer's item is to be regarded as the main item, then it is agreed that the Customer will transfer to us co-ownership of the main item in the ratio of the objective value of our purchased object to the other mixed objects at the time of the mixing.

The Customer shall store the property resulting in this way on our behalf.

12.7.

In order to secure our outstanding amounts, the Customer shall hereby also undertake to concede to us such amounts he is entitled to collect from third parties as a result of any linkage of the goods purchased from us to another item of real estate.

12.8.

We undertake to release the collateral due to us upon the Customer's request, insofar as the realizable value of our collateral exceeds the obligations to be secured by more than 10% or the nominal amount by more than 50%; the choice of the collateral to be released is our responsibility.

### **§ 13 Court of jurisdiction – place of execution – applicable law**

13.1.

If the Customer is a merchant, our place of business shall be the place of the court of jurisdiction; however, we are also entitled to take the Customer to court at his place of residence.

13.2.

Unless otherwise stated in the order confirmation, our registered office shall be the place of performance.

13.3

The legal relations of the parties are subject to German law, excluding the principles on conflicts of law relating to international private law and excluding the UN Sales Convention.

### **Section 14 Severability clause**

Should individual provisions of this contract be or become ineffective, this will not affect the validity of the other provisions of this contract.