

**Trendteam GmbH & Co. KG**  
**Terms and Conditions**

**I. Applicability of Terms and Conditions**

1. We conclude our contracts only subject to the terms and conditions hereafter. These Terms and Conditions, hereinafter ToC, shall be applicable to all contracts with the person placing the order, including future ones, and even if they have not been expressly agreed upon once again. Any stipulations different from these ToC shall have to be confirmed in writing by us. Terms and Conditions of the person placing the order shall not be binding for us unless we have in writing acknowledged same. A formal protest shall not be required.
2. Individual stipulations agreed with the person placing the order, provided they have been made in writing, shall have precedence before these ToC. Any legally pertinent declarations as well as any communication that the person placing the order is required to give us after contract conclusion (including e.g., deadlines, notice of defect) shall also require writing. Declarations in text form are deemed to satisfy the requirement for writing.
3. These ToC shall apply only if the person placing the order is an entrepreneur within the meaning of Art. 14 BGB.

**II. Offers, Scope of Delivery**

1. Our offers are non-binding.
2. Documents belonging to our offers such as images, drawings, indications of weight and measure and similar are only approximate and not contractual unless expressly declared binding by us. We reserve all rights on estimates, drawings and other such documents and data, independent of their nature and support, and these are and remain our intellectual property. Such documents may not be disclosed to third parties without our express approval. That applies also to samples made available to the person placing the order.
3. Our order confirmation, and that alone, shall be material for the scope of delivery. A partial delivery may be made if this is not an excessive burden to the person placing the order.
4. The person placing the order may assign claims against us to others only with our express approval. This shall not apply to claims for payment that the person placing the order may have against us.

### **III. Prices, Terms of Payment**

1. Prices are net plus VAT. Unless stipulated differently, prices for deliveries shall be Ex Works with Packaging. In case of delivery to foreign country or to a foreign branch office of the person placing the order, we shall deliver Ex Works (EXW) pursuant to Incoterms 2020.
2. Terms of Payment are as contained in our Order Confirmation.
3. Prices may be adapted if we can prove that after contract conclusion an increase in cost has occurred for which we are not responsible.
4. The person placing the order may offset or retain amounts only if such claims are not in dispute or have been determined by a legally binding and final judgement.

### **IV. Delivery Period**

1. The deadlines found in the Order Confirmation, or which have otherwise been agreed upon with the person placing the order, shall be material. We regret that we are able to comply with such deadlines only if the person placing the order shall timely submit all documents that that person is bound to submit, and only if the agreed upon Terms of Payment and other obligations have been complied with. Should these requirements not be timely met, any period shall be extended by the duration of such delay.
2. For deliveries, a deadline is considered complied with if a shipment that is ready for use is dispatched or collected during that period. Where a delivery is delayed for reasons attributable to the person placing the order, the deadline shall be deemed complied with if within the agreed period it has been communicated that the goods are ready for shipment. Where goods ready for shipment are not timely collected for reasons attributable to the person placing the order, we shall be entitled to require 3% of the net invoice amount as storage fee for each month or fraction thereof, not to exceed 5% of the net invoice amount. If costs really incurred exceed that amount, we may claim such really incurred costs.
3. Where we are prevented from fulfilling our obligations by the occurrence of unforeseeable extraordinary circumstances which we could not avert despite reasonable care, regardless of whether they occurred in our factory or with our supplier - e.g. operational disruptions, official interventions, delays in the delivery of essential raw and building materials, energy supply difficulties, pandemics - then, if the delivery or service is not thereby made impossible, the delivery period shall be extended for the duration of such hindrance. Should it become impossible to fulfil our obligation because of any one of the reasons aforesaid, our obligations shall lapse.
4. The delivery period is extended as well in case of strike, tag-out, close-out etc. as far as reasonable. Here too, should delivery become impossible, our contractual obligations shall lapse.

5. Where in any one of the cases above the delivery period becomes unreasonably long, the person placing the order is entitled to withdraw from the contract. Claims for damages shall be excluded.
6. Where any one of the circumstances above obtains with the person placing the order, the same consequences in Law shall apply to its obligation of acceptance of the goods.
7. Both contract parties are obliged to inform the respective other party forthwith of any disturbances in the performance of the contract.

#### **V. Dispatch and Transfer of Risk**

1. Risk transfers to the person placing the order at the moment the order is dispatched. Where the dispatch is delayed for reasons attributable to the person placing the order or one of its agents, the risk shall transfer already on the day that we communicate that the goods are ready for shipment.
2. Insurance will be taken out only if the person placing the order expresses such a wish in writing, and only against advance payment.

#### **VI. Rights of the Person placing the Order in case of Defects**

1. Claims of the person placing the order due to defects require that the delivery item does not have the contractually agreed quality or, if such has not been agreed, is not suitable for the use assumed in the contract or for the usual use.  
Customary deviations in colour, shape, measure or material of the delivery item shall not be grounds for claiming a defect.
2. We hereby assign our claims against suppliers of material components manufactured by Third Parties to the person placing the order. Should material components manufactured by Third Parties turn out to be defective, the person placing the order may claim our liability only if an attempt for out-of-court settlement with that Third Party has failed.
3. Where a claim for defects turns out to be well-founded, we shall be entitled to repair or replace the item, at our choosing, within a period of not less than 30 working days. Where such supplementary performance fails, the person placing the order shall be entitled to lower the price or shall - if the non-contractual property of the item is not merely insignificant - be entitled to withdraw from the contract. Besides this, the person placing the order shall be entitled to require damages or reimbursement of cost, if applicable. Where the person placing the order withdraws from the contract, that person must give us back the delivery item and shall have to

pay a reasonable sum for the period that it has made use of the delivery item, irrespective of other claims.

4. Other possible claims of the person placing the order according to Art. 439 Sect. 3 BGB are not affected.
5. Claims by the person placing the order due to the expenses necessary for the purpose of supplementary performance, in particular transport, travel, labour and material costs, are excluded if the expenses increase because the delivery item has been subsequently moved to a location other than the place of delivery by the person placing the order or by a third party, unless such change of location corresponds to the intended use of the delivery item or was agreed with us when the contract was concluded.

Transport costs incurred in the scope of the supplementary performance shall be borne by the person placing the order.

6. If a delivery item is returned, the person placing the order shall pay us a fee for usage. To calculate this, the usual rental amount shall be taken into consideration.
7. Claims by the person placing the order because of defects shall lapse after 12 months, starting from the handover of the delivery item. This shall not apply where the Law, especially in Articles 438 Sect.. 1 No. 2, 478 Sect.. 1 and 634 a Sect.. 1 No. 2 BGB, dictates longer periods.
8. Claims for defects shall be limited as follows: Where non-material contractual obligations have been breached because of slight negligence, we shall not be liable. We shall not be liable for damages consequential to a defect except in case of intentional wrongdoing, gross negligence or the breach of material contractual obligations. Where we are liable for damages consequential to a defect, such liability shall be limited to foreseeable damages that are not attributable to extraordinary circumstances. Material contractual duties are those without whose fulfilment the orderly execution of the contract is not conceivable and upon whose observance the person placing the order is entitled to rely.

It is for us to demonstrate that circumstances exist which limit the liability in the manner aforesaid.

9. Where a limitation of liability exists in the manner aforesaid, that shall not limit claims attributable to us because of harm to body and health as well as loss of life of the person placing the order or its agents. Claims by the person placing the order that stem from Product Liability Law, claims under a warranty that we have given, and claims for wrongfully keeping silent about a defect shall not be affected either. As far as these claims are concerned, the periods of limitation contained in the Law shall apply.

## **VII. Limitation of Liability, Damages**

1. The following limitations shall apply to our contractual and non-contractual (tort) liability as well as a liability for culpable actions at the time of contract conclusion. It is for us to prove that facts exist which limit or exclude liability.
2. We shall not be liable for the breach of non-material contractual duties because of slight negligence.

Where material contractual duties have been breached because of slight negligence, the claim for damages shall be limited to damages foreseeable and typical to the contract in question. Where non-material contractual duties have been breached because of gross negligence, we shall be liable for the foreseeable damage typical to that contract. For the rest, our liability is unlimited. Where we are in default with delivery because of a slightly negligent breach of contractual obligations, our liability is limited to 5% of the agreed net price.

Material contractual duties are those without whose fulfilment the orderly execution of the contract is not conceivable and upon whose observance the person placing the order is entitled to rely.

3. Our liability for loss of life or harm to body or health is not subject to limitations of liability.
4. The aforesaid limitations of liability shall not apply to possible claims of the person placing the order that stem from Product Liability Law.
5. As far as the Statute of Limitations is concerned, Nos. VI. 6 and 8 shall apply *mutatis mutandis*.

## **VIII. Retention of Title**

1. Goods delivered shall remain our property until the whole agreed purchase price including all claims from the business relationship, even future ones, has been paid.
2. The person placing the order shall have the right to resell the goods within the scope of an orderly conduct of business. The person placing the order already now transfers to us any and all claims originating from such resale of goods under retention of title, notably its claim for payment against its own purchasers. We hereby accept such transfer. The person placing the order shall be required upon our request to make known to its debtors that this transfer has occurred. Claims and the names of the debtor of the person placing the order have to be communicated to us.
3. The person placing the order shall be entitled to collect claims originating from resale. Where a default of payment occurs or where we become aware of circumstances which in commercial

appreciation are suitable to lower the creditworthiness of the person placing the order, we shall be entitled to revoke this right of collection of the person placing the order.

4. Further processing of goods under retention of title shall be done on our behalf within the meaning of Art. 950 BGB. If goods under retention of title are processed or mixed with other items that do not belong to us, we shall acquire co-ownership of the new item in the ratio of the net invoice value of the goods under retention of title to the amount of the net invoice value of the other goods used at the time of processing or mixing.
5. It is not allowed to give security upon goods which are our property as chattel mortgage. Where Third Parties gain control of goods under retention of title, especially in the case of attachment or seizure, the person placing the order shall make known that we remain the owner of such goods and shall submit to us forthwith a copy of the official protocol of such attachment or seizure.
6. In case of non-contractual behaviour of the person placing the order, we shall be entitled to withdraw from the contract and to ask that goods that we have delivered shall be handed back to us.

#### **IX. Place of Fulfilment, Place of Jurisdiction and applicable Law**

1. Place of fulfilment for all obligations originating from the contractual relationship shall be Steinheim.
2. Place or jurisdiction for all disputes originating from the contractual relationship, where the person placing the order is a merchant, a legal person under public law or a special fund under public law, shall be Steinheim. We shall, however, be entitled to bring a case before the Court locally competent for the headquarters of the person placing the order.
3. German Law shall apply to the exclusion of any other Law. The application of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (UN Convention/CISG) is excluded.

#### **X. Data Protection**

The Privacy Notice contained in our homepage shall apply: [www.trendteam.eu](http://www.trendteam.eu).