

General Terms and Conditions of Sale of Höhne GmbH ("GTC")

I. General Provisions – Scope – Form

1. Our General Terms and Conditions of Sale (GTC) apply to the delivery of movable property in accordance with the contract concluded between the customer and us, provided that the customer is an entrepreneur (Section 14 of the German Civil Code [BGB]), a legal person under public law or a special fund under public law.
2. Our GTC apply exclusively; we reject any terms and conditions of our customers contrary to, supplementary to or deviating from our GTC, unless we have expressly agreed to their validity in writing. Our GTC shall apply even if we execute the delivery without reservation with knowledge of terms and conditions of the customer contrary to or deviating from our GTC.
3. Any individual agreements made with the customer in particular cases shall take precedence over these GTC in each and every case. The content of such agreements shall be governed by a written agreement or our written confirmation subject to proof to the contrary.
4. Legally relevant declarations and notices of the customer with regard to the contract (for example, setting a deadline, notice of defects, withdrawal from the contract or reduction of the purchase price) shall be in writing, i.e. in written or text form (e.g., letter, email, fax). Statutory formal requirements, and further evidence, in particular in case of doubts regarding the legitimacy of the declarant, remain unaffected.
5. References to the validity of statutory provisions are only of clarifying significance. Unless otherwise directly amended or expressly excluded in these GTC, the statutory provisions therefore apply, even if there is no explicit clarification.

II. Offer – Conclusion of Contract – Offer Documents

1. Our offers are non-binding. This also applies if we have provided the customer with catalogues, technical documentation, other product descriptions or documents - also in electronic form.
2. The customer's order represents a binding contract offer, which we may accept within one week by sending an order confirmation or by delivering the goods, unless otherwise stated in the order. The acceptance may be declared in writing (for example, by order confirmation or by delivery of the goods to the customer).
3. We reserve ownership and copyright of illustrations, drawings, calculations and other documents.

III. Delivery – Passing of Risk – Acceptance – Default of Acceptance

1. Unless otherwise agreed, the delivery shall be ex works, where the place of performance for the delivery and any subsequent performance ("Nacherfüllung") also is. At the request and expense of the customer, the goods will be sent to another destination ("Versendungskauf", *sale to destination according to buyer's instructions*). Unless otherwise agreed, we are entitled to determine the type of shipment (in particular transport company, shipping route, packaging).
2. The risk of accidental loss and of accidental deterioration of the goods shall pass to the customer upon delivery at the latest. In the case of a sale to a destination according to the customer's instructions, however, the risk of accidental loss and of accidental deterioration of the goods as well as the risk of delay shall already pass upon delivery of the goods to the freight forwarder, carrier or the person otherwise designated to dispatch the shipment. Delivery shall be deemed to have taken place if the customer is in default of acceptance.

IV. Prices - Payment Terms

1. Unless otherwise agreed in individual cases, our prices are "ex works" plus statutory value-added tax.
2. In the case of a sale to a destination according to the customer's instructions (III. paragraph 1.), the customer shall bear the packaging and transport costs, unless otherwise agreed in individual cases. Any customs duties, fees, taxes and other public charges shall be borne by the customer.
3. The purchase price including any ancillary costs must be paid within 30 days of receipt of the goods and without any cash discount deduction, unless otherwise agreed. However, we are also entitled at any time within the scope of an ongoing business rela-

tionship to carry out a delivery in whole or in part only against advance payment. We shall declare a reservation to this effect at the latest with the order confirmation.

4. The customer shall be in default upon expiry of the above payment period. The statutory provisions apply to the consequences of default in payment.
5. The customer shall have rights of set-off only if its counterclaims have been legally established, are uncontested, are recognized by us or are linked to the main claim in a synallagmatic manner. The customer is entitled to exercise a right of retention only insofar as its counterclaim is based on the same contractual relationship.
6. If, after the conclusion of the contract, it becomes apparent that our purchase money claim is jeopardized by the customer's inability to perform (for example, by a petition to open insolvency proceedings), we shall be entitled to refuse performance and – if applicable after setting a deadline – to withdraw from the contract in accordance with the statutory provisions.

V. Retention of title

1. Until full payment of all our current and future claims arising from the purchase contract and an ongoing business relationship (secured claims), we reserve title to the goods sold (reserved goods).
2. The goods subject to a retention of title shall not be pledged to third parties or assigned by way of security prior to full payment of the secured claims. The customer must inform us without undue delay of any petition to open insolvency proceedings or measures taken by third parties to levy execution on the reserved goods.
3. In the event of breach of contract by the customer, in particular in the event of non-payment of the due purchase price, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of the retention of title. The demand for return of the goods does not at the same time imply a notice of withdrawal; rather, we are entitled to just demand the return of the goods and reserve the right to withdraw from the contract. If the customer does not pay the due purchase price, we may only assert these rights if we have unsuccessfully set the customer a reasonable deadline for payment or such a deadline is dispensable according to the statutory provisions.
4. The customer is entitled until revoked to resell and/or process the reserved goods in the ordinary course of business. In this case, the following provisions additionally apply.
 - a) The reservation of title extends to the products resulting from the processing, mixing or combination of our goods to their full value, we being considered to be the manufacturer. If when processing, mixing or combining the goods with goods of third parties the ownership of such third parties continues, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In addition, the same applies to the resulting product as to the goods delivered with reservation of ownership.
 - b) The customer hereby already assigns to us by way of security the claims against third parties resulting from the resale of the goods or of the product in total or in the amount of our possible co-ownership share in accordance with the above paragraph without the need for further specific declarations. We accept this assignment. The obligations of the customer mentioned in paragraph 2 also apply with regard to the assigned claims.
 - c) Apart from us, the customer is entitled, until revoked, to collect the assigned claim arising out of the resale. We undertake not to collect the claims as long as the customer meets its payment obligations to us, its ability to perform is not impaired and we do not assert the reservation of title pursuant to paragraph 3. If this is the case, however, we may demand that the customer informs us of the assigned claims and their debtors, furnishes all the information required for the collection of the sums due, hands over the relevant documents and notifies the debtors (third parties) of the assignment. In addition, in this case, we are entitled to revoke the customer's right to resell and further process the goods subject to a reservation of title.
 - d) If the realizable value of the security exceeds our claims against the customer by more than 10%, we shall release securities of our choice at the customer's request.

VI. Claims for defects

1. The statutory provisions apply to the rights of the customer in case of material defects and defects of title (including wrong and short delivery), unless otherwise provided for below. In all cases, the statutory special provisions for final deliveries of the unprocessed goods to a consumer remain unaffected, even if such consumer has further processed them (supplier recourse in accordance with Section 478 BGB). Supplier recourse claims are excluded if the defective goods were further processed by the customer or another entrepreneur, for example by incorporation into another product.
2. The basis of our liability for defects is above all the agreement made with respect to the condition of the goods. All product descriptions which are the subject of the individual contract or have been made public by us, in particular in catalogues or on our website, shall be deemed to be an agreement on the condition of the goods.
3. Insofar as the condition was not agreed, it must be judged according to the statutory provision whether or not there is a defect (Section 434 paragraph 1 sentences 2 and 3 BGB). However, we accept no liability for public statements made by the manufacturer or other third parties (for example, advertising messages).
4. The claims of the customer based on defects presuppose that the customer has complied with its statutory obligations to examine the goods and make a complaint in respect of a defect immediately on receipt of the goods (Sections 377, 381 of the German Commercial Code [*HGB*]). If a defect becomes apparent during the delivery, the examination or at any later date, this must be notified to us in writing without undue delay. In any case, obvious defects must be notified in writing within 5 working days from the date of delivery and any defects that cannot be identified during the examination within the same period from discovery. If the customer fails to carry out a proper examination and/or notification of defects, our liability for the defect which is not or not promptly or properly notified will be excluded according to the statutory provisions.
5. If the delivered item is defect, we may first choose whether to effect subsequent performance ("Nacherfüllung") by rectifying the defect ("Nachbesserung") or delivering a defect-free item ("Ersatzlieferung", *replacement delivery*). Our right to refuse subsequent performance if the legal requirements are satisfied remains unaffected.
6. We are entitled to make the owed subsequent performance conditional on the customer paying the due purchase price. However, the customer is entitled to retain a part of the purchase price which is reasonable in relation to the defect.
7. The customer must give us the time and opportunity required for the owed subsequent performance, in particular hand over the goods complained of for examination purposes. In the case of a replacement delivery, the customer must return the defective item to us in accordance with the statutory provisions. The subsequent performance does not include removal of the defective item or reinstallation if we were originally not obliged to install it.
8. The expenses necessary for the purpose of the examination and subsequent performance, in particular transport, travel, labour and material costs as well as any removal and installation costs shall be borne and reimbursed by us in accordance with the statutory provisions, if there is actually a defect. Otherwise, we may demand compensation from the customer for any costs incurred as a result of the unjustified defect removal request (in particular examination and transport costs), unless the absence of defectiveness was not recognizable to the customer.
9. If the subsequent performance has failed or if a reasonable deadline to be set by the customer for the subsequent performance has expired or is dispensable according to the statutory provisions, the customer may withdraw from the purchase contract or reduce the purchase price. However, the customer shall have no right of withdrawal if the defect is immaterial.
10. Claims of the customer for damages or reimbursement of futile expenses exist also in the case of defects only in accordance with Section VII. below and are otherwise excluded.

VII. Other liability

1. Unless otherwise provided in these GTC including the following provisions, we are liable for any breach of contractual and non-contractual obligations in accordance with the statutory provisions.

2. We are liable for damages – regardless of the legal reason – within the limits of fault-based liability for intent and gross negligence. In case of ordinary negligence we are liable subject to a milder liability standard in accordance with statutory provisions (for example, for care in our own affairs) only
 - a) for damages resulting from injury to life, limb or health,
 - b) for damages resulting from a material breach of a fundamental contractual obligation (obligation the fulfilment of which enables proper execution of the contract in the first place and on whose observance the contract partner regularly relies and may rely); however, in this case, our liability is limited to compensation for the foreseeable, typically occurring damage.
3. The limitations of liability arising from paragraph 2 also apply to breaches of duty by or for the benefit of persons for whose fault we are responsible in accordance with statutory provisions. They do not apply to the extent that we fraudulently concealed a defect or gave a guarantee of quality of the goods and for claims of the customer under the German Product Liability Act (*Produkthaftungsgesetz*).
4. The customer may withdraw from or terminate the contract owing to a breach of duty that does not consist of a defect only if we are responsible for the breach of duty. Otherwise, the statutory requirements and legal consequences apply.
5. The above provisions do not involve a change in the burden of proof to the customer's detriment.

VIII. Limitation of actions

1. In derogation of Section 438 paragraph 1 no. 3 of the German Civil Code (*BGB*) the general limitation period for claims based on material defects and defects of title is one year from the date of delivery. The special statutory provisions regarding limitation of actions, in particular Section 438 paragraph 1 no. 1 and 2, paragraph 3, Sections 444, 445b BGB), remain unaffected.
2. The above limitation periods of the law on sales also apply to contractual and non-contractual claims for damages of the customer which are based on a defect of the goods, unless the application of the regular statutory limitation period (Sections 195, 199 BGB) would lead to a shorter limitation period in individual cases. However, damage claims of the customer pursuant to VII. paragraph 2 sentence 1 and sentence 2 a) as well as according to the Product Liability Act become barred by limitation only according to the statutory limitation periods.

IX. Reservation of performance

1. The performance of the contract is subject to the reservation that this does not conflict with German or other applicable national, EU or international provisions of foreign trade law and embargos or other sanctions.
2. The customer is obliged to provide all information and documents required for export, shipment or import.

X. Choice of Law – Jurisdiction

1. These GTC and the contractual relationship between the customer and us are governed by the law of the Federal Republic of Germany, to the exclusion of international uniform law, in particular the CISG.
2. If the customer is a merchant within the meaning of the German Commercial Code (*HGB*), a legal person under public law or a special fund under public law, the courts of Hamburg-Mitte shall have exclusive – also international – jurisdiction over all disputes arising directly or indirectly from the contractual relationship. The same applies if the customer is an entrepreneur within the meaning of Section 14 BGB. However, in all cases, we are also entitled to bring an action at the place of performance of the delivery obligation in accordance with these GTC or an individual agreement having priority or at the customer's general place of jurisdiction. Priority statutory provisions, in particular on exclusive jurisdictions, remain unaffected.

As at: July 2018