

General Conditions of Sale of Membrana GmbH

I. Exclusive validity of our conditions of sale

All of our quotations and tenders are based on our General Conditions of Sale. We accept purchase orders exclusively on these terms. General terms and conditions of the purchaser or agreements deviating from our Commercial Code shall be binding on us only if we expressly recognise them in writing. With the placing of an order or the acceptance of work of services the purchaser recognises the validity of our General Terms and Conditions not only for the business transaction in question, but also for all future business transactions.

II. Area of application

Our General Terms and Conditions shall apply only to legal transactions with companies in the sense of the German Civil Code.

III. Delivery

1. As soon as the goods leave our works or our warehouse or are made available to the Buyer ready for shipping in a manner establishing default in acceptance, all transport risks shall pass to the Buyer.
2. Periods and deadlines agreed upon for our services and work shall only be deemed to be binding, if they are expressly designated as such by us. A delivery period or a delivery date shall be deemed to have been adhered to, if the goods have left our works or our sales warehouse by the expiry of the period.
3. Force Majeure and other obstructions which are beyond our control such as war, mobilisation, fire, strike and lockout and suchlike shall exempt us, for the duration of such disturbance and its consequences, from the obligation to deliver. Should such circumstances occur, after we have defaulted, the consequences of default shall remain excluded for the duration of their effectiveness. If the delivery period agreed upon is exceeded by more than two months, the Buyer and the Seller shall be entitled to cancel the part of the contract not performed.
4. The Buyer must, if the delivery period is exceeded, set a reasonable extension of the period in writing. If we have not performed the work or service within this additional period, the Buyer shall be entitled to cancel the contract.
5. From the exceeding of a period for performance or a performance date or from performance default the Buyer shall not be entitled to derive any claims for damages against us, unless the exceeding of the period or deadline is due to wilful intent or gross negligence on the part of one of our statutory representative or of one of our vicarious agents.
6. We shall be entitled to effect part deliveries and to invoice each part delivery in itself, as far as a part delivery is tolerable for the Buyer. The re-sale of the goods delivered using make-up and packaging material owned by us shall require our prior written consent.
7. Seller may deliver against any order an excess or deficiency of up to 10 % of the quantity ordered. The quantity actually delivered will be invoiced.

IV. Payment

1. Besides the prices agreed, the Buyer must pay the statutory value-added or turnover tax at the currently applicable rate.
2. Retention of due payments or offsetting shall be possible only on the basis of claims of the purchaser which have been the subject of non-appealable court decisions or have been recognised by us in writing.
3. All costs arising in connection with the contract in the country of the Buyer including fees and taxes which were not known at the time of the conclusion of the contract shall be borne by the Buyer.
4. If, after the conclusion of the contract, circumstances come to our knowledge which appear to make the credit worthiness of the purchaser doubtful, we can, at our discretion, demand cash in advance or provision of securities.
5. In case of late payment by Buyer, Buyer shall, without prejudice to any other right of Seller, be liable to pay interest at a yearly rate of 8 % in excess of the basic interest rate (Euribor).

V. Retention of title

1. The goods supplied by us shall remain our property up to the complete settlement of all of our receivables from the reciprocal business relationship including any possible current account balance. The goods may not be pledged to others or transferred as security.
2. Should we as a result of a combination of the goods supplied by us with the goods of the purchaser not acquire co-ownership, but lose our property, the ownership or co-ownership of the Buyer of the new item shall immediately pass to us upon its creation. All expectant rights which could lead to such an acquisition of ownership or co-ownership by the Buyer, are now already assigned to us by the latter. Any possible transfer necessary by us for the acquisition of the ownership or co-ownership shall be replaced by the agreement that the party ordering the goods preserves the item for us like a borrower, or, if the party ordering a good does not own the item, by the assignment of the entitlement to surrender against the owner to us already agreed hereby. The ownership or co-ownership arising for us is to be treated legally like the original goods. Otherwise the goods supplied by us and subject to retention of title are also to be treated with care.
3. If the Buyer, despite default, does not pay or if the Buyer threatens to become insolvent, the Buyer must, at our request, surrender the goods subject to retention of title for our free disposal. The taking-back of goods subject to retention of title does not constitute any cancellation of the contract.
4. All receivables of the Buyer from re-sale of goods of which we have ownership or co-ownership (goods subject to retention of title) shall already pass to us upon the conclusion of the transaction of sale. This shall apply whether the goods are sold to one or to several customers. The purchaser must collect the receivables assigned. We can revoke this authority, if the purchaser does not punctually meet one of his obligations towards us or if circumstances come to our knowledge which make our rights appear threatened.
5. We undertake, at the request of the Buyer, to release the securities (goods and accounts receivable) to which we are entitled according to the above rules at our discretion, if their

value exceeds the claims to be secured by more than 20 %. For the valuation of the security their realisable value (securing value) is decisive.

6. If our retention of title loses its validity in the case of supplies abroad or for other reasons, the purchaser shall be obliged to grant to us without delay security for the items supplied or any other security for our accounts receivable which will be effective according to the law applicable in each case and come as close as possible to the retention of title according to German law.
7. The Buyer shall be obliged to insure the goods subject to retention of title with the due care and diligence of a prudent businessman and on request to provide evidence to the effect that this insurance has been taken out. The Buyer already now assigns to us his claims under this insurance by way of security.

VI. INCOTERMS

The usual commercial terms such as FOB and CIF shall apply in accordance with the INCOTERMS of the International Chamber of Commerce in the version as of the conclusion of the contract.

VII. Claims concerning defects

1. Notices of defects must be sent in writing at the latest within 30 days of receipt of the goods - in the case of hidden defects without delay after their discovery - stating the invoice and packaging unit. Deviations with regard to the raw or colour shade of the goods supplied shall not be deemed to be defects, unless they lead to a considerable deterioration in the usability of the products made therefrom.
2. In the case of notices of defects sent in good time and justifiably we shall, at our discretion, have the right to reduce the purchase price by a reasonable amount or to supply a replacement. In the event of a failed delivery of replacement the purchaser shall have the choice between repeat delivery of a replacement, reasonable reduction of the price and returning of the goods after the refunding of the purchase price. Defects in one part of our performance shall not entitle the Buyer to complain about the performance as a whole.
3. If the Buyer wishes to further process the goods despite identifiable defects, he shall give us an opportunity to make comments in good time prior to this.
4. Claims of the purchaser based on defects shall be subject to the statute of limitations 12 months after the delivery of the goods.
5. Our warranties shall expire, if the goods are modified by others, moreover, our warranty shall expire, if the Buyer does not follow our instructions for use.

VIII. Liability

1. For consequences
 - a) of errors which occur during contract negotiations, in particular for the consequences of inadequate or incorrect advice given to the Buyer,
 - b) the violation of non-essential contractual duties (subsidiary duties), for example a consulting or protection obligation,
 - c) an unlawful act, unless it consists of injury for life and limb or the impairing of the health of the Buyer, we shall only accept liability if these consequences are due to wilful intent or gross negligence of one of our statutory representatives or one of our vicarious agents.
2. Should the Buyer suffer disadvantages as a result of the fact that we violate non-essential contractual obligations (subsidiary obligations), for example a consulting or protection obligation, we shall likewise only accept liability if these consequences are due to wilful intent or gross negligence of one of our statutory representatives or one of our vicarious agents.
3. For consequences, as long as they do not consist of injury of life and limb or the impairing of the health of the Buyer, or unlawful acts which one of our statutory representatives or one of our vicarious agents commit, we shall only accept liability if these consequences were brought about by wilful intent or gross negligence.
4. Where Seller gives technical advice to Buyer with respect to the processing or treatment of the goods, it is agreed that such advice is given without any liability on Seller's part.

IX. Make-up and packaging material

If the Buyer does not return make-up and packaging material which remains our property within a time limit to be determined by us on the terms and conditions laid down and in a state capable of being used we shall be entitled to invoice the Buyer for the replacement price and to demand immediate payment for it. If the Buyer provides evidence of damage considerably below the replacement price, only this is to be refunded.

X. Marks and signs

Marks and signs under which the goods are supplied must not be used for the products produced therefrom without our prior written consent.

XI. Other provisions

1. The sales contract shall be subject to German law. The use of the Convention of the United Nations of 11.04.1980 concerning contracts on international purchase of goods shall be excluded.
2. The exclusive venue for all disputes about and resulting from the contract shall be Wuppertal. We shall, however, have the right to sue the Buyer at any other venue applicable to him.
3. Should any provision of this contract be or become ineffective, or should a gap emerge in this contract, the effectiveness of the remaining provisions shall not be affected by this.
4. In place of the ineffective provisions or in order to fill the gap a reasonable provision shall be inserted which, as far as legally possible, comes as close as possible to what the parties concluding the contract wanted or would have wanted according to the sense and purpose of the contract, if they had considered the point.