

General Conditions of Sale (GCS) for Goods and Services



1. Subject of the Agreement

The type and extent of the supply of goods and services by us are governed exclusively by the mutual, written declarations and these General Conditions of Business. Other conditions of business are only obligatory for us if and insofar as we have expressly consented to them. The purchaser may not transfer any rights from the agreement.

2. Obligation to Deliver; Delivery Deadlines

We are entitled to make partial deliveries as long as they entail no unacceptable expense for the purchaser. Over and above our rights in Paragraph 321 of the German Civil Code we may withdraw from the agreement if, after signing the agreement, we become aware of any circumstances justifying any doubts as to the creditworthiness of the purchaser and which thereby endanger our debt claims

The adherence to delivery deadlines assumes the timely receipt of all documentation from the purchaser, especially plans, approvals and releases, as well as the adherence to the agreed conditions of payment and other preparations and cooperation on the part of the purchaser. If these conditions are not fulfilled or if we are prevented from making the delivery by acts of God or similar events such as industrial action at our place of business or by our sub-contractors or any other unforeseeable events beyond our control, the delivery deadline will be extended as appropriate.

Should the purchaser be in default in accepting the delivery of goods, he is obliged to pay storage charges in the amount of 0.5% of the price of the goods to a maximum of 5%, beginning one month after notification that the goods are ready for shipment. The proof and claim of any higher or lower storage costs remains reserved to the parties to the agreement.

3. Prices and Payment

Our prices are ex-works and include packing and insurance plus the applicable Value Added Tax. The invoice amounts are payable in cash without deduction 30 days after the invoice date. We may however make delivery dependent on immediate payment. For purchasers whose credit situation is unknown to us, delivery will only be made on advance payment or on a cash-on-delivery basis. We will accept cheques and bills of exchange on account of performance only after previous agreement. In such cases payment will be considered as having been made only when the amount of the relevant invoice has been credited to our account without reservation.

If the supplier is responsible for installation, the purchaser shall bear all accruing expenses including reasonable costs for waiting periods and other delays in installation for which we are not responsible.

The purchaser may offset payment only in cases of counter-claims and may do so only by means of a right of retention. In the case of payment in arrears the purchaser is obliged to provide us with security. The objects and rights placed in our custody or at our disposal shall serve from that moment on as collateral to safeguard our claims. We are entitled to disclose the claim to third party debtors and to realise the securities privately at the stock exchange or at market price, provided they are not required to be sold at public auction.

Irrespective of other claims due to payment in arrears, our claims, once the due date has expired, are payable at 2 % p. a. over the applicable discount rate of the Deutsche Bundesbank or any corresponding reference rate of a European central bank, unless higher or lower damage has been proven.

4. Passage of Risk

Risk is transferred to the purchaser as follows:

- for the sale of goods not requiring installation, when the goods leave the premises of the supplier, or when they are declared ready for collection or shipment.
- for the sale of goods requiring installation on the day of acceptance by the purchaser's company.

In case of default in acceptance on the part of the purchaser, the risk shall be transferred to the purchaser from the moment the purchaser is in arrears.

5. Reservation of Ownership

The goods remain our property until all pre-sent and future claims arising from the commercial relationship with the purchaser have been satisfied. The purchaser is obliged to store the goods separately. The purchaser may process or otherwise handle the goods for us without any obligations arising from this for us. Insofar as the purchaser acquires any rights of sole ownership of the goods through processing, connection or con-mingling, the parties agree that the purchaser will transfer rights of co-ownership of these goods to us in relation to the selling price of our conditional commodity and the selling price of the remaining goods received used to manufacture the final product at the moment of processing, connection or con-mingling. The purchaser shall place the products or aggregate of objects in safe keeping for us.

The purchaser may sell the conditional commodities and any products arising therefrom as a result of their being processed or treated only under the similar reservation of ownership and shall not infringe our conditional rights by disposing of the goods in any other way, e.g. by pledging them or transferring them by way of security. The access to the conditional commodities by third parties shall be reported immediately.

The purchaser hereby transfers to us any claims accruing to the purchaser from the resale of conditional commodities or claims arising from the sale of goods resulting from processing, con-mingling or connection with all ancillary rights in the amount of the invoice value of the conditional commodities. Further, the purchaser assigns to us the debt claim due to him as remuneration for the connection of our conditional commodities in the amount of the relation to their selling price and the selling price of the remaining connected goods at the time of connection. The purchaser is authorised to call in the debt claims until further notice. He is required to report the assignment to the debtors should we so desire.

Insofar as the value of this collateral exceeds our debt claims by more than 20%, we will, should the purchaser call on us to do so, release the collateral of our choosing in the corresponding quantity.

6. Rights to Tools

The purchaser acquires no rights to tools through remuneration for shared costs of the tools.

7. Industrial Property Rights and Copyrights/Deficiencies in Title

1. Except as otherwise agreed, we are only obliged to transport the goods free of industrial property rights and copyrights of third parties (herein-after referred to as property rights) in the country of the purchaser. Insofar as a third party raises any justified claims against the purchaser due to infringement of property rights through supply by us as per agreement, we shall be liable to the purchaser within the period defined in Section 12 as follows:
 - a. We will at our discretion and at our expense either acquire the rights of use for the goods in question, alter them in such a manner that property rights are infringed, or exchange them. Should this not be possible for us at suitable conditions, the purchaser is entitled to withdraw from the agreement or obtain a reduction in the price as provided for by law.
 - b. The obligation to pay damages shall be governed by Section 1.
 - c. The above-mentioned obligations exist only insofar as the purchaser informs us in writing immediately concerning the third party claims asserted, does not recognise any infringement and all defensive measures, and settlement proceedings remain reserved. Should the purchaser cease the use of the goods in order to reduce damage or for any other significant reason he is obliged to inform the third parties that this cessation of use is not connected with any acknowledgement of property rights.
2. Claims of the purchaser are excluded insofar as he is responsible for the infringement of the property rights.
3. Claims by the purchaser are also excluded insofar as the infringement of property rights is due to special instructions from the purchaser, through special instructions from the purchaser, through any unforeseen use by us or has been caused by the goods being altered by the purchaser or used together with products not supplied by us.

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4. In the case of infringement of any property rights the arrangements made here concerning material defects under the terms of Section 12 shall apply correspondingly. These arrangements shall also apply in the case of any other legal defect in title.
5. Claims by the purchaser against us and our agents due to legal defect in title over and above, or other than those governed in, this Section, are excluded.

8. Examination and Acceptance of the Goods

Mutually agreed acceptance of the goods under special examination conditions is to be carried out by the purchaser or his representative on our premises. The costs of the acceptance shall be borne by the purchaser. Should the purchaser omit to carry out this examination, the goods shall be considered to have been delivered according to the terms of the agreement when they leave our premises.

If we have requested the purchaser to accept the goods after completion, this is to be carried out two weeks at the latest after we have made the request. If the purchaser refuses to cooperate, acceptance shall nevertheless be considered to have taken place.

9. Deviations in Measurement, Weight and Quantity

A deviation of up to 10% in the weight, number and measurements of the goods is permissible, providing this is not forbidden by DIN specifications.

10. Rights to Documentation and Soft-ware

We reserve the rights of ownership and copyright in respect of those cost estimates, diagrams and other documentation (herein referred to as documentation) entrusted to us. The documentation may only be made accessible to third parties with our consent and may only be used for the purposes of this agreement and must be returned to us on demand.

The purchaser has the non-exclusive right to use software with the agreed features in unaltered form and on the agreed equipment, which has been supplied to us. The purchaser may make two security copies of the software without express consent.

11. Illustrations and Descriptions

Illustrations and descriptions as well as technical data correspond to the circumstances or intentions at the time of printing of the list or other purchasing documentation. Alterations of any sort, especially insofar as they are the result of technical progress, altered execution or similar, remain reserved insofar as they are reasonable for the purchaser and take our interests into consideration.

We provide advice on the use of the goods to the best of our knowledge and belief. Information and details on the suitability and use of our products are not considered as assured characteristics and do not release the purchaser from examining them himself. The purchaser is responsible for the adherence to legal and official regulations when using our goods.

12. Material Defects

1. Any claims for defects on the part of the purchaser assume that he has fulfilled his statutory obligations in respect of examination and notification of complaints under the terms of Paragraph 377 of the German Civil Code.
2. Insofar as the goods purchased are found to be defective, the purchaser is entitled at his option to either such subsequent fulfilment in the form of a correction of the fault or to have new goods supplied which are free of all defects. Should the purchaser choose to have the defect corrected we shall be obliged to bear the necessary expenses for this purpose, in particular the cost of transport, freight, labour and materials insofar as these are not increased by having the purchased goods transported to another place than the place of fulfilment
3. If the post-facto fulfilment is not successful, the purchaser is entitled to withdraw from the agreement or to demand a reduction of the purchase price, as he so chooses.

4. We are liable for any statutory damage-claims made by the purchaser due to wilful intent, gross negligence, including wilful intent or gross negligence on the part of our representatives or agents. Should no allegations of infringement of the agreement for damage be made, liability for claims is limited to foreseeable, typical damage.
5. We are legally liable for any substantial infringements of the agreement; however, in this case liability for damage claims is limited to foreseeable, typical damage.
6. Liability for culpable harm to human life, body or health remains unaffected; this applies also to the binding liability in accordance with the Law on Product Liability.
7. If not otherwise provided above, liability is excluded.
8. The period of limitation for claims for defect claims is 12 months as from the moment of the passing of risk.
9. The period of limitation in the case of delivery recourse under the terms of Paragraphs 478 and 479 of the German Civil Code remain unaffected and shall last for five years from the moment of delivery of the defective object.

13. Other Damage Claims

Liability extending beyond that provided for in Section 12 is excluded without regard to the statutory aspects of the asserted claim. This applies especially to damage claims due to fault at the conclusion of the contract, other dereliction of duties or delictual damage claims under the terms of Paragraph 823 of the German Civil Code.

Insofar as our liability for damage claims is excluded or limited, this also applies with regard to the personal liability for damage on the part of our salaried and wage employees, our representatives and agents.

14. Legal Venue and Applicable Law

The legal venue for all disputes resulting from, or in conjunction with, the contractual relationship is, at our option, **Dinslaken**, the registered office of the purchaser. In actions on cheques or dishonoured bills it is also the place of payment.

This contractual relationship is governed by German law to the exclusion of the United Nations Agreement on Contracts on the Sale of Goods (CISG).

Should any individual provisions of this agreement be invalid, its remaining clauses still remain binding. This does not apply if adherence to the agreement constitutes unreasonable hardship for any party.

Pintsch Bamag GmbH wishes to inform the purchaser that, in accordance with Paragraph of the Federal German Law on Data Protection, personal information will be stored on him.

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