

# Conditions of sale and delivery

## I. General provisions

1. The following terms and conditions of sale and delivery shall apply to the exclusion of any other terms and conditions to all present and future offers, agreements and contracts concerning our sales and deliveries, unless other terms and conditions are provided by us in writing at the time of or prior to the offer, agreement or contract.
2. Terms and conditions provided by the buyer shall only apply to such offer, agreement or contract, if their application is expressly confirmed by us in writing. Regardless of those deviating terms' and conditions' provisions, will such terms and conditions under no circumstances be binding, even if we, aware of those terms and conditions, perform without express objection to such terms and conditions of the buyer.
3. These terms and conditions of sale and delivery shall not apply to buyers who are consumers (*Verbraucher*) pursuant to § 13 BGB (German Civil Code).
4. Contracts and other agreements that are individually negotiated between our customers and us shall – if agreed upon in writing – overrule these terms and conditions of sale and delivery from which they are differing.
5. In addition to these terms and conditions of sale and delivery all relevant statutory provisions shall apply.

## II. Pricing and costs

1. All of our offers are subject to change (without notice).
2. All of our prices are quoted "ex works" without packaging and subject to the respective VAT (henceforth: net merchandise value) that is legally in effect.
3. For any sale with a net merchandise value of 3,000 € or more, we shall provide packaging and prepay shipping cost.

## III. Terms of payment

1. Our invoices are due immediately. Our customers are entitled to a 2% trade discount from the amount on the invoice if such discounted amount is paid within 8 working days of the invoice date.
2. Our claims of payment can only be offset by the customer's (counter-)claims, that are uncontested or found valid by final judgement. Our customers are entitled to a right of retention only if their (counter-)claim is uncontested or found valid by final judgement and arises from the same contractual relationship.
3. Unless we have previously otherwise agreed in writing, all payments shall be made in cash or via electronic bank transfer. Moreover, payments via electronic bank transfer, check (also voucher check) or draft shall only be accepted on account of performance.
4. Agents are not authorised for collection.

## IV. Time of performance and deficient timely performance

1. Via the designation of time periods or points in time, performance time limits may be agreed upon between our customers and us. Unless it has been specifically otherwise agreed upon, we are entitled to perform prior to any such deadline but are not obligated to do so. A delay begins at the earliest with the expiration of the performance deadline.
2. Performance time limits shall extend themselves for a reasonable period of time if circumstances arise – which we were neither responsible for nor had control over – leading to a delay in (our) performance. This is especially valid when:
  - a) the customer's documents, certifications or clearances (which are due) have not been properly received; the customer does not meet his contractual payment obligations; or the customer does not timely fulfil or realize other duties or (cooperation-type) obligations,
  - b) our supplier, sub-contractors or other persons – upon whose delivery and performance we are dependent for our performance to our customers – have not timely, fully and correctly delivered to us,
  - c) situations of force majeure or other unforeseeable occurrences occur (e.g. legal or illegal strikes, fires, natural disasters) which protract performance.
3. In situations covered under Sec. IV paragraph 2, we are entitled to withdraw from the contract if performance is not possible for indefinite duration or if expenditures are required on our part, which stand in great disproportion to the performance interests of our customer in light of the contents of the relevant contractual obligations and the principle of good faith.
4. If the agreed-upon deadline extension has been transgressed, our customer is entitled to withdraw from the contract only after the setting of a reasonable deadline under penalty of non-performance. In cases where the extension of the performance deadline, pursuant to Sec. IV paragraph 2, is more than three months, the customer is also hereby entitled to withdraw after setting a reasonable deadline under penalty of non-performance.
5. This customer is obligated to accept performance as soon as we have shown our readiness to perform. In the event that our performance would be delayed (by the customer) for more than one month after we have shown our readiness to perform, we are entitled to levy a storage fee against the customer. This amount is a flat rate of 0.5% of the net merchandise value for every month or partial month up to a maximum of 5%. Proof of lower or higher storage fees is reserved to the parties.
6. Claims for compensation of damages or expenditures on the part of the customer on account of delays may only be made valid pursuant to statutory provisions and Section XI of these terms and conditions of sale and delivery.

## V. Passing of risk

1. Our performance shall be tendered "ex work". This is also valid for the shipping-conveyance of the goods, even when we prepaid the shipping costs and/or when we have used our own employees for shipment.
2. If performance has been agreed upon to include assembly and mounting, deviating from Sec. V paragraph 1, risk and responsibility for the goods pass to the customer at the time of the integration of the goods into the customer's operations; if a test run has been agreed upon, such risk and responsibility pass after the successful test run. All of this is conditioned upon the test run or the integration of the goods into the customer's operations having taken place immediately after the ready-for-operation assembly and mounting. If the test run or the integration of the goods into the customer's operations is delayed for more than two weeks, risk and responsibility pass after this point in time.

## VI. Insurance and assertion of transport- and breakage damages

1. If requested by the customer, we shall cover the shipment with transport- and breakage insurance. The cost for this shall be borne by the customer.
2. The customer must examine the goods for transport and breakage damage immediately after they have been delivered.
3. The customer must point out all discernable damage(s) immediately to the transporter and must execute a written assessment of damages. This is valid also if the packaging is or appears undamaged on the outside. As for damages which are not discernable, the customer must give notice of such damages immediately after discovery and must record an assessment of the damages.
4. We shall only recognize a report of damage if notification of such takes place within 10 days of the date of delivery, if such transport- and breakage damages were recognized upon delivery or could have been recognized by way of examination. Non-discernable transport- or breakage damages must be notified within 10 days after they have been discovered.
5. For processing claims in relation to damaged goods, the following documentation must be sent to us:
  - a) Transport documents (e.g. bill of lading, express card, postal address etc.).
  - b) Written assessment of damages.
  - c) Assertion of claim for replacement of damaged goods or for respective credit voucher.

## VII. Acceptance

Goods which have been delivered shall be received and accepted by the customer, even if they show immaterial defects. We are entitled to make partial delivery and to issue partial invoice for such partial delivery.

## VIII. Custom-made goods

Custom made shall be understood as constructive modifications to existing types of lighting fixtures and as fabrications based on designs provided by us or the customer. Custom product orders can not be cancelled after release to manufacturing. For the cancellation of custom orders before release, a handling fee shall be levied in the amount of the agreed upon compensation less any amount which we may have saved on our expenditures. This amount is calculated at a flat rate of 20% of the net merchandise value. It is reserved to the parties to prove that such handling fee, in any one concrete case, is higher or lower (especially on account of higher savings on expenditures) than the flat rate. Any price indications we may give prior to our firm offer are non-binding. For custom-made orders with a net merchandise value of more than 25,000 € or with more than a three-month performance deadline, payment shall be made (unless some other agreement has been reached with the customer) as follows:  
1/3 of the purchase price is due at the time of the order,  
1/3 is due upon effectuation of (our) performance, and  
1/3 is due within 30 days of the issuing of the invoice.

## IX. Retention of title and assignment by way of security, extraordinarily terminate

1. We shall retain ownership of the goods which we deliver – and all goods are subject to retention of title (hereinafter: *retained goods*) – and the passage of title is contingent on the payment of all receivables and the fulfillment of any further requirement from the business connection, including those arising in the future.

2. A customer shall immediately notify us in writing of any garnishment, distraint or other act of disposal or third-party claim or action which might affect our proprietary rights on our *retained goods* to enable us to take appropriate legal action under § 771 ZPO (Code of Civil Procedure).
3. At all times while our retention of title is in effect for our *retained goods*, the customer is prohibited from pawning or transferring (by way of security) such goods.
4. Our *retained goods* (i.e. those subject to our retention of title) may only be resold in due course of business, if the purchase price is paid to our customer in cash. Retained goods may also be resold, if our customer notifies the purchaser of our retention of title on such goods.
5. Our customers are empowered by us to dispose of our *retained goods* in such manner that the ownership of the goods may be transferred to our customer's purchaser, when the purchaser fulfils all requirements of such transaction sale towards our customer or us.
6. Our customers hereby cede to us all claims which might arise from the resale against their purchasers or third parties; by transaction sales of combined, mixed, blended, processed or remodelled objects, only that part of the total sum of the claim(s) is ceded to us, which corresponds to the invoiced amount (incl. VAT) of our claim. Our customers also cede to us all claims for the securing of our claims against them, which arise against a third party as a result of the connection of our *retained goods* with a parcel of land.
7. The customer remains empowered within the framework of the ordinary course of business for the collection of claims stemming from any resale. Our competence, for ourselves to collect, remains in tact. We obligate ourselves, however, to refrain from collecting such claims as long as the customer fulfils his payment obligations, does not end up in delay or default of payment, and (especially) does not file for insolvency proceedings and as long as no stoppage of payments is in existence or pending. If this is the case, we are entitled to require that the customer notifies us of the ceded claims and identifies the debtors, gives us all of the details and relevant documentation needed for collection, and notifies the debtor (third party) of the conveyance.
8. The processing, converting or alteration (by our customers) of our *retained goods* is always carried out on our behalf. In the event that any of our *retained goods* are combined, inseparably mixed or blended with other objects that do not belong to us and if we are not sole owner of the new (mixed) objects pursuant to § 947 (2) BGB (German Civil Code), we shall have partial ownership in these new objects to the extent of the value of our *retained goods* (i.e. invoiced amount incl. VAT) in proportion to the value of that which was added; all of which is to be determined at the point in time of the combining, mixing etc. The provisions relating to our *retained goods* do equally apply to the new objects. The customer shall safely store and control (on our behalf) any newly created objects whether such objects are wholly or partially owned by us.
9. If there is a breach of contract by one of our customers – especially delay or default of payment – we are entitled to take back our *retained goods*; our customers are obligated to surrender our *retained goods*. In the event that we take back our *retained goods* or assert our retention of title, this is not to be perceived as a withdrawal from the contract, unless expressly stated otherwise in writing.
10. We obligate ourselves to disclaim securities provided by a customer to us to such extent that the releasable value of our securities exceeds the secured claims by more than 10% or exceeds the face amount (i.e. nominal value) by more than 50%. We are entitled to choose the securities which are to be disclaimed.
11. We are entitled to extraordinarily terminate the agreement
  - a) if the economical situation of the customer has materially deteriorated, in particular, if execution measures are carried out against him or out of court conciliation proceedings or insolvency proceedings have been instituted against him or were requested for; or
  - b) if we have entered into an insurance to cover our payment claims against the customer and the insurer partially or fully withdraws its confirmation of cover.

This clause does not affect our statutory rights to terminate or rescind the agreement or to claim damages.

## X. Warranty of merchantability / warranty for defects

1. Any warranty claims are contingent on the customer's compliance with the requirements for examination of the goods and notification of defects without undue delay pursuant to § 377 Handelsgesetzbuch (German Commercial Code).
2. In the context of the warranty claims, we are entitled to meet such claim by either remedying the defect, or delivering a new free-of-defect object, or respectively providing a new free-of-defect performance.
3. If the expenditures, which pursuant to § 439 (2) BGB (German Civil Code) are in principle ours to bear, increase due to the delivery of the goods to a place other than the place of performance, we shall not be responsible for any of these additional costs.
4. If remedying the defect, or delivering a new free-of-defect object, or respectively providing a new free-of-defect performance pursuant to Sec. X paragraph 2 fails, the customer is entitled to declare a withdrawal from the contract or to require an abatement of the purchase price proportionate to the deficiency.
5. Any claim for damages and for reimbursement of expenses shall only be asserted in compliance with the statutory provisions and under the terms of Sec. XI.
6. The warranty for defective goods does not cover common wear and tear.
7. Moreover, our warranty does not cover situations where such defects arise as the result of improper or negligent handling, excessive operational demands, unsuitable equipment, defective construction work, or unsuitable building foundation, or if such chemical, electronic or electrical influences come about which have not been stipulated to in the contract or if operational- or maintenance work has not been conducted.
8. There shall be no liability assumed for defects or damages, which arise on account of improper alterations or repair work on the part of the customer or on the part of a third party.
9. The statute of limitations for warranty claims on goods and chattels is one year. With respect to immovables and to such objects, which were in accordance with their normal and intended use employed for immovables and caused a deficiency of such immovable, the statutory period of limitations shall apply.

## XI. Disclaimer or reduction of liability

1. We shall not be liable for reimbursement of damages and/or expenditures, regardless of kind and point in time of the breach or neglect of duty, including tortious acts, except for such liability arising from intentional or grossly negligent conduct on our part.
2. In addition, such exemption from our liability for damages does not apply, if duties, which have to be fulfilled to allow for the execution of the contract in the first place or upon which the customer is entitled to depend (i.e. material contractual duties), are breached or neglected. However, in such cases, our liability is limited to foreseeable damages or to the foreseeable amount of expenditures. There shall be no liability for lost profits, for gainless expenditures, for recourse or damages occurred to third parties as well as for other indirect or consequential damages, unless a characteristic attribute (which has been guaranteed by us) actually aims at securing the buyer against such damages and/or expenditures.
3. The limitation of liability and liability exclusion pursuant to Section XI paragraphs 1 and 2 do not apply to claims, which come about on account of bad-faith (on our part), for our liability for guaranteed characteristic attributes, for claims pursuant to the Produkthaftungsgesetz (Product Liability Act) or for the injury to life, body and health.
4. To the extent that our liability is hereby excluded or restricted, such exclusion or restriction does also apply to our liability for our personnel, employees, representatives and agents.

## XII. Return shipment based upon good will

Return shipment of goods, outside of the context of our warranty for defect, shall only be accepted by us if such return shipment has first been agreed upon in writing. We shall charge a processing fee of 5% of the net merchandise value.

## XIII. Copyright and other trademark rights, property rights for our documents

For estimation of costs, diagrams and other documents made available to initiate, prepare, support, facilitate or carry out a contractual relationship or the conclusion of a contract (henceforth: 'documents'), we reserve for us all property rights and copyrights as well as other intellectual property or trademark rights to the extent that such rights exist. Accordingly, our documents may only be made accessible to third parties to the extent that we have expressly given our prior consent or if such accessibility is essential to fulfil the goal or purpose for which they have been made accessible to our customer. If no contractual relationship or conclusion of contract ultimately arises, all documents shall be returned to us immediately upon request, and any copies held by customers shall be immediately destroyed (especially those in digital or print form).

## XIV. Place of performance and jurisdiction

1. The sole place of performance shall be Berlin.
2. The jurisdiction and venue for all (direct and indirect) disputes, which might arise from our contractual relationships, shall be Berlin.
3. German law shall regulate all contractual relations to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG)

## XV. Binding character of the contract

If a clause in these sale and delivery provisions or within other agreements should be or become invalid, the effectiveness of all other clauses or agreements shall continue to remain in force.