

General terms and conditions of delivery and payment for planto GmbH, Diez

§ 1 General Scope of Application

1. The following delivery and payment terms ("General terms and conditions") have exclusive validity and cover all present and future business relations. Variations, opposing or additional "General terms and conditions" shall not be a part of this contract, even where we have knowledge thereof, unless we expressly agree to their validity in writing.
2. Our business conditions shall only apply to undertakings as stipulated in § 310 I BGB (German Civil Code).

§ 2 Conclusion of Contract

1. Offers are not binding. Details on goods offered (including technical data, measurements, etc.) are approximate; they are not a guaranteed condition, unless such a guarantee is expressly given in writing. They are subject to technical variations and variations in shape, colour and/or weight within reason.
2. A customer's order is a binding offer. We may accept this offer within two weeks by sending a confirmation of order or by sending the goods to the customer within this same period. We may confirm the order by fax or e-mail.
3. Illustrations, drawings, calculations and any other documents sent to the customer are subject to our copyright and property rights. This also applies to written documents marked "confidential". They may only be passed on to third parties if we have given the customer our express consent in writing.

§ 3 Prices - Payment Terms

1. The prices applicable are those that appear on the price list valid at the time of ordering. Unless otherwise indicated on the confirmation of order, our prices are valid "ex factory" excluding packaging; the latter will be shown separately in the bill.
2. Statutory VAT is not included in our prices; on the day when the bill is issued, the amount legally applicable will be indicated separately on the bill.
3. Unless otherwise shown on the confirmation of order, the net amount of the bill (without tax) is due within 30 days of the billing date. Customers with a German delivery address shall receive a 2% discount on payments received within 8 days of the billing date. The date of receipt of payment shall be applicable for these purposes. Failure to pay on the due date shall give rise to liability under the statutory regulations to this effect.
4. The customer shall only be entitled to offsetting rights, where his or her counterclaims have been legally established, are unassailable or are acknowledged by us. Moreover, the customer is only entitled to exercise a right of retention where his or her counterclaim is based on the same contractual relationship.
5. For contracts where delivery is arranged on a date exceeding six weeks, we reserve the right to change our prices accordingly, if costs, particularly those due to collective agreements or changes in the price of materials, rise or fall after the contract has been concluded. Such modifications will be proven on request.

§ 4 Delivery Time / Scope of Delivery / Partial Deliveries

1. Delivery times are generally only approximate and not binding. Any other agreement must be reached expressly and in writing. If we are unable to deliver on time, we will inform the customer immediately.
2. The start of the delivery term stated by us is conditional upon clarification of all technical issues. At the earliest, it will commence once we have sent the confirmation of order, although not before the customer's timely and proper completion of any obligations, and in particular that of furnishing the documents required (e.g. official permits, releases, setting copy) and settlement of any advance payment agreed. We reserve the right to plead for non-fulfilment of contract.
3. In the event that the customer defaults on acceptance or is culpable of breaching other contributory obligations, we shall be entitled to claim for any damages, including any extra expenses, that may thus have been incurred. We reserve the right to any further claims.
4. In accordance with the provisions of Paragraph 3, any risk of accidental damage to, or accidental decline in, the items bought shall be incurred by the customer as of the point at which (s)he defaults in acceptance or payment.
5. We are liable according to the legal provisions, where the sales contract in question is a transaction for delivery by a fixed date as stipulated in § 286 Section 2 No. 4 BGB (German Civil Code) or § 376 HGB (German Commercial Code). We are liable according to the legal provisions, where, as a consequence of a delivery delay for which we are responsible, the customer is entitled to claim that it is no longer in his or her interest to fulfil the contract; in this case, however, liability for damages incurred shall be limited to foreseeable losses typically associated with this type of contract.
6. We shall also be liable in accordance with the legal provisions, where a delivery delay is due to a breach of contract for which we are deliberately responsible or a breach of contract caused by gross negligence; we shall also be liable for blame incurred by our agents or those employed in the performance of our obligations. Where the delay in delivery is not caused by a breach of contract for which we are deliberately responsible, our liability for damages shall be limited to foreseeable losses typically applicable to this type of contract.
7. We are also liable according to the legal provisions, where the delivery delay for which we are responsible is the result of the culpable breach of an essential contractual obligation; in this case, however, the liability for damages shall be limited to foreseeable losses typically applicable to this type of contract.
8. Unforeseen circumstances for which we are not responsible (including, for instance, power shortages, delays in the delivery of vital components and other materials, import difficulties, operational or traffic difficulties, strikes, lock-outs, force majeure) will extend the delivery time proportionately. In the event that we are unable to meet this extended delivery deadline, both we and the customer shall have the right of rescission. In this case, the customer will immediately be refunded any payments that may have been made.
9. Partial deliveries by us are admissible, provided these are reasonable for the customer. Should an article consist of several components, the goods must be delivered in open transit. The delivery scope does not cover assembly and/or instruction manuals.

§ 5 Passing of Risk

1. Deliveries are agreed "ex factory", unless otherwise stated in the confirmation of order. If the customer wishes the goods to be sent to a place other than our business domicile, (s)he shall bear the costs of acceptance and the dispatch of the goods. Where the customer so wishes, the delivery may be covered by transport insurance; in this case, the customer shall also incur any resulting costs.
2. Transport packaging and any other packaging subject to the packaging regulation will not be taken back. The customer is under an obligation to dispose of the packaging at his or her own expense.
4. Barring stipulations to the contrary in the confirmation of order, the customer is under an obligation to take the goods from our business domicile within 14 days of the date on the supply advice or any other communication notifying the customer of their readiness for collection. We are entitled to keep the goods in storage at the customer's expense, if the customer fails to collect the goods within the specified term.

§ 6 Guarantee

1. To the extent stipulated in the following paragraphs, we will provide a guarantee based on the state of the art faultlessness of the goods. We must draw attention to the fact that the legibility of the European Article Numbers (EAN) shown on the bar code of the goods cannot always be guaranteed in line with current state of the art. We would also draw attention to the fact that the normal wear and tear of the goods does not constitute a defect and cannot therefore be covered by our guarantee.
2. The goods must be examined immediately after reception. We must be notified in writing of any obvious defects within two weeks of reception. If this is not done, the goods shall be deemed accepted. Access by us to this defect advice shall be necessary for the purposes of adherence to this deadline. Where consumers are concerned, this regulation shall only be valid in the case of obvious defects.
3. For the purposes of subsequent specific performance, we shall be under obligation to choose between removal of the defect and delivery of a new article free of defects, where such a defect exists.
4. Should subsequent specific performance founder, the customer is entitled to choose between reduction of payment (abatement) and rescission of the contract (cancellation). In the event of a very minor breach of the contract, particularly for minor defects, the customer shall have no such right of rescission.
5. The guarantee period shall be valid for one year as of the delivery of the merchandise.
6. We shall be liable in accordance with legal provisions, where the customer puts forward a claim for damages derived from wilful or gross negligence, including the wilful or gross negligence of our agents or those employed in the performance of our obligations. Unless we are guilty of wilful breach of contract, the liability for damages shall be limited to foreseeable losses typically applicable to this type of contract.
7. We are only liable in accordance with legal provisions, where we culpably breach an essential contractual obligation; in this case, however, liability for damages shall be limited to foreseeable losses typically applicable to this type of contract.
8. Liability for culpable physical injury and hazards to life and health shall remain unaffected; this also applies to compulsory liability arising from the Product Liability Act.
9. There shall be no liability except the aforementioned, unless prescribed by law.

§ 7 Joint and Several Liability

1. Any further liability for compensation in damages as provided for under § 6, is excluded, irrespective of the legal status of the claim asserted. This applies in particular to claims for damages arising from blame regarding conclusion of contract, due to other breaches of obligation or claims for damages in tort according to § 823 BGB (German Civil Code).
2. Where our liability for damages is excluded or limited, this shall also apply to the personal liability for damages of our employees, workers, staff, agents or those employed in the performance of our obligations.

§ 8 Retention of Title

1. We shall retain title of the goods until full settlement of all requirements arising from current business relations.
2. Where the customer behaves in a way that is contrary to the contract, particularly in terms of payment default, we shall be entitled to take back the goods. Taking back the goods shall not constitute rescission of the contract, unless we expressly state this to be the case in writing. Distraint of the goods by us shall always constitute rescission of contract. After taking back the goods, we shall be entitled to their exploitation, and proceeds from such exploitation, less the appropriate exploitation costs, shall be taken into account for the purposes of the customer's accounts payable.
3. For as long as we retain title to the goods, the customer is under an obligation to handle the goods with care. Where maintenance and inspection work is required, the customer must carry these out promptly. The customer is also under an obligation to insure the goods sufficiently and for their original value against damage caused by fire, water or theft.
4. In the event of distraint or other intervention by third parties, the customer must provide written notification immediately, so that we can bring an action in accordance with § 771 ZPO (German Code of Civil Procedure). Where the third party is not in a position to refund us court and out-of-court costs of an action in accordance with § 771 ZPO (German Code of Civil Procedure), the customer shall be liable to us for the default incurred. The customer must notify us immediately of any change in ownership or change in domicile.
5. The processing or transformation of the goods by the customer shall always be carried out for us. In the event that the goods are processed with other objects that do not belong to us, we shall acquire joint title to the new items in proportion to the value of the goods (final billing total including VAT) with respect to the processed objects at the time of processing. The same provisions shall apply to the items that come into being through such processing as for the goods delivered with retention of title.
6. In the event that the goods should be indivisibly combined with other objects that do not belong to us, we shall acquire joint title to the new items in proportion to the value of the goods (final billing total including VAT) with respect to the other combined objects at the time of combining. Should the combining take place in such a way that the customer's items shall be deemed the main item, it shall be considered agreed that the customer shall transfer proportional joint title to us. The customer guarantees us any sole or joint title thus arising. The customer is entitled to resell the goods in the course of ordinary business dealings; the customer hereby assigns to us all claims in the sum of the final billing total (including VAT) of our claim, arising from the resale to his or her purchaser or third party, irrespective of whether resale takes place without or after processing. The customer shall remain authorised to collect this claim even after such assignment. Our power to collect the claim ourselves shall nevertheless remain unaffected. We hereby undertake however not to collect the claim, provided the customer meets his or her payment obligations for the collected proceeds, is not in arrears with payment and, in particular, if insolvency or suspension of payments proceedings have not been instituted. However, if this is the case, we shall be entitled to require that the customer disclose the claims assigned and the debtor in question, make all indications required for collection, surrender the relevant documents and notify debtors (third parties) of such assignment.
8. We hereby undertake to release the collateral that we hold upon the customer's request insofar as the realizable value of our collateral exceeds the claim to be secured by more than 10%; the choice of the collateral to be released shall be incumbent upon us.

§ 9 Place of Performance and Place of Jurisdiction

1. Unless otherwise shown on the confirmation of order, our head office in Diez is also the place of performance.
2. Where the customer is a businessman, a legal person or a public special fund in public law, our business domicile in Diez is the place of jurisdiction; we reserve the right, however, to bring legal action against the customer at the court of his or her domicile.
3. The law applicable is that of the Federal Republic of Germany; UN trade law is not applicable.

§ 10 Other

1. Any assignment of the customer's rights and obligations arising from the contract entered with us shall require our prior written consent, if it is to be effective.