

# Conditions of Delivery and Payment of Stollenwerk & Cie. GmbH

## I. General scope of application

1. The terms of trade apply to all present and future terms of trade.
2. Consumers in the sense of these terms of trade are natural persons with whom we enter into a business relationship, even though a commercial or self-employed capacity cannot be ascribed to them.

Traders in the sense of these terms of trade are natural persons, legal entities or legally capable private companies with which we enter into a business relationship and which act in a commercial or self-employed capacity.

Customers in the sense of these terms of trade are both consumers and traders.

3. Deviating, contradictory or supplementary terms of trade are not components of contract, even if these are known, unless their application has been expressly agreed in writing.

## II. Conclusion of contract

1. Our offers are non-binding. Complaints may not be made of deviations in quality, colour, width, weight, execution or design which are normal in the trade, are minor or technically unavoidable. We accept no liability for printing errors or mistakes.
2. When placing an order for goods, the customer bindingly declares its intention to acquire these goods. We are entitled to accept the offer of contract contained in the order within 2 weeks of its receipt. Acceptance can be declared either in writing or by delivering the goods to the customer.
3. If the consumer orders goods by electronic means, we will confirm receipt of the order without delay. A confirmation of receipt does not in itself represent a binding acceptance of an order. Confirmation of receipt can be combined with a declaration of acceptance.
4. When consumers order goods by electronic means, we store the contractual text and, on request, e-Mail this to the customer together with these general terms of trade.

## III. Delivery

1. The delivery dates stated by us are not fixed deadlines, unless this has been expressly agreed in writing. With the exception of fixed deadlines which have been bindingly agreed, delivery schedules are stated under the reservation that we receive our supplies in good time from our suppliers.
2. The point in time at which the goods leave the works is decisive for compliance with delivery schedules. If the goods cannot be dispatched on time for reasons which are not our fault, the delivery schedules are regarded as met upon notification of readiness to dispatch.
3. Acts of God: Industrial disputes, official intervention and other non-culpable disturbances to operations which hinder the fulfilment of our obligations entitle us to postpone the delivery for the duration of the hindrance, plus a reasonable start-up time (lasting a maximum of 14 work days), or to withdraw from that part of the contract which is still outstanding. The customer can set us a reasonable period of notice to declare whether we intend to withdraw or to deliver within a reasonable time. The customer may withdraw from the contract if we fail to make such a declaration within the period of notice set by the customer. If a fixed transaction has been agreed, the customer's legal rights of withdrawal are not affected by the aforesaid regulations.
4. If we are in default of delivery and the customer wishes to withdraw from the contract, it shall then set us a reasonable period of grace of at least 2 weeks to perform, unless the law does not require such a period of grace to be set.
5. The goods are delivered ex-works. The customer bears the shipping costs.
6. In the case of deliveries made from external stores, freight is charged ex-stores.
7. In the case of deliveries made by rail, the carriage / freight charge from the factory to the rail depot is not invoiced.
8. Goods are dispatched uninsured unless agreed otherwise.
9. If, due to the culpability of the customer, acceptance is not declared on time, then after setting a period of grace of 10 days, we can at our discretion either issue an invoice for the arrears, withdraw from the contract or demand compensation for damages.

## IV. Minimum order value

Not applicable

## V. Reservation of ownership

1. In contracts with consumers, we reserve ownership of the goods until the purchase price has been paid in full.

In contracts with traders, we reserve ownership of the goods until all claims from the on-going business relationship have been paid in full.

2. The customer is obliged to treat the goods with care.

The trader is furthermore obliged to insure the reserved goods against the risk of destruction, loss or damage due to fire, water and theft for the time after risk is transferred. It is furthermore obliged to insure the reserved goods against the risk of destruction, loss and damage during transport. The trader shall inform us without delay if the reserved goods are lost, destroyed or become damaged. On request, it shall provide us with all the documentation concerning the damage to the reserved goods, in particular damage appraisal reports, inform us of existing insurance policies and, at its discretion, either provide us with the cover note or with a trust letter made out for our reserved goods by the insurer.

3. The customer is obliged to inform us without delay if a third party pursues legal action against the reserved goods, such as a seizure order, and likewise notify us of any damage to or destruction of the goods. The customer shall notify us immediately if the goods change possession or if the customer changes address.
4. We are entitled to withdraw from the contract and demand the return of the goods if the customer infringes the contract, particularly in case of default of payment or infringement of a duty under items 2, 3, 5, 7 and 8 of these terms.
5. The Trader is entitled to resell the goods in a regular business transaction. It even now assigns all claims which accrue to it against third parties from the resale to us. We accept the assignment. After making the assignment, the trader is entitled to collect the claim. We reserve the right to collect claims ourselves as soon as the trader does not properly fulfil its obligations of payment and is thus in default.

We are furthermore entitled to notify the third party debtor of the assignment of claim after informing the trader of this beforehand.

If the object of delivery is resold together with other goods not belonging to us, the trader's claim against its customer is then assigned to us at the price agreed between ourselves and the trader.

6. We are obliged to release the securities due to us if their value exceeds the claims to be insured by more than 20 %, insofar as these claims have not been settled.
7. Reserved goods may not be pledged or assigned as security. We must be informed immediately of any seizures, attachments or other legal action taken by third parties.
8. The trader always processes or converts the reserved goods on our behalf. Insofar we are regarded as the manufacturer as per § 950 BGB. If the trader processes, combines or mixes the reserved goods with other goods not belonging to us, we then accrue co-ownership to the new goods in the ratio of the invoice value of the processed reserved goods to that of the invoice value of the other processed goods. The goods created by processing, combining or mixing, to which we acquire full or co-ownership, are otherwise subject to the regulations concerning reserved goods – insofar as these refer to traders.

## VI. Transfer of risk

1. If the purchaser is a trader, the risk of accidental destruction or deterioration of the goods is transferred to the purchaser upon hand-over, or for mail-order sales when the goods are passed to the carrier, the freight forwarder or to another person or agent commissioned to execute the shipment.
2. If the purchaser is a consumer, the risk of accidental destruction or deterioration of the purchased goods, including for mail-order sales, is first transferred to the purchaser upon hand-over of the goods.
3. Hand-over is assumed if the purchaser is in default acceptance.

## VII. Warranty

1. If the purchaser is a trader, we rectify defective goods either by rework or a replacement delivery at our discretion.
2. If the purchaser is a consumer, it may initially choose whether subsequent fulfilment is made by rework or by a replacement delivery. We are nevertheless entitled to refuse the type of subsequent fulfilment chosen if this would only be possible with disproportionate costs and the other type of subsequent fulfilment would not significantly disadvantage the consumer.
3. Should subsequent fulfilment fail, then in principle the customer can demand a reduction in price or withdraw from the contract at its discretion. If the infringement of contract is negligible, however, and in particular where solely minor defects are concerned, the customer then has no right of withdrawal.
4. Traders must notify us in writing of obvious defects within 2 weeks of receiving the goods. Otherwise the warranty claim lapses. On time dispatch suffices for setting the deadline. The trader bears the full responsibility for justifying the claim, in particular for the defect itself, for the time at which the defect was established and for notifying us of the defect on time.

Hidden defects must be notified to us in writing immediately these become apparent, although at the latest within 2 weeks of their discovery.

5. Consumers must inform us in writing of obvious defects within 2 months from

the time that the non-conformity in the goods was established. The time we receive the notification is decisive for compliance with this deadline. Should the consumer fail to make this notification, the warranty rights expire two months after the defect was found. This does not apply if the seller is culpable of malice aforethought. The consumer bears the burden of proof for the point in time at which the defect was discovered. If the consumer was persuaded to purchase the goods by inaccurate statements, it bears the burden of proof for the decision to buy.

6. If the customer chooses to withdraw from the contract due to a legal or material defect after subsequent fulfilment has failed, it has no further claims to damages because of the defect.

Should the customer choose compensation for damages after subsequent performance has failed, the goods remain with the customer unless this is unreasonable. Compensation for damages is limited to the difference between the purchase price and the value of the defective goods. This does not apply if we the infringement of contract is due to malice aforethought on our part.

7. The warranty period for traders is 1 year from delivery of the goods. The period of limitation for consumers is 2 years from delivery of the goods.
8. If the customer receives faulty assembly instructions, we are solely obliged to supply accurate assembly instructions, and this only if the defect in the assembly instructions prevents proper assembly.
9. We do not give the customer any guarantees in the legal sense. Manufacturer guarantees are not affected by this.

#### VIII. Limitations of liability

1. If the object of delivery cannot be used by the customer as per contract due to our culpability because of neglected or defective execution of suggestions or advice given before or after conclusion of contract, or because of infringement of other auxiliary contractual obligations (in particular the operating and maintenance instructions for the object of delivery), the regulations under sections VI and VII apply accordingly to the exclusion of further claims on the part of the customer.
2. We are only liable for damages not incurred on the object of delivery itself, regardless of the legal reasoning, in case of
  - malice aforethought,
  - gross negligence on the part of our owner/our boards or our managers,
  - culpability for fatalities, physical injuries or harm to health,
  - defects which we have maliciously covered up or the absence of which we have guaranteed,
  - defects in the object of delivery, insofar as liability exists under product liability laws for personal or material damage from objects in private use.

In the case of culpable infringement of major contractual obligations, we are likewise not liable even for gross negligence on the part of non-managerial staff or for ordinary negligence, in the latter case damages are limited to those typical of contract which should normally have been foreseen.

Further claims are excluded.

#### IX. Payment

1. The invoice is prepared on the date the goods are delivered or made ready for pick up. The due date of the invoice may not be postponed as a matter of principle. If premature delivery is justified in the sense of the customer, an exception to this rule can be made by an order of execution.
2. Invoices are payable cash before delivery.
3. Modifications to these rules must be negotiated and are not recognised by us unless confirmed in writing.
4. Payments are always used to settle the oldest due debts plus the default interest accrued on these.
5. As day of payment is considered to all methods of payment, on which the amount is available on one of our accounts without reservation. Costs of overseas payments go alone debited to the buyer.
6. Default interest is charged on late payments at a rate of 5 % above the base interest rate of the European Central Bank.

If the customer is in default with a due payment or if its assets deteriorate considerably, we can then demand cash payment in advance before delivering the still outstanding goods and waive the normal target date for payment.
7. Payments shall be made exclusively in cash, by cheque or remittance by bank, giro or postal order.
8. Offsetting is only allowed against undisputed claims or those which have been established under law.
9. All sales are solely concluded to stipulated delivery dates, quantities, articles, qualities and fixed prices. Both parties are bound to this.
10. Block orders are nevertheless admissible. These can be regulated in the execution orders.
11. Changes to orders issued require the agreement of both parties. The details of these can be regulated in the execution orders.

#### X. Applicable law, place of jurisdiction, concluding provisions

1. German law shall prevail. The provisions of UN commercial law do not apply.
2. If the customer is a merchant, a legal entity under public law or a special public law trust, our registered office is the sole place of jurisdiction for all disputes arising from this contract. The same applies if the customer has no general place of jurisdiction in Germany or if its abode or normal place of residence is unknown at the time legal action is initiated.
3. Should individual provisions in the contract with the customer, including these general terms of trade, be or become unworkable in part or in full, this does not affect the validity of the remaining provisions. The partly or fully unworkable regulation shall be replaced by one which comes closest to the financial intent of the unworkable provision.

#### XI. Ban on avoidance

It is forbidden to avoid the conditions of payment and delivery, particularly through commission business.

#### XII. Data security

1. The data required to process the order is protected and treated in confidence in compliance with the Data Security Act.

Every customer has the right to information and a right of correction, protection and deletion of its stored data. Please contact [info@stollenwerk-koeln.de](mailto:info@stollenwerk-koeln.de) or send your request to us by fax or post.
2. We nevertheless reserve the right to pass on data for the purpose of checking credit-worthiness. The customer has the right of revocation at any time.

#### XIII. Concluding provisions

Should provisions in these terms of trade or a provision made under other agreements be or become unworkable, this does not affect the validity of any other provisions or agreements. The provision which has become unworkable shall then be replaced by a legal regulation which comes closest to the intent of the original one.