

Delius GmbH & Co. KG General Delivery and Payment Terms and Conditions

- 1. General**
- 1.1. These Delivery and Payment Terms and Conditions will apply exclusively to goods and services supplied to our customers, hereinafter also referred to as the Buyer(s) or Purchaser(s). They will also apply to all future supplies of goods and services, even if they are not expressly referred to again when subsequent contracts are concluded.
- 1.2. We hereby expressly object to our customers' purchasing terms and conditions or other terms and conditions of business. They will not be binding upon us even if we do not expressly object to the same at the time of concluding the contract.
- 2. Offers, brochures, orders, Buyer's duty to inspect, copyrights**
- 2.1. Sending a price list or brochure does not constitute an offer. All images and figures in our brochures are non-binding, particularly regarding the product design, size and colour. We reserve the right to make technical and design changes.
- 2.2. Our offers are subject to change without notice. Orders are only binding upon us if we confirm them or fulfil them by sending the goods.
- 2.3. The information we provide regarding the products or services, intended use, etc. (e.g., dimensions, weights, performance values) should be considered approximate. These are descriptions or labels and do not constitute warranties.
- 2.4. All information provided by our representatives, and oral information in general, must be confirmed by us in writing.
- 2.5. We retain ownership of and copyright over all illustrations, drawings, calculations and other documents. This also applies to any written documents marked "confidential". The Buyer must obtain our express written consent before disclosing them to a third party.
- 3. Prices**
- 3.1. All prices are exclusive of all taxes and customs duties. These will be charged at the rates in force at the time of invoicing.
- 3.2. All prices are EXW from the domestic factory (Spenge), excluding packaging, freight and other shipping costs. Freight charges must be paid in advance by the Purchaser upon request or must be reimbursed without discount. The same applies in the case of direct shipments or special procurements from the point of dispatch.
- 3.3. If a delivery period of more than four months has been agreed upon, we will be entitled to pass on to the Purchaser, to a comparable extent, any cost increases that have occurred in the meantime as a result of price increases for materials, production, assembly, labour, delivery or similar.
- 3.4. Our entitlement to commercial default interest from merchants (Section 353 of the German Commercial Code – HGB) will remain unaffected.
- 4. Delivery period, delivery**
- 4.1. Quoted delivery periods are approximate only. Fixed-date deliveries must be expressly agreed upon.
- 4.2. Delivery periods will commence when the order confirmation is sent at the earliest. Commencement of the delivery periods specified by us will be subject to the clarification of all technical issues and the timely and proper fulfilment by the Buyer of its obligations. Delivery periods will be deemed met if we, or the carrier, dispatch the goods before said period expires.
- 4.3. The Incoterm® (2020) in the order confirmation will be binding. The Buyer will bear the transport risk. Transport insurance will only be taken out at the Buyer's request and expense.
- 4.4. Timely deliveries will be subject to proper and timely delivery to us by our own suppliers. We will inform the Purchaser immediately of any delay in delivery. We will not be liable for late delivery, non-delivery or non-contractual delivery attributable to our suppliers unless we are at fault.
- 4.5. In the event of delays in delivery due to force majeure, riot, strike, lockout, raw material shortages or operational disruptions not attributable to us, including those affecting our suppliers, the delivery period will be extended, at a minimum, by the period until the disruption has been remedied insofar as said disruption is affecting the production or delivery of the goods to be supplied. We will inform the Purchaser about the start and end of such hindrances without delay. In the event of prolonged operational disruptions due to force majeure, riot, strike, lockout, raw material shortages or other operational disruptions not attributable to us, or in the event that our supplier fails to deliver to us through no fault of our own, we and the Purchaser will also be entitled to withdraw from the contract in full or in part without giving rise to any claims for compensation. In the event of withdrawal, any payments already made must be refunded without delay. The contracting partner who intends to withdraw from the contract in accordance with the foregoing provisions must give two weeks' notice. Long-term operational disruptions as defined above will be deemed to exist if they last longer than five weeks. Force majeure as defined in this clause is an event beyond our control, the effects of which on the performance of the contract cannot be avoided by reasonable efforts on our part. Such events include fire damage, floods, epidemics and pandemics (e.g. the effects of COVID-19). This also applies in the case of such effects through our subcontractors.
- 4.6. Claims for compensation due to delayed delivery can only be asserted under the conditions set out in clause 5.
- 4.7. We are entitled to make reasonable part deliveries. Part deliveries will be invoiced at the value of the part delivery and will be paid for by the Purchaser in accordance with clause 8.
- 4.8. Excess or short deliveries of up to 10% of the quantity ordered are permitted.
- 4.9. If acceptance is required, our deliveries and services will be deemed to have been accepted, notwithstanding any other (constructive) acceptance, when
- the delivery (and, if we are obliged to do so, the installation) has been completed,
 - we have notified the Buyer of the completion in accordance with a. and requested their acceptance,
 - twelve working days have elapsed since the delivery or installation, or the Buyer has started to use our supplies and/or services (e.g. has put said supplies into operation or further processed them), and, in this scenario, six working days have elapsed since the delivery or installation, and the Buyer has not accepted the delivery within this period for any reason other than a defect reported to us that makes use of the delivery and/or service impossible or substantially impairs it.
- 5. Rights in the event of defects, compensation**
- 5.1. The Purchaser shall carefully inspect designs, preliminary products and intermediate products provided for inspection and report any defects. Any such defect reports must be made in writing. Services provided in accordance with a declared approval will be deemed to be in conformity with the contract.
- 5.2. Insofar as we are obliged to remedy the defect, we may do so either by repair or replacement at our discretion. Section 377 of the HGB will remain unaffected. This means that any complaint will be excluded if the goods have been further processed, e.g. cut to size, despite obvious defects. Minor, technically unavoidable variations in quality, colour, width, weight, finish or pattern will not constitute defects. This also applies to variations customary within the trade except where we have agreed to a delivery that matches the sample exactly.
- Replaced parts will become our property. In the event of remedying the defect, we will be obliged to bear all expenses necessary to remedy the defect, in particular transport costs, travel, labour and material costs, provided that these have not been increased by the fact that the purchased item has been taken to a location other than the contractually agreed place, unless such relocation is in accordance with the intended use. This will not limit the Buyer's rights under Section 439 III of the German Civil Code (BGB).
- Claims by the Buyer for the reimbursement of expenses pursuant to Section 445a (1) BGB will be excluded unless the last contract in the supply chain is a purchase of consumer goods (Sections 478 and 474 BGB) or a consumer contract for the provision of digital products (Sections 445c, sentence 2, 327 (5) and 327u BGB).
- Without prejudice to any further claims, in the event of an unjustified defect report, the customer shall reimburse us for the costs incurred in checking and, if requested, remedying said defect. Moreover, the Purchaser will be entitled to the additional statutory rights to withdrawal from the contract and a reduction of the purchase price, provided that the statutory requirements for these are met. Claims for damages or compensation will only exist in accordance with the following provisions.
- 5.3. In the event of a culpable violation of a material contractual obligation (a so-called cardinal obligation), we will be liable for damages but the amount thereof will be limited to the foreseeable damage that would typically occur, unless otherwise stipulated hereinafter. Cardinal obligations are essential obligations, the fulfilment of which is necessary for the proper execution of the contract and on which the Purchaser may reasonably rely. They also include obligations whose breach would jeopardise the achievement of the purpose of the contract.
- 5.4. The Purchaser will be entitled to compensation claims against us in accordance with the statutory provisions, without restriction and up to the statutory amount, if such claims arise as a result of actions by us, our legal representatives or vicarious agents and are based on
- culpable injury to life, limb or health or
 - a wilful or grossly negligent breach of duty or
 - mandatory statutory liability provisions (e.g. under the German Product Liability Act (ProdHaftG) or data protection legislation) or
 - the breach of a duty arising from an accepted procurement risk or guarantee.
- Any further compensation claims against us, our legal representatives and our vicarious or auxiliary agents are excluded, regardless of the legal basis on which they are asserted. The statutory allocation of the burden of proof will remain unaffected.
- 6. Limitation period for claims for defects**
- 6.1. The Buyer's claims for material defects will be subject to a limitation period of one year, unless
- the goods supplied by us are items which have been used for a structure in accordance with their normal use and have caused said structure to be defective, or
 - the defect has been fraudulently or maliciously concealed or is due to a wilful breach of duty by us, our legal representatives or our vicarious agents, or
 - the claims are based on a guarantee or procurement risk accepted by us, or
 - the claims arise from a contract for the sale of consumer goods with digital elements (Section 475b BGB) or one or more contracts falling under Sections 475a, c and/or 327a-b BGB, but only insofar as the digital elements are concerned,
 - the item supplied under the contract is a new or newly manufactured movable item for a customer acting as a consumer as defined by Section 13 BGB, or
 - they are claims for compensation, or
 - they are claims in accordance with Section 445a BGB.
- The statutory limitation periods will apply in scenarios a. to f. In the g. scenario, the statutory limitation periods will also apply where the last contract in the supply chain is a purchase of consumer goods as defined by Section 474 BGB (in particular, where the final buyer purchases an item from a merchant as a consumer). Otherwise (in other words, where the final buyer is not a consumer), the limitation period will be 14 months.
- 6.2. The statutory provisions on suspension, expiry suspension and the commencement and recommencement of limitation periods will continue to apply.
- 6.3. Clauses 6.1 to 6.3 will apply mutatis mutandis to defects of title.
- 7. Retention of ownership**
- 7.1. If we have already received payment in full for an item at the time of delivery, ownership thereof will pass to the customer upon delivery unless otherwise agreed in individual cases.
- 7.2. If we provide advance performance by delivering the goods before we have received payment or payment in full for said goods (retained goods), the following additional provisions will apply:
- 7.2.1. We will retain ownership of all goods delivered by us until the purchase price has been paid and, in addition, until all our claims arising from the business relationship, including those arising from contracts concluded at a later date and irrespective of their legal basis – including all contingent liabilities (particularly payments by cheque and bill of exchange) – have been settled.
- 7.2.2. If the retention of ownership only becomes effective following entry in certain registers and/or by compliance with other specific legal requirements, the Buyer undertakes to fulfil these requirements. The Buyer will bear all resulting costs in connection with the same.
- 7.2.3. The Buyer may further process and resell the retained goods within the ordinary course of business as long as they do not default on their obligations to us and do not cease to make their payments. The following will apply in particular:
- 7.2.3.1. The retained goods will be processed or transformed on our behalf as manufacturer within the meaning of Section 950 BGB without placing us under any obligation. The Buyer does not acquire ownership of the new item through the processing or transformation of the retained goods. If the retained goods are processed, mixed, blended or combined with other items, we will acquire co-ownership of the new item in the ratio of the invoice value of our retained goods to the total value. The provisions applicable to the retained goods will apply mutatis mutandis to the co-ownership shares resulting from the above provisions.
- 7.2.3.2. The Buyer hereby assigns to us the claims arising from the resale or other disposal transactions, such as contracts for work and materials, together with all ancillary rights, including proration where the retained goods have been processed, mixed or combined, and we have acquired co-ownership in the amount of our invoice value or have been permanently installed. As a result of this assignment, if the retained goods have been processed, mixed, combined or permanently installed, we will be entitled to a corresponding first-priority fractional share of the respective claim from the resale in the ratio of the invoice value of our retained goods to the invoice value of the item in question. If the Buyer sells the retained goods together with other goods not supplied by us, the Buyer hereby assigns to us a first-priority share of the claim arising from the resale to an amount equal to the invoice value of our retained goods. If the Buyer has sold said claim within the framework of a valid factoring transaction, they hereby assign to us the replacement claim against the factor.

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If the Buyer includes the claim from the resale in a mutual running account arrangement with their customer, the Buyer hereby assigns to us their claims from this mutual running account arrangement to the amount of the invoice value of the retained goods.

In particular, the assignment includes not only payment claims, but also claims to surrender, especially where the Buyer resells retained goods.

7.2.3.3. We hereby accept the above assignments.

7.2.3.4. The Buyer will be entitled to collect the claims assigned to us until we revoke this right. The authorisation to collect will lapse when revoked. This will occur if the Buyer falls into payment arrears or ceases making payments. The same will apply if the Buyer's financial situation deteriorates significantly in a manner that jeopardises our claim. In such circumstances, we are authorised by the Buyer to notify the purchasers of the assignment and collect the claim ourselves.

7.2.3.5. Upon request, the Buyer shall provide us with a detailed list of its claims, including the names and addresses of the purchasers, the amount of each individual claim, the invoice date, etc., and all information and documents necessary for the assertion and verification of the claims.

7.2.3.6. Amounts that the Buyer receives in respect of assigned claims must be kept separately for us until they are transferred.

7.2.4. The Buyer is not permitted to pledge or transfer the retained goods or the assigned claims by way of security. We must be notified immediately of any measures of distraint, stating the creditor involved.

7.2.5. If the value of the collateral to which we are entitled exceeds our total claim against the Buyer by more than 10%, we will be obliged to release the same at the Buyer's request.

7.2.6. If the Buyer defaults on payment or ceases to make payments, we will be entitled, subject to further statutory provisions, to take back the retained goods. We may freely dispose of the retained goods we have repossessed in this manner.

7.2.7. The Buyer shall store the retained goods for us free of charge. They shall insure them against all the usual risks such as fire, theft and water to the typical extent. The Buyer hereby assigns to us any claims for compensation against insurers or other liable parties as a result of the aforementioned types of damage up to the amount of our claims. We hereby accept the assignment.

8. Payment

8.1. Our invoices are payable immediately and without deduction. This also applies to invoices for part deliveries pursuant to clause 4.7.

8.2. Early payment discounts that have not been agreed upon are not permitted. Where an early payment discount has been agreed upon, this will only apply to the confirmed order in question and the period for the early payment discount will commence upon the invoice date.

The early payment discount period will be deemed to have been observed if the full amount due is credited to our account no later than by the last day of the early discount period.

8.3. If the Purchaser is late with payment, they will be liable to pay interest on arrears of 12% or at least the statutory interest rate in accordance with Section 288 II BGB. If the interest pursuant to sentence 1 exceeds the statutory interest rate, the Purchaser is at liberty to prove that no damage caused by the delay was incurred or was incurred to this extent. We reserve the right to claim greater damages due to delay.

8.4. If the Purchaser is late with a payment, regardless of the legal grounds, or has ceased to make payments, all claims against them will become payable immediately, even if longer payment terms have been granted in individual cases.

8.5. If the Purchaser's financial situation deteriorates significantly and this jeopardises our claim under the respective legal transaction, we will be entitled to demand advance payment or appropriate security. The same will apply if such circumstances existed prior to the conclusion of the contract and we only become aware of them at a later date. If the advance payment or security is not received in due time despite a reminder and the granting of a reasonable grace period, we will be entitled to withdraw from the contract and claim damages for non-performance.

8.6. We are entitled to claim commercial default interest from our customers who are merchants (Section 353 HGB).

9. Offsetting and right of retention

9.1. The Buyer may not offset counterclaims or exercise any right of retention except where these are based on the same legal relationship or Section 320 BGB or where said claims are undisputed or have been legally established.

10. Place of performance, place of jurisdiction, applicable law

10.1. The place of performance will be our registered office. The same applies for the place of supplementary performance.

10.2. The place of jurisdiction will be our registered office if the Purchaser is a merchant or legal entity under public law or a special fund under public law or if the Purchaser has no general place of jurisdiction in Germany.

If the customer's registered office is outside the Federal Republic of Germany, we will also be entitled to bring an action against them at their general place of jurisdiction.

10.3. The contractual relationship between us and the Purchaser will be governed by German substantive law as if both parties were domiciled in Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) is hereby excluded.

Last updated: February 2025