

General Terms and Conditions of Sale and Delivery - ystral gmbh

I. Scope

1. These General Terms and Conditions of Sale („Terms“) shall apply to all - including future - contracts with entrepreneurs, legal entities under public law and special funds under public law („Purchaser“) for deliveries and other services, including contracts for work and services and the delivery of non-fungible goods. The Purchaser's terms and conditions of purchase shall not apply even if we do not expressly object to them again after receipt by us.
2. Our offers are non-binding and subject to change. Supplements and amendments to the agreements made, including these Terms and Conditions, must be made in text form in order to be effective.
3. The contract concluded in writing, including these Terms and Conditions, shall be solely authoritative for the legal relationship between us and the Purchaser. This contract reflects all agreements on the subject matter of the contract in full. Verbal agreements, guarantees or other promises made by us prior to the conclusion of this contract shall not be legally binding and shall be replaced by the written contract, unless it is expressly stated in each case that they shall continue to be binding.
4. The written form provided for in these Terms and Conditions shall also be complied with by the text form.
5. In case of doubt, the interpretation of commercial clauses shall be governed by Incoterms 2020®.

II. Prices

1. Unless otherwise agreed, the prices and conditions of our price list applicable at the time of conclusion of the contract shall apply, namely in Euro ex delivery works (Ballrechten-Dottingen) plus freight, value added tax and, if applicable, packaging as well as, in the case of export deliveries, customs duties and fees and other costs associated with the delivery.
2. If costs for packaging, transport or transport insurance, which are included in the agreed price and are not shown separately, change later than three months after conclusion of the contract, we reserve the right to adjust the agreed prices to the development of these costs at our reasonable discretion.

III. Payment and Default of Payment

1. Unless otherwise agreed or stated on the invoices, the purchase price shall be due for payment without any discount within 8 days from the date of invoice.
2. Unless otherwise agreed, one third of the purchase price shall be due upon conclusion of the contract and one third after we have notified the Purchaser that the delivery item or essential parts of the delivery item are ready for shipment. The remaining part of the purchase price shall be payable upon completion of the entire delivery.
3. Payment shall be made in such a way that we can dispose of the amount on the due date. Costs of payment transactions shall be borne by the Purchaser.
4. The Purchaser shall only be entitled to a right of retention and a right of set-off insofar as (a) its counterclaims are undisputed or have been finally determined by a court of law, or (b) they are based on the same contractual relationship with the Purchaser and would entitle the Purchaser to refuse performance in accordance with § 320 BGB (German Civil Code).
5. The Purchaser shall be in default of payment upon expiry of the day on which our claim becomes due and payable, without any reminder being required. In the event of default in payment, we may charge a flat-rate default fee of € 40.00 as well as interest in the amount of 9 percentage points above the base interest rate. We reserve the right to claim further damages.
6. If, after the conclusion of the contract, it becomes apparent that our claim for payment is jeopardized by the Purchaser's lack of ability to pay or if other circumstances arise which indicate a significant deterioration in the Purchaser's ability to pay, we shall be entitled to refuse our due and not yet due performances and may set a deadline within which the Purchaser shall, at its discretion, either effect performance or provide security concurrently with performance. In such cases, we may also declare due all claims arising from the current business relationship with the Purchaser. The delay of the payment of a not insignificant amount owed by the Purchaser or with the delay with the provision of a security shall also be deemed to be a lack of ability to perform.
7. Any agreed cash discount shall be subject to full settlement of all due liabilities of the Purchaser at the time of the cash discount. Unless otherwise agreed, cash discount periods shall commence from the date of invoice.

IV. Shipment, Transfer of Risk, Packaging, Partial Delivery

1. In the absence of any agreement to the contrary, we shall determine the route and means of dispatch as well as the forwarding agent and carrier.
2. In the absence of a special delivery clause in the contract, the delivery item shall be deemed to have been delivered „free carrier“ (FCA) Ballrechten-Dottingen.
3. With the handing over of the delivery item to the first forwarding agent or carrier, at the latest however with the leaving of the warehouse or the delivery plant, the risk, also that of a seizure of the delivery item, is transferred to the Purchaser for all transactions, also for carriage paid and free domicile deliveries. We shall provide insurance only upon instruction and at the expense of the Purchaser. The obligation and costs of unloading shall be borne by the Purchaser.
4. Delivery items notified as ready for dispatch in accordance with the contract must be called off immediately, otherwise we shall be entitled, after a reminder and fruitless expiry of an appropriately specified period of grace, to dispatch them at our discretion at the cost and risk of the Purchaser or to store them and to invoice them immediately. Unless otherwise agreed, the storage costs shall amount to at least 0.5% of the invoice amount for each full month.
5. If the Purchaser does not accept the delivery on the delivery date, the part of the purchase price due on the delivery date shall nevertheless be paid as if the delivery had been made on the delivery date. We shall store the delivery item at the Purchaser's expense and risk. At the request of the Purchaser, we shall also insure the delivery item at the expense of the Purchaser. If the Purchaser does not accept the delivery within a reasonable period of grace set by us for a reason for which we are not responsible, we may terminate the contract in whole or in part in writing. We shall then be entitled to compensation for the damage caused by the Purchaser's delay, including indirect and consequential damage. The total amount of compensation shall not exceed the purchase price for the part of the delivery item for which the contract is terminated, plus reasonable storage costs.
6. If, through no fault of our own, transport by the intended route or to the intended place in the intended time becomes impossible or substantially more difficult, we shall be entitled to deliver by another route; the additional costs incurred shall be borne by the Purchaser. The Purchaser shall be given the opportunity to comment beforehand.
7. We shall provide packaging, protective and/or transport aids according to our experience at the expense of the Purchaser. Insofar as we are obliged to take back packaging, this shall only be taken back at our warehouse. We shall not bear any costs incurred by the Purchaser for the return transport or for its own disposal of the packaging.
8. We are entitled to make partial deliveries to a reasonable extent.

V. Delivery Periods and Delay in Delivery

1. Information on delivery times are approximate. Delivery periods shall commence on the date of our order confirmation and shall only apply on condition that all commercial and technical details of the order have been clarified in good time and that all obligations of the Purchaser have been fulfilled in good time, e.g. prompt provision of requested drawings and all official certificates which may be required, provision of letters of credit and guarantees or provision of advance payments. The same shall apply to delivery dates.
2. The date of dispatch ex works or ex warehouse shall be decisive for compliance with delivery periods and dates. They shall be deemed to have been complied with upon notification of readiness for dispatch if the delivery item cannot be dispatched on time through no fault of ours.
3. Our delivery obligation is subject to correct, timely and contractual self-delivery, unless the incorrect or delayed self-delivery is our fault.
4. Events of force majeure shall entitle us to postpone the deliveries and services incumbent upon us by the duration of the impediment and a reasonable start-up period, insofar as the performance of deliveries and services is made impossible or substantially more difficult by such events. This shall also apply if such events occur during an existing delay. Equivalent to force majeure are measures of currency policy, trade policy and other sovereign measures, furthermore strikes and lockouts, operational disruptions for which we are not responsible (e.g. (e.g. fire, breakdown of machinery, shortage of raw materials and energy), obstruction of traffic routes, delay in import/customs clearance, epidemics, natural disasters, extreme natural events, acts of terrorism as well as defective or delayed deliveries by suppliers/subcontractors due to the force majeure events listed above, as well as all other circumstances which, through no fault of our own, make our deliveries and services significantly more difficult or impossible. We shall notify the Purchaser immediately and in writing of the occurrence and cessation of such event. If the impediment lasts longer than six months, either party may withdraw from the contract after the fruitless expiry of a reasonably determined period of grace.
5. If we are in default with the delivery of the delivery item, the Purchaser shall be entitled to payment of liquidated damages, unless we have excluded this either on our offer, our order confirmation or by agreement with the Purchaser. The liquidated damages shall amount to 0.5% of the purchase price of the delayed delivery for each full week of delay, but not more than 5% of the purchase price. If the delivery of only a part of the delivery item is delayed, the liquidated damages shall be determined on the basis of the purchase price corresponding to the part of the delivery item which cannot be used as intended by the parties due to the delay. The liquidated damages shall become due upon written demand by the Purchaser, but not before completion and settlement of the total delivery by us or termination of the contract by claiming damages in lieu of performance. We reserve the right to prove that the Purchaser has suffered no or less damage than the aforementioned lump sum. Beyond the lump-sum compensation, we shall not be liable for damages caused by delay, unless we have acted intentionally. The right of the Purchaser to claim damages instead of performance in accordance with No. VIII.1 and VIII.2 shall remain unaffected.

VI. Acceptance

1. If an acceptance test has been agreed, it may, in the absence of any agreement to the contrary, only take place in our supplying plant or our warehouse immediately after notification of readiness for acceptance during normal working hours. We shall bear the costs of the acceptance tests carried out at the place of manufacture, but the Purchaser shall bear all travel and accommodation expenses of its representatives as well as all other personal acceptance costs of the Purchaser incurred in connection with the acceptance tests.
2. We shall notify the Purchaser in writing of the tests in sufficient time to enable the Purchaser to be represented at the tests. If the Purchaser is not represented, he shall receive a test report from us, the correctness of which shall be presumed.
3. If the acceptance is not carried out, not carried out in time or not carried out completely through no fault of our own, we are entitled to dispatch the delivery item without acceptance or to store it at the expense and risk of the Purchaser and to charge him for it.

4. If the acceptance test reveals that the delivery item is not in conformity with the contract, we shall remedy the defects without delay in order to bring the delivery item into conformity with the contract. Only in the case of significant defects may the Purchaser demand a repetition of the acceptance test.

VII. Liability for Material Defects

1. The quality of the delivery item shall be governed exclusively by the technical delivery specifications agreed in writing. Insofar as we have to deliver according to drawings, specifications, samples, etc. of the Purchaser, the latter shall assume the risk of suitability for the contractually intended use. Otherwise, the suitability for a contractually intended use must be agreed in text form at the latest upon conclusion of the contract.
2. Insofar as the delivery item has the agreed quality in accordance with VII.1 and is suitable for the use provided for in the contract, the Purchaser may not invoke the fact that the delivery item is not suitable for the usual use or has a quality which is usual for items of this type and which the Purchaser has expected.
3. Defects of the delivery item shall be notified in writing without delay, at the latest seven days after delivery. Defects which cannot be discovered within this period even with the most careful inspection shall be notified in writing immediately after discovery. In all cases, the delivery item must be kept available for inspection in unchanged condition after discovery of the defect. If the Purchaser violates the obligation to notify or does not make the delivery item available for inspection, the delivery item shall be deemed approved. The above provisions of this paragraph shall apply mutatis mutandis to the manufacture of a delivery item.
4. In the event of an intended installation of the delivery item, the Purchaser shall have the additional obligation to inspect the properties of the delivery item relevant for its use prior to installation; Section VII.3 shall apply to the notification of defects. If the Purchaser fails to inspect the characteristics of the delivery item relevant to its use prior to installation, he shall be deemed to have acted with gross negligence. In this case, warranty rights with regard to these properties shall only be considered if the defect in question was fraudulently concealed or a guarantee for the quality of the delivery item was assumed.
5. In the event of a justified notice of defect within the time limit, we may, at our discretion, either remedy the defect within a reasonable period of time (subsequent improvement) or deliver a defect-free delivery item (replacement delivery, both forms of subsequent performance). The rectification of the defect shall be scheduled in such a way that the Purchaser's operations are not unnecessarily impaired. The Purchaser shall, at its own expense, allow us access to the delivery item and provide for any intervention with respect to equipment that is not part of the delivery item, to the extent necessary to remedy the defect. Unless otherwise agreed, the Purchaser shall bear all additional costs incurred by us for subsequent performance because the location of the delivery item deviates from the place of delivery agreed upon at the time of conclusion of the contract. Replaced defective parts shall be made available to us and shall become our property.
6. In the event of failure or refusal of subsequent performance, the Purchaser may, after unsuccessful expiry of a reasonable period, withdraw from the contract or reduce the purchase price. If the defect is not substantial, he shall only be entitled to the right of reduction. The reduction shall not exceed 15% of the purchase price. If the defect is so fundamental that the Purchaser loses its interest in the contract in respect of the delivery item or a substantial part thereof, the Purchaser may rescind the contract in respect of that part of the delivery item which, because of the defect, cannot be used as intended by the parties. The Purchaser shall then be entitled to compensation for its losses, costs and damages up to an amount not exceeding 15% of the partial purchase price corresponding to the part of the delivery item in respect of which the Purchaser has withdrawn from the Contract. The above provisions of this paragraph shall apply mutatis mutandis to the manufacture of a delivery item.
7. We shall bear expenses in connection with subsequent performance only to the extent that they are reasonable in the individual case, in particular in relation to the purchase price of the delivery item, but in no case more than 100% of the purchase price. We shall only assume further expenses in accordance with Section VIII. of these Terms and Conditions. We shall not be liable for any expenses incurred as a result of the sold delivery item being taken to a place other than the agreed place of performance.
8. After the agreed acceptance of the delivery item by the Purchaser, the notification of defects which were detectable during the agreed type of acceptance shall be excluded.
9. Our further liability shall be governed by section XIII of these Terms and Conditions. The statutory right of the Purchaser to demand reimbursement of the expenses which he had to bear in relation to his customer remains unaffected, insofar as the defect asserted by his customer was already present at the time of the transfer of risk to the Purchaser.

VIII. Damages and Statute of Limitation

1. We shall only be liable for breach of contractual and non-contractual obligations, in particular for impossibility, delay, culpa in contrahendo and tort - including for our executive employees and other vicarious agents - in cases of intent and gross negligence. In the event of simple or gross negligence, our liability shall be limited to the damage typical for the contract and foreseeable at the time of conclusion of the contract. In all other respects, our liability, including for damage caused by defects or consequential damage, loss of production or loss of profit, shall be excluded.
2. The limitations of liability from No. VIII.1 shall not apply in the case of intent, culpable breach of essential contractual obligations, insofar as the achievement of the purpose of the contract is jeopardized, in the case of culpably caused damage to life, limb and health and also not if and insofar as we have assumed a guarantee for the quality of the delivery item, as well as in cases of mandatory liability under the Product Liability Act. Essential contractual obligations are those which make the proper execution of the contract possible in the first place and on whose compliance the Purchaser may regularly rely. The rules on the burden of proof shall remain unaffected.
3. Claims for defects, including claims for damages, shall become statute-barred one year after delivery of the delivery item. Longer statutory limitation periods shall remain unaffected in the case of items which have been used in accordance with their customary use for a building and have caused its defectiveness, for the claim for reimbursement of expenses regulated in No. VII.9 sentence 2, in cases of planning or monitoring services for buildings and in cases of injury to life, limb or health, in the case of an intentional or grossly negligent breach of duty by us or in the case of fraudulent concealment of a defect.

IX. Drawings and technical information

1. Insofar as we have supplied items in accordance with drawings, models, samples or other documents provided by the Purchaser, the latter shall assume liability that the industrial property rights of third parties are not infringed. If third parties prohibit us from manufacturing and supplying such items, in particular by invoking industrial property rights, we shall be entitled - without being obliged to examine the legal situation - to cease any further activity in this respect and to demand compensation for damages and indemnification against claims by third parties from the Purchaser, unless the latter is not responsible for the breach of duty.
2. We reserve all property rights and copyrights to catalogs, technical documentation (e.g. drawings, plans, calculations, references to DIN/EN standards), other product descriptions or documents handed over to the Purchaser, even if the handover has taken place in electronic form. To the extent permitted by law, we may also provide information and drawings for installation, commissioning, maintenance and care (operating and assembly instructions) in electronic form. In the event of delivery in paper form, we shall not be obliged to provide more than one copy. We are not obliged to procure or hand over workshop drawings for the delivery item or spare parts.

X. Retention of Title

1. Ownership of the delivery item is transferred under the condition precedent of full payment of the purchase price.
2. All delivered items shall remain our property (Reserved Goods) until all claims have been fulfilled, in particular also the respective balance claims to which we are entitled within the scope of the business relationship (balance reservation). This shall also apply to claims arising in the future and conditional claims and also if payments are made on specially designated claims. This reservation of balance shall finally expire upon settlement of all claims which have already come into existence at the time of payment and which are still open and covered by this reservation of balance. However, in the case of advance payment transactions or cash transactions within the meaning of § 142 of the German Insolvency Code (InsO), only the simple retention of title pursuant to No. X.1 shall apply.
3. The Purchaser may only sell the Reserved Goods subject to retention of title in the ordinary course of business under his normal terms and conditions of business and as long as he is not in default, provided that the claims from the resale are transferred to us in accordance with No. X.4 to 5. He shall not be entitled to dispose of the Reserved Goods in any other way.
4. The Purchaser hereby assigns to us the claims arising from the resale of the Reserved Goods subject to retention of title. We hereby accept the assignment. The claims shall serve as security to the same extent as the Reserved Goods.
5. The Purchaser may collect the claims assigned to us from the resale in the ordinary course of business. This authorization to collect shall expire in the event of our revocation, but at the latest in the event of default in payment or application for the opening of insolvency proceedings. We shall only exercise our right of revocation if, after conclusion of the contract, it becomes apparent that our claim for payment under this or other contracts with the Purchaser is jeopardized by the Purchaser's lack of ability to pay. At our request, the Purchaser is obliged to inform his customers immediately of the assignment to us and to provide us with the information necessary for collection or to hand over documents.
6. The Purchaser must inform us immediately of any seizure or other interference by third parties. The Purchaser shall bear all costs which have to be incurred in order to revoke the seizure or to return the Reserved Goods subject to retention of title, insofar as they are not reimbursed by third parties.
7. If the Purchaser is in default of payment, we are entitled to take back the Reserved Goods. The same shall apply if, after conclusion of the contract, it becomes apparent that our claim for payment under this or other contracts with the Purchaser is jeopardized by the Purchaser's lack of ability to pay. The taking back of the Reserved Goods shall not constitute a withdrawal from the contract.
8. If the realizable value of the existing securities exceeds the secured claims including ancillary claims (interest, costs or similar) by more than 20% in total, we shall be obliged to release securities of our choice to this extent at the request of the Purchaser.

XI. Place of performance, Arbitration Clause, Elective Legal Venue and Applicable Law

1. Place of performance for payments by the Purchaser is our registered office. The place of performance for deliveries is Ballrechten-Dottingen.
2. All disputes arising out of or in connection with this contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with these Rules. The place of arbitration shall be Stuttgart and the language of arbitration shall be German.
3. Notwithstanding Clause XI.1, we shall have the option to bring an action against the Purchaser before the state courts at the Purchaser's place of business or before any other court having jurisdiction by operation of law, subject to the following conditions: We shall exercise our option by filing a corresponding complaint or other action initiating proceedings under the respective procedural law with the state court selected in each case. If we bring an action against the Purchaser before the state courts at the Purchaser's registered office or another court having jurisdiction by operation of law, the arbitration clause in Clause XI.2 shall expire with respect to the subject matter of the dispute upon notification, at the latest upon delivery of the action or any other measure initiating proceedings to the Purchaser.
4. All legal relations between us and the Purchaser shall be governed by the laws of the Federal Republic of Germany. The provisions of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.
5. In case of doubt, the German version of these Terms shall apply.