

Standard Terms and Conditions for Sale and Delivery

G. & W. Jaspers GmbH u. Co. KG

valid from 1st July 2010

I. Scope

1. All deliveries and performances are carried out in accordance with the following Standard Terms and Conditions for Sale and Delivery. Conflicting, deviating or supplementary terms of the contractual partner shall not be binding for the contract unless we accept them in writing. Acceptance by our commercial agents is not sufficient. Our Standard Terms and Conditions shall also apply when we supply the Buyer without reservation after having been informed of conflicting or divergent terms and conditions on part of the Buyer. The Buyer accepts these Standard Terms and Conditions for Sale and Delivery at the latest with the confirmation of the order and the acceptance of the goods. Objections must be submitted in writing without delay; an objection in standard terms and conditions is not sufficient. These Standard Terms and Conditions shall govern any and all future contract of sale between us and the Buyer.
2. If individual conditions are invalid the contract shall remain fully in force with the remaining conditions.

II. Conclusion of the contract

1. Our offers are non-binding. The order from the Buyer represents a binding offer. The contract shall come into force through the sending of a written confirmation of order or an updated quota inventory list within ten days, or if the goods ordered are sent to the Buyer and accepted by him. This applies in particular to transactions at fairs and the agency work of our commercial agents.
2. Deviations of the confirmation of order or of the updated quota list from the order shall be deemed to be approved unless a written objection is received within three working days of the date on which the confirmation of order or the updated quota list was received.

III. Prices and delivery

1. All prices refer to the current price list for the respective clientele and are understood as net prices; turnover tax at the applicable rate is always shown separately.
2. Our delivery periods are always approximate. If the agreed delivery date is exceeded by more than two weeks the Buyer shall have the right to set us in writing a final deadline of not less than two weeks. If we fail to comply with the final deadline the Buyer shall have the right to withdraw from the contract if the final deadline was combined with the threat of rejection.
3. Our deliveries are always subject to the proviso that our suppliers deliver merchandise, raw materials and resources to us correctly and on-time. We shall notify the Buyer immediately, if the goods are not available or only partially available and return all advance payments of the Buyer immediately.
4. Unforeseeable occurrences, labour disputes, breakdowns, lack of employees, goods or resources, and other indirect or direct reductions of the production quantities of the sold products in our company or at our suppliers shall release us for the time of the occurrence from our obligation to deliver. In these cases we reserve the right to choose whether to deliver after remedy of the occurrences or to withdraw from the contract fully or in part. The Buyer has the right to withdraw from the contract if he can demonstrate that it would be unreasonable for him to be continuously be bound to the contract.
5. We have the right to choose the route and the type of transport, taking the legitimate interests of the Buyer into consideration. If ordered goods are shipped the shipment shall be ex works at the Buyer's risk. This shall also apply if we have taken over the freight and other costs. We do not insure goods against transport damage unless the Buyer requests this in writing and pays the costs.
6. We invoice freight and packing costs in accordance with our additional customised supplementary terms and conditions. Export shipments shall in general be ex works, duty and tax unpaid.
7. This shall not affect the transfer of risk, which takes place when the goods are handed to the transporter.
8. Other delivery terms result from the respective valid price lists and supplementary terms and conditions.

IV. Terms of payment

1. Our invoices must be settled net cash (without deductions) within 30 days of the date of the invoice, or within 8 days with 2% skonto, or in case of bank collection authorization with 3% skonto..
2. If several debts are outstanding, we reserve the right to determine the order in which they are redeemed.
3. Cash-on-delivery charges shall be for the account of the Buyer.
4. The Buyer shall be in default after the due date and a reminder, but not later than 30 days after the due date and after receipt of the invoice. We reserve the right to require payment in advance from new customers or with special del credere risks.
5. If the contractual partner is a consumer, interest of five percentage points, in other cases interest of eight percentage points, above the respective basic interest rate shall be paid on the invoice sum from the due date, in accordance with section 247 of the German Civil Code. We shall be entitled to demand payment of verified higher interest costs unless the Buyer furnishes proof that less damage arose as a consequence of the default of payment.

V. Furnishing security

1. We reserve the right to retain the delivery in the event that it can be seen after the conclusion of the contract that fulfilment of the claim to payment is at risk because of the Buyer's lack of ability to pay. A risk shall exist in particular if payments are not made as agreed, if credit has already reached a disproportionate level or if we receive unfavourable information about the Buyer. We shall fulfil our contractual obligations subject to deviating agreements as soon as the purchase price has been received or if security in the amount of 110% is received for it; reservation of title within the meaning of No. VI below shall not be deemed to be security for the purposes of this provision. Regulation of the German Insolvency Law or the Receivership Law remain unaffected.
2. If we set the Buyer a deadline to pay the purchase price or furnish security we shall be entitled to withdraw from the contract after the unsuccessful expiry of the deadline.

VI. Reservation of title

1. We reserve title to the goods that are delivered until full and complete payment of all claims against the Buyer, including those arising under a future business relationship. If ancillary costs are due (costs of bills of exchange, financing costs, interest), claims shall not be settled in full until these costs have been settled as well.
2. The Buyer agrees to store reserved goods correctly, to protect them from damage and to insure them to an adequate extent.
3. The Buyer is authorised to sell the goods in the ordinary course of business. In the event that goods that we supplied are sold/delivered, irrespective of the value or condition, the Buyer hereby assigns his claims against his own buyers together with all ancillary rights, including claims for damages arising from the transaction, to the amount of the claims shown in No. VI.1. If reserved goods that we delivered are sold to a third party together with other goods, the Buyer agrees to apportion the invoice items accordingly. If the apportionment is not carried out, that part of the claim to the total price shall be deemed to be assigned to us which corresponds to the invoice value of the deliveries. If an open account agreement was arranged with the Buyer, the assignment shall cover the corresponding balance claim. We hereby accept the declared assignment.
4. The Buyer is authorised to collect debts. This shall not affect our right to collect debts ourselves. However, we agree not to collect the assigned debts as long as the Buyer conforms with his obligations from the sums collected, is not in default and in particular an application for the initiation of insolvency proceedings is not submitted. If this is the case, we may demand that all assigned claims and their debtors are disclosed, that we are given all the information and documents that are required to collect the debts and that the Buyer notifies the debtor of the assignment.
5. The Buyer agrees to notify us without delay if third parties proceed against reserved goods or the assigned debts, in particular if distress is levied. In this case the Buyer shall send us a copy of the bailiff's return and an assurance in lieu of an oath on the identity of the distressed goods. If the third party is unable to reimburse the judicial and extra judicial costs of the action, in particular of an action against execution, the Buyer shall be liable in the amount of the statutory costs.
6. If there is a prohibition of assignment in the relationship between the Buyer and his customer, the Buyer agrees to notify his customer of the prior assignment if the latter is a merchant (§354a of the German Commercial Code).
7. In so far as the realisable total value of the securities to which we are entitled under the business relationship, including the securities under No. V, exceeds the accounts receivable by 20%, or if the nominal value of the securities exceeds the accounts receivable by 50%, the securities will be reassigned upon written demand from the Buyer. We shall be entitled to select the securities for assignment.
8. In the event that the Buyer has claims against insurers or other third parties arising from damage to, or the deterioration, loss or destruction of items serving as security, or for other reasons, he hereby assigns these to us.
9. We shall be entitled to retrieve the goods in the event of behaviour by the Buyer in breach of the contract, in particular on default of payment. Retrieval of the goods on our part shall not be deemed to be withdrawal from the contract, unless we declare this expressly in writing. After retrieving the goods we shall be entitled to sell them. The proceeds of the sale shall be set off against the Buyer's debts, less reasonable sales costs.

VII. Indemnity, damages, rescission

1. We shall be liable to the Buyer for damages only in cases in which we are responsible for the default in performance. We shall only be responsible for:
 - a) material breaches of contract that are caused at least by ordinary negligence, or
 - b) intentional, culpable or grossly negligent non-material breaches of the contract;
 - c) breaches of contract that are caused at least by ordinary negligence in so far as they lead to injuries to life, body and health.
2. In so far as there is no intentional breach or gross negligence the obligation to pay damages shall be limited to contractually typical and foreseeable damage. In cases of ordinary negligence not resulting in a material breach of contract the liability is limited to the order value. This limitation of liability shall not apply to injuries to life, body and health.
3. The Buyer may only claim damages instead of performance if we were given in writing an adequate period for performance or subsequent performance. The final deadline must be at least two weeks. This shall also apply to the right to withdraw from the contract. The final deadline may be combined with the period under No. III 2.
4. We shall be liable for claims for damage against us by the Buyer under rights of recourse in accordance with § 478 of the German Civil Code to a maximum of the invoice sum for the defective goods.
5. Our liability for the correctness of the turnover tax identity number is excluded, in so far as this is permitted by statute.

VIII. Setting off, assignment

1. Setting off against a claim from us is only possible if the claim is not in dispute or is unappealable.
2. The Buyer shall only have a right to retain goods in so far as the counterclaim is not in dispute or is unappealable and the counterclaim is based on the same contract.

IX. Public charges

1. In the event that during the term of the contract the public charges (customs duties, compensatory duties, commercial taxes, other public charges) or freight charges that apply at the time it is concluded are increased and this leads to an increase in the prime costs of production and/or sales beyond our control, we reserve the right to withdraw from the contract without having to set a final deadline if the Buyer does not state that he is prepared to take over the extra costs. The Buyer's right to claim damages is excluded in the event of a withdrawal.

X. Data processing

1. We shall be entitled in accordance with the provisions of the Federal Data Protection Act to process all data that are acquired on the basis of the business relationship with the Buyer.

XI. Industrial property rights

1. We reserve title to and copyright of cost estimates, drafts, drawings and other documents; this type of work, or legally protected work, may only be made accessible to third parties by agreement with us and must be returned to us on demand together with any drawings and other documents. Copies, irrespective of the data carrier, may only be made with our express written permission.
2. In the case of infringements of other industrial property rights (in particular patents, protected industrial designs) we reserve all rights to institute injunction proceedings and to claim damages.

XII. Warranty

1. We warrant the correct quality of the products we supply in so far as they are used, stored and cared for in accordance with the instructions for use and/or for the intended purpose. The information on the shape, dimensions, weights and colours in the conformation of order is provided to the best of our knowledge. Customary deviations and/or production-related deviations to the shape, dimensions, weights and colours do not impair the use on which the contract is based and shall not be deemed to be defects; this applies in particular to decorated and hand-made candles. We provide written guarantees only and these are designated as such.
2. The Buyer shall inspect the goods for completeness and condition immediately after they are delivered.
3. The exact specifications of obvious defects must be notified to us in writing within three working days of receipt of the goods. Hidden defects must be notified in the same form without delay after they are discovered. The limitation period for any claims shall be one year since the delivery of the goods, except for consumer transactions according to §§ 478f German Civil Code in which case the statutory limitation periods of § 479 German Civil Code apply.
4. In the case of a claim under warranty or guarantee we shall have the right to subsequent performance by remedying the defect or supplying a product that is free of defects against the return of the defective item. We may refuse subsequent performance if this is only possible with unreasonable costs.
5. The right to withdraw from the contract or to reduce the price shall only exist if and to the extent that we refused subsequent performance or this has been abortive. Subsequent performance must be attempted three times without success before it is deemed to be abortive.
6. In the case of customised products or decorated candles the Buyer may only demand an appropriate reduction of the purchase price.

XIII. Place of performance, venue

1. The place of performance for all obligations under this contract is our registered office, at present Hopsten.
2. The venue is before the courts competent for our registered office; however, we may also sue the Buyer at the courts competent for his registered office or place of residence.
3. The contractual relationship shall be governed by German law, including the UN Convention on Contracts for the International Sale of Goods (CISG) of 11.04.1980, but excluding the provisions of the German International Private Law.