

General Conditions of Sale

§ 1 General – Scope

- (1) Our Conditions of Sale shall apply exclusively; we will not accept any buyer's conditions contrary to or deviating from ours, unless we expressly agree to their validity in writing. Our Conditions of Sale shall also apply in case we deliver to a buyer without reservations, while having knowledge of that buyer's conditions being contrary to or deviating from ours.
- (2) All arrangements made between Gaudlitz and the buyer for the purpose of executing the present contract shall be taken down in that contract in writing.
- (3) Our Conditions of Sale shall apply only to entrepreneurs within the meaning of § 310 para. 1 BGB (German Civil Code).

§ 2 Quotation – Bidding Documents

- (1) A contract with Gaudlitz shall only become effective when the buyer accepts our quotation without reservations or when he receives our written order acknowledgment or when Gaudlitz starts performing the delivery/service. If Gaudlitz sends a written order acknowledgment, this shall be decisive for the contents and scope of the contract unless the parties have expressly agreed otherwise.
- (2) The order signed by the buyer shall be a binding offer. Gaudlitz is entitled to accept this offer within two weeks by sending an order acknowledgment or to ship the ordered goods to the buyer within this period.
- (3) Gaudlitz reserves ownership and copyright to illustrations, drawings, calculations and other documents. This also applies to such written documents marked „Confidential“. The buyer shall not forward such documents without our prior express permission given in writing.

§ 3 Prices – Terms of Payment

- (1) Unless the order acknowledgment specifies otherwise, Gaudlitz prices are quoted „ex works“, exclusive of packing, which will be made against extra charge.
- (2) Gaudlitz prices are quoted exclusive of the statutory value-added tax. Such tax, if applicable, will be separately shown on the invoice at the rate valid on the date of the invoice.
- (3) Any deduction of discounts shall be subject to separate agreement made in writing.
- (4) Unless the order acknowledgment specifies otherwise, the purchase price shall be due for payment net (without any deductions) within 30 (thirty) days from the date of the invoice. The consequences of the buyer's failure to make payment within this period shall entail the consequences stipulated by German legislation.
- (5) The buyer shall not be entitled to set-off any counterclaims of himself against the purchase price unless such counterclaims have been recognized by declaratory judgment and are not contested, or if they are acknowledged by Gaudlitz. The buyer is entitled to exercise a retention right in so far as his counterclaim is based on the same contract.

§ 4 Time of Delivery

- (1) In case of the buyer's default in taking delivery, or if the buyer culpably fails to perform any other co-operation duties of his, Gaudlitz shall be entitled to demand compensation for any damage and extra expenditures incurred. Gaudlitz reserves the right to make any further claims.
- (2) In the case mentioned in para. (1), the risk of accidental loss, destruction or deterioration of the purchased goods shall pass to the buyer at the time at which the buyer gets into default of taking delivery or performing any other of his duties.
- (3) Gaudlitz shall be liable in accordance with statutory provisions as far as the respective purchasing contract concerns a transaction for delivery by a fixed date in the meaning of § 286 para. 2 No. 4 BGB (German Civil Code) or § 376 HGB (German Commercial Code). Gaudlitz shall also be liable in accordance with statutory provisions if, in consequence of a default in delivery for which Gaudlitz is answerable, the buyer is entitled to claim that his interest in the further performance of the contract has ceased.
- (4) Gaudlitz shall further be liable in accordance with statutory provisions if a default in delivery is due to an intentional or grossly negligent infringement of contract by Gaudlitz; any fault of our representatives or vicarious agents shall be attributed to Gaudlitz. Unless the default in delivery is due to an intentional infringement of contract for which Gaudlitz is answerable, our liability for damages shall be limited to the foreseeable typical damage.
- (5) Gaudlitz shall also be liable in accordance with statutory provisions if the default in delivery for which Gaudlitz is answerable is due to the culpable infringement of a substantive contractual obligation; in such a case, though, our liability to damages shall be limited to the foreseeable typical damage.
- (6) In case of a default in delivery, Gaudlitz shall be liable to pay a flatrate compensation in the amount of 1.5% of the delivery value per week of default, but not in excess of a total of 9% of the delivery value.

§ 5 Liability for Defects

- (1) If he should find the purchased goods to be defective, the buyer shall be entitled to demand, at his option, either rectification of the defect or defect-free replacement delivery. If he opts for defect rectification, Gaudlitz shall bear all expenses required for such rectification, including, in particular, costs of transport, travel, working hours and materials, as far as these expenses are not increased by the fact that the purchased goods were moved to a place other than the place of delivery/performance.
- (2) If such rectification should not be successful, the buyer shall be entitled to demand, at his option, either rescission from the contract or reduction of the purchase price.
- (3) Gaudlitz shall be liable in accordance with statutory provisions if the buyer claims liability for damages due to intention or gross negligence by Gaudlitz or its representatives or vicarious agents. Unless any intentional breach of contract is imputed to Gaudlitz, Gaudlitz' liability for damages shall be limited to the foreseeable typical damage.
- (4) Gaudlitz shall be liable in accordance with statutory provisions if Gaudlitz culpably infringes any substantive contractual obligation; in this case, though, liability for damages shall be limited to the foreseeable typical damage.
- (5) If the buyer is entitled to claim damages instead of contract performance, Gaudlitz' liability, also within the scope of para. (3), shall be limited to compensation for the foreseeable typical damage.
- (6) Gaudlitz' liability for culpable personal injury, including such leading to loss of life or health, mutilation or disability, this also applies to other mandatory and statutory liability claims.
- (7) Liability shall be excluded unless the above provisions stipulate otherwise.
- (8) The limitation period shall be 12 (twelve) months from the passing of the risk.
- (9) Gaudlitz expressly disagrees with the inclusion of recourse clauses according to §§ 478, 479 BGB (German Civil Code) based on the buyer's general terms and conditions.
- (10) Any further liability for damages, irrespective of the legal nature of the claim asserted, shall be excluded. This shall apply especially to damage claims because of culpa in contrahendo or failure to comply with other duties, and to tortious claims for property damage pursuant to § 823 BGB.
- (11) As far as Gaudlitz' liability for damages is excluded or limited, the same shall apply to the personal liability for damages of our organs, employees, representatives and vicarious agents.

§ 6 Retention of Title

- (1) Gaudlitz shall retain title to the purchased goods until receipt of all payments due under the purchasing/delivery contract. In case of the buyer's behaviour in breach of contract, especially in case of default in payment, Gaudlitz shall be entitled to demand return of the purchased goods. This shall not constitute rescission of the contract, unless Gaudlitz expressly declares such rescission in writing. Seizure of the purchased goods by Gaudlitz shall always constitute rescission of the contract. After the purchased goods have been returned to Gaudlitz, Gaudlitz shall be entitled to realize the same; the proceeds of such realization, minus appropriate realization costs, shall be set off against the buyer's liabilities.
- (2) The buyer shall take good care of the purchased goods; in particular, he shall, at his own cost, adequately insure the purchased goods at their replacement value against theft and damage by fire and water. The obligation to effect insurance shall also remain valid if the purchased goods (e.g., tools), after passing of ownership, are in the supplier's possession for the purpose of production.
- (3) In case of seizures or other intervention by third parties, the buyer shall promptly inform Gaudlitz in writing to enable the latter to take action pursuant to § 771 ZPO (German Code of Civil Procedure). If the respective third party should not be able to reimburse Gaudlitz for the judicial and extrajudicial costs of legal action, the buyer shall be liable for the loss incurred by Gaudlitz.

§ 7 Miscellaneous

- (1) If the buyer is a businessman, the principal place of business of Gaudlitz shall be the place of jurisdiction; Gaudlitz shall be entitled, though, to sue the buyer also at the court having jurisdiction at the buyer's place of business.
- (2) These Conditions of Sale and all contracts to which they apply shall be governed by the law of the Federal Republic of Germany; application of the UN Sales Convention shall be excluded.
- (3) Unless specified otherwise on the order acknowledgment, the principal place of business of Gaudlitz shall be the place of performance/delivery.

The buyer may reserve further statutory claims and rights.