

Terms and conditions (AVB)

PEYER COVER GmbH Leonberg

1 General, Scope

- (1) We agree with you as company (§ 14 BGB) upon the present Standard Terms and conditions (STC) for all contracts concerning the sale and/or supply of movable object (in the following also: goods).
- (2) Our AVB will be exclusively applicable. Any deviating, opposing or additional Standard Terms and Conditions of the buyer will only be part of the contract in case and to the extent we expressly agreed upon it.

2 Conclusion of contract

- (1) Our offers are non-binding. This also applies if we provide catalogs, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents - also in electronic form - to the customer, in which we reserve ownership and copyright.
- (2) By ordering a product, the customer makes a binding agreement to purchase the goods ordered. We have the right to accept the contractual offer included in the order within two weeks of receipt.
- (3) The acceptance can be declared either in writing (e.g. by order confirmation) or by delivering the goods to the buyer.
- (4) If there are arrears, confirmed orders will be carried out only after receipt of payment.

3 Period of delivery and delay in delivery

- (1) The period of delivery is individually agreed upon respectively indicated with the acceptance of the order.
- (2) If we cannot keep to binding periods of delivery agreed upon because of reasons we are not responsible for (unavailability of performance), we will inform the buyer accordingly without delay and at the same time let him know the expected new period of delivery. If the performance is not available again within the new period of delivery, we are entitled to cancel the contract completely or in parts; any already rendered counter-performance of the buyer will be reimbursed by us without delay. An unavailability of performance in this sense is considered to be especially the delayed supply of the goods to us by our suppliers if a congruent covering transaction was concluded through no fault of our own or our supplier.

4 Delivery, passing of risk, acceptance, default in acceptance

- (1) Delivery will be ex warehouse which is also the place of fulfillment. The goods will be sent to another place of destination (sale to destination according to buyer's instructions) on the buyer's demand and cost. If not agreed upon otherwise, we are entitled to determine ourselves the way the goods are dispatched (especially the forwarding agents, shipping route, packaging).
- (2) The risk of any accidental sinking and the accidental deterioration of the goods will pass to the buyer with the handing over to him at the latest. In case of a sale to destination according to buyer's instructions, however, the risk of any accidental sinking and the accidental deterioration of the goods as well as the risk of delay will already pass with the delivery of the goods to the forwarding agents, the carrier or to any other person or institution assigned to carry out dispatch.

5 Prices and terms of payment

- (1) If nothing else was agreed upon, our current prices valid at the time of the conclusion of the contract will be applicable, that is ex warehouse plus the respective VAT legally effective at that time.
- (2) In case of a sale to destination according to buyer's instructions (§ 4 paragraph 1) the buyer will take over the transport costs ex warehouse and, if applicable, the cost of any transport the buyer may have asked for. Any possibly due customs fees, other fees, taxes and other public fees will be paid by the buyer. We will not take back any transport packages or any other packages according to the packaging regulations; they will pass into the buyer's ownership; excluded from this regulation are pallets.
- (3) The purchase price will be due with its invoicing.
- (4) The buyer will only be entitled to counterbalancing rights or rights of retention as far as his entitlement was determined legally binding or is undisputed. In case of defects of the delivery the rights of the buyer remain particular to § 7 para. 4 p. 2 of the AVB unaffected.

6 Retention of title

- (1) The ownership of the sold goods will remain with us until payment of all our present and future accounts receivables based on the purchase contract and a current business relation (secured debt) is fully met.
- (2) The goods under reservation of ownership may not be pledged or be secured debt to third parties before full payment, be transferred by way of security. The buyer has to inform us immediately in writing if an application is made to open insolvency proceedings, or where such access by third parties (e.g. seizures) carrying out on the goods belonging to us
- (3) In case of any behavior of the customer contrary to contract, especially in case of nonpayment of the purchase price due, we are entitled to cancel the contract according to the laws and legal regulations and to reclaim the goods on the basis of the retention of title to ownership and the cancellation of contract. If the buyer will not pay the purchase price due, we may only assert these rights, if we had fixed an acceptable time for payment prior to this action or if such setting of a deadline is not necessary according to the laws and legal regulations.
- (4) The buyer is entitled to sell the goods under retention of title to ownership in the ordinary course of business and/or to process them. In this case the following conditions will be applied additionally.
 - (a) The retention of title extends to the products resulting from the processing, mixing or combination of our goods at their full value, whereby we are considered the manufacturer. The event of processing, mixing or combining with goods from third parties are their property rights, we acquire co-ownership in proportion to the invoice value of the processed, mixed or combined goods. Incidentally apply to the resulting product the same as for the goods delivered S. 1/2 under retention of title.

(b) costs incurred from the resale of the goods or products claims against third parties, the buyer already now or in the amount of our co-ownership share in accordance with the preceding- paragraph to the security to us. We accept the assignment referred to in para. 2 obligations of the purchaser therefore apply with respect to the assigned claims.

(c) to collect the claim remains the buyer authorizes beside us. We undertake not to collect the claim as long as the buyer meets his payment obligations to us. Fulfills, no shortage of its performance is present, and we do the reservation of title not by exercising a right in accordance with para. 3. If this is the case, we can demand the buyer notifies us of the assigned claims and their debtors, provide all information necessary for collection, hands over the pertinent documents and informs the debtors (Third Parties) of the assignment. In addition, we are in this case entitled to revoke the authority of the purchaser to further resale and processing of the goods under retention of title.

(d) if the realizable value of the collateral of our receivables by more than 10%, we shall release the buyer's request securities at our discretion.

7 Customer's claims for defects

(1) The laws and legal regulations will be applicable for the buyer in case of a defect in quality or non-conformity or defect of title (including wrong and short delivery) as far as nothing else is fixed in the following. The statutory provisions for special delivery of the goods to a consumer will remain unaffected in all cases (supplier recourse acc. §§ 478, 479 BGB).

(2) The buyer's complaints can be made provided that he fulfilled his legal duties, the obligation of inspection and notification and rejection (§§ 377, 381 HGB). If the inspection shows that there is a defect, we will have to be informed without delay. The notification is regarded to be without delay if it is sent within 7 days, the delay is kept to if the notification is posted in time. The notification has to be carried out in writing. Independent of the above-mentioned obligation of inspection and notification and rejection the buyer will have to notify the seller about apparent defects (including wrong and short delivery) within 7 days from delivery; the delay is kept to if the notification is posted in time. The notification has to be carried out in writing. If the customer does not carry out the above-mentioned claims for defects, our liability for the defect we were not informed about is excluded.

(3) If the goods supplied are defective, the buyer is entitled to demand a supplementary performance and can choose between the removal of defects (amendment) or delivery of an item free of defects (replacement delivery). If the buyer does not declare which of the two rights he will choose, we can fix an acceptable delay. If the buyer does not choose within this delay, the right to choose will pass to us after the expiry of the delay.

(4) We are entitled to make the supplementary performance due conditional on the buyer's paying of the purchase price due. However, the buyer is entitled to withhold a proportionate part of the purchase price considering the scope of the defect.

(5) Any claims for damages respectively any replacement of expenses of no avail will only exist on the basis for the stipulations of § 7, in all other cases they will be excluded.

(6) Special conditions for delivery of paper

In case of delivery of paper, the deviations usual in the trade respectively the tolerances concerning quantity, weight and size will apply. Such deviations are no defects and do not entitle the buyer to raise any warranty claims.

8 Other liability cases

(1) As far as nothing else will result on the basis of these STC including the following regulations, we will be liable in case of any violation of contractual and non-contractual duties according to the laws and legal regulations.

(2) for damages we are liable – for whatever legal reason – in the context of fault-based liability for intent and gross negligence. In case of simple negligence, we are liable, subject to a milder liability standard by statutory provisions (e.g. for care in own affairs) only

a) for any damages resulting from the violation of life, body or health,

b) for damages resulting from the not inconsiderable breach of an essential contractual obligation (necessary obligation on the basis of which the proper fulfilment of the contract is possible and on the observation of which the contractual partner relies regularly and is entitled to rely on); in this case, however, our liability is limited to the compensation of the foreseeable, typically happening damage or loss.

(3) The resulting from para. 2 limitations of liability also apply to breaches of duty by or for the benefit of persons whose negligence we are liable according to legal regulations. They do not apply if we fraudulently conceal a defect or have given a guarantee for the quality of the goods. The same applies to the buyer's claims based on the product liability act.

(4) The buyer can only withdraw from or cancel the contract because of a violation of duty which does not consist of a defect, if the violation of duty was caused by us. A free right of the buyer to cancel the contract (especially according to §§ 651, 649 BGB – Civil Code) is excluded. For all other cases the legal conditions and legal consequences will apply.

9 Limitation

Notwithstanding § 438 para. 1 no. 3 BGB, the limitation period for claims from material defects and defects one year after delivery.

10 Choice of law and place of jurisdiction

(1) For these AVB and all legal relationships between us and the buyer the right of the Federal Republic of Germany, excluding international uniform law, in particular the CISG applies.

(2) If the buyer is a merchant in the sense of the code of commercial law, legal entity of the public law or a special property subject to public law, **the exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly out of the contractual relationship will be our business location in Leonberg.** We are, however, also entitled to file suit at the buyer's general place of jurisdiction.

- Terms and conditions / AVB of PEYER COVER GMBH Leonberg (Version January 2016) -