

General Terms and Conditions of Business - molco GmbH

Section 1 SCOPE OF APPLICABILITY

Our General Terms and Conditions apply exclusively. They also apply to all future business relationships, regardless of whether they are expressly agreed again. General terms and conditions of the customer that deviate from our GTC shall not apply unless expressly agreed to in writing.

Section 2 OFFER AND CONTRACT CONCLUSION

1. The order constitutes a binding offer. At our discretion, we can accept this offer within six weeks by sending an order confirmation or by sending the ordered merchandise within this time period.
2. Offers by the seller are non-binding. Declarations of acceptance and all orders require written confirmation by the seller in order to be valid. The same applies to supplements, amendments and collateral agreements.

Section 3 PRICES, PAYMENT

1. Unless otherwise agreed, our prices are ex works plus VAT in the applicable amount prescribed by law.
2. Our invoices are due for payment in full within 30 days of the invoice date. Invoices for wage work are due immediately upon acceptance. In the event that the customer is in default of payment, we reserve the right to charge default interest in the amount of 8% above the applicable base rate. We reserve the right to assert claims for higher default penalties.
3. For contracts with an agreed delivery term of more than four months, we are entitled to raise the prices to reflect any cost increases incurred.
4. The offsetting of charges is permitted only pursuant to a legally established, undisputed claim, or to a claim acknowledged by us.
5. Payment will be accepted via bills of exchange or check only upon special agreement and without satisfaction of claims. The customer shall be responsible for all related costs and fees, which are due and payable immediately.
6. If we become aware of any circumstances which could threaten the solvency or creditworthiness of the customer, we are entitled to demand pre-payment and to revoke any grace periods or installment payment agreements.

Section 4 DELIVERY, DELIVERY PERIOD

1. All shipments are packed by us with care and in accordance with standard commercial practices. The risk is transferred to the customer once the shipment has left the dispatch location. The same applies to partial deliveries. We will purchase insurance for transport damage and for other loss or partial loss only if expressly demanded by the customer. The customer will cover the costs of this insurance.
2. The satisfaction of our delivery obligations requires timely and proper fulfillment of the customer's duties.
3. Binding or non-binding agreements on delivery dates or delivery deadlines must be made in writing. If pre-payments are agreed, the start of the delivery deadline depends on receipt of the agreed pre-payment.
4. The seller shall not be responsible for delays in deliveries and service due to force majeure and due to events that make delivery extremely difficult or impossible for the seller – such as strikes, lockouts, official orders, etc., even if these are incurred by suppliers to the seller or its subcontractors – regardless of any binding agreements it has made regarding dates and deadlines. The seller is entitled to suspend the delivery or service for the duration of the hindrance plus a reasonable preparation period; in the alternative, it is entitled to cancel the contract in whole or in part for the portion not already fulfilled.
5. If the seller is in default, its liability for damage in the event of minor negligence will be limited to 5% of the invoice amount for the deliveries and service affected by the default. All other claims are excluded unless the delay is due to the gross negligence or intent of the seller.
6. The seller is entitled to make partial deliveries or effectuate partial service at any time.
7. For compliance with the delivery deadline, it is sufficient if the delivery is properly dispatched on the last date of an agreed deadline. The seller shall not be responsible for transport delays.

Section 5 TOLERANCES, GUARANTEES, COMPLAINTS

1. For all deliveries, the following deviations in measurements are acceptable, and shall not constitute a guarantee claim:

For rolls: +/- 3 mm in width; for sheets: +/- 3 mm in length and/or +/- 3 mm in width. These tolerances will also apply to wage work.

2. The customer is obligated to inspect incoming goods immediately upon receipt, including the inspection for the absence of defects. The customer must report any defects to the seller immediately in writing, no later than within one week of receiving the delivery items. Defects that cannot be identified even after careful inspection within these deadlines must be communicated in writing immediately after their identification.

3. If a defect is identified for which molco is culpable, we can choose to remedy the defect or to deliver a replacement. In the event that we remedy the defect, we shall cover the necessary costs, including transport, delivery and other costs, provided that these costs are not increased by a delivery of the purchased goods to a different location than the place of performance.

4. If we fail to remedy the defect, if we are not willing or able to remedy the defect or offer a replacement delivery, the customer shall be entitled to reduce the purchase price (discount) or terminate the contract. We shall be liable pursuant to the legal provisions if the customer asserts claims for liability that are based on intent or gross negligence, including intent or gross negligence of our representatives or vicarious agents. If we are not held liable for intentional breach of contract, the liability for damage shall be limited to foreseeable, typically incurred damage. We shall be liable pursuant to legal provisions if we culpably breach a material contractual duty; however, in this case, the liability for damage shall be limited to the foreseeable, typically incurred damage. This shall not affect liability for culpable damage to life, limb or health. Unless otherwise agreed above, liability is excluded.

5. Defects to part of a delivery or service shall not give customer the right to complain about the entire delivery or service if it is possible to separate the non-defective goods from the defective goods or the non-defective services from the defective services using reasonable measures. In these cases as well, the customer can demand only a reduction in the purchase price (discount). The provisions above shall apply accordingly.

The customer is responsible for proper storage of incoming deliveries. Defects resulting from improper storage shall not constitute guarantee or other claims against us.

6. When delivering special stock (such as warehouse stock or as-is stock) or similar deliveries that are expressly sold as such or sold after inspection, we provide no guarantee for materials or execution.

7. In the event of wage work, we guarantee only our own services, not the material delivered by the customer. The laws regarding defective performance under the contract for work and services shall apply accordingly: Our liability shall be restricted to the amount of the agreed wages plus the value of the materials rendered unusable from the faulty work. Further claims for liability are excluded, unless these are based on a violation of duties caused by gross negligence or intent. If the service or delivery can be separated, and the defects pertain to only part of the service, the above provisions apply to the faulty partial delivery or partial service.

Our claims for wage work, with all collateral claims, shall continue to apply for the parts of the service that were provided without defects.

8. Liability for wear and tear is excluded.

9. Guarantee claims against us shall apply only to the direct customer; they cannot be assigned.

10. The above provisions represent the full guarantee for the products and exclude all other types of claims for guarantees. This does not apply to claims for liability based on a guarantee of qualities meant to protect the customer from the risk of consequential damages.

Section 6 SAMPLES, COLLATERAL AGREEMENTS

1. Samples are intended to demonstrate the properties of the goods in regard to strength, surface, adhesiveness and other mechanical qualities, but not other qualities.

2. Collateral agreements on offers and order confirmations, alongside other agreements, are not valid unless made in writing.

Section 7 LIABILITY AND PRODUCT RISKS

Claims for liability from a positive violation of a contractual duty, from culpa in contrahendo and unauthorized actions cannot be filed against us in the absence of intentional or grossly negligent conduct. The same applies if damage is incurred due to a risk associated with delivered goods – regardless of whether this risk relates to defective goods or their contractual condition, or is caused by the fact that no, or only insufficient, warnings were given about this risk.

Section 8 RETENTION OF TITLE

1. The delivered goods remain our property until the satisfaction of all claims we are entitled to vis a vis the customer now or in future, for any legal reason whatsoever. Processing or reconfigurations is always performed for us, but without obligation for us.

Goods subject to retention of title can be sold only as part of standard business procedure. They cannot be pledged or assigned to third parties as collateral.

2. The customer is entitled to process or sell the goods subject to retention of title in standard business procedure as long as it is not in default of payment. Pledges or assignments of collateral are not permitted. As security, the customer assigns to us all claims arising from the resale or any other legal reason with regard to the reserved goods. We authorize the customer to collect claims assigned to us on its own behalf and for its own account. This collection authorization can be revoked if the customer does not properly fulfill its payment obligations.

3. In the event that third parties gain access to the retained goods, the customer will notify these parties of the collateral relationship and notify us.

4. If the customer violates the terms of this contract -- particularly with regard to payment default -- we are entitled to take back the reserved goods or, if needed, to demand the assignment of the claims for delivery of the customer against third parties.

By taking back the retained goods the contract is not terminated, unless this termination has been separately declared.

Section 9 APPLICABLE LAW, PLACE OF PERFORMANCE, VENUE

1. These General Terms and Conditions of Business and all legal relationships between the customer and us are governed by the laws of the Federal Republic of Germany. The Convention on Contracts for the International Sale of Goods and the Uniform Law on the Conclusion of International Sales Contracts are excluded.

2. The place of performance is our domicile.

3. If the customer is a merchant listed in the Commercial Register under HGB (German Commercial Code), the sole venue for disputes between the contractual partner and us is the court with jurisdiction over our domicile.

Section 10 MISCELLANEOUS

If a provision in these General Terms and Conditions of Business or a provision under other agreements is or becomes invalid, this shall not affect the validity of all other provisions or agreements.