

General Sales Conditions of ORC Manufacturing Vertriebs GmbH (herein after referred to as "ORC")



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1. Area of Application

- The sales conditions below apply to all contracts entered into between the purchaser and ORC concerning the delivery of goods. They also apply to all future business relations, even if they have not been expressly agreed upon. Deviating conditions of the purchaser which are not expressly acknowledged by ORC are not binding for ORC, even if ORC does not expressly object to them. The sales conditions below also apply if ORC, being aware of contrary or deviating conditions of the purchaser, fills the purchaser's order without reservation.
- ORC will announce to the purchaser in writing all changes to its General Terms and Conditions which apply to purchase contracts concerning the delivery of goods entered into between the purchaser and ORC after the changes to the Terms and Conditions have come into effect. The changes are deemed to have been approved by the purchaser if the purchaser does not raise a written objection to the changes within six weeks of receipt of the changes notification. To comply with the period, it is sufficient that the objection be sent in a timely manner. ORC will in each instance, when announcing changes, draw the purchaser's attention to the fact that the changes are deemed to apply if the purchaser does not object in writing to the changes within six weeks.
- All of the agreements which have been entered into between the purchaser and ORC for performance of the purchase contract are recorded in writing in the respective purchase contract and in these General Terms and Conditions.

2. Offer and Entry into Contract

- An order of the purchaser which is to be classified as an offer for entry into a purchase contract can be accepted by ORC within 2 weeks by sending an order confirmation or by sending the products ordered within the same time period.
- ORC's offers are subject to change without notice, and are non-binding, unless ORC has expressly designated these as binding.
- All orders are accepted subject to the proviso of correct and timely delivery to us, the delivery possibility and interim sale.
- ORC hereby reserves the ownership, copyright and other proprietary rights in all pictures, calculations, drawings and other documents. The purchaser may only pass these on to third parties with ORC's written consent, regardless of whether ORC has labelled them as confidential.

3. Payment Conditions

- ORC's prices apply "ex works" including packaging if nothing different is stipulated in the order confirmation. The statutory VAT is not included in the prices. This is shown separately in the invoice in the statutory amount on the date of issue of the invoice.
- A discount deduction is only permissible in the case of written agreement between ORC and the purchaser. The purchase price is payable net (without deduction) immediately upon receipt of the invoice by the purchaser, if no other payment term is given in the order confirmation. A payment is only deemed to have been made when ORC is able to dispose of the amount. In the case of cheque payments, payment is only deemed to have been made when the cheque is cleared.
- If the purchaser is in default of payment of the purchase price, then ORC is entitled to demand default interest from the pertinent point in time onwards in the amount of 8 percentage points above the respective basic interest rate (§ 247 of the German Civil Code). ORC remains entitled to provide evidence of and to claim compensation for a higher amount of loss.
- The purchaser is only entitled to set-off, even if defect complaints or counter-claims are being made, if the counter-claims have been determined in a final and legally-binding manner, have been acknowledged by ORC or are undisputed. The purchaser is only authorised to exercise a right of retention if its counter-claim is based on the same contractual relationship.

4. Delivery and Performance Time

- Delivery dates or periods which have not expressly been agreed as binding are exclusively non-binding information. The delivery period quoted by ORC only commences when the technical issues have been clarified. In the same way, the purchaser is obliged to properly fulfil all of the obligations to which it is subject, and in a timely manner.
- If the underlying contract is a transaction where time is of the essence in the sense of § 286 paragraph 2, number 4 of the German Civil Code or § 376 of the German Commercial Code, then ORC is liable in accordance with the statutory provisions. The same applies if, as a result of a delivery default attributable to ORC, the purchaser is entitled to claim the discontinuance of its interest in the further performance of the contract. In such case, ORC's liability is limited to the foreseeable, typically-occurring damage or loss, if the delivery default is not due to an intentional or grossly negligent breach of the contract which is attributable to ORC, in which regard fault on the part of ORC's representatives or vicarious agents is to be ascribed to ORC. In the same way, ORC is liable to the purchaser in the case of delivery default pursuant to the statutory provisions if that is due to an intentional or grossly negligent breach of the contract which is attributable to ORC, in which regard fault on the part of ORC's representatives or vicarious agents is to be ascribed to ORC. ORC's liability in such case is limited to the foreseeable, typically- occurring damage or loss, if the delivery default is not due to an intentional breach of the contract which is attributable to ORC.
- In the event that a delivery default attributable to ORC is due to a culpable breach of a fundamental contractual obligation, in which regard fault on the part of ORC's representatives or vicarious agents is to be ascribed to ORC, ORC is liable in accordance with the statutory provisions, with the proviso that in such case, the compensation liability is limited to the foreseeable, typically- occurring damage or loss.
- Otherwise, in the case of a delivery default attributable to ORC, for every full week of the default, the purchaser can claim a flat-rate compensation sum in the amount of 3% of the delivery value, but a maximum of not more than 15% of the delivery value.
- A more extensive liability for a delivery default attributable to ORC is hereby excluded. The purchaser's other statutory claims and rights to which it is entitled in addition to the compensation claim due to a delivery default attributable to ORC remain unaffected hereby.
- ORC is entitled to effect partial deliveries and partial performance at any time, insofar as this is reasonable for the customer.
- If the purchaser is in acceptance default, then ORC is entitled to demand compensation of the loss suffered and any additional expenditure incurred. The same applies if the purchaser culpably breaches its co-operation obligations. Upon the occurrence of acceptance default or debtor default, the risk of accidental deterioration and accidental destruction is transferred to the purchaser.

5. Transfer of Risk – Dispatch/Packaging

- Loading and dispatch take place without insurance at the purchaser's risk. ORC endeavours to take account of the dispatch type and the dispatch route wishes and interests of the purchaser; additional costs caused thereby - even in the case of agreed freight-free delivery - are borne by the purchaser.
- ORC does not take back transport or any other packaging in accordance with the German Packaging Ordinance. The purchaser is obliged to take care of the disposal of the packaging at its own cost.
- If the dispatch is delayed at the request of or due to fault on the part of the purchaser, then ORC stores the goods at the purchaser's cost and risk. In such case, the announcement of dispatch readiness is treated as equivalent to the dispatch.
- Upon the request and at the cost of the purchaser, ORC insures the delivery through a transport insurance policy.

6. Guarantee/Liability

- Defect claims of the purchaser only exist if the purchaser has duly complied with its inspection and complaint obligations owed pursuant to § 377 of the German Commercial Code.
- If a defect in the goods exists for which ORC is responsible, ORC is obliged to effect subsequent performance - excluding the rights of the purchaser to rescind the contract or to reduce the purchase price (reduction) - unless, due to the statutory regulations, ORC is entitled to refuse to effect subsequent performance. The purchaser is obliged to give ORC a reasonable period of time for the subsequent performance. The subsequent performance can, according to ORC's choice, be done through removal of the defect (subsequent improvement) or delivery of new goods. In the case of defect removal, ORC bears the necessary expenditure, insofar as this is not increased because the pertinent goods are at a location other than the place of performance. If the subsequent performance fails, the purchaser can, according to its choice, demand reduction in the purchase price (reduction) or can declare rescission of contract. The subsequent improvement is deemed to have failed upon the second fruitless attempt, insofar as further subsequent improvement attempts are not reasonable due to the contract object and are not reasonable for the purchaser. Compensation claims on the conditions below due to the defect can only be made by the purchaser if the subsequent performance has failed. The right of the purchaser to make claims for more extensive compensation on the conditions below remains unaffected hereby.
- The guarantee claims of the purchaser become time-barred one year after hand-over of the goods to the purchaser, unless ORC has maliciously concealed the defect; in such case, the statutory regulations apply.
- ORC is liable without limitation pursuant to the statutory provisions for loss of life, personal injury and damage to health which is due to a negligent or intentional breach of duty by ORC, its legal representatives or its vicarious agents, as well as for damage or loss which is encompassed by the liability pursuant to the German Product Liability Act. For damage or loss which is not covered by sentence 1, and which is due to intentional or grossly negligent breaches of contract as well as bad faith on the part of ORC, its legal representatives or its vicarious agents, ORC is also liable pursuant to the statutory provisions. In such cases, however, the compensation liability is limited to the foreseeable, typically-occurring damage or loss, insofar as ORC, its legal representatives or its vicarious agents have not acted intentionally. If ORC has given a quality and/or shelf-life guarantee, it is also liable in the framework of that guarantee. For damage which is due to the lack of the guaranteed quality or shelf life, but is not directly sustained to the goods however, ORC is only liable if the risk of such damage is obviously encompassed by the quality and shelf-life guarantee.
- ORC is liable for other damage or loss which is caused through simple negligence, insofar as the negligence pertains to the breach of such contractual obligations whose compliance is of particular importance for the attainment of the contract purpose (cardinal obligations). However, ORC is only liable insofar as that other damage or loss is typically connected with the contract and is foreseeable.
- A more extensive liability of ORC is hereby excluded, without regard to the legal nature of the claim made. This applies particularly also to tortious claims or claims for compensation of fruitless expenditure instead of the performance; ORC's liability pursuant to numbers 4.2 to 4.4 of this contract remain unaffected. Insofar as ORC's liability is excluded or limited, this also applies to the personal liability of its employees, workers, representatives and vicarious agents.
- Compensation claims of the purchaser due to a defect become time-barred one year from hand-over of the goods. This does not apply in the case of loss of life, personal injury or damage to health culpably caused by ORC, its legal representatives or its vicarious agents, or if ORC or its legal representatives have acted intentionally or with gross negligence, or if its simple vicarious agents have acted intentionally.

7. Retention of Title

- Until the fulfilment of all claims, including all of the account balance claims from the current account to which ORC is entitled against the purchaser now or in the future, the delivered goods (goods subject to retention of title) remain in the ownership of ORC. In the event of contract-breaching behaviour by the purchaser, e.g. default of payment, after first setting an appropriate period, ORC has the right to take back the goods subject to retention of title. If ORC takes back the goods subject to retention of title, this does not constitute a rescission of contract, unless ORC has expressly declared this. If ORC distrains the goods subject to retention of title, this is a rescission of contract. After having taken them back, ORC is entitled to utilise the goods subject to retention of title. After deduction of an appropriate amount for the utilisation costs, the utilisation proceeds are to be set off against the amounts owed to ORC by the purchaser.
- The purchaser is obliged to treat with care the goods subject to retention of title and to sufficiently insure them for new value, at its cost, against fire and water damage and against theft. Maintenance and inspection work which becomes necessary is to be carried out in a timely manner by the purchaser at its own cost.
- The purchaser is entitled to sell and/or to use the goods subject to retention of title in an ordinary manner in business dealings, as long as it is not in default of payment. Pledging or transfers by way of security of the goods subject to retention of title are not permissible. The claims (including all of the account balance claims from the current account) arising out of the onward sale or another legal ground (insurance, unlawful act) with regard to the goods subject to retention of title are hereby assigned now by the purchaser to ORC to the full extent, for the sake of precaution; ORC hereby accepts the assignment. ORC hereby revocably empowers the purchaser to collect the claims assigned to ORC for the purchaser's account in the purchaser's own name. The collection authority can be revoked by ORC at any time if the purchaser does not duly fulfil its payment obligations.
- Integration or transformation by the purchaser of the goods subject to retention of title is always undertaken for ORC. ORC's sole ownership or co-ownership so created in an item is kept by the purchaser for ORC.
- In the case of third-party access to the goods subject to retention of title, particularly distrains, the purchaser will give notice of ORC's ownership and will inform ORC without undue delay so that it is able to enforce its ownership rights. If the third party is not able to reimburse ORC for the judicial or extra-judicial costs arising in this connection, then the purchaser is liable for them.
- ORC hereby undertakes to release the securities to which it is entitled, upon request by the purchaser or by a creditor of the purchaser, insofar as the realisable value of its securities exceed the claims to be secured by more than 10%; the choice of the securities to be released is ORC's.

8. Place of Performance, Legal Venue, Applicable Law

- The place of performance for deliveries and payments arising out of and in connection with the purchase contracts entered into between ORC and the purchaser is Wachtendonk. The legal venue (including for summary actions based on cheques) for all of the disputes arising between ORC and the purchaser out of and in connection with the purchase contracts entered into between ORC and the purchaser is Geldern. However, ORC is also entitled to sue the purchaser at its domicile and/or place of business.
- Only the law of the Federal Republic of Germany applies. The applicability of the UN purchase law (UN Convention on Contracts for the International Sale of Goods) is hereby excluded.