S. Goldmann GmbH & Co. KG
Schillerstr. 79 · 33609 Bielefeld · Germany

Terms and Conditions of Sale and Delivery

We enter into contracts exclusively on the following terms and conditions. These also apply to all future business relationships, even if they are not expressly agreed upon again. Any deviations from these terms and conditions are only valid if we confirm them in writing. The customer's terms and conditions which we do not accept in writing are not binding on us, even if we do not expressly object to them. Email constitutes 'written form' within the meaning of our terms and conditions.

§ 1 Offers, scope of delivery

1. Our quotations are subject to change. Verbal and telephone agreements must be confirmed by us in writing to be valid.

2. Samples of the goods reflect only their approximate characteristics. The documents accompanying our quotations, such as brochures, illustrations and drawings, as well as details of weight and dimensions, are only approximate unless we expressly state that they are binding. Our order confirmation alone shall be decisive as regards the quality of the goods to be supplied.

3. The scope of the delivery shall be determined in accordance with our written order confirmation. In the absence of such a confirmation, our quotation shall prevail. Any ancillary agreements and amendments require our written confirmation.

4. Partial deliveries are permitted, provided they are reasonable for the customer. We reserve the right to deliver quantities that are up to 10 per cent higher or lower than specified due to bottling processes. Where higher tolerances are customary in the trade for individual products, these tolerances shall be deemed to be in accordance with the contract.

§ 2 Customer involvement

1. Where a licence or an export authorisation is required for the delivery of the goods, the customer must provide us with all the details and information necessary to apply for such a licence or authorisation. This applies in particular to any end-use declaration that may be required.

2. The customer must inform us of any unusual uses of the goods that would not normally be expected.

3. The customer must comply with all provisions of German, European and international foreign trade law. The customer may only use the goods supplied to them for the purpose agreed in the contract or as notified to us and must not sell or otherwise transfer them to any persons, companies, organisations or institutions subject to sanctions imposed by the European Union, the United Nations, the United States of America or any other applicable sanctions regimes.

4. The customer shall compensate us for any losses arising, for example, from a breach of the above obligations, where such breach is attributable to the customer. Furthermore, the customer is obliged to indemnify us in full against any claims by third parties, insofar as the customer is responsible for the breach of duty.

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§ 3 Prices and Terms of Payment

1. Prices are ex works, inclusive of packaging. Invoices are based on the quantities actually delivered.

2. If, following the conclusion of the contract, the costs relevant to the price calculation (in particular raw material, energy and transport costs) increase, we shall be entitled to adjust the agreed price in proportion to the increase in costs. A price increase shall only be considered if there are more than four months between the conclusion of the contract and the agreed delivery date, and the relevant costs have risen by more than 5 per cent since the conclusion of the contract. The customer must be notified of the price adjustment in writing, with full disclosure of the basis for the calculation. The customer is entitled to withdraw from the contract within 14 days of receiving the notification, provided that the price increase exceeds 20 per cent of the original price.

3. For deliveries abroad, all duties, charges, taxes, costs for technical inspections etc., incurred outside the Federal Republic of Germany, shall be borne by the customer. This also applies to the costs of any necessary legalisation of certificates of origin.

4. If the customer culpably fails to meet their payment obligations or suspends payments, we shall be entitled to declare the entire outstanding debt due and payable. Furthermore, we shall then be entitled to demand advance payments or security.

5. Set-off against counter-claims or the assertion of rights of retention is only permitted insofar as the customer’s claims are undisputed or have been established by a final and binding judgement.

6. If, after the conclusion of the contract, it becomes apparent that our entitlement to payment is at risk due to the customer’s inability to pay, we may refuse to perform our obligations and set the customer a deadline for payment in exchange for delivery or for the provision of security. If the deadline expires without payment being made, we shall be entitled to withdraw from the contract and claim damages. It shall not be necessary to set a deadline, if the customer seriously and definitively refuses to pay or if there are special circumstances which, having weighed up the interests of both parties, justify our immediate withdrawal.

§ 4 Delivery time

1. The deadlines specified in our order confirmations or otherwise agreed with the customer shall apply. Compliance with these deadlines is conditional upon the timely receipt of all documents to be supplied by the customer as well as compliance with the agreed terms of payment and other obligations. If these conditions are not met in good time, the delivery period shall be extended accordingly.

2. The delivery deadline shall be deemed to have been met if the consignment, ready for dispatch, is dispatched or collected within that period. If delivery is delayed for reasons attributable to the customer, the deadline shall be deemed to have been met provided that notification, that the goods are ready for dispatch, is given within the agreed period.

3. Should we be prevented from fulfilling our obligations due to force majeure (in particular natural disasters, epidemics, pandemics, war, terrorism, official orders, cyber-attacks, operational disruptions, energy supply difficulties, delays on the part of our suppliers, strikes, lockouts) – regardless of whether these occur at our premises or at those of our suppliers – the delivery period shall be extended by the duration of the hindrance. If delivery thereby becomes impossible, we shall be released from our obligation to deliver.

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Should the aforementioned circumstances arise in relation to the customer, the same legal consequences shall also apply to their obligation to accept delivery. Either party may only invoke the circumstances referred to here, if they notify the other party without delay.

If the hindrance persists for more than six months, either party is entitled to withdraw from the contract by giving written notice.

4. If dispatch or delivery is delayed at the customer's request, we may, from one month after notification, that the goods are ready for dispatch, charge storage charges amounting to 0.5 per cent of the net invoice amount for each month or part thereof. The storage charges shall be capped at 5 per cent of the net invoice amount, unless we can prove that the costs incurred were higher.

§ 5 Delivery and transfer of risk

1. Risk passes to the customer upon handover to the first carrier (sale by delivery in accordance with Section 447 of the German Civil Code (BGB)). If dispatch is delayed for reasons within the customer's control, risk passes to the customer on the day the goods are ready for dispatch.

2. We only take out transport insurance at the customer's request and at their expense.

§ 6 Packaging

1. Where our deliveries are made in returnable containers, these must be returned to us by the customer, at their expense and risk, in an empty and undamaged condition no later than 30 days after arrival.

2. If the customer fails to fulfil this obligation within the specified time, we shall be entitled to claim reasonable compensation for the period exceeding 30 days and, following the setting of a deadline for return which has passed without result, to claim the replacement cost taking into account the aforementioned compensation.

3. The labels affixed to the returnable containers must not be removed. The returnable packaging must not be swapped or filled with other goods. The customer is liable for any reduction in value, mix-ups or loss for which they are responsible. Use as storage containers or transfer to third parties is not permitted unless this has been agreed in writing in advance.

4. In the case of deliveries by tank wagon or isotank container, the customer must ensure that these are emptied and returned as quickly as possible. Should the demurrage period be extended due to reasons attributable to the customer, the cost of the tank wagon hire incurred as a result shall be borne by the customer.

§ 7 Retention of title

1. The goods supplied remain our property until all claims arising from the business relationship have been paid in full (extended retention of title).

2. The customer is permitted to resell the goods in the ordinary course of business. The customer hereby assigns to us any claims arising from the resale of the goods subject to retention of title. We accept this assignment. The customer remains authorised to collect these claims provided that they fulfil their payment obligations to us.

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3. In the event of late payment by the customer or should we become aware of circumstances which, in our commercial judgement, are such as to call the customer's creditworthiness into question, we shall be entitled to revoke the authorisation to collect assigned receivables. In such a case, the customer must inform us of the assigned claims and the respective debtors and must disclose the assignment to its debtors.

4. The transfer of ownership of goods owned by us as security is not permitted. In the event of third-party intervention regarding the goods subject to retention of title, in particular in the event of attachment, the customer shall inform us immediately and draw attention to our ownership.

5. We are entitled to withdraw from the contract in the event of the customer's breach of contract and to demand the return of the goods subject to retention of title.

6. If the value of the security to which we are entitled exceeds our claims by more than 20 per cent, we shall, at the customer's request, be obliged to release security of our choice to the extent of such excess.

§ 8 Customer rights in the event of defects

1. If the purchase constitutes a commercial transaction for the customer, they must notify us of any defects in writing without delay and at the latest within 7 working days of receipt of the goods (§ 377 of the German Commercial Code (HGB)). We must be notified in writing of any latent defects immediately upon their discovery.

2. In the event of valid complaints regarding defects, we shall be entitled, within a reasonable period, at our discretion to either rectify the defect or supply a replacement (subsequent performance). If subsequent performance fails after the second attempt, the customer may – provided the breach of contract is not merely minor – reduce the price or withdraw from the contract. In addition, the customer may, where applicable, be entitled to claim damages in accordance with § 9.

3. We shall bear the costs of returning the goods in the event of subsequent performance, provided that the goods are at the agreed place of delivery. If the goods are at a different location, the customer shall bear the additional costs, unless the goods have been moved in accordance with their intended use.

4. We accept no liability for the suitability of the goods for the purposes intended by the customer, provided that such purpose has not become part of the contract. Where we provide advice on the practical application of the goods, our liability shall be governed by the provisions of § 9.

§ 9 Limitation of liability, compensation

1. We shall be liable without limitation for damage resulting from loss of life, bodily injury or damage to health arising from a negligent or intentional breach of duty on our part or on the part of our legal representatives or vicarious agents as well as for damage covered by liability under the Product Liability Act.

2. We shall be liable without limitation for any loss or damage caused by wilful misconduct or gross negligence on our part or on the part of our legal representatives or vicarious agents as well as for any loss or damage arising from a breach of warranty.

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3. In the event of a breach of a material contractual obligation (cardinal obligation) due to slight negligence, our liability is limited to the foreseeable damage typical for this type of contract. A material contractual obligation is an obligation the fulfilment of which is essential for the proper performance of the contract and on the observance of which the customer may reasonably rely.

4. Otherwise, our liability is excluded.

5. The above limitations of liability also apply in favour of our legal representatives, vicarious agents and employees.

6. In the event of a delay in delivery, the customer's claim for damages shall be limited to 5 per cent of the net purchase price of the goods delivered late, unless the delay is due to wilful misconduct or gross negligence.

7. Unless otherwise provided for in these terms and conditions, any further claims for damages by the customer – on whatever legal grounds – are excluded.

§ 10 Limitation period

1. The general limitation period for claims arising from material defects and defects of title is one year from the date of delivery. This does not apply to claims under § 438 Section 1 No. 1 and 2 of the German Civil Code (BGB) (claims for the return of property, construction defects), to claims under the supplier's right of recourse (§ 479 German Civil Code (BGB)) or in cases of fraudulent concealment of a defect.

2. The above time limit also applies to the customer's contractual and non-contractual claims for damages arising from a defect unless the application of the standard statutory limitation period (§§ 195, 199 of the German Civil Code (BGB)) would result in a shorter limitation period.

3. The limitation periods set out in the Product Liability Act remain unaffected. The statutory limitation periods apply to claims for damages pursuant to § 9 section 1 and 2.

§ 11 Place of performance, jurisdiction, applicable law

1. The place of performance for all obligations arising from the contractual relationship is Bielefeld.

2. The place of jurisdiction for all disputes arising from the contractual relationship shall be Bielefeld, provided that the customer is a trader, a legal entity under public law or a special fund under public law. We are, however, free to bring proceedings before the court with jurisdiction over the customer's registered office.

3. German law shall apply exclusively. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) is excluded.

§ 12 Data Protection

We provide information on the processing of personal data in the context of our business relationship in accordance with Articles 13 and 14 of the GDPR in our privacy policy, which is available at www.goldmann.de/en/privacy-policy/.

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§ 13 Final Provisions

1. Should any provision of these terms and conditions be or become invalid, in whole or in part, this shall not affect the validity of the remaining provisions.

2. Any amendments or additions to these terms and conditions must be made in writing.

3. In the event of any discrepancy or inconsistency between the German and English version of these International Terms and Conditions of Purchase, the German version shall apply.

4. You can find information on our ethical and social standards in our Code of Conduct, which is available at https://www.gold-mann.de/en/downloads/.