



HOBERG & DRIESCH

**Hoberg & Driesch GmbH & Co. KG
Röhrengroßhandel**

**General Terms and Conditions of Sale and Delivery
Version 10/2022**

I. Application / Conclusion of Contract

1. These General Conditions of Sale and Delivery (Conditions) shall apply to all present and future contracts with commercial buyer, with public legal entities as well as public trusts in regard to deliveries and other services, including contracts for work and services, contracts for the delivery of fungible and non-fungible goods to be manufactured or produced. In the case of drop shipments, the conditions of the price list of the commissioned supplier shall apply additionally. The buyer's purchase conditions shall not be binding even if we do not expressly object to them again after their receipt.
2. Our offers are non-binding to us. Orders of the buyer are only binding for us if they have been confirmed by us in text form. The same applies to changes to orders. However, we are entitled to accept an order by executing the order without prior confirmation. Acceptance can take place within a reasonable period of time after receipt of the order.
3. Oral agreements, promises, assurances, guarantees and statements about the designated use of our products made or given by our sales staff shall not be binding unless confirmed by us in text form.
4. Any trade terms shall, in cases of doubt, be interpreted according to the Incoterms as amended from time to time.

II. Prices

1. Unless otherwise agreed, the prices are ex works or ex warehouse plus freight, commissioning, VAT and import duties. Subsequently agreed changes to the order entitle us to charge the additional costs incurred as a result. The goods will be invoiced „gross for net“.
2. The prices set out in the order confirmation are not fixed prices. Rather, they are based on the manufacturers' list prices which apply as of the order confirmation date, as well as any discount scheme agreed upon with the purchaser. If the list prices change before the delivery date or if the discount system changes, then our prices change in the same ratio. In this context, it is irrelevant whether an earlier or later delivery should have taken place; what is authoritative is the date of the actual delivery. Insofar as the changes to the manufacturers' list prices are not consistent, the change made by the largest manufacturer in the state of North Rhine-Westphalia is authoritative.
3. If, more than four weeks after conclusion of the contract, the sum of the costs incurred outside our company which are included in the agreed price changes, we shall be entitled to adjust the prices to the corresponding extent in each case on the first day of the calendar month.



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4. In the event that the adjusted price exceeds the initial price by more than 10%, the buyer shall have the right to withdraw from the contract with regard to the quantities affected by the price adjustment upon the price adjustment taking effect. The right of rescission can only be exercised within one week of becoming aware of or being able to take note of the price adjustment.

III. Payment and Set-Off

1. Unless otherwise agreed or stated in our invoices, payment shall be made without cash discounts immediately upon delivery and in such a manner that we can dispose of the sum on the due date. This also applies if the test certificates according to DIN EN 10204 are not part of the delivery or arrive late. For contracts with a delivery value of more than EUR 100,000, we are entitled to demand a down payment of 30% of the purchase price. Any payment transfer costs shall be borne by the buyer.

2. If, deviating from this, discount deduction has been agreed, this always refers only to the invoice value excluding freight and presupposes the complete settlement of all due obligations of the buyer at the time of discount allocation. Unless otherwise agreed, discount periods shall commence from the invoice date.

3. If, after conclusion of the contract, it becomes apparent that our payment claim is endangered by the buyer's lack of ability to pay or if the buyer is in default of payment with a considerable amount, or if other circumstances arise which indicate a significant deterioration in the buyer's ability to pay after conclusion of the contract, we may refuse agreed advance performance and exercise the rights under section 321 BGB. This also applies insofar as our obligation to perform is not yet due. We shall then also be entitled to demand payment of all claims not yet due from the current business relationship with the buyer. A lack of ability to pay on the part of the buyer is also deemed to exist if the buyer is at least three weeks in arrears with a substantial amount (from 10% due), furthermore the substantial downgrading of the limit existing for him with our trade credit insurance.

4. If the term of payment is exceeded or in case of default, we shall charge interest in the amount of the statutory default interest rate, unless higher interest rates have been agreed. In addition, we shall be entitled to charge a lump sum for default amounting to 40.00 EUR. We reserve the right to claim further damages.

5. The buyer may retain or set off any counterclaims only insofar as such claims are undisputed or have become legally binding and as they are based on the same contractual relation with the seller and/or as they would entitle the buyer to refuse the fulfilment of his contractual duties under section 320 BGB.

IV. Execution of deliveries, delivery periods and dates

1. Our commitment to deliver is subject to our correct, timely and contractual self-delivery and in case of imported material additionally under provision of receipt of monitoring documents and import licenses, unless we are responsible for the incorrect or delayed self-delivery. In particular, we are entitled to withdraw from the contract if we have concluded a proper covering transaction, but are not supplied by our supplier for reasons for which we are not responsible, e.g. if our supplier is insolvent. The same shall apply insofar as the buyer has specified the supplier to us but the latter does not fulfil its delivery obligations or fails to do so in a timely manner.



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2. Any confirmation as to delivery times shall only be approximate and non-binding. Delivery times shall commence with the date of our order confirmation and are subject to the timely clarification of any details of the order as well as of the fulfilment of any of the buyer's obligations, e.g. to produce official certifications, to provide letters of credit and payment guarantees, to pay agreed down payments or to forward drawings approved by the buyer.

3. Any agreed delivery time shall be considered to be met if and in so far the goods have left the works or our warehouse at such time or date. If and in so far the goods fail to be dispatched at the agreed time for reasons not attributable to us, the agreed delivery time shall be considered to have been met at the day on which the goods are notified to be ready for dispatch.

4. The buyer must ensure smooth acceptance of the goods and notify us in good time of any difficult delivery conditions. The buyer must unload immediately and properly and have crane assistance or a forklift ready for this purpose. If we or if third parties assist in the unloading, this shall be done without legal obligation and at the risk and expense of the buyer.

5. Events of force majeure, in particular wars, natural disasters or political unrest and the associated effects, entitle us to postpone deliveries for the duration of the hindrance and a reasonable start-up period. This shall also apply if such events occur during an existing delay. Equal to force majeure are currency, trade policy and other sovereign measures (e.g. anti-dumping and compensation investigations, orders for customs registration, etc.), strikes, lockouts, operational disruptions for which we are not responsible (e.g. fire, machine and roller breakage, shortage of raw materials and lack of energy), pandemics and their effects, obstruction of traffic routes, delays in import/customs clearance, as well as all other circumstances which, through no fault of our own, make deliveries and services significantly more difficult or impossible or economically unreasonable. In this context, it is irrelevant whether the circumstances occur at our premises, at the supplier's works or at those of another sub-supplier. If, as a result of the aforementioned events, performance becomes unreasonable for one of the contracting parties, it may withdraw from the contract by means of an immediate declaration in text form.

V. Further Processing

Subject to the provisions in Sections X and XI, we do not give any commitment (risk, liability) that processing which is not done at the seller's supplier will be successful without malfunction. Pipes will be aimed straight as well as possible "by eye", without a guarantee of impact-free spinning on the lathe and of a bare surface after turning.

VI. Retention of Title

1. The goods delivered to the buyer shall remain our property until the full purchase price is paid. The buyer shall take all measures required to preserve the retention of title – or of an equivalent security in the country of his branch or in a different country of destination -, and to provide the corresponding evidence upon our request.

2. To the extent permitted by the laws of the country, in which the goods are located, the following additional regulations apply:

a. All goods delivered to the buyer shall remain our property (Reserved Property) until all of the buyer's accounts resulting from the business relationship with him, in particular, any account



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balances have been settled. This condition shall apply to any future as well as any conditional claims, e.g. from acceptor's bills of exchange, and such cases where the buyer will affect payments on specifically designated claims. As soon as the buyer has settled his accounts with us in full, he shall obtain title to those goods which were delivered to him before such payment was effected. The current account reservation applies not in in prepayment or delivery vs payment cases.

b. With regard to processing or manufacturing of the Reserved Property, we shall be deemed as manufacturer within the meaning of section 950 BGB (German Civil Code) without committing us in any way. The processed or manufactured goods shall be regarded as Reserved Property within the meaning of clause 2 a of these Conditions. If the buyer manufactures, combines or mixes the Reserved Property with other goods, we shall obtain co-ownership in the new goods in proportion to the invoiced price of the Reserved Property to the invoiced price of the other goods. If, by such combining or mixing, our ownership expires, the buyer herewith transfers to us any rights which the buyer will have in the new stock or goods in proportion to the invoiced price of the Reserved Property, and he will keep them in safe custody free of charge. Our co-ownership rights shall be regarded as Reserved Property within the meaning of clause 2a of these Conditions.

c. The buyer may resell the reserved property only within the normal course of his business in accordance with his normal business terms and provided he is not in default of payment and provided also that any rights resulting from such resale will be transferred to us in accordance with clause 2 d – e of these Conditions. The buyer shall not be entitled to dispose of the Reserved Property in any other way.

d. The buyer hereby assigns to us any claims resulting from the resale of the Reserved Property. We hereby accept the assignment. Such claims shall serve as our security to the same extent as the Reserved Property itself. If the Reserved Property is resold by the buyer together with other goods not purchased from us, then any receivables resulting from such resale shall be assigned to us in the ratio of the invoiced value of the other goods sold by the buyer. In the case of resale of goods in which we have co-ownership rights pursuant to clause 2 b, the assignment shall be limited to the part which corresponds to our co-ownership rights.

e. The buyer shall be entitled to collect any receivables resulting from the resale of the Reserved Property. This right shall expire if withdrawn by us, at the latest if the buyer defaults in payment, fails to honour a bill of exchange, or files for bankruptcy. We shall exert our right of revocation only if and in so far as it becomes evident after the conclusion of the contract that payment resulting from this contract or from other contracts is jeopardised by the lack of buyer's ability to pay. The buyer shall - upon our request - immediately inform his customers of such assignment and to forward to us any information and documents necessary for collection.

f. The buyer shall immediately inform us of any seizure or any other attachment of the Reserved Property by a third party. He shall bear any costs necessary to suspend such seizure or attachment or to remove the Reserved Property, if and in so far as such costs are not borne by a third party.

g. Should the total invoiced value of our collateral exceed the amount of the secured receivables including additional claims for interest, costs etc. by more than 50 %, we shall - upon the buyer's request - release pro tanto collateral at our discretion.



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VII. Weights

1. The weight of the goods shall be determined on our or our suppliers' scales and shall be evidenced by the presentation of the pertinent weight ticket. Where provided by law, the weight may be determined without weighing in accordance with the applicable standards. We may calculate the weight without weighing on the basis of such standards ("theoretical weight") plus 2 ½ pct. "commercial weight". Weight deviations of up to 0.5 % do not entitle the buyer to make a complaint.
2. Quantities, bundle numbers etc. stated in the dispatch note are non-binding for goods invoiced by weight. If no individual weighing has been agreed, the total weight of the delivery shall apply. Differences compared to the calculated individual weights shall be distributed proportionately among them.

VIII. Certificates / Testing and Inspection

1. The provision with inspection certificates according to EN 10204 requires consent in text form. We are entitled to forward copies of such certificates. The fee for agreed inspection certificates shall be based on our price list or the price list of the respective exhibitor (supplier).
2. Where testing and inspection of the goods has been agreed upon or where corresponding material standards provide for such testing and inspection, it can only take place in the supplying plant or in our warehouse immediately after notification of readiness. The buyer shall ensure that we can commission the desired accepting company on his behalf and for his account or for his customer's. Unless otherwise agreed, this authorisation shall be deemed to have been granted if an accepting company is named in the order.
3. The buyer shall bear his personal inspection costs, whereas the costs of inspection will be invoiced to him in accordance with our price list.
4. Should, through no fault of ours, an inspection of the goods fail or be delayed or be incomplete, we shall be authorised to dispatch the goods without prior inspection or to store them at the buyer expense and risk and to invoice the goods to him.
5. Any testing and inspection of goods with regard to parameters beyond the standards agreed upon is at the risk and expense of the buyer.

IX. Dispatch, Passing of Risk, Packaging, Partial Delivery, Callable and Continuous Deliveries

1. We shall be entitled to choose the route and mode of dispatch as well as the forwarding agent and the carrier. Unless otherwise agreed in text form, our deliveries shall be made from our registered office.
2. The buyer shall immediately request delivery of those goods which have been notified to him as ready for dispatch. Otherwise we are entitled, upon reminder, to ship such goods at the buyer's cost and risk or to store them at our discretion and to invoice them to the buyer.
3. Can, by reasons not attributable to us, the goods not be shipped or will it become significantly difficult to ship the goods via the designated route or to the designated place within the designated time, we reserve the right to ship them via a different route or to a different place. Any additional



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costs will be borne by the buyer. In such cases we will ask the buyer for his prior comments.

4. The goods will be delivered unpacked and not be protected against rust. Only if agreed upon, the goods will be delivered packed. Besides, any package, protection and/or transport device will be supplied according to our experience and at the buyer's cost. Packaging shall be taken back in order to comply with the provisions of the Packaging Act after reasonable advance notice at the place of our warehouse. We shall not bear the buyer's costs for the return transport of the packaging. Unless otherwise agreed, the buyer shall bear the disposal costs.

5. In the case of call-off orders, the risk shall be transferred to the buyer at the time of the provision of the goods for collection. Otherwise, the risk, including the risk of confiscation of the goods, shall pass to the buyer upon transfer of the goods to a forwarding agent or carrier, at the latest, however, upon leaving the warehouse or the supplying plant, in all transactions, including pre-paid and free deliveries. We shall only provide insurance at the buyer's instruction and expense. Unloading and its costs shall be borne by the buyer.

6. We shall be entitled to make partial deliveries at reasonable quantities. Excess and short deliveries customary in the industry are permissible up to 10 % of the completed quantities.

7. In the case of contracts with continuous delivery, we must be given call-offs and classifications for approximately equal monthly quantities; otherwise we shall be entitled to make the determinations ourselves at our reasonable discretion. Unless otherwise agreed, call-off orders are to be processed within 365 days of conclusion of the contract. After expiry of this period, we shall be entitled to store the goods not called off at the expense and risk of the buyer and to charge him for them.

X. Warranty Provisions

1. The inner and outer properties of the goods, especially their quality, grade and measures are to be determined with priority by the agreed quality, namely by the standards or materials sheets agreed upon. References to standards and other sets of regulations, to test certificates according to EN 10204 and other attestations as well as particulars of qualities, grades, measures and use of the goods are no warranties or guarantees, the same shall apply to declarations of conformity and corresponding markings such as CE and GS.

2. We do not assume any liability for a specific use of the goods. Rather, it is the buyer's responsibility to check the suitability of the goods for the intended use. Something else shall only apply if we were informed of the intended use by the buyer in text form at the latest when the purchase contract was concluded and have expressly agreed to this use in text form.

3. Insofar as the goods have the agreed quality in accordance with Clause X.1, the buyer may not rely on the fact that the goods are not suitable for normal use or do not have a quality which is usual for goods of this type and which the buyer has expected.

4. The statutory provisions shall apply to the inspection of the goods and notification of defects with the proviso that the obligation to inspect the goods after delivery shall also extend to any test certificates in accordance with or pursuant to DIN EN 10204 and that defects in the goods and test certificates must be notified to us in text form no later than 7 days after delivery of the goods. Any transport damage can only be taken into account if it is noted on the delivery note. In this respect, the notification obligations of the General German Forwarding Conditions (AdSP) shall apply.



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Defects that cannot be discovered immediately after delivery, even with the most careful inspection, must be reported to us in text form immediately after discovery.

5. We must keep within the margins usual in trade with regard to quantities, dimensions and forms. Small deviations in size and design compared to a sample dispatch, small insignificant defects such as sand places, fissures, flash rust and the same are often unavoidable and thus do not justify complaints.

6. In case the buyer intends to install the goods into another object or attach the goods to another object, prior to installation resp. attachment, the buyer has the obligation to inspect at least randomly the goods with regard to properties relevant for the application in question and to notify us of defects without delay. In case the buyer, in the event of an installation of the goods into another object or attachment of the goods to another object, fails to inspect the properties of the goods relevant for the designated end use at least at random prior to installation resp. attachment, this represents a particularly grave disregard of the care required in the ordinary course of business (gross negligence) in relation to us. In such a case, the buyer may assert rights in relation to these properties only if the defect had been deliberately concealed or in case of a guarantee for the respective quality of the goods.

7. If and in so far the buyers claim for defects is justified and has been made in time, we may, upon our discretion, remedy the defect (rectification) or deliver non-defective goods (subsequent delivery). Should we fail or decline the supplementary performance, the buyer may resort to his statutory rights. In cases where the defect is only minor or where the goods have already been resold, processed or transformed, he may only reduce the purchase price.

8. In case the buyer has installed the goods, in accordance with the goods' type and designated use, into another object or attached the goods to another object, he may claim reimbursement of his necessary costs for the dismantling of the defective goods and the installation or attachment of goods free from defects ("dismantling and installation costs") only in accordance with the following provisions:

- Necessary dismantling and installation costs are only those, which directly result from the dismantling resp. removal of the defective goods and the installation resp. attachment of identical goods, have accrued on the basis of competitive market prices and have been proven by the buyer by appropriate documents in text form.

- Additional costs of the buyer for consequential damages such as e.g. loss of profit, down time costs or additional costs for cover purchases are no dismantling and installation costs and therefore not recoverable under Sect. 439 para. 3 of the German Civil Code. The same applies for sorting costs and for supplementary costs resulting from the fact that the sold and delivered goods are at a place other than the agreed place of delivery.

- The buyer is not entitled to request advance payments for dismantling and installations cost or other expenses required for the remedy of the defective delivery.

9. We will reimburse the buyer for his expenditures in connection with the supplementary performance only in so far as such expenditures are reasonable and not disproportionate in relation to the value of the goods. Disproportionate expenditures are in particular given in case the



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expenditures requested by the buyer, in particular dismantling and installation costs, exceed 150 % of the purchase price of the goods invoiced by us or 200 % of the value of the defective merchandise. If the last contract in the supply chain is a consumer sale, the reimbursement of expenses shall be limited to the appropriate amount. Costs of the buyer related to the self-remedy of defects without the legal requirements being fulfilled, are excluded, the same applies for costs for disassembly of the defective and assembly of replacement goods, in case due to a transformation of the buyer before the assembly, the assembled goods provide substantially different features than the original goods delivered by us. Expenditures accrued by delivery of goods to another place than that of the agreed performance, will not be accepted.

10. If and in so far the goods are subject to contractually agreed testing and inspection by the buyer, such testing and inspection shall bar any claims for such defects which might have been determined by the agreed type of testing and inspection.

11. If the buyer does not immediately give us the opportunity to convince ourselves of the defect, in particular if he does not immediately make the rejected goods or samples available for testing purposes upon request, all rights due to the material defect shall lapse.

12. No warranty shall be given to goods sold as declassified material with regard to such defects either specified in the contract or to those normally to be expected. Goods classified as "IIa-Ware" ("secondaries") are not subject to any warranty, subject to XI no. 2 of these Conditions.

13. Our further liability is subject to Section XI of these Conditions. Any of the buyer's rights of recourse according to section 445a BGB (German Civil Code) are excluded, unless the last contract in the supply chain is a consumer sale. Section 478 BGB (German Civil Code) shall remain unaffected.

XI. General Limitation of Liability and Limitation Periods, Import Regulations

1. Our liability for breach of contractual or extra-contractual obligations, in particular for non-performed or deferred deliveries, for breach of duties prior to the contract ("Verschulden bei Vertragsanbahnung") as well as for tortuous acts - including our responsibility for our managerial staff and any other person employed in performing our obligations - shall be restricted to damages caused by our wrongful intent or by our gross negligence and shall in case of gross negligence not exceed the foreseeable losses and damages characteristic for the type of contract in question. In all other respects, our liability, also for damages caused by defects and consequential damages, is excluded.

2. The aforesaid restriction shall not apply to such cases where we breach our fundamental contractual obligations and therefore the accomplishment of the purpose of the contract is at risk or where the non-fulfilment of the obligations the contracting party relies on renders the proper completion of the contract impossible. It shall neither pertain to damages to life, to the body or to health caused by our fault nor to any cases where we have guaranteed certain characteristics of the goods. Nor shall such clause affect our statutory liability laid down in the Product Liability Act (Produkthaftungsgesetz) of 15/12/89. Any statutory rules regarding the burden of proof shall remain unaffected by the aforesaid.

3. Unless otherwise agreed, any contractual claims which the buyer is entitled to in connection with the delivery of the goods, including claims for damages for defective goods, shall fall under the



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statute of limitations within a period of one year after the goods have been delivered to the buyer. This restriction shall not apply to our liability and to the limitation of claims in connection with the delivery of goods which have been used for a building in accordance with their customary manner of use and which have caused its defectiveness and claims resulting from breaches of contract caused by our wrongful intent or by our gross negligence; neither to damages to life, to the body and to health caused by our fault, in cases of mandatory liability under the Product Liability Act, and to the limitation of statutory recourse claims. In these cases, the statutory limitation periods shall apply.

4. If the goods are imported into third countries outside the EU, the buyer is responsible for compliance with the official safety regulations and statutory provisions on product liability that go beyond the corresponding European regulations and provisions. If claims are asserted against us for breach of these safety regulations or statutory provisions, the buyer shall be obliged to indemnify us against these claims at our first request.

5. Within the scope of his obligation pursuant to clause 4, the buyer is obliged to reimburse us for any costs and expenses incurred by us as a result of or in connection with the defence against the aforementioned claims, including, but not limited to, the reimbursement of lawyer's and court costs.

XII. Safeguard- measures

1. To the extent that we import the goods intended for the buyer into the territory of the European Union, pursuant to the Implementing Regulation (EU) 2019/159 of 31.01.2019, as amended from time to time, tariff quotas shall apply to certain categories of goods, upon exhaustion of which an additional duty of 25% shall be assessed.

2. Our obligation to import the goods into the European Union as well as the agreed delivery date is therefore subject to the proviso that at the time of the intended import the relevant tariff quota is not exhausted or critical and that therefore no additional duty and no security are assessed. Otherwise we are entitled to postpone the delivery date by up to 3 months until the import is possible again without assessment of the additional duty, e.g. because new tariff quotas are opened.

3. If we import the goods and the tariff quotas are already exhausted, critical or overbooked on the day of import without this being recognisable to us on the day of import by inspection of publicly accessible documents, the buyer shall bear any resulting additional duty (if applicable, the proportion attributable to him) or the corresponding security deposit. We are entitled to charge him the resulting additional costs in addition to the agreed purchase price.

4. The buyer may demand delivery at any time against payment of any additional customs duty incurred.

XIII. Place of Performance, Jurisdiction and Applicable Law, Data Protection

1. The place of performance for deliveries and place of performance for payments is our place of business in Düsseldorf, and in the event that the contract has been entered into by one of our branch offices, the branch office is deemed to be the place of performance. Exclusive - also international - place of jurisdiction is place of business of our company in Düsseldorf. If the buyer is a merchant, a legal entity under public law or a special fund under public law or has no general place of jurisdiction in Germany, the exclusive place of jurisdiction - including international jurisdiction - shall be the place of our place of business in Düsseldorf. However, we are also entitled to sue the buyer at any other



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general or special place of jurisdiction.

2. All legal relationships between us and the buyer shall be governed by the laws of the Federal Republic of Germany in addition to these terms and conditions, to the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).

3. The data of our buyers are stored and processed by us in accordance with the requirements of the DSGVO.

XIV. Applicable Version

In case of doubt, the German version of these General Terms and Conditions of Sale and Delivery shall prevail.