



GENERAL TERMS AND CONDITIONS



OttoJust

The application of any other terms and conditions is explicitly excluded.

The following terms and conditions apply to all contracts signed by us unless otherwise agreed in writing in specific cases. The application of any of the buyer's terms and conditions is expressly excluded. Delivery of goods does not imply acknowledgment of any of the buyer's terms and conditions. On the contrary, by taking delivery of the goods the buyer explicitly agrees to our terms and conditions.

Section 1

Offers

All offers are subject to confirmation. Orders are only considered to have been made when they have been confirmed in writing.

Section 2

Prices

We reserve the right to invoice the list prices in effect on the day of delivery. All prices are subject to German VAT at the statutory rate.

Section 3

Delivery

Above certain order volumes, delivery is free to the buyer's address. Deliveries are made from our factory or our branch office at our discretion. On leaving our factory or our branch office goods are transported at the risk of the buyer and recipient, whatever form of transport is chosen. Delivery dates requiring our written confirmation are set so that delivery by the given date is probable. Unforeseen hindrances such as force majeure, action by public authorities, mobilisation, war, blockade, operating disturbances of all kinds, disruption to public transport, lack or delay in the delivery of raw materials or other important supplies as well as all significant difficulties in our own operations or those of our suppliers and similar instances entitle us at our discretion to change the delivery date, to make partial deliveries of goods or services and/or to revoke the contract in full or in part without liability for damages. In the event of a delay and having set a further deadline for delivery without effect, the buyer can only claim damages for non-performance if the seller or his agents caused the damages deliberately or by gross negligence. No extended liability is accepted pursuant to Section 287 German Civil Code (BGB). If the buyer does not take prompt delivery of the goods, the risk is transferred to the buyer and the seller is entitled to demand payment without giving further notice or a grace period and to have the goods stored in a warehouse or by a transport company or to have them auctioned. The payment dates are not altered even if in exceptional cases the seller agrees to later acceptance of delivery. The return of sold goods at our discretion is always at the buyer's risk. Cessation of payments, a notice of protest on a promissory note, a decline in creditworthiness or trustworthiness, the liquidation of the buyer's company as well as economic and political events which imperil or could imperil the orderly execution of the transaction entitle us, at our discretion and notwithstanding any other contractual terms and notwithstanding acceptance of a promissory note, to demand prior or immediate payment or to revoke the contract and/or to demand compensation for damages.

Section 4

Payment

Our invoices are payable immediately on receipt without any deductions, unless a different payment date or a discount have been expressly agreed in writing. If the payment date mentioned above or any other expressly agreed payment date is exceeded, the buyer is in default of payment immediately. In any event, the buyer is in default of payment at the latest if he does not pay within 30 days of the due date and receipt of the invoice. If the receipt of the invoice is uncertain, the buyer is in default of payment at the latest 30 days after payment was due and our goods have been received. We are entitled to charge interest at the prime rate set by the ECB plus 8% p.a. for as long as payment is overdue. This does not affect our right to claim for additional compensation for damages.

Promissory notes and cheques are only credited subject to the correct receipt of the full amount. We reserve the right to collect promissory notes accepted by a third party or the buyer himself. The buyer bears the costs of collection and the discount. We assume no guarantee for presentation and protest. We are entitled to return all outstanding promissory notes if the buyer's own promissory notes are protested or if third-party promissory notes are not honoured immediately. All our accounts receivable become due and payable at the same time. Predated cheques are not accepted. Our representatives and drivers are entitled to take receipt of cheques and cash.

The buyer is only entitled to offset or withhold payment if his counterclaim is undisputed or has been legally confirmed. This does not affect the buyer's other statutory rights, particularly the defence of non-performance of the contract. Otherwise no deductions will be accepted if not expressly agreed. Notification of defects in particular does not exempt from payment. Notwithstanding any instructions by the buyer to the contrary, we are entitled to credit payments to his older debts. If the buyer does not fulfil his payment obligations, in particular does not honour a cheque or ceases payment, or if we become aware of other circumstances which cast doubt on the buyer's creditworthiness, we are entitled to demand immediate payment of the entire outstanding debt, even if cheques have been accepted. In this case we are entitled to demand advance payments or collateral.

On default of payment concerning a contract or if facts come to light which point to the risk of non-performance of one or all contracts with the buyer, all the buyer's outstanding obligations are due immediately.

Section 5

Retention of title

1a) We retain title to all goods delivered by us until all our claims against the buyer, including contingent claims, have been met. This also applies to claims that arise in the future.

b) In order to assert our retention of title we are entitled to demand immediate restitution of the goods and exclude all rights to retain them, unless these counterclaims are undisputed or have been legally confirmed. If the buyer does not comply with this demand without delay, we or persons authorised by us are entitled to enter the buyer's premises to take direct possession of the goods for which title has been retained. The buyer is obliged to provide information on the whereabouts of the goods and if necessary to allow inspection of the relevant commercial files.

c) Notwithstanding the buyer's obligation to pay, we are entitled to sell the recovered goods ourselves for the best available price and to credit the proceeds or to the price invoiced by us to the buyer (sales price), less discount, rebates and other deductions and less impairment.

In all cases we are entitled to deduct our recovery costs from the amount of the credit.

d) The buyer is obliged to notify us without detail of any seizure of the goods or other prejudice of our title by third parties and to confirm our title both to third parties and to us. The buyer is forbidden to pledge or to assign as collateral the goods for which title has been retained.

e) The buyer is to insure the goods for which title has been retained for a sufficient amount, particularly against fire and theft. Claims against the insurer to the value of the goods for which title has been retained for damage to those goods are hereby assigned to us with immediate effect. The buyer is to notify the insurer that the claim has been assigned.

f) The buyer cannot acquire title to the goods pursuant to Section 950 German Civil Code (BGB) by working or processing them to produce a new product. Any work or processing by the buyer takes place for our account, without creating any obligations on our part. The worked or processed goods are considered to be goods for which title has been retained within the meaning of these terms and conditions.

g) If the goods are joined, mixed or merged with goods not belonging to us (Sections 947, 948 German Civil Code (BGB)), our pro rata title to the new product or the total quantity corresponds to the relation between the value of our goods and the value of the other joined, mixed or merged goods at the time they were joined, mixed or merged. If the buyer acquires sole title to the new product, the parties to the contract agree that the buyer grants us co-ownership rights to the new product or the total quantity in relation to the value of the processed, joined, mixed or merged goods for which title has been retained to the total value of the new product or total quantity. The new product is considered goods for which title has been retained within the meaning of these terms and conditions. The buyer is to store them on our behalf with due commercial care and undertakes to give us the information necessary to exercise our rights and to allow us to inspect his files as necessary to do so.

2. a) The buyer's rights under the secondary sale of the goods for which title has been retained and all ancillary rights are assigned to us herewith, irrespectively of whether the goods for which title has been retained are sold on without or after processing, joining or mixing and whether they are sold on to one or several buyers. If the assigned claim against the third-party debtor has been included in an open invoice, the agreed assignment also extends to the current receivables. The assigned claims serve as collateral for all our rights and claims under Section 5. 1a).

b) In the event that the goods for which title has been retained are sold on by the buyer together with other goods not belonging to us, be it after joining, mixing, working or processing, the assignment of the purchase price receivable in accordance with Section 5. 2a) is deemed to have been agreed. Moreover, it is agreed that a claim amounting to 10% of our sales price is also assigned in addition to the aforementioned secondary sales price, which on receipt is to be offset against interest and costs, whereby the unused surcharge is to be credited. If the buyer provides a related service together with the sale of the goods to which title has been retained and does not distinguish on the invoice sent to his customer between goods to which title has been retained and the service, i.e. if he charges an aggregate price, this price is assigned to us for the amount of our sales price.

c) If the goods to which title has been retained are used by the buyer to fulfil a contract for work or a contract for work and materials the receivable from these contracts is assigned to us in advance to the extent determined under Section 5 a) and b).

e) The buyer is entitled to collect the receivable from the secondary sale despite having assigned the claim. Our authority to collect the receivable is not affected by the buyer's authority to collect it. We will not collect the receivables ourselves as long as the buyer meets his payment obligations to us in an orderly manner. At our request he is to notify us from whom the assigned receivable is due and to notify the debtors that the receivable has been assigned. We and anyone authorised by us are entitled to enter the buyer's premises to inspect the documents required to identify and recover the receivables assigned to us, to remove them for a short period or to copy them.

f) We are entitled to revoke the buyer's authority to sell on the goods to which title has been retained and to collect the receivables assigned to us immediately if the buyer is in default of payment to us or is in payment difficulties due to a significant deterioration of his financial situation. If an application is made to open insolvency proceedings for the assets of the buyer, if all payments are ceased, if an affidavit is made pursuant to Section 807 German Civil Process Regulations (ZPO) or if a change of ownership of the buyer's company takes place in connection with payment difficulties, the authority to sell on the goods to which title has been retained and collect the receivables assigned to us expires automatically.

If we have revoked the buyer's authority to sell on the goods to which title has been retained or it has expired automatically, the buyer is obliged to return the goods to which title has been retained to us immediately and to obtain their direct possession for us or someone authorised by us. In this context we and those authorised by us are entitled to enter the buyer's premises. The buyer is also obliged to let us inspect his files unless he discloses all the necessary information to us without delay. All the costs arising from recovering possession of the goods to which title has been retained are borne by the buyer.

3. a) The retention of title in accordance with the preceding provisions remains in force even if certain of our claims have been included in a current invoice and the balance has been established and acknowledged.

b) The retention of title in accordance with the preceding provisions expires when all claims listed under Section 5.1a) above have been met. Title to the goods to which title has been retained then passes to the buyer and the assigned receivables are owed to him.

4. If the value of collateral provided to us exceeds the amount of our receivables lastingly by more than 20%, we are obliged to release collateral at our discretion at the buyer's request.

Section 6

Liability

We guarantee the goods and services supplied by us in accordance with the following provisions. The buyer is obliged to examine the goods carefully and promptly following delivery and to notify us in writing of any defects or incorrect quantities within 8 days of taking delivery. In the event of a defect or an incorrect quantity that could not be identified during the initial examination, notification must be sent without delay in writing as soon as the discovery is made. Otherwise the goods are deemed to be accepted despite this defect or incorrect quantities. If our customer is a trader we have the right to assign him our contractual remedies for an acknowledged defect against our respective suppliers and invite him to pursue his claim directly against the supplier. In these cases our own liability is subsidiary to the liability of our supplier.

In the event of justified complaints we can at our discretion remedy the defect, supply a replacement or provide compensation for the lesser value. If the attempt to remedy the defect or supply a replacement is not successful the customer is entitled to reduce the purchase price or to rescind the contract. The following provisions apply additionally to deliveries of our goods:

As a replacement for a materially defective item a substitute will be supplied at the price applicable to the buyer plus German VAT on the day of delivery. We will grant a discount to be determined at our discretion on the price plus German VAT in line with the impairment to the value of the defective goods due to the defect. We are nevertheless also entitled to grant this discount in cash or by crediting it to a current account. Products for which a substitute has been supplied become our property. The dimensions and technical specifications provided by us (e.g. sizes) are not guaranteed characteristics.

No guarantee is given for goods described explicitly in offers, price lists, invoices etc as special items, seconds, used or similar.

We assume no liability if

- goods have been repaired, overhauled or retreaded or otherwise worked on by anyone other than us;
- the serial numbers and/or characters no longer exist. Moreover, we assume no liability for defects if in particular in the case of goods the necessary air pressure or that stated in the latest edition of the technical guide was not maintained; the goods were subject to excessive strains contrary to regulations, in particular by exceeding the weight permitted for each individual tyre size and the driving speeds stipulated in each case;
- the goods became defective as a result of a misalignment or their performance was impaired by other disturbances in the rotation of the wheel (e.g. dynamic imbalance);
- the goods became defective due to external force or mechanical injuries or were exposed to external sources of heat;
- in the event of natural wear and tear resulting generally from improper use or an accident. No guarantees apply to the extent that we supply used goods.

If and insofar as the preceding terms and conditions have no specific provisions, the customer is not entitled to claim compensation for damages for whatever reason (e.g. for non-performance, impossibility, delay, positive breach of contract and fault in conclusion of a contract, tort, compensation between severally liable debtors etc.). This does not apply in the event that we or our legal representatives or senior staff are guilty of intent or gross negligence. No liability is accepted for damages due to simple negligence. This disclaimer also applies to the personal liability of our legal representatives and staff and other agents. Moreover, compensation for damages may not exceed the losses sustained and the profit earned that we should have foreseen as a possible consequence given the circumstances of which we were aware or should have been aware at the time the contract was signed. The maximum amount of our liability is limited to ten times the cash net value of the underlying individual order. The liability of a legal representative or agents of the operator is excluded for damages to life and limb and to health resulting from simple negligence.

Section 7

Special provisions

Parts sent to us as specimens or which have become unusable as a result of maintenance or alterations or parts that have been replaced will be scrapped or otherwise invalidated unless explicitly agreed otherwise. In all cases the buyer is obliged to take delivery of customised products and goods we do not keep in stock (common goods).

Section 8

Place of performance and place of jurisdiction

The place of performance is the seller's registered offices as described overleaf. The place of jurisdiction is the Lübeck district court or the higher Lübeck county court. The seller reserves the right to bring an action against the buyer at his general place of jurisdiction. German law is agreed to apply.

Section 9

Invalidity

Any invalidity of the individual provisions agreed has no effect on the validity of the other provisions.