

General provisions

The following Terms of Sale apply exclusively to natural persons or legal entities, as well as incorporated partnerships acting as part of its commercial or independent professional activity in concluding the legal transaction (companies in the sense of Sec. 14 BGB - German Civil Code).

HÜWA GmbH sells goods to companies and performs services for companies exclusively on the basis of these Terms of Sale. They also apply to all future transactions with the purchaser, even if they are not referred to specifically in each individual case. The Terms of Sale of HÜWA GmbH apply exclusively. Deviating conditions of the purchaser to which we do not expressly agree are not considered a part of the contract, even if we do not expressly object to them. Our Terms of Sale apply even if we complete a delivery to the purchaser without reservation and we are aware of conditions of the purchaser that are contrary to or that deviate from our Terms of Sale. The current version of the Terms of Sale is available at www.huewa.de.

Offer and contract acceptance

Offers provided by us are non-binding. An order by the purchaser is considered a binding contractual offer, which we can accept within 10 days from when we receive it. A delivery contract shall only come about following our written order confirmation or upon delivery of the goods. Transmitting an order confirmation via fax or e-mail fulfils the written form requirement.

Prices and payment conditions

Only prices confirmed by us in writing are valid. These are ex works, and do not include statutory VAT or packaging, shipping or insurance costs.

We reserve the right to adjust prices appropriately if costs decrease or increase, in particular due to changes in wages or material prices, after the contract is concluded. We will provide verification of this to the purchaser upon request.

Our invoices are payable within 10 days after the invoice date without deductions, unless otherwise indicated in our order confirmation. The purchaser shall be in default of payment after the end of this payment term. The invoice amount shall be subject to interest based on the interest rate in Sec. 288 BGB during the default period. Furthermore, we reserve the right to assert further default interest. We only accept cash payments or transfers. The date of receipt by us shall determine if payment was made in a timely fashion.

The purchaser can only offset counter-claims that are undisputed or recognised by us, or that have been established in a court of law. The purchaser is only entitled to exercise a right of retention if its counter-claim results from the same contractual relationship.

If we become aware of circumstances impacting the credit-worthiness of the purchaser after the contract is concluded, or if the purchaser falls into default of payment, we may request an advance payment within a reasonable time period, and deny services until payment is received. If this period expires without payment, we are entitled to withdraw from the contract in whole or in part, and to request compensation for damages instead of payment.

Delivery term and delays

The delivery term we name shall begin only after we have all data necessary for production and delivery, and after all obligations of the purchaser are fulfilled, at the earliest on the date we confirm the order. We reserve the right to object that the contract has not been fulfilled. If goods are provided promptly for pick-up by the purchaser or a commissioned transportation company, then the agreed delivery term shall be considered upheld. The delivery terms indicated are always exclusively the transportation time.

In the event of force majeure, strikes or other delays for which we are not responsible, the delivery period shall be extended by the duration of the hindrance. This also applies if such issues affect one of our preliminary suppliers.

If we are responsible for a delivery delay under these provisions, then our liability for each full week of delay shall be limited to damages of 0.5%, and to a maximum total of 5% of the contractual price for the delayed delivery. If the delivery delay was caused by an intentional or grossly negligent contractual violation for which we are responsible, then we shall be liable in accordance with the law.

If the purchaser falls into default of acceptance, we are entitled to demand compensation for damages regardless of any further claims. In particular, we can charge storage fees of 0.5% for each full week of delay, and a maximum of 5% of the contractual price for the delayed delivery.

For on-call orders, we are entitled to invoice goods or services that have not yet been accepted for 12 months after our order confirmation, and to charge appropriate storage fees until acceptance, or to withdraw from the contract with respect to the goods or services that have not yet been accepted.

The danger of accidental deterioration or destruction of the purchased goods shall be transferred to the purchaser upon default of acceptance.

Delivery and transfer of risk

If not otherwise indicated in our order confirmation, delivery shall be ex works. Upon request by the purchaser, goods shall be sent to another destination at their own cost and risk. In this case, the purchaser shall bear the transportation costs ex works, as well as all duties, taxes and fees incurred.

If the delivery was agreed to be freight paid or free delivery, then we shall ship the goods at the customer's risk, but shall bear the transportation costs to the agreed destination. Any duties, taxes and fees shall be borne by the purchaser in this case. Shipping is not insured, unless the purchaser instructs us otherwise and bears the insurance costs we incur. We will determine the shipping method and route at our discretion.

Once goods are provided for pick-up by the purchaser or a commissioned transportation company, risk shall be transferred to the purchaser.

Partial deliveries are permitted. If the delivered quantity exceeds or falls below the agreed quantity by up to 10%, then the contract shall be considered properly fulfilled.

Disposable packaging will not be taken back. Reusable packaging, such as Europool pallets and mesh boxes, shall be held by the purchaser for exchange upon pick-up or delivery, or returned to us within 2 weeks. The purchaser shall bear shipping costs for return transport. If the packaging is neither exchanged nor returned, then we will charge the purchaser for the reusable packaging.

Warranty claims

Deliveries are considered free from material defects if they have the agreed properties at the transfer of risk. The agreed properties are stipulated in the product description in our sales documents. We are not responsible for any other properties or features. We will accept no further warranty for any application, period of use or durability. The purchaser shall bear the risk of using the product and ensuring it is suitable for its purpose.

Customary deviations in a delivery from different production series shall not be considered defects. The same applies to general, reasonable deviations in prototype deliveries. Prototypes are provided simply to clarify form. We cannot guarantee that colours will match prototypes or previous deliveries. Technical data, specifications and performance information in the sales documents only describe the properties of the products, and are not considered a guarantee.

Complaints must be submitted regarding defects promptly and in writing, at the latest within 10 days, including the delivery slip number. For obvious defects, the term shall begin when the purchaser picks up goods, or when goods are delivered to the agreed destination by the commissioned transportation company. For concealed defects, the term shall begin when the defect is discovered. If the purchaser does not submit a prompt notification of defects, then the delivery shall be considered approved. The purchaser must note obvious transportation damage on the delivery documents when accepting the goods, then submit a complaint to the freight company and inform us of this promptly.

If there is a defect, we reserve the right to choose the manner of supplementary performance. We must be provided with an appropriate time period for supplementary performance. The originally agreed delivery term is considered appropriate, and at least the amount of time necessary to re-acquire the goods. If supplementary performance is unsuccessful twice, then the purchaser can reduce the purchase price or withdraw from the contract, at its discretion.

If goods were brought to a location besides the place of fulfilment, then we will not bear any resulting additional costs for supplementary performance. If expenses for supplementary performance for the purchaser increase because goods were brought to a location besides the place of fulfilment, then resulting claims by the purchaser are excluded.

We may deny supplementary performance if it would result in unreasonable or unusually high costs. If a defect complaint is illegitimate, we can demand that the purchaser reimburse resulting costs. The purchaser must provide us with all information necessary to handle the defect complaint, and must give us an opportunity to investigate the defect. The purchaser is obligated to support us to a reasonable extent in assessing and correcting the defect and to avoid subsequent damages.

There shall be no defect claims for insignificant deviations from the agreed properties or delivery quantity. Insignificant impacts to usability and damages emerging after the transfer of risk due to improper handling, excessive load, unusual external influences, improper use, improper implementation or using unsuitable operating materials are not considered defects. Deviations in delivered quantities of up to 10% are considered insignificant. Transportation, processing and packaging may damage the goods. Such breakage is considered normal in the industry and no complaint may be submitted if the broken percentage is less than 3% of the delivered quantity.

Claims for damages and statute of limitation

We shall be liable in accordance with the law, if the purchaser asserts claims for damage based on intentional actions or gross negligence. If we are not charged with an intentional breach of contract, claims for damages shall be limited to the foreseeable, typical damages.

We shall be liable in accordance with the law if we culpably violate a cardinal contractual obligation. In such cases, compensation for damages shall be limited to foreseeable, typical damages unless we are charged with an intentional breach of contract or gross negligence.

If the purchaser has a claim for compensation for damages instead of services, then our liability shall be limited to reimbursing foreseeable, typical damages.

Liability for compensation for damages due to culpability on the conclusion of the contract, due to other violations of obligations, and due to tortious claims for reimbursement of property damage in accordance with Sec. 823 BGB is excluded. This also applies if the customer demands reimbursement for wasted expenditures instead of compensation for damages in place of services.

Liability for a culpable injury to life, body or health shall remain unaffected. This also applies in cases of mandatory liability under the law.

If our liability for damages is excluded or restricted, then this restriction shall also apply to personal liability for damages on the part of our agents, employees, workers, representatives, and executives.

The warranty term is one year, and shall begin upon transfer of risk. Claims for damages by the customer resulting from a defect shall expire one year after the transfer of risk. This shall not apply if we are charged with intentional actions or gross negligence, or in cases of injury to life, body or health.

Our claims for payment shall expire after 5 years, starting at the end of the year in which the claim came into being. Recourse claims by the customer against us shall only exist if the customer and its purchasers have not made any agreements beyond statutory defect claims. The above provisions apply accordingly to the scope of our liability for damages.

Security rights

We reserve ownership to the purchased goods, until all of our current and future claims under the business relationship with the purchaser have been fulfilled.

If the purchaser falls into default of payment, after the end of a reasonable time period we are entitled to reclaim the purchased goods for use or sale. If we reclaim goods, this shall not be considered withdrawal from the contract.

The purchaser may not pledge the reserved goods or transfer them as a security before paying the purchase price. The purchaser is obligated to inform us promptly regarding compulsory enforcement measures by third parties over the reserved goods, and to provide us with all documents and information necessary to safeguard our rights. Enforcement officers and third parties must be informed of our property.

The purchaser is entitled to sell the reserved goods as part of its regular business operations. This entitlement shall end after an unsuccessful attempt at compulsory enforcement against the purchaser and if a request is made to open insolvency proceedings against the assets of the purchaser. The purchaser hereby already assigns to us all claims to which it is entitled against its purchasers or third parties resulting from resale, in the amount of our invoice plus VAT. This applies regardless of whether the reserved goods are sold with or without any further processing. We hereby accept the assignment. The purchaser shall remain entitled to collect the claim. We are entitled to revoke this entitlement if the purchaser does not fulfil its payment obligations as agreed, including towards third parties. In this case, the purchaser is obligated to inform us of the assigned claims and their debtors, to provide all information necessary to collect the claims, to provide us with the documents necessary for enforcement, and to notify its purchasers of the assignment.

The purchaser shall process reserved goods on our behalf, without this resulting in any obligations for us. If the reserved goods are processed, combined, connected or mixed with other goods that do not belong to us, then we shall obtain co-ownership of the new goods based on the ratio of the value of the reserved goods to the value of the other goods at the time of processing, combination, connection or mixing. The purchaser shall safeguard the new goods for us free of charge. Otherwise, the same provisions apply to the new goods as the reserved goods.

In order to secure our claims against the purchaser, the purchaser shall also assign claims to us that it obtains against third parties through combining the reserved goods with a property. We hereby accept the assignment.

Our security rights shall expire only once the customer has fulfilled all payment obligations in full. If the value of our securities exceeds the value of our total claims by more than 10%, then upon request by the customer we are obligated to approve securities of our choice.

Data protection

The contractual parties hereby undertake not to violate data protection law regulations when fulfilling the contract. The parties shall obligate all employees involved in fulfilling the contract to comply with these provisions and maintain data secrecy. The contractual partners shall take necessary technical and organisational measures to ensure compliance with statutory provisions.

Place of fulfilment and place of jurisdiction

The place of fulfilment is our headquarters in Berching. The place of jurisdiction is the court responsible for our headquarters in Berching. However, we reserve the right to sue the purchaser at its place of residence or business headquarters. The law of the Federal Republic of Germany applies to this contract. The UN Sales Convention shall not apply.

Miscellaneous

We reserve the right to change the design, structure and form of our products, and to make technical improvements to our products up to the time of delivery.

We reserve all rights of ownership and copyrights to drawings, images, calculations and other documents. This also applies to written documents designated as confidential. The customer shall require our express written consent before transmitting such documents to third parties.

Amendments and supplements to this agreement must be in written form. Fax or e-mail transmission shall fulfil the written form requirement. If we can verify that a declaration has been sent, then we will assume the customer has received it.

If a provision of these General Terms of Sale is or becomes invalid, this shall not affect the validity of the remaining provisions. The contractual partners are obligated to replace invalid provisions with a regulation coming as close as possible to it in economic terms.