

General Terms and Conditions GALLER Lager- und Regaltechnik GmbH

1. The following general terms of sale, assembly and delivery apply to all contracts concluded with our customers. We do not recognize any conditions stipulated by the customer which may contradict or deviate from our terms of sale, assembly and delivery, unless such conditions have been agreed by us in writing in advance. Even in such cases where we agree to supply the customer in the knowledge that certain conditions stipulated by him contradict or deviate from our terms of sale, assembly and delivery, these terms still apply.

2. Our terms of sale, assembly and delivery also apply to future orders, even if we do not expressly refer to these terms in the course of an existing business relationship.

§ 2 Quotations, documentation

1. All quotations are subject to confirmation and orders do not become valid until acknowledged by us in writing. This applies in particular to orders accepted by sales representatives.

2. The following terms of sale, assembly and delivery form part of the acknowledgement of order and of the order itself. The customer confirms his acceptance of these on concluding the contract. Where our acknowledgement of order remains undisputed, our terms of sale, assembly and delivery are regarded as having been accepted by the customer.

All illustrations, drawings, calculations and other documents subject to copyright remain our property, even when such documents have been released to the customer for any reason whatsoever. They are to be returned to us on request and may not be made accessible to third parties without our express written consent. Copying and reproduction are expressly forbidden. If the production by us of shelves or shelving units based on designs, samples or other data submitted by the customer should breach the rights or copyright of third parties, the customer guarantees that the permission of such third parties has been or will be obtained. In other respects the customer indemnifies us against any claims whatsoever made by third parties.

3. We reserve the right to make changes to any information contained in brochures, catalogues, price lists and other documentation related to quotations, provided such changes can be shown to be of a technical nature, do not seriously affect the function of the goods offered, and do not relate to any specifications guaranteed as binding in our acknowledgement of order.

§ 3 Prices

1. Unless indicated otherwise in our acknowledgment of order, our terms are 'ex works'.

2. We reserve the right to raise our prices by a corresponding amount if, after the conclusion of the contract, cost increases are incurred resulting from higher material, raw material or supplementary material prices, wage or salary costs, freight charges or public levies. Proof of such cost increases will be provided to the customer on request.

3. Where the customer is not a registered company we have the right to raise our prices in cases where delivery is to take place more than four months after the conclusion of the contract; if the price increase is more than 5% of the agreed price, the customer will have the right to cancel the contract within one week from being informed of the increase in price.

§ 4 Terms of payment

1. Unless specified otherwise in the acknowledgement of order, payment for goods and supplementary services is to reach our company headquarters in Kulmbach within eight days after the invoice has been handed or sent to the customer.

2. Where in exceptional cases goods are delivered or released without prior confirmation of order, the invoice amount is to be paid immediately and without deduction on the delivery or release of the goods.

3. If, after the conclusion of the contract, we become aware of circumstances which, in our judgement as responsible businessmen, justify doubts regarding the creditworthiness of the customer, e.g. the initiation of insolvency proceedings, indication of impending cessation of payment (failure to observe due dates of payment etc.), all outstanding payments, irrespective of the dates of any bills of exchange already accepted or credited and of any dates of payment previously agreed, become due immediately. In such case we also have the right to carry out any outstanding deliveries only against payment in advance or against some form of security.

4. Unless the acknowledgement of order states otherwise no deduction of expenses, discounts or cash discounts is permitted.

5. All payments are to be effected in EURO. If in our quotation prices are indicated in a foreign currency, on payment the conversion must be made at the official rate published at the Frankfurt am Main currency exchange (12.00 hrs CET), for the day on which our written acknowledgement of order is issued.

6. If payment by cheque or bill of exchange is agreed, the acceptance of the cheque or the bill by us is only on account of performance.

7. Where payment is delayed by the customer we are allowed to charge default interest amounting to 5% above the respective discount rate of the German central bank p.a. together with reminder costs of 10.23 €, unless we prove that the cost of the delay is higher or the customer can prove it is lower. We are also entitled to withhold further outstanding deliveries.

8. Against our claims the customer can only offset counterclaims which are unchallenged or legally justified. The customer may only make use of a right of retention if his counterclaims are based on the same contractual relationship as our claims for payment.

§ 5 Delivery time / part deliveries

1. Events of force majeure entitle us to postpone delivery for as long as the obstacle remains. Equivalent to force majeure are industrial disputes, mobilisation, war, blockade, import and export bans, non-availability of raw materials or energy, fire, traffic hindrances, bad weather (e.g. in the case of assembly work) and other circumstances over which we have no control, irrespective of whether these affect our company or one of our suppliers or subcontractors.

2. If, as a result of such events, delivery becomes impossible or if the delay caused by the obstacle to performance lasts longer than 4 weeks, we are entitled to withdraw from the contract. The customer has the right to ask us to declare whether we intend to withdraw from the contract or to effect delivery within a reasonable period of time. If we do not give such a declaration within a reasonable amount of time, the customer for his part can withdraw from the part of the contract which has not yet been fulfilled. Any further claims on the part of the customer are excluded.

3. If we cause a delay for which we are responsible, we accept liability for such a delay only if it has been caused deliberately or is the result of gross negligence.

4. The fulfillment of our delivery commitments pre-supposes the punctual and orderly fulfillment of the customer's responsibilities. If the customer is late in taking delivery of the goods or in breach of his duty to cooperate, we are entitled to claim for the damage incurred by us including any additional costs arising. In this event the risk of accidental destruction or accidental deterioration of the goods is transferred at the point in time when he falls in arrears with his responsibilities.

5. We reserve the right to make part deliveries to a reasonable extent.

§ 6 Delivery, collection, assembly

1. For our conditions of assembly please see the terms set out in the appendix to our general terms of business.

2. The unloading of the vehicles is to be carried out by the customer.

3. For customers collecting the goods themselves the following applies: loading of trucks is only possible from the side by fork-lift truck. If several such customers arrive simultaneously, they will be dealt with consecutively.

§ 7 Dispatch / packing

1. Where goods are shipped by us we have the choice of means of transport, unless specific provisions have been made in the acknowledgement of order. The additional cost of any special or accelerated form of transport required by the customer will be borne by the customer, even if we are responsible for the standard freight costs.

2. If the contract is cancelled due to the customer's fault, the customer is responsible for returning any goods delivered to him to our headquarters in Kulmbach at his expense and risk.

3. Packing will be in accordance with commercial standards. It is not included in our prices and will be charged at cost in accordance with the expense incurred.

4. Where the customer requires us to take back transport and packaging materials, he is obliged to deliver them to our company headquarters in Kulmbach within working hours. Such transport and packaging materials are only accepted by us in a clean condition, free of other substances and sorted according to the type of material. Where the customer fails to carry out this duty the customer will be responsible for any additional costs incurred by us for the disposal of such materials.

§ 8 Transfer of risk

1. Where materials are delivered by us for assembly and installation at the customer's place of business the transfer of risk takes place when the goods are delivered to the place of delivery designated in the acknowledgement of order.
2. Where the goods are dispatched, the risk is transferred to the customer at the point when they are handed to the freight forwarder or carrier. This also applies if the freight costs are paid by us.
3. Where delivery or shipment of the goods is delayed for reasons due to the customer, the risk of destruction or deterioration, in particular regarding the risk to the surface quality of the goods posed by lengthy storage in the open air, is transferred to the customer at the point where he is informed that the goods are ready for delivery.
4. Insurance against damage in transit will only be concluded by us at the express wish and at the expense of the customer.

§ 9 Customer acceptance

1. When the goods are assembled and installed by us, customer acceptance is, unless agreed otherwise, to take place within three working days from completion of the assembly or installation work.
2. The result of the acceptance procedure is to be documented and signed both by the customer (or his representative) and by us (or our representative). The documentation should contain any remarks regarding faults which have been discovered together with any other reservations held by the customer.
3. Where the customer has begun to use the goods on a continuous basis immediately after the assembly and installation has been completed, customer acceptance is, unless agreed otherwise, regarded as having been effected after 10 working days have elapsed from the start of such use - even where no formal acceptance procedure has taken place.

§ 10 Complaints

1. In transactions where the customer is not a registered company, visible defects to the goods entitle the customer to make a claim only if they are made known to us within one week after receipt of the goods. In transactions with registered companies visible defects must, in view of our obligation to make claims on the freight forwarder or carrier, be reported to us without delay, but at the latest within three days from delivery of the goods. Non-visible defects must be reported to us without delay, but at the latest within three days from such defects becoming visible.
2. Where the goods are dispatched it is in addition the customer's responsibility to report any damage or complaint to the freight forwarder or carrier and to have the claim confirmed or recognized without delay.
3. Minor damage does not entitle the customer to withhold payment.

§ 11 Guarantee / guarantee period

1. Where we are to blame for any fault with the goods we can replace or repair them at our discretion. Where repairs or replacements do not achieve the desired result the customer has the choice of either requiring a corresponding reduction in the purchase price or the cancellation of the contract.
2. We accept no responsibility for normal wear and tear, changes to the goods by the customer or for damage caused by faulty modifications, installation or operation by the customer or by a third party.
3. Unless otherwise provided for below, any further claims made by the customer, whatever legal basis they are made on, are excluded. We consequently do not accept liability for any damage which is not caused directly to the goods; in particular we accept no liability for consequential damage, loss of profit or other financial damage sustained by the customer. This limitation on our liability does not apply when the damage has been caused by a deliberate action or by negligence on our part or on the part of someone acting on our behalf. It does not apply, either, when the goods lack a property which we have guaranteed.
4. Where shelving has not been assembled by us and has been incorrectly erected, we can accept no liability for its load-bearing characteristics. Indications of load-bearing capacity only apply where the shelving is assembled in accordance with our instructions.
5. The guarantee period is 6 months or one year when the goods are installed in a building, calculated in each case from the point of transfer of risk. This period is a period of limitation and also applies to claims for consequential damage based on defects.

§ 12 Liability

1. In cases other than the above guarantee provisions we only accept liability for compensation if the damage has been caused by a deliberate action or by negligence on our part or on the part of someone acting on our behalf. This applies in particular for claims arising from errors in the conclusion of the contract, or from breach of a collateral obligation or of manufacturer's liability in accordance with § 823 of German federal law (BGB). This limitation on liability does not apply to claims made under product liability legislation or initial inability to perform or impossibility of performance where we are responsible for this.
2. Insofar as our liability is excluded or limited by the above provisions, this applies also to the personal liability of our employees (assembly workers etc.) and other workers, our representatives, persons employed by us in the performance of our obligations and other vicarious agents.

§ 13 Retention of title

1. We retain the title to the goods supplied until all payments, including those for early or late deliveries, which are due under the contract with the customer have been received. This also applies to credit or financing arrangements made with the customer. The retention of title remains in effect even if individual claims are waived or a balance is struck and accepted by us.
2. Where goods to which we retain title are confiscated or claimed by third parties the customer has the duty to inform us immediately in writing. If goods to which we retain title are integrated into the premises of a third party, the customer hereby assigns to us all assignable claims which he may have on the third party or the person concerned for payment to the value of the goods, together with all ancillary rights, including the right to the establishment of a mortgage as security with first priority in our favour. We hereby accept the assignment.
3. If goods to which we retain title are integrated into the customer's premises the customer hereby assigns to us all claims which he may have arising from the sale of the site or the rights thereto to the value of the goods, together with all ancillary rights, with first priority in our favour. We hereby accept the assignment.
4. Where the total realizable value of the securities provided to us exceeds, on a non-temporary basis, more than 120% of our claims, we shall be obliged, at the customer's request, to surrender securities of our choice to the level of the excess. The customer is obliged, by separate storage and appropriate marking of the goods, to ensure that goods to which we retain the title are at all times identifiable. When all claims arising from the contract have been met, the title to the goods and the assigned claims are transferred to the customer.
5. The customer has the duty to maintain the goods in a good condition during such time as we retain title to them and to have any necessary repairs carried out without delay. He is obliged to insure the goods against fire and theft and to furnish us with proof that insurance cover has been obtained.
6. Where goods are supplied abroad the customer has the duty to ensure at his expense that the retention of title to the goods or a comparable legal safeguard in our favour is maintained or established in the country where the goods will be permanently located.

§ 14 Applicable law

1. The contractual relationship between the customer and ourselves is exclusively subject to German law. The application of any international or unified commercial legislation is excluded.

§ 15 Storage of data

1. On accepting these terms of business, delivery and assembly the customer agrees to the electronic storage by us of his personal data for purposes of processing the order and of invoicing.

§ 16 Place of fulfillment / jurisdiction

1. Unless stated otherwise in the acknowledgement of order, our company headquarters in Kulmbach will be the place of fulfillment for the delivery of the goods, for all payments and for all bills of exchange or cheques received.

2. All disputes arising from a business relationship with a registered company, with the exception of default actions, will be subject to the jurisdiction of the county court in Bayreuth. The county court in Bayreuth is also the place of jurisdiction if the customer is not generally resident in Germany, moves abroad after concluding the contract, or if his residence or location is not known when the action is brought against him. However, we have the right at our discretion to bring an action against the customer at his place of residence or place of business.

§ 17 Closing provisions

1. If one or more provisions of these terms of business, delivery and assembly prove to be wholly or partially void, this does not affect the validity of the remaining provisions.