

## **General Terms and Conditions of Sale and Delivery of JUNGMANN GmbH & Co KG**

### **1. Scope**

The terms of sale and delivery of Jungmann GmbH & Co KG (hereinafter referred to as "Seller") shall only apply to entrepreneurs, a legal entity under public law or a special fund under public law within the meaning of § 310 para. 1 sentence 1 BGB (German Civil Code).

### **2. Conclusion of contract**

- a) The offers of the Seller are not binding.
- b) Based on an order by the Buyer, the contract is only concluded after the Seller has confirmed it. For the content and scope of the contract, the aforementioned confirmation of the Seller is decisive. All declarations of the parties in connection with the conclusion of the contract must be in text form to be effective.
- c) These sales and delivery conditions of the Seller apply exclusively. All conditions of the Buyer - regardless of their content - do not apply, even if the Seller has not expressly objected to them or if he carries out the delivery without reservation in knowledge of the Buyer's conditions.
- d) Drafts, calculations, drawings and other documents provided by the Seller remain his property. These may only be used to process the Seller's offers and may not be made available to third parties and must be returned to the Seller at his request.

### **3. Prices, payment, offsetting and retention**

- a) The prices are ex warehouse/works plus packaging, freight and statutory value added tax, for export deliveries plus customs duties as well as fees and other public charges.
- b) The invoice amounts are to be paid within 30 days of the invoice date without any deductions, unless otherwise stated in the Seller's order confirmation. The time of crediting to the account of the Seller is decisive for the timeliness of the payment. Cheques shall only be considered as payment after they have been cashed. A discount of 2 % is granted for payment within 14 days. The Seller is not obliged to accept bills of exchange. However, if he nevertheless accepts bills of exchange, the bank discount and collection charges shall be borne by the Buyer when the claim becomes due and shall be payable immediately. Bills of exchange and cheques are always only accepted on account of performance. No obligation is assumed for the timely presentation and protesting of bills of exchange and cheques.
- c) The Seller is entitled to demand an increase in the agreed prices in accordance with the extent to which wage, material and/or transport costs have increased from the date of conclusion of the contract to the date of delivery. The Seller shall prove this increase in costs to the Buyer upon request. If the amount of the increase exceeds 5% of the originally agreed price, the Buyer is entitled to withdraw from the contract within a period of seven days after notification of the increase.
- d) The Buyer shall be entitled to execute or render outstanding deliveries or services only against advance payment or provision of security if, after conclusion of the contract, he becomes aware of circumstances which are suitable to substantially reduce the creditworthiness of the Buyer and which jeopardise the payment of the Seller's outstanding claims by the Buyer under the respective contractual relationship. Furthermore, the Seller is entitled to inspect the Buyer's warehouse and to provisionally secure his goods delivered there under reservation of title until payment is made. Transport and storage costs arising in this connection shall be borne by the Buyer.
- e) The Buyer shall only be entitled to set off counterclaims that are undisputed, legally established or ready for decision.
- f) The Buyer is only entitled to assert a right of retention based on undisputed, legally established or counterclaims ready for decision which originate from the same contractual relationship with the Seller.

#### **4. Delivery periods, default of acceptance by the Buyer**

- a) Delivery periods are non-binding, unless they have been expressly designated as binding in writing by the Seller.

Delivery periods shall be extended if there is a delay in self-delivery for which the Seller is not responsible. The extension of the delivery period corresponds to the duration of the delay. The same applies if the execution of the delivery is delayed due to force majeure.

If these circumstances continue for more than three months, each party to the contract shall be entitled to withdraw from the contract in whole or in part, without either party being able to derive any rights or claims from this against the other party to the contract.

- b) If the Buyer is in default of acceptance or if he violates other obligations to cooperate, the Seller can demand compensation for the damage incurred by him in this respect including any additional expenses. We reserve the right to assert further claims.
- c) The risk of accidental loss or accidental deterioration of the delivery item is transferred to the Buyer at the point in time at which the Buyer is in default of acceptance or debtor's delay.

#### **5. Shipping and transfer of risk**

Shipment is ex works at the expense and risk of the Buyer.

The risk is transferred to the Buyer at the latest when the delivery item is handed over to the forwarding agent, carrier or other third party designated to carry out the shipment. This also applies if partial deliveries are made or the Seller has taken over other services.

If dispatch or handover is delayed as a result of a circumstance, the cause of which lies within the Buyer's sphere of risk, the risk shall pass to the Buyer on the day on which the delivery item is ready for dispatch and the Seller has notified the Buyer of this in text form.

#### **6. Retention of title**

- a) The Seller retains title to all goods delivered by him until the Buyer has paid all claims arising from the business relationship or - if individual claims have been included by the Seller in a current account - until the acknowledged balance has been settled.

Goods within the meaning of this provision are those which are (co-)owned by the Seller.

- b) The handing over of a bill of exchange or cheque shall not be considered as payment as long as the bill of exchange or cheque has not been honoured by the Buyer.

- c) The Buyer is entitled to resell the delivered goods within the scope of ordinary business operations. However, he hereby assigns to the Seller the claims against the Buyer to which he is entitled from the resale in the amount of the gross invoice amount of the goods to secure all claims of the Seller from the business relationship, irrespective of whether the goods have been resold without or after processing, transformation, combination, mixing or blending.

The claim assigned to the Seller by the Buyer in advance also refers to an acknowledged balance from the relationship with the Buyer's customer and, in the event of the Buyer's insolvency, to any surplus (so-called causal balance).

If the Buyer is granted a respite on the selling price, the Buyer shall reserve title to the goods sold by him to the Buyer on the same terms and conditions as those on which the Seller has reserved title upon delivery of the goods.

The assignment of the claims shall be a silent claim for the time being, i.e. the customer shall not be informed of the assignment. The Buyer is authorised to collect the claims until further notice. However, he is not entitled to dispose of the claims in any other way, e.g. by assignment.

- d) The Seller has the right to revoke the authorisation to collect the claims and to collect the claims himself if the buyer does not fulfil his contractual obligations, in particular if he is in default of payment or does not fulfil his payment obligations from the collected proceeds in accordance with the contract, or if an application for the opening of insolvency proceedings on his assets has been filed. In these cases, the Buyer is obliged to inform the Seller, at the Seller's request, of the names of the customers and the amount of the assigned claims, to provide the Seller with all the information necessary for the assertion of the assigned claims and to inform the customers of the assignment at the Seller's request.

- e) In the cases of number 6 d) sentence 1, the Seller is also entitled to prohibit the Buyer from further processing and/or selling the goods delivered to him and still in his possession.  
If the Seller has received the goods back as a result of a withdrawal from the contract, he is entitled to sell them. The proceeds of the sale shall be set off against the liabilities of the Buyer - less reasonable costs of sale. The costs for the return transport of the goods delivered under retention of title to the Seller shall be borne by the Buyer.
- f) The processing or transformation of the goods by the Buyer shall always be carried out for the Seller on the Seller's behalf, but at no cost to the Seller.  
If goods are processed, combined or inseparably mixed or blended with other items not belonging to the Seller, the Seller shall acquire co-ownership of the new item in the ratio of the gross invoice amount of the goods to the gross invoice amount of the other items.  
If, as a result of one of these transactions, sole ownership of the Buyer arises because an item belonging to him represents the main item, it is deemed to be agreed that the Buyer transfers co-ownership of this item to the Seller in the ratio of the gross invoice amount of the goods to the gross invoice amount of the other items.  
In all cases of this paragraph, the Buyer shall keep the resulting co-ownership of the Seller free of charge for the Seller.
- g) The Buyer is obliged to insure the goods against all usual risks, in particular fire, burglary and water hazards at his own expense at replacement value and to handle them with care. If maintenance and inspection work is necessary, the Buyer must carry this out at his own expense.
- h) Furthermore, the Buyer shall be obliged to notify the Seller immediately in writing of any seizure of the goods or of the assigned claims by third parties or of any other claims which third parties assert in respect of the goods.
- i) The Buyer is obliged to provide the Seller with information on the whereabouts of the goods and on the claims arising from the resale at any time upon request. The costs arising from the assertion of the Seller's rights shall be borne by the Buyer.
- j) If the realisable value of the existing securities exceeds the claims to be secured by more than 10%, the Seller shall be obliged to release the securities. The selection of the securities to be released is the responsibility of the Seller.
- k) With the full payment of all claims of the Seller from the business relationship with the Buyer, including a possible current account, not only the ownership of the Seller of the goods but also the assigned claims are transferred to the Buyer.

#### **7. Buyer's obligation to examine and notify**

- a) The Buyer is obliged to examine the goods immediately after their delivery to him with due care and in the ordinary course of business. Any defects discovered in this process must be reported to the Seller without delay and the handling and processing of the goods must be stopped immediately.  
Defects which were not recognisable in the course of the inspection of the goods upon delivery must be reported to the Seller by the Buyer immediately after their discovery.
- b) The notification must be made in writing and must precisely describe the type and extent of the defects. Decisive for the timeliness of the notification is its receipt by the Seller.
- c) If the Buyer violates his obligation to inspect and notify, the goods shall be deemed to have been approved with the proviso that he is excluded from all claims for defects.

#### **8. Liability of the Seller**

- a) The Seller has the choice whether he fulfils the Buyer's claim for subsequent performance by eliminating the defect or by delivering a defect-free item.
- b) The Seller is only liable for claims for damages as follows:
- aa) He is liable for damages resulting from injury to life, body or health, which are based on an intentional or negligent breach of duty by himself, his legal representative or vicarious agent.  
Furthermore, he is liable for other damages insofar as they are based on an intentional or grossly negligent breach of duty or a culpable violation of essential contractual obligations by himself, his legal representative or vicarious agent. However, if the violation of essential contractual obligations is based on simple negligence, the liability of the Seller is limited to the replacement of the foreseeable, typically occurring damage.

- bb) In the event of a breach of non-essential contractual obligations, the liability of the Seller is excluded if he is only guilty of minor negligence.
- c) The period of limitation for claims against the Seller due to a defect is one year from the statutory commencement of the limitation period. This shall not apply in cases of liability in accordance with the above No. 7 b) aa), §§ 438 para. 1 No. 2 and 634 a para. 1 No. 2 BGB (German Civil Code) as well as in cases in which the Seller has fraudulently concealed the defect or has assumed a guarantee for the quality of the object of purchase.
- d) The right of the Buyer to withdraw from the contract in the event of a breach of duty for which the Seller is responsible and which does not consist in a defect in the purchased item remains unaffected. This also applies to claims of the Buyer, which result from a legally binding liability of the Seller.
- e) However, the Seller shall not be liable if the defect is due to the Buyer's failure to observe the instructions for the storage, transport and handling of the goods enclosed with the delivery.

### **9. Property right infringements**

If deliveries are made in accordance with drawings, samples or other information provided by the Buyer and if patent, trademark or other property rights of third parties are infringed as a result, the Buyer shall indemnify the Seller from all claims asserted against him on this basis and shall be liable to him for the resulting damage and lost profit.

### **10. Place of performance, place of jurisdiction and applicable law**

- a) The place of performance for all claims arising from or in connection with the delivery contract and the place of jurisdiction for all disputes arising from or in connection with the delivery contract - including the validity of this jurisdiction clause - is the registered office of the Seller. However, the Seller is also entitled to sue the Buyer in his general place of jurisdiction.
- b) The contractual relationship shall be governed exclusively by the law of the Federal Republic of Germany, excluding German private international law and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11/04/1980.

### **11. Data protection**

- a) The Seller notes that personal data - as far as legally permissible - is collected, stored and processed.
- b) No warning without prior contact!
- c) Unsolicited applications are not welcome from our side.  
If we nevertheless receive unsolicited applications, these will be deleted unread.  
Further information and regulations on data protection can be found at [www.jungmann-ense.de](http://www.jungmann-ense.de) and are available for download.

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