

General terms and conditions of sale of the company Grumbach Brutgeräte GmbH

§1

General terms – Validity

- (1) Our terms of sale are exclusively valid; terms of the customer which contradict or deviate from our terms of sale will not be recognised by us unless we have explicitly confirmed their validity in writing beforehand. Our terms of sale also remain valid in the event that we fulfil delivery to the customer without reservations and in knowledge of terms of the customer which contradict or deviate from our terms of sale.
- (2) All agreements reached between us and the customer concerning the fulfilment of this contract are written down in the present contract.

§2

Offer – Offer documentation – Conclusion of contract

- (1) If the order qualifies as an offer in accordance with §145 Civil Code, we can accept it within 2 weeks. Acceptance can be declared either in writing or by delivering the goods to the customer. Our written order confirmation alone is also definitive for the scope of the delivery. Supplementary additions or changes to the order or additional verbal agreements also require our written confirmation to ensure validity.
- (2) If the customer orders the goods electronically we will confirm receipt of the order without delay. Receipt of an order does not constitute binding acceptance of the order. The receipt of order can be connected with the declaration of acceptance. If the customer orders the goods electronically, the text of the contract is stored by us and sent upon request to the customer by e-mail together with our general terms and conditions of trade.
- (3) For images, drawings, calculations, and other documentation we reserve rights of ownership and copyright. This also applies to written documentation marked “Vertraulich” and/or “Confidential”. Before passing such documents on to third parties the customer needs our explicit written agreement.
- (4) Our offerings are subject to change. Changes in the construction, design, or performance of our products that are unimportant or caused by technological developments are excepted from the information given in our catalogues, brochures, or website.
- (5) Partial delivery is permitted. Partial deliveries are generally to be considered independent business processes. Disagreement concerning one partial delivery does not affect the unfulfilled part.

§3

Pricing – Terms of payment

- (1) Price lists and pricing information in catalogues or on the internet are subject to change. Agreements on fixed prices always require written confirmation.
- (2) If not stated differently in the order confirmation, our prices are valid “ex works” or ex delivery warehouse, excluding packaging, delivery, installation, start-up, and other additional costs (e.g. customs duties); this will be charged separately.
- (3) VAT is not included in our prices; it is stated separately in the invoice on the invoice on the day of invoicing in accordance with legal stipulations.
- (4) Cash discount requires specific written agreement.

- (5) If not stated differently in the order confirmation or the invoice, the net purchase price (without discount) is due within 30 days from the date of invoicing ex paying agent or seller. On expiry of this term the customer is considered in default. Legal regulations concerning the consequences of default apply. The same applies to separately invoiced partial deliveries.
If the customer defaults, we are authorised to claim all amounts owing, also including other deliveries, without any discount. This also applies to amounts that are not due yet or have been deferred. All amounts owing will also be claimed if we doubt the customer's creditworthiness because of their economic situation, and if a different credit period is therefore not considered appropriate. In this case delivery will only be concluded by us step by step upon payment of the agreed price. If this is rejected by the customer we are authorised to withdraw from the contract entirely or partially or to claim compensation for non-compliance with the contract.
- (6) We reserve the right to alter our prices accordingly if cost reductions or cost increases occur subsequent to conclusion of the contract, especially in the event of wage agreements or alterations in material prices.
- (7) The customer is only authorised to offset or delay payments if their claims have been legally stated or are undisputed or recognised by us. Moreover, they are only authorised to exercise the right to delay payments to the extent that their claims refer to the same contractual relationship.
- (8) Our representatives and fitters are only permitted to collect payments if they can present corresponding written authorisation.
- (9) Bills of exchange are only accepted after previous explicit and written confirmation. Bills of exchange or cheques are only accepted in any case on account of payment.
- (10) In international business we retain the right to suspend delivery if, as a result of sudden currency fluctuations after conclusion of the contract, we should suffer a currency disadvantage amounting to 10% of the delivery price. The customer is to be notified immediately. Delivery is to be resumed immediately after the currency fluctuations have ended.

§4 Period of delivery

- (1) The period of delivery begins on dispatch of the confirmation of order to the customer. However, the beginning of the period of delivery stated by us depends on prior clarification of all technical questions and details of execution of the order.
- (2) Compliance with our delivery obligation furthermore requires the prior punctual and correct fulfilment of the customer's obligations (e.g. provision of documentation by the customer, approvals, releases, etc.). Plea of non-performance is reserved.
- (3) The delivery period is considered to have been observed if the subject of delivery has been shipped before expiry of the delivery period or if notice of the readiness for shipment has been given.
- (4) If non-compliance with the delivery period is attributable to force majeure, e.g. war, disturbances, natural disasters etc. or similar events such as strikes, lock-outs etc., the delivery period is extended accordingly.
- (5) The delivery period is also extended appropriately if unforeseeable or unusual condition occur (e.g. operational breakdown, delays in the supply of parts, official sanctions etc.), which could not have been prevented by us despite a reasonable level of diligence.
- (6) If the customer is in default of acceptance or is responsible for failing to meet other participatory obligations we are entitled to claim compensation for the resulting damages caused, including possible additional expenditures. Further claims are reserved. If indemnification instead of performance is claimed in accordance with §281 German Civil Code, we can claim 20% of the sales price as indemnification, notwithstanding the possibility of claiming higher damages.
- (7) If the conditions from article (6) apply, the risk of accidental perishing or accidental deterioration of the goods passes to the customer at the moment when they enter the position of default of acceptance or payment.
- (8) According to statutory regulations we are furthermore liable if delay in delivery is caused by non-compliance with the contract because of intent or gross negligence for which we bear responsibility; the fault of our representatives or vicarious agents is not attributable to us. If delay in delivery is not caused by intentional non-compliance our liability for indemnification is limited to foreseeable, typical damages. According to statutory regulations we are also liable if the delay in delivery which we are responsible for is caused by negligent breach of significant duties of contract; in this case liability for indemnification is limited to foreseeable, typical damages.

Furthermore liability due to delay in delivery because of our fault is limited to flat-rate default compensation of 0,5% of delivery value for each completed week of delay, but not more than 5% of delivery value.

§5

Passing of risk – Cost of packaging

- (1) If not stated differently in the confirmation of order, delivery “ex works” Asslar is agreed. If shipping of the subject of delivery has been agreed, we are entitled to decide on the method and route of shipping.
- (2) The risk of accidental perishing and of accidental deterioration of goods passes to the customer upon handover, in the case of sales shipment of goods to the carrier, the haulage contractor, or any other person or institution appointed to carry out shipment. If the buyer is in default of acceptance, this shall be considered equal to handover. The same applies if shipment, realisation of installation or assembly etc. is delayed or postponed by the customer.
- (3) If desired by the customer we will cover delivery by shipment insurance; the customer pays the corresponding costs.

§6

Liability for faulty goods

- (1) Claims by the customer arising from a defect require that they have duly complied with the obligations of inspection and notification owed in accordance with §377 German Commercial Code. In particular, devices must be inspected before start-up with regard to their functionality, and measuring devices must be inspected or adjusted with regard to their correct readings. The information in the operation manual is to be observed. The customer bears complete burden of proof for all prerequisites of claim, in particular for the defect itself, for the moment when the defect was noticed, and for the timeliness of the complaint.
- (2) Usual tolerances concerning measure, weight, colour etc. do not represent a defect.
- (3) In the event of defect in the object of sale we first remedy the defect or deliver a defect-free item at our discretion. In the case of remedial work we are obliged to bear all expenses needed to remedy the defect, in particular the cost of transport, travel, work, and materials, provided these costs are not increased because the object of sale has been moved to a site other than the place of delivery. Ownership of replaced parts passes to us.
- (4) If remedial work fails, the customer is entitled in their discretion to claim withdrawal from the contract or reduction of purchase price. In the case of insignificant non-compliance, in particular insignificant defects, the customer is not entitled to withdrawal. This applies especially in the case of insignificant deviations from texture.
- (5) We are liable according to statutory regulations if the customer claims compensation for damages caused by intent or gross negligence. If we are not found guilty of intentional breach of contract, liability for indemnification is limited to foreseeable, typical damage.
- (6) We are liable according to statutory regulations if we breach major contractual obligations because of our fault; in this case liability for indemnification is limited to foreseeable, typical damage.
- (7) If the customer receives faulty assembly instructions, we are merely obliged to deliver correct assembly instructions. This only applies if the faulty instructions prevent correct assembly.
- (8) If not stated otherwise in the previous articles, liability is excluded.
- (9) Claims because of defects are barred on legal guarantee as of the passing of risk.
- (10) Assignment of warranty claims is only possible if we have previously consented in writing.
- (11) The customer does not receive warranty in the legal sense. This does not apply to manufacturers' warranties.

§7

Overall liability

- (1) Further liability for indemnification other than stated in §7 is excluded, regardless of the legal grounds of the claims. This applies in particular to claims because of negligence in contracting, because of other breach of duty or because of tortious claims to compensation of material damage in accordance with §823 German Civil Code.
- (2) We are not liable for the actions of assembly and installation personnel which are not directly connected with delivery and assembly. This also applies to activities initiated by the customer.
- (3) As far as liability towards us is excluded or limited, the same applies to personal liability of our personnel, employees, workers, representatives and vicarious agents.
- (4) As far as the customer is entitled to indemnification, this is barred 12 months as of delivery of goods. This does not apply if we can be charged with malice.

§8

Securities for the reservation of title

- (1) We reserve ownership of the object of sale until payment of the delivery contract has been received in full. If the customer breaches the contract, in particular in the case of default of payment, we are entitled to repossession of the object of sale. Our repossession of the object of sale does not represent withdrawal from the contract if not explicitly stated by us in writing. Distraint of the object of sale through us always represents withdrawal from the contract. After repossession of the objects of sale we are entitled to their utilisation; the proceeds of utilisation – minus appropriate costs of utilisation – are to be counted towards the customer's liabilities.
- (2) The customer is obliged to treat the object of sale with care; in particular they are obliged to insure it at their own expense against fire, water and theft at reinstatement value. If maintenance and inspection are required, the customer must carry them out in good time at their own expense.
- (3) In the event of distraint or other actions of third parties the customer must notify us immediately in writing so that we can take legal action according to §771 German Code of Civil Procedure. If the third party is not able to reimburse our judicial and extrajudicial cost of legal action according to §771 German Code of Civil Procedure, the customer is liable for the losses accruing to us.
- (4) The customer is entitled to resell the object of sale in the regular course of business; however, they already assign to us all claims arising under the resale towards the buyers or third parties, amounting to the total invoice sum of our claims (including VAT), regardless of whether the subject of purchase has been resold without or after processing. The customer remains entitled to collect those claims even after assigning them to us. This applies notwithstanding our entitlement to collect the claims ourselves. However, we commit ourselves not to collect the claims as long as the customer complies with their financial commitments based on proceeds taken, is not in default of payment, and in particular as long as no application for the initiation of bankruptcy, settlement, or insolvency proceedings has been made and payments have not been suspended. If however such a case occurs we can demand that the customer notify us of the assigned claims and debtors, give all information needed for collection, hand over the respective documents, and notify the debtor (third party) of the assignment.
- (5) The customer also assigns to us claims towards a third party to guarantee our claims towards them which arise because of the connection of the object of sale with real estate.
- (6) Upon suspension of payment or initiation of insolvency proceedings the right to resell, utilise, or install the reserved goods expires, as well as the entitlement to collect assigned claims.
- (7) We commit ourselves to release the securities which we are entitled to upon request of the customer to the extent that the realisable value of our securities does not exceed the unsatisfied claims by more than 20%; the selection of securities to be released is to be made by us.

§9

Place of jurisdiction – Place of performance

- (1) If the customer is a trader, the place of jurisdiction is the location of our business. The same applies if the customer has no general place of jurisdiction in Germany or if their legal or usual residence is not known at the time of initiation of legal action. However, we are entitled to sue the customer at the place of jurisdiction of their business or residence.
- (2) The laws of the Federal Republic of Germany apply; application of the UN Laws for the Sale of Goods is excluded. This also applies if the customer is a foreigner or is located abroad.
- (3) If not stated differently in the confirmation of order, the place of performance is our seat of business.
- (4) If individual regulations of the contract with the customer, including those general terms and conditions of sale are partially or completely invalid or become invalid, this does not apply to the validity of the other regulations. The regulation which is partially or completely invalid is to be replaced by a regulation whose economic success is as close as possible to the invalid one.