

# Terms and Conditions of Sale and Delivery (also as Download on [www.togu.de](http://www.togu.de))

## 1. General points:

1.1. These terms and conditions of sale apply to companies or traders and not to end consumers. These terms and conditions of sale apply to all business dealings with the buyer/customer even if they are not mentioned in subsequent contractual agreements (quotations/order confirmations). Our express written acknowledgement is required in respect of any departure from the above, especially with regard to the applicability of purchasing and acquisition provisions specified by the buyer.

1.2. Our quotations are subject to change. Purchase orders shall only become binding if we issue confirmation of said orders or if we deliver the goods in fulfilment of said orders. Supplementary verbal agreements shall only be binding subject to our confirmation.

## 2. Delivery:

2.1. The term of delivery shall commence on dispatch of the order confirmation but not before the buyer has furnished any documents, permits and approvals which may need to be obtained and not before an agreed deposit has been received. The deadline is deemed to have been met if the goods have been declared ready for dispatch or if the items have left the factory by the expiry of the delivery period.

2.2. No liability shall be accepted if delivery is delayed by acts of God, unforeseen occurrences, unexpected hindrances or circumstances beyond our control. The same shall apply if the above circumstances affect our suppliers. The term of delivery shall be extended accordingly depending on the duration of such events and hindrances. Nor can we accept responsibility for any such circumstances which occur during an existing delay. Should any resulting delays persist for six weeks, then both parties to the agreement shall be entitled to withdraw from the contract for the delivery in question to the exclusion of any other claims.

2.3. Failure to meet an agreed delivery deadline shall only be regarded as default after a reasonable period of additional respite has been allowed.

2.4. The items included in the delivery shall be as specified in our written order confirmation. Part deliveries may be made within the delivery periods which we specify.

2.5. We reserve the right to vary delivery quantities up or down by up to 10% in the case of special commissions (e.g. promotional designs).

Insofar as we produce customised items based on designs, models, drawings or other specifications made by the buyer, the buyer is required to ensure that no industrial property rights of third parties are infringed by the production and sale of such goods. The buyer shall be required to make full recompense in settlement of any claims made against us for the breach of such property rights.

2.6. Our obligation to supply shall be suspended if the buyer is in arrears with the settlement of an account payable.

## 3. Prices, price changes

3.1. The prices shall always be charged as valid on the day of delivery. Price changes shall be allowed subject to at least six weeks between signing of contract and agreed delivery date. If the prices are higher than at the time of signing the contract, and if the price increase substantially exceeds the rise in the general cost of living between purchase order and delivery, the buyer shall be entitled to withdraw from the contract within 14 days of notification of the price increase in respect of the quantity not yet collected.

3.2. Prices are quoted exclusive of value-added tax.

3.3. If deliveries are free of carriage charges under the agreement, the prices we quoted are based on the freight charges and supplementary charges applicable at the time of the quotation. They will therefore be adjusted, to the advantage or disadvantage of the buyer, to take account of changes to freight rates and to supplementary charges for our deliveries, without the buyer thereby earning the right to withdraw from the agreement.

## 4. Shipping:

4.1. The cheapest mode of dispatch is selected according to our best judgement.

4.2. Goods are loaded and shipped without insurance cover at the risk of the recipient. Freight, postage and packaging are invoiced separately.

4.3. We make every effort to accommodate the customer's wishes and interests with regard to the mode of dispatch and shipping route. Any additional costs incurred thereby will be charged to the buyer's account, even if delivery is free of carriage charges under the agreement.

## 5. Collection:

5.1. If the customer falls behind with the collection of goods, we shall be authorised to bill for the service and to store goods at the customer's expense and risk, or to withdraw from the contract after allowing an additional 14 days of respite, or to claim damages for non-performance. An additional period of respite need not be allowed if the buyer bluntly or categorically refuses to take delivery of the goods or if the buyer is obviously unable to pay the purchase price even if this additional time is allowed.

5.2. If the buyer makes an unwarranted withdrawal from an awarded contract, we may claim 10% of the sale price for the costs incurred by processing the order and for lost profit, without prejudice to the option of asserting claims for larger sums in respect of actual losses. The buyer shall have the right to provide evidence of lower damages.

## 6. Payment:

6.1. The discounting of bills is subject to our consent, any fees and costs associated therewith and the risk of timely presentation and levying of protest being borne in full by the customer.

6.2. In the event of delayed payment and justified doubts as to the customer's solvency or creditworthiness, we shall be entitled - without prejudice to our other rights - to claim securities or advance payments for outstanding deliveries and to call the immediate accrual of all claims arising from the business connection.

6.3. Interest shall be charged on late payments at the normal bank lending rate - at least 3% above the base rate - while reserving the right to assert further claims.

6.4. Only undisputed claims or claims recognised by declaratory judgement shall entitle the buyer to set-off or retention.

## 7. Warranty:

7.1. The buyer is required to inspect the delivered goods immediately on their receipt for defects in respect of their condition, properties and designated use, otherwise the goods shall be deemed to have been passed. It is important to note that all our balls are fitted with a new kind of plastic valve and can be pumped up; balls which have lost air can therefore be re-inflated by any customer.

7.2. Our products are subject to unavoidable differences in size and weight and variations in colour and design due to raw material sources over which we have no control, and such discrepancies do not constitute grounds for claims or complaints.

7.3. All information about the suitability, handling and use of our products, technical advice and other instructions are given to the best of our knowledge and do not discharge buyers from the responsibility to make checks and verify facts themselves.

7.4. Complaints shall only be considered if they are made in writing within eight days of receipt of the goods, enclosing proof of purchase and evidence of said defects and subject to their verification; in the case of hidden defects, claims must be made on discovery of said defects but within six months of receipt of the goods. Rejected goods are to be returned free of carriage charges and expenses.

7.5. Our obligation under the warranty shall be limited to replacing or changing the goods or reducing the purchase price, as we see fit.

7.6. The same terms and conditions shall apply to any replacement delivery.

7.7. The assertion of claims under the warranty does not release the buyer from the obligation to pay.

## 8. Reservation of title:

8.1. The sold goods shall remain our property until such time as our accounts arising from the business relations with the customer have been paid in full. The purchased goods shall be at the legitimate disposal of the customer in the normal course of business.

8.2. The customer hereby assigns to us by way of security the receivables owed by third parties from the resale of our goods. The customer shall be authorised to collect this payment for our account until such time as the latter's payment to us is cancelled or suspended.

8.3. The goods and claims superseding them may not be pledged to third parties or transferred or assigned by way of security before our accounts have been paid in full. We are to be given immediate notification by fax or registered letter of any third-party access to our goods and receivables.

8.4. The exercise of reservation of title does not equate to withdrawal from the contract.

8.5. If the value of the security exceeds our claims by more than 20% then we shall release securities of our choice at the customer's request.

8.6. If we issue a finance credit bill at the customer's request after receiving and cashing a cheque or some other means of payment, and if this finance bill is accepted by the customer, then the rights to reservation of title shall lapse when the bill is cashed by the customer at the earliest.

## 9. Compensation:

To the extent allowed by law, our duty to pay damages, irrespective of legal grounds, shall be limited to the invoice value of our goods directly involved in the event responsible for causing the loss or damage. This shall not apply insofar as we are liable without limitation under mandatory legislation due to having acted with intent or gross negligence. The same shall apply to the practices of our vicarious agents.

## 10. Place of performance, place of jurisdiction, other matters:

10.1. The place of performance for delivery and payment is Bachham near Prien.

10.2. If the buyer is a merchant who has been entered as such in the commercial register then legal action shall be taken at the court having jurisdiction in the town in which our registered office is located in respect of any disputes arising from the contractual relationship or alternatively, if we so wish, at the court having jurisdiction in the town or city in which the buyer's registered office is located.

10.3. German law shall be the sole applicable law to the exclusion of laws on the international sale of goods even if the buyer's registered office is located abroad.

10.4. Should one clause in these terms and conditions be or become null and void, this shall not affect the validity of the other clauses.