



General Terms and Conditions of Sale and Delivery

**C. Otto Gehrckens GmbH & Co. KG
Gehrstücken 9, D-25421 Pinneberg**

These General Terms and Conditions of Sale and Delivery as most recently revised are available on the home page of C. Otto Gehrckens GmbH & Co. KG on the Internet by going to **www.cog.de** so that our business partners have the opportunity to view the content at any time. We will also be glad to send print copies on request.

Section 1

General – Scope of Application – Written Form – Assignment – Changes in Orders

- (1) Our General Terms and Conditions of Sale and Delivery apply solely and exclusively; we cannot accept any orderers' terms and conditions contradictory or deviant to our own; this also applies in the event of our silence or unconditional contractual performance unless we have expressly agreed in writing to the application of such terms and conditions.
- (2) Our general terms and conditions of delivery only apply toward an entrepreneur, a legal entity under public law or a public-law special fund within the sense of Section 310 (1) BGB (German Civil Code). They also apply to all future transactions with such orderers.
- (3) All provisions agreed between ourselves and an orderer for the purpose of performing this contract are to be included herein or in an amendatory contract in writing.
- (4) The assignment of any claims against us to third parties is excluded. This provision is without prejudice for Section 354 a HGB (German Commercial Code).
- (5) Changes in orders are possible only in exceptional cases and only if we have not yet begun production. The orderer must bear any expenses incurred as a consequence of changes in the order requested by the orderer.



Section 2

Information, Advice.

(1) Information and advice related to our deliveries and services are based on our past experience. The values given at this time, especially performance data, are average values determined during tests conducted under the usual laboratory conditions. We cannot assume any obligations with regard to precise compliance with the values and possible uses. Any liability is regulated in accordance with Section 10 of these Terms and Conditions.

(2) In cases of doubt, any statements we have made with respect to this contract (e.g., performance description, order confirmation, reference to DIN standards, etc.) cannot be interpreted as the assumption of a warranty. In cases of doubt, our assumption of any warranties is based solely on express written statements we have issued.

Section 3

Terms and Conditions of Delivery / Packaging.

(1) Unless otherwise stated in the order confirmation delivery is always agreed ex works.

(2) We will invoice packaging at our cost price. Transport and all other packaging under the provisions of the packaging regulations will not be accepted back. Euro pallets and wire baskets are excepted. The orderer has a duty to ensure disposal of packaging not acceptable back at their own expense.

(3) For tailored goods under- and over-deliveries of up to 10% of the quantity/quantities agreed are acceptable subject to pro rata adjustment of the purchase price.

(4) Tooling and moulds made by or for us to make rendering of the contractual goods and/or services possible remain our sole property in view of our design goods and services performance even if the orderer bears the cost/s of their manufacture/performance either in whole or in part.

(5) Visible transport damage must be reported in writing immediately upon acceptance of the goods; hidden transport damage must be reported in writing within 7 days after discovery. Reports of damage must be submitted to the forwarding agent making the delivery.



Section 4

Offers / Copyrights.

- (1) Our offers/bids are non-binding. This also initially applies to technical specifications and other details in bids/offers, brochures, on the Internet and other information sources.
- (2) We reserve title and copyright in all our illustrations, drawings, calculations and other documents. Same may not be made accessible to third parties.
- (3) The contract shall not be deemed concluded until we have submitted a written order confirmation or performed immediate delivery.

Section 5

Prices and Terms and Conditions of Payment.

- (1) Our prices exclude VAT. This will be added as legally applicable on the date of invoicing and shown separately.
- (2) Payment of the purchase price attracts 2% discount if made within fourteen days of the invoicing date and is due in full net and in cash or by bank transfer within thirty days. Payment is considered made on the date the amount/s in question is/are at our disposal. The orderer bears the risk of the payment method chosen.
- (3) Other forms of payment are subject to specific written agreement. All costs incurred thereby will be born by the orderer.
- (4) A discount will only be granted if all amounts due for previous goods and services are paid in full.
- (5) No discount will be granted on COD items.
- (6) The orderer has a right of setoff or of retention only in cases of claims and/or demands that are undisputed or res judicata.



Section 6

Delivery and cooperation duties.

- (1) The scope of our duty of delivery is governed solely by this contract. The right to make changes in design, form and/or colour based on any improvement in technology or change in legal requirements is reserved provided such changes are not major or unreasonable to the orderer.
- (2) If part shipments are reasonable for the orderer then same may be undertaken and invoiced.
- (3) Statement/s of delivery period is/are made subject to the contractual cooperation of the orderer. Performance of our delivery duty predicates the orderer fulfilling their contractual duties punctually.
- (4) If we ourselves are not supplied with the necessary goods and/or services although we have sent reliable suppliers the relevant order/s then we are relieved of our duty of contractual performance and may withdraw from the contract. In such cases, we will notify the orderer immediately that the goods or supply will not be available or will not be available in good time. The orderer bears the burden of proof that we are accountable for any breach of obligation related to the procurement of the goods.
- (5) If it transpires after we have performed our contractual duties in full that the orderer cannot offer adequate creditworthiness guarantees and our claim/s to payment be endangered thereby then we are entitled to refuse delivery until the orderer has made the payment/s in question or offered security for same. Should payment or the rendering of security not be made within twelve working days after same has been requested then we are entitled to withdraw from the contract.
- (6) Should the orderer be in arrears in calling contractual goods and/or services, acceptance of same or pickup of same or a delay in shipment or delivery be their fault then we are entitled to demand lump-sum payment equal to the locally normal storage costs regardless of whether we store the goods in question ourselves or not. This does not affect our right to claim further damages in law. The orderer's right to prove that no or lesser damage was sustained is reserved.
- (7) We are released for compliance with the agreed delivery period for the duration of any hindrance resulting from incidents of force majeure, strike, lock-out or similar unforeseeable events which prevent the performance of an order.



Section 7

Delivery delay.

1) Should the agreed date of delivery not be adhered to due to circumstances prevailing in our works or that/those of our supplier/s over which we have no control then the delivery date shall be delayed appropriately. We will advise the orderer without delay should this be the case. Should the hindering circumstances still prevail a month after the agreed delivery date then each of the parties may withdraw from the contract. Any further right to claim damages for exceeding the delivery date due to circumstances for which we cannot be held liable is excluded.

(2) In the event of delayed delivery the orderer is entitled to demand compensation totalling 3% of the shipment value per week up to a maximum of 12% provided the orderer suffers damage from such delay. The orderer may also set us an appropriate period of grace in writing of at least 15 days. If this period expires fruitlessly then the orderer is entitled to withdraw from the contract or demand damages in lieu of the contractual goods and/or services. Damages liability is limited to 50% of the damage suffered.

(3) Paragraph 2 does not apply in the case of delay due to deliberate act, gross negligence or major breach of contractual duties. It also does not apply if a transaction for delivery by a fixed date was agreed between merchants.

Section 8

Place of performance.

(1) Our head office location is the place of performance.



Section 9

Warranty and Liability for Other Defects.

- (1) We assume warranties only within the framework of agreements in specific contracts.
- (2) The orderer has the normal legal duties of inspection and prompt notification of complaint/s under § 377 HGB. This provision also applies if the customer is an entrepreneur within the sense of Section 14 BGB and the order is placed in the course of commercial or freelance work.
- (3) The statutory warranty period for new merchandise is limited to one year; damage compensations pursuant to Section 10 of these General Terms and Conditions are excepted from this provision.
- (4) The orderer cannot extrapolate any further rights from material defects that affect the value of the goods for the purpose/s discernible to us either not at all or only in a minor way. No liability can be accepted in the following cases in particular: unsuitable or improper use, defective application of the design of the goods supplied by the client, incorrect installation by the orderer or third parties, natural wear and tear, improper or negligent treatment, incorrect, improper or overly long storage, unacceptable operating conditions (temperatures, pressures, media) to which the goods have been subjected, improper maintenance of the module in which the product/s supplied is/are installed, electrochemical or electrical influences for which we cannot be held liable.
- (5) Should the product/s supplied have show any material defects/s when the risk is transferred then we are entitled and obligated to render delayed performance. Delayed performance may be rendered in the form of remedy or replacement at our discretion. The costs of such delayed performance - particularly for transport, labour and materials - will be borne by us, provided that they have not been increased because the goods have been transported to a site other than the orderer's business location, if and when such transport is contrary to the intended use of the goods. If such costs exceed 50% of the value of the goods and/or services supplied then we are entitled to refuse delayed performance.
- (6) Should delayed performance fail, not be rendered within an appropriate period of grace set by the orderer or be refused then the orderer is entitled to withdraw from the contract or demand an appropriate pro rata reduction in the purchase price or demand damages in lieu of contractual performance within the limits set in the paragraphs below.
- (7) Should a material defect lead to damage then we accept unlimited liability in accordance with legal provisions for injury to life, body and health caused by negligent or wilful breach of obligation on our part or on the part of our legal representatives or our vicarious agents and for loss or damage covered by the German Product Liability Act. We are liable in accordance with legal provisions for any loss or damage which is not covered by Sentence 1 and which is caused by wilful or negligent breach of contract or fraudulent representation on our part or on



the part of our legal representatives or our vicarious agents. In this case, however, the liability to pay damage compensation is limited to the foreseeable loss or damage typical for the circumstances, provided that neither we nor our legal representatives nor our vicarious agents have acted wilfully. We are liable within the scope of any warranty of characteristics which we have submitted concerning the goods or a part of the goods. However, we are liable for loss or damage resulting from a lack of warranted characteristics, but which has not occurred directly to the goods, only if and when the risk of said loss or damage is clearly covered by the warranty of characteristics.

(8) We are also liable for any loss or damage caused by simple negligence, provided that the negligence results in the breach of contractual obligations which are of major significance for the realisation of the intentions of the contract. However, we are liable solely for the loss or damage which is typical of the contract and foreseeable.

(9) If and when the orderer exercises rights from the recourse regulations of Sections 478 and 479 BGB, we exclude any liability for damage compensation to the extent legally permissible. In other respects, the above provisions are without prejudice for Section 478 BGB.

(10) The foregoing provisions do not apply to used products. Liability for material defects can only be accepted where we have expressly assumed guarantee obligations and in cases of deliberate act or gross negligence.

Section 10

Miscellaneous Liability for Damages.

(1) The provisions in Section 9 (7-9) also apply to the right to claim damages for other (miscellaneous) breaches of contractual duties.

(2) In the event a precontractual duty is breached or a hindrance to performance exist when contract is made (§§ 311 II, 311a BGB) our liability is restricted to damage through (or loss incurred by) relying on (the validity of) a declaration.

(3) The provisions in Section 9 (7-9) apply mutatis mutandis to our tort liability.

(4) The extent to which our liability is excluded or restricted shall also applies to the personal liability of our employees, representatives and vicarious agents.



Section 11

Confidentiality

(1) Unless otherwise expressly agreed in writing, the information provided to us with regard to the order will not be deemed confidential unless the confidential nature of said information is obvious.

(2) We hereby point out that we save personal data which are related to our business relationship with you. Under no circumstances will we use the collected data outside of our company, nor will we sell the data or otherwise make them available to third parties unless essential for performance of the contract.

Section 12

Reservation of title.

(1) Title in the products supplied remains reserved until all claims of the supplier against the orderer arising from the relevant commercial relationship have been satisfied. This includes all future such claims arising from contracts made simultaneously or later and also applies should claims for a current invoice be abandoned and the balance be extracted and accepted.

(2) The orderer is entitled to sell or process the product/s in the course of their normal business. . Any such processing is undertaken on our behalf without this involving any obligation on our part. Should goods subject to reservation of title be processed or combined or mixed with other goods then we acquire co-ownership in the resultant product/s. In the case of processing this is pro rata to the ratio of the value (=invoiced gross value including ancillary costs and taxes) of the goods subject to reservation of title to that of the new product/s; in the case of combination or mixture pro rata to the value of the goods subject to reservation of title to that of the other goods involved.

(3) The orderer herewith assigns all claims accruing to them from onward sale against buyers or third parties to us. They remain entitled to collect such claims after said assignment. Our authority to collect the claims ourselves remains unaffected by this; however, we will not exercise said right as long as the orderer correctly and punctually fulfils their contractual payment and other duties. Should we so request the orderer must advise us of the claims assigned and the debtor/s involved together with all the details needed to collect it/them, send us the necessary documents and advise the debtor/s concerned of said assignment.

(4) Should the orderer be in breach of contract, in particular in arrears of payment, then we are entitled to withdraw from the contract and retrieve the product/s concerned. The orderer herewith grants us irrevocable permission to freely enter their business and storage premises to so retrieve our goods.



(5) The orderer may not assign goods subject to our reservation of title as security or hypothecate them without our agreement. This also applies to any product/s made from/with them. Making financing contracts (e.g. leasing) that include assignment of our reservation of title rights predicates our written prior agreement unless such contract obliges the financing institution to pay the purchase price portion to which we are entitled directly to us.

(6) The orderer must advise us without delay in writing of any case of attachment or other third party action. They may not enter into any agreement with any of their buyers/clients that might deleteriously affect our rights.

(7) We undertake to release the security due us at the orderer's request and at our discretion to the extent the realisable value of same exceeds the claim/s secured by over 20% or nominally by over 50%.

Section 13

Miscellaneous

(1) Should any provision herein be or become null and void for any reason whatsoever this shall not affect the validity of the remainder.

(2) If the orderer is a merchant in German law then the place of jurisdiction for all disputes with them concerning this agreement is our head office location.

(3) Sole and exclusive proper law is German law, excluding application of the UN Convention on the International Sale of Goods (CISG) and the referral provisions of German international private law.

C. Otto Gehrckens GmbH & Co. KG

Pinneberg, December 2008