



Maßgeschneiderte
Lacktechnik

General Terms and Conditions of Supply and Payment of Lackfabrik Bäder GmbH & Co. KG

Date 12/2018

I. Scope

1. Our Terms and Conditions of Supply and Payment shall only apply if the buyer is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law within the meaning of § 310 para. 1 BGB. The terms of delivery and payment shall not apply to consumers (§ 13 BGB).
2. Our Terms and Conditions of Supply and Payment shall apply on an exclusive basis. Any terms and conditions of the buyer that contradict or depart from our Terms and Conditions of Supply and Payment shall not be incorporated into contracts unless we have expressly agreed in writing to their application.
3. Our offers are subject to confirmation unless expressly agreed otherwise.
4. Individual agreements in individual cases (including collateral agreements, supplements and amendments) must be made in writing in order to be effective and take precedence over these Terms and Conditions of Supply and Payment.



II. Prices

1. The prices agreed shall be subject to value added tax as applicable on the date of delivery.

III. Delivery

1. The buyer must collect the purchased goods at the agreed delivery date or, if a delivery date has not been bindingly agreed, immediately after notification of availability at the place of performance in accordance with Section VIII. 1.
2. In the event that the buyer is late in accepting the goods, we shall be entitled at our choice to dispatch the goods or – if not otherwise possible, in case of emergency also outdoors – to store them, in both cases at the cost of the buyer. Should this occur, we shall bear no liability for the accidental destruction of, loss of or damage to the goods. If the goods are stored by us, we shall be entitled to invoice the goods and to demand payment upon expiry of a period of one week after the failure to accept the goods.
3. If it is agreed notwithstanding paragraph 1 that we are to be obliged to dispatch the goods, transport shall occur at the cost of the buyer and we shall be entitled to choose the means of transportation along with the route at our discretion, unless the buyer has issued specific instructions to us regarding this matter. Risk shall pass at the time the goods are handed over by us to the carrier.
4. Partial deliveries shall be permitted where reasonable for the buyer.
5. Any significant, unforeseeable breakdowns, late delivery or non-delivery on the part of our suppliers for which we are not at fault in addition to e.g. stoppages of operations resulting from a lack of raw materials, energy or labour, strikes, lockouts, difficulties in procuring means of transportation, traffic disruptions, governmental action or *force majeure* occurrences affecting us or our sub-suppliers shall extend the delivery period by the duration of the disruption of performance, where this has a significant effect on our ability to supply the goods. We shall promptly inform the buyer of the start and finish of any such impediments. If delivery is delayed as a result by more than one month, the buyer shall be entitled and we shall also be entitled to withdraw from the Contract with regard to the quantity affected by the disruption to delivery, without any right to claim

damages. The foregoing shall be without prejudice to the buyer's statutory right of withdrawal in the event of a disruption to delivery on account of a circumstance for which we are at fault.

6. If delivery is made using returnable containers, these shall be fully emptied and sent back, carriage paid, within 90 days of receipt of the delivery. The buyer shall be liable for the loss of or damage to any returnable packaging if it is at fault for such loss or damage. Returnable packaging may not be used for other purposes or to accommodate other products. It is only intended for the transportation of the goods delivered. Any labelling must not be removed.
7. Disposable packaging will not be taken back by us. However, we shall inform the buyer of a third party which recycles the packaging in accordance with statutory and administrative requirements.

V. Payment

1. The amount invoiced shall be payable within 30 days upon receipt of the invoice and shall be paid without any deduction. In case of payment within 10 days upon receipt the customer is entitled to deduct 2 % of the net amount. We are, however, also entitled to partially or fully ask for payment in advance if we deem it appropriate. We declare a corresponding reservation at the latest with the order confirmation.
2. Upon expiry of the above payment period, the buyer shall be in default without a reminder. The purchase price shall be subject to interest at the statutory default interest rate applicable from time to time during the period of default. We reserve the right to assert further claims for damages caused by default.
3. The presentation of bills of exchange does not constitute payment in cash and shall only be acceptable as payment with our prior approval. Any discounting and bill charges shall be borne by the buyer.
4. The buyer shall only be entitled to set-off or retention rights to the extent that his claim has been legally established or is undisputed. In the event of defects in the delivery, the Buyer's counter rights, in particular in accordance with VIII of these Terms and Conditions of Delivery and Payment, shall remain unaffected.
5. If it becomes foreseeable after conclusion of the contract (e.g. through application for opening of insolvency proceedings with regard to the buyer) that our claim to the purchase price is endangered due to a lack of the

buyer`s ability to pay, we shall be eligible according to the legal regulations on refusal of performance and – if necessary, after setting a deadline – to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of unjustifiable items (custom-made items), we may rescind the contract immediately; the legal regulations on dispensability of setting a deadline remain unaffected.

VI. Reservation of title

1. The statutory provisions shall apply to the buyer's rights in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly or defective assembly instructions), unless otherwise provided below. The basis of our liability for defects is above all the agreement reached on the quality of the goods. All product descriptions which are the subject of the individual contract or which have been made public by us (in particular in catalogues or on our website) shall be deemed an agreement on the quality of the goods. Details and information on the suitability and application of the purchased goods in the case of the admixture of components (e.g. thinners, hardeners, additional paints) which have not been purchased from us shall only be deemed to be an agreement on the quality if the respective suitability has been expressly assured by us in writing or made public.
2. The goods subject to retention of title may neither be pledged to third parties nor transferred by way of security until the secured claims have been paid in full. The buyer must notify us immediately in writing if an application is made to open insolvency proceedings or if the goods belonging to us are seized by third parties (e.g. seizures).
3. In the event of conduct on the part of the buyer which is in breach of contract, in particular non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or demand the return of the goods on the basis of retention of title. The demand for surrender does not at the same time include the declaration of withdrawal from the contract; rather, we are entitled to only demand surrender of the goods and to reserve the right to withdraw from the contract. If the buyer does not pay the due purchase price, we may only assert these rights if we have previously unsuccessfully set the buyer a reasonable deadline for payment or if such setting of a deadline is dispensable under the statutory provisions.
4. The buyer is entitled to dispose of the products in the ordinary course of business as long as he fulfils his obligations arising from the business relationship with us in good time.

5. The buyer shall remain authorised alongside us to collect the assigned claim. We undertake not to collect the claim as long as the buyer meets his payment obligations towards us, there is no defect in his ability to pay and we do not assert the retention of title by exercising a right in accordance with the above contractual provisions. If this is the case, however, we can demand that the buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. In this case we shall also be entitled to revoke the buyer's authority to further sell and process the goods subject to retention of title.
6. At our request, the buyer shall provide us with all necessary information on the stock of the goods owned by us and on the claims assigned to us, as well as inform his customers of the assignment.
7. The buyer is obliged to keep the reserved goods in safe custody and to insure them at his own expense against loss and damage. He hereby assigns his claims from the insurance contracts to us in advance. We accept this assignment.
8. If the value of the securities exceeds our claims by more than 20 %, we shall release securities of our choice at the buyer's request.
9. The buyer's right to dispose of the products subject to our retention of title and to collect the claims assigned to us shall lapse as soon as he ceases payment and/or falls into financial collapse. If these conditions occur, we shall be entitled to demand the immediate provisional surrender of all goods subject to our retention of title, to the exclusion of the right of retention, without setting a grace period or exercising our right to rescind the contract.
10. If the retention of title should not be effective according to the law of the country in which the delivered goods are located, the buyer shall provide an equivalent security at our request. If he does not comply with this request, we may demand immediate payment of all outstanding invoices irrespective of agreed payment terms.

VII. Claims relating to defects

1. The statutory provisions shall apply to the buyer's rights in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly or defective assembly instructions), unless otherwise provided below. The basis of our liability for defects is above all

- the agreement reached on the quality of the goods. All product descriptions which are the subject of the individual contract or which have been made public by us (in particular in catalogues or on our website) shall be deemed an agreement on the quality of the goods. Details and information on the suitability and application of the purchased goods in the case of the admixture of components (e.g. thinners, hardeners, additional paints) which have not been purchased from us shall only be deemed to be an agreement on the quality if the respective suitability has been expressly assured by us in writing or made public.
2. If the quality has not been agreed, it shall be assessed according to the statutory provisions whether a defect exists or not (§ 434 Para. 1 S. 2 and 3 BGB). However, we accept no liability for public statements made by third parties (e.g. advertising statements).
 3. The buyer has to examine the commodity immediately after their receipt for lack. Defects must be reported by the buyer immediately after receipt of the goods, unless the defect was not identifiable during the inspection. If such a defect appears later, it must also be reported immediately. Notifications of defects must be made in writing in order to be effective and must specify the type and extent of the defect.
 4. The buyer shall give us the time and opportunity required for the subsequent performance owed, in particular to hand over the goods complained of for inspection purposes. In the case of subsequent performance, we shall be entitled at our discretion to remedy the defect or to make a replacement delivery. In the event of a replacement delivery, the buyer must return the defective item to us in accordance with the statutory provisions. Subsequent performance does not include the removal of the defective item or its reinstallation if we were not originally obliged to install it. We shall bear or reimburse the expenses necessary for the purpose of testing and subsequent performance, in particular transport, travel, labour and material costs as well as any dismantling and installation costs, in accordance with the statutory provisions, if a defect actually exists. Otherwise, we may demand compensation from the buyer for the costs incurred as a result of the unjustified request to remedy the defect (in particular testing and transport costs), unless the lack of defectiveness was not recognisable to the buyer.
 5. We shall be entitled to make the subsequent performance owed dependent on the buyer paying the purchase price due. However, the Buyer shall be entitled to retain a reasonable part of the purchase price in proportion to the defect.
 6. In the event of recourse by the entrepreneur (§ 445a BGB), it is assumed that no defects existed at the time of the transfer of risk to the buyer if the

- buyer duly inspected the goods in accordance with paragraph VII. 2 (sentence 1) but did not report any defects, unless this assumption is incompatible with the nature of the goods or the defect.
7. If the buyer asserts claims under a right of recourse (§ 445a BGB), he must be treated by us as if he had implemented all legally permissible contractual possibilities vis-à-vis his contractual partner (e.g. refusal of subsequent performance due to disproportionality or limitation of the reimbursement of expenses to an appropriate amount).
 8. We are entitled to reject recourse claims of the buyer (§ 445a BGB) with the exception of claims for new delivery of the goods if we grant the buyer an equivalent compensation for the exclusion of his rights.

VIII. Liability

1. Unless otherwise provided for in the following provisions, all claims for damages by the buyer against us and our employees, workers, staff, representatives and vicarious agents shall be excluded.
2. The limitations and exclusions of liability contained in the previous item 1. and otherwise in these terms and conditions of delivery and payment shall not apply in cases of intent, gross negligence, injury to life, limb and health, or as a result of a guarantee of quality or durability or in accordance with the statutory provisions (in particular the German Product Liability Act) a liability on our part is indispensable prescribed.
4. In the event of ordinary negligence, we shall be liable, subject to a milder standard of liability in accordance with statutory provisions (e.g. for care in our own affairs), only for damages arising from the not inconsiderable breach of a material contractual obligation (an obligation the fulfilment of which is essential to the proper performance of the contract and the observance of which the contractual partner regularly relies on and may rely on); in this case, however, our liability shall be limited to compensation for the foreseeable, typically occurring damage.

IX. Promotion

1. Unless the buyer instructs us otherwise in writing, he shall permit us to use our business relationship with his company for marketing purposes. This permission extends solely to the factual description of the essential content of the order and the buyer (e.g. reference lists with company name and logo).

IX. Place of performance, applicable law and miscellaneous issues

1. The place of performance for all obligations arising out of the business relationship or the individual contract shall be our relevant shipping facility, and for payment purposes shall be our registered office.
2. Jurisdiction shall lie at our choice at our registered office or at the general place of jurisdiction of the buyer. This shall also apply to any disputes arising within the process involving bills, cheques or any other payment instruments. The buyer shall be obliged to request us to exercise our right to chose within a reasonable period.
3. Contractual relations with our customer shall be governed exclusively by the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods shall not apply.
4. Personal data of the buyer will only be stored and processed by us in so far as this is necessary for the proper processing of the contractual relationship and in accordance with the relevant statutory provisions. For the rest, we refer to our information on data protection:
<https://baederlacke.eu/en/download-en/>