

Terms of Sale and Delivery of Telegärtner Karl Gärtner GmbH

Last changed: May 2018

I. Scope of application, definitions, general provisions

1. These Terms of Sale and Delivery apply to all purchasing and delivery agreements on the basis of which Telegärtner Karl Gärtner GmbH (hereinafter referred to as "**Contractor**") delivers goods to a contractual partner (hereinafter referred to as "**Client**") or performs services associated with said deliveries to this contractual partner. These Terms of Sale and Delivery also apply to future agreements within the framework of ongoing business relationships, even if not expressly agreed in the future.
2. Written declarations provided by each party shall determine the scope of the deliveries or services (hereinafter referred to as "**deliveries**"). The General Terms and Conditions of the Client shall only apply insofar as the Contractor has expressly agreed to them.
3. These conditions shall not apply to consumers as defined by Sec. 13 of the German Civil Code.
4. The Contractor shall retain its ownership of and copyright for cost estimates, drawings, and other documents (hereinafter referred to as "**documents**") without restriction. The documents may not be made accessible to third parties and must be returned to the Contractor any time upon request.
5. The term "claims for damages" in these General Terms and Conditions also includes claims for reimbursement of wasted expenditures.

II. Minimum order value, processing fee

1. The minimum order value is EUR 250.00.
2. Each order must be treated separately. A follow-up order to an order which has already been completed shall be treated as a new order.
3. If the Contractor accepts an order at a price below the order value indicated in clause 1, a processing fee of EUR 40.00 shall be added to the price of the goods.

III. Price, payment, terms of payment

1. All prices shall be understood as provided in euros, ex works, not including packaging, shipping, and insurance, and not including the applicable statutory value added tax.
2. If goods are to be delivered more than four (4) months after conclusion of the contract, the Contractor is entitled to adjust its prices to the Client in an amount corresponding to the change of raw material prices for the products applicable since the conclusion of the contract. If the products are delivered under a continuous obligation, price adjustments are permissible without the four month restriction.
3. If the delivery is insured at the Client's wish, the Client will be invoiced for the premiums.
4. Payment is due immediately after the delivery and the invoice has been received by the Client, without any prompt payment discount or any other discounts. Any statutory claims to reduction or retention claims of the Client shall not be affected. If payment is not made within 30 days after receipt of invoice, the Client will be deemed in default under the law, pursuant to Sec. 286 para. 3 German Civil Code, and must pay the Contractor default interest pursuant to Sec. 288 para. 2 German Civil Code amounting to nine (9) percentage points above the base interest rate, based upon the payment claim. The Contractor's right to assert any further damages due to default of payment shall remain unaffected.
5. Checks or bills of exchange shall only be deemed payment after they are redeemed. Discount or collection charges shall be borne by the Client.
6. The Contractor is entitled at any time to agree to make a delivery only in return for advance payment, either in whole or in part, even during an ongoing business relationship. The Contractor shall declare such provisos at the latest in its confirmation of the order.
7. In case of default of payment on the part of the Client, the Contractor is furthermore entitled to withdraw from the Agreement after a reasonable deadline set for the Client; statutory provisions regarding dispensability of setting a deadline shall remain unaffected.
8. The Client may only offset claims against such claims as are undisputed by the Contractor or are binding and non-appealable.

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IV. Retention of title

1. The objects of the deliveries (hereinafter referred to as "**reserved goods**") shall remain the property of the Contractor up to the fulfillment of all claims to which it is entitled against the Client under the business relationship. Insofar as the value of all security interests to which the Contractor is entitled exceeds the amount of all secured claims by more than 10%, the Contractor shall release an appropriate part of the security interests upon request by the Client. The Contractor shall be free to choose between various security interests in such releases.

2. While the retention of title exists, the Client is prohibited from pledging or assigning as security such reserved goods, and may only sell them in the course of normal business and under the condition that the Client receives concurrent payment from its customers in return for transfer of ownership to the reserved goods, or subjects the transaction to the proviso that ownership of the reserved goods will only be transferred to the customer once it has fulfilled its payment obligation. The Client hereby assigns any claims against its customers resulting from the resale of goods delivered under a retention of title to the Contractor. The assignment shall be considered implicitly completed as soon as the Client delivers reserved goods to its customers. If the Client becomes insolvent, the Contractor shall be entitled to have property released from the estate in relation to the reserved goods.

3. In case of seizures, confiscations, or other actions by third parties, the Client must inform the third party that the reserved goods are the property of the Contractor, and must also inform the Contractor immediately.

V. Deliveries, delivery deadlines, consequences of default

1. The deadline for fulfilling delivery obligations begins on the day on which the delivery agreement concluded between the Contractor and Client (hereinafter referred to as "**confirmed order**") is received by the Contractor. The confirmed order must include all documents to be submitted by the Client, required permits and approvals, in particular drawings, and an obligation to uphold the agreed payment conditions and other obligations of the Client in full and without errors. The Contractor shall inform the Client of any errors which could affect the execution of the order promptly after they are identified.

2. Partial deliveries are permissible if the partial delivery can be used by the Client, if delivery of the remaining ordered goods is ensured, and if the Client does not incur any significant additional expenses or costs due to the partial delivery, unless the Contractor declares its willingness to assume these costs.

3. Instances of force majeure or operational disruptions experienced by the Contractor or its suppliers that temporarily prevent the Contractor - without any fault on its part - from delivering the goods in question by the agreed deadline or within the agreed delivery term, will delay the delivery date or extend the delivery term by the duration of the service interruptions caused by said circumstances. If such disruptions lead to a delay of service of more than four (4) months, the Client may withdraw from the Agreement. Other rights of withdrawal shall remain unaffected.

4. If the Contractor falls into default, the Client may demand damages for each full week of delay of 0.5%, although the damages may be at most 5% of the price for the part of the deliveries it cannot put into useful service due to the delay, provided that it can demonstrate and prove that it has suffered damages due to the delay. The Contractor is entitled to prove that lower damages, or no damages at all were incurred.

5. In case of delayed deliveries, both Client claims for damages due to a delayed delivery and claims for damages in place of the delivery exceeding the limits set in number 4 are excluded, even after the expiration of any delivery term set for the Contractor. This shall not apply as far as in cases of intentional action, gross negligence, or due to injury of life, body, or health, mandatory liability is prescribed. The Client may only withdraw from the Agreement within the framework of legal provisions, insofar as the Contractor is responsible for the delivery delay. The above regulations are not associated with any change in the burden of proof to the detriment of the Client.

6. Upon request by the Contractor, the Client is obligated to declare within a reasonable period whether it will withdraw from the Agreement due to the delivery delay, or whether it still wants to receive the delivery.

7. If shipment or delivery is delayed by more than one month upon request by the Client after notice is sent that goods are ready for delivery, the Client may be invoiced storage fees of 0.5% of the price of

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the objects of the deliveries for each month or partial month thereafter, and at most a total of 5% of this amount. The parties' rights to prove that storage costs were either higher or lower remain unaffected.

8. In case of custom-made products, the Client shall not have any claim to delivery of the tools. Insofar as the Client is invoiced for a proportion of the tool costs, these shall relate to wage costs incurred to manufacture the tools.

VI. Returns and cancellations

1. Order cancellations and returned goods require the prior consent of the Contractor.
2. If the Contractor takes goods back voluntarily, it will invoice a processing fee of 20% of the value of the goods, and at least EUR 40.00. The Contractor reserves the right to make discounts from the credit memo for freight, costs for warehouse work, refurbishing goods, and damaged packaging.
3. In case of cancellations confirmed by the Contractor as such, it shall charge a flat-rate cancellation fee of 10% of the value of the goods, and at least EUR 25.00. The Client is entitled to prove that lower damages, or no damages at all were incurred.
4. If not expressly agreed otherwise, in case of customer-specific components, the Contractor shall have the right to increase or decrease the delivered quantity by up to 10% from the ordered quantity, insofar as this is reasonable for the Client in the individual case and if the purchase price is adjusted accordingly to the changed quantity if the delivered quantity is reduced.

VII. Transfer of risk

Risk shall be transferred to the Client once goods are handed over to the freight company or picked up by the Client. Deliveries can be insured by the Contractor against normal transportation risks upon request and at the cost of the Client.

VIII. Reception

The Client may not reject reception of deliveries due to insignificant defects.

IX. Material defects, requirement to give notice of defects, limitation of liability

The Contractor shall be liable for material defects as follows:

1. All parts or services which have a material defect must be repaired, re-delivered, or re-performed at the discretion of the Contractor, insofar as the cause of the defect already existed at the time of transfer of risk.
2. Defects in partial services shall not entitle the Client to cancel remaining orders or ongoing contracts. The statutory provisions regarding withdrawing from the contract shall remain unaffected hereby.
3. Claims for defects shall expire 12 months from the legal beginning of the statute of limitations; the same shall apply to withdrawals and reductions. This term shall not apply insofar as the law, pursuant to Sec. 438 para. 1 no. 2 German Civil Code (Bauwerke und Sachen für Bauwerke - Buildings and materials for buildings), Sec. 634a para. 1 no. 2 German Civil Code (Baumängel - Construction defects) and Sec. 445b German Civil Code (Rückgriffsanspruch - Recourse claim) prescribe longer terms as well as in cases of intent, malicious concealment of the defect, or failure to comply with a guaranteed feature. Statutory provisions regarding suspension of limitation periods, suspensions, and restarting the terms shall remain unaffected.
4. The Client must submit objections for obvious material defects to the Contractor promptly, and at the latest within 14 days after goods are received. The Client must submit an objection for defects that cannot be discovered even after careful inspection upon arrival of the goods promptly, and at the latest 14 days after they are discovered. If the Contractor does not receive complaints regarding defects within the applicable deadline, Client claims for such material defects shall be excluded.
5. In case of defect complaints, Client payments may be retained to a reasonable extent in relation to the material defects asserted. The Client may only withhold payments if they relate to the same contractual relationship under which the defect rights were asserted. The Client shall have no right of retention if its defect claims have expired. If the defect complaint is made unjustly, the Contractor is entitled to demand reimbursement for any expenses it has incurred from the Client.
6. If supplementary performance fails, the Client may withdraw from the Agreement or reduce compensation – regardless of any claims for damages pursuant to clause XII.

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7. Claims for damages will not exist in cases of insignificant deviation from the agreed properties, insignificant restrictions in usability, cleanliness, color, other features, natural wear or damage which occurs after the transfer of risk due to incorrect or negligent handling, excessive strain, unsuitable operating materials, defective construction work, unsuitable building sites, or unique external influences not assumed under the Agreement, as well as in case of non-reproducible software errors. If the Client or third parties make improper changes or complete improper repair work, there shall also be no claims for damages for such work or changes or their consequences. In addition, claims for damages due to missing assembly instructions are also excluded if such instructions are typically not part of the delivery or if claims for damages cannot be supported based on delivered assembly instructions because these were complete and correct for a professional Client, or if the Client has installed an object free from errors. Furthermore, with respect to custom products, there shall be no claims for defects due to excess or reduced deliveries within the framework of Contractor's right to adjust quantities within 10% of the ordered quantity pursuant to clause VI. 4.

8. In case the Client has installed defective goods into another object or mounted onto another object according to the defective goods' nature or intended purpose, the Contractor shall be obligated in the course of supplementary performance to reimburse the Client for necessary and reasonable expenses for removal of the defective goods and the installation or mounting of the repaired or re-delivered defect-free goods. This requires that the Client has proven to the Contractor the expected amount of necessary expenses for the removal and installation in advance, e.g. by providing a cost quote, to enable the Contractor to verify the reasonableness of the necessary expenses.

9. Further claims of the Client for expenses required for supplementary performance, in particular transportation, commuting, work, and material costs, are also excluded insofar as this increases expenses because the object of the delivery is performed subsequently at another location besides the Client's office, unless the Contractor has agreed to said performance in advance or if the performance corresponds to its intended use.

10. Client recourse claims against the Contractor pursuant to Sec. 478 German Civil Code (Rückgriff des Unternehmers - Recourse of the entrepreneur) shall only exist insofar as the Client has not made any agreement with its purchasers going beyond statutory claims for damages. Furthermore, no. 8 and no. 9 shall apply accordingly to the scope of the Client's recourse claim against the Contractor.

11. Moreover, Client liability due to a material defect is excluded. This shall not apply to any defects which are maliciously concealed, failure to comply with a guaranteed feature, injury of life, body, health, or freedom, or to intentional or grossly negligent violations of Contractor obligations or of those of its agents. The above regulations are not associated with any change in the burden of proof to the detriment of the Client.

X. Industrial property rights and copyrights; defects of title

1. If not otherwise agreed, the Contractor is obligated to perform the delivery only in the country of the delivery location, free from any third party industrial property rights and copyrights (hereinafter referred to as "**property rights**"). If a third party asserts justified claims against the Client due to the violation of property rights because of a delivery performed by the Contractor and used in accordance with the Agreement, the Contractor shall be liable towards the Client within the framework of the term indicated in clause IX no. 3 as follows:

a) The Contractor shall at its discretion either obtain a right of use for the deliveries in question and cost, change the deliveries such that the property rights are not violated, or make an exchange. If this is not possible for the Contractor with reasonable conditions, the Client shall be entitled to statutory rights of withdrawal or reduction.

b) The Contractor's obligation to pay claims for damages shall be determined under clause XII.

c) The aforementioned Contractor obligations shall only exist insofar as the Client informs the Contractor promptly of the claims asserted by third parties, insofar as a violation is not admitted, and insofar as the Contractor retains the right to take all measures to defend itself and engage in settlement negotiations. If the Client ceases use of the delivery to mitigate damages or for another good cause, it is obligated to inform the third parties that the cessation of use does not equate to an acknowledgement of any violation of property rights.

2. Client claims are excluded insofar as the Client is responsible for the property right violation.

3. Client claims are furthermore excluded insofar as the property right violation was caused by specialized requirements of the Client, by an application not foreseeable by the Contractor, or by the

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delivery being changed by the Client or used in conjunction with products not delivered by the Contractor.

4. In the case of property right violations, the provisions of clauses IX no. 5, no. 6 and no. 10 apply accordingly to Client claims regulated in clause X no. 1 lit. a).

5. If there are any other defects of title, the provisions of clause IX apply accordingly.

6. Further Client claims, or claims besides those regulated in this clause, against the Contractor and its agents due to a defect of title are excluded.

XI. Impossibility, contractual amendment

1. Insofar as the Contractor is not able to perform the delivery in accordance with statutory regulations due to impossibility, the Client is entitled to withdraw from the Agreement. If the Contractor's performance obligation is excluded due to impossibility, the Client may only demand claims for damages insofar as the Contractor is responsible for said impossibility. However, the Client's claims for damages shall be restricted to 10% of the value of that part of the delivery that cannot be put into useful service due to the exclusion of the performance obligation because of impossibility. This shall not change in the burden of proof to the detriment of the Client.

2. If force majeure in the sense of clause V. no. 3 significantly changes the economic conditions or the content of the delivery, or has a significant effect on the Contractor's business operations, and if the parties would not have concluded the Agreement or would have changed its contents if they had foreseen this change, the Contractor may demand an adjustment to the Agreement insofar as it is unreasonable for it to comply with the unchanged Agreement in consideration of all the circumstances of the individual case, in particular the distribution of risk under the Agreement or under the law. If it is not possible to adjust the Agreement or unreasonable for the Contractor to do so, the Contractor may withdraw from the Agreement. If it wants to make use of this right of withdrawal, after becoming aware of the consequences of the event it must inform the Client of this promptly, even if it initially agreed to an extension of the delivery term with the Client. The Client's rights to withdraw from the Agreement under clause V. no. 3 remain unaffected.

XII. Other claims for damages

1. If not otherwise regulated in these Terms of Sale and Delivery, Client claims for damages (hereinafter referred to as "**claims for damages**") for any reason, and in particular due to violation of contractual rights and duties or tort, are excluded.

2. This shall not apply insofar as legal regulations provide for mandatory liability, i.e. under the Product Liability Act, in case of intentional action, gross negligence, injury of life, body, or health, or due to the violation of cardinal contractual obligations. Claims for damages for the violation of cardinal contractual obligations shall, however, be limited to the typical and foreseeable damages for the contract, insofar as the liability is not based on intentional action, gross negligence, or injury of life, body, or health. The above regulations are not associated with any change in the burden of proof to the detriment of the Client.

XIII. Applicable law and place of jurisdiction

1. The sole place of jurisdiction for all rights and duties of both parties, as well as for all direct or indirect disputes between the parties resulting from this Agreement or regarding its existence shall be Böblingen. However, the Contractor shall also be entitled to file suit at the Client's domicile.

2. German material law, excluding the conflict of law regulations of international private law and the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall apply to legal relationships associated with this Agreement.