

General Terms and Conditions of HATHO GmbH, Eschbach, Germany

Last modified: 08/2022

Section 1 Scope – Form of statements

(1) Our General Terms and Conditions (hereinafter referred to as GT&C) apply to the production and delivery of chattels pursuant to the terms of the contract concluded between us and the purchaser. They are exclusively aimed at natural or legal persons or incorporated partnerships carrying out commercial or self-employed professional activities (entrepreneurs).

(2) Our GT&C apply exclusively. Unless expressly agreed in writing, we do not accept purchasers' terms and conditions that are adverse to or differ from our GT&C.

(3) Our GT&C also apply if we deliver goods without reservation in the knowledge that the purchaser's terms and conditions deviate from or are adverse to our GT&C. They will apply to all future deliveries, services and quotations provided to purchasers even if not specifically agreed to again separately.

(4) The purchaser must submit any legally relevant statements and notifications to us or a third party (including setting deadlines, reporting of defects, withdrawal from the contract or a reduction of the price) in writing or electronically (e.g. letter, email, fax).

Section 2 Quotation – Conclusion of contract

(1) Orders placed by the purchaser represent a binding quotation, which we may accept within two weeks either by sending an order confirmation or by delivering the goods. Our previous quotations are not binding and subject to change.

(2) We reserve the right to retain ownership and copyright of illustrations, drawings, calculations and other documents. This also applies to written documents marked as confidential. The purchaser may not pass such documents on to third parties without our express written approval.

Section 3 Pricing and terms of payment

(1) Our price list valid at the time the contract is concluded applies to the scope of services and delivery that is detailed in the order confirmation. Our prices are quoted in euros and are ex works, excluding packaging, dispatch, VAT and any applicable customs duties, fees and other public charges.

(2) If, at the time of providing the service, the price increases due to a change in the market price or an increase in the fees charged by third parties involved in providing the service, the higher price will apply. In the event that this amount exceeds the previously agreed price by 20 percent or more, the purchaser shall have the right to withdraw from the contract. This right must be asserted by the purchaser immediately after being informed of the increase in price.

(3) The total amount is immediately payable without deductions upon invoicing and delivery or acceptance of goods. Nevertheless, we shall remain entitled at all times, including within the framework of an existing business relationship, to make deliveries or parts of deliveries only subject to the goods having been paid in advance. Any such reservation shall be communicated upon confirming the order at the latest. All payments must be made by bank transfer. We do not accept payment by bills of exchange or cheques.

(4) Pursuant to sections 352 and 353 of the German Commercial Code (HGB), if the purchaser has not paid by the due date, any outstanding balance will be subject to an annual interest of 5% from this date. Purchasers that have not paid within 14 days of invoicing will be in default without receiving a reminder. During this default, the purchase price will be subject to the applicable statutory default interest rate. We reserve the right to assert other claims resulting from the purchaser's default.

(5) The purchaser may only exercise offsetting or retention rights if his/her counterclaims have been determined as final and conclusive by a court ruling, or if they are undisputed or accepted by us. In the event of defects in the delivery, the counter-rights of purchasers remain unaffected.

(6) Should, following the conclusion of the contract, it become apparent that our claim to the purchase price is jeopardised by the purchaser's inability to perform (e.g. following the opening of insolvency proceedings), we are entitled to withdraw from the contract pursuant to the statutory provisions on the right to refuse performance and following the setting of a deadline where applicable (section 321 of the German Civil Code (BGB)).

Section 4 Delivery - Transfer of risk - Default in delivery - Default of acceptance

(1) The goods will be delivered ex works unless the order confirmation states otherwise.

(2) We have the right to employ third parties for the purpose of fulfilling our contractual delivery obligations. At the very latest, the risk passes to the purchaser at the time the contractual item is handed over to the forwarding agent, carrier or other third parties employed for delivery. This also applies to partial deliveries. If the dispatch or delivery of an item is delayed due to a fault of the purchaser, the risk will be transferred to the purchaser on the day that the contractual item is ready for dispatch and the vendor has informed the purchaser of this.

(3) In the event that we fail to adhere to binding delivery deadlines for reasons beyond our control (non-availability of performance) we shall immediately notify the purchaser of this fact and communicate a new, estimated delivery time. Should we remain unable to perform within the new deadline, we have the right to withdraw from the contract in whole or in part; any counter-performance on the part of the purchaser already rendered shall be reimbursed without undue delay. Non-availability of performance includes late delivery by our own suppliers, congruent hedging transactions on our part, any other disruptions to the supply chain – for example due to force majeure – or specific cases in which we are not obliged to procure.

(4) Default in delivery is governed by statutory provisions. In any event, a reminder by the purchaser is required.

(5) In the event that the purchaser is in default of acceptance, fails to cooperate, or if our delivery is delayed for other reasons for which the purchaser is responsible, we shall be entitled to claim compensation for the resulting damages including additional expenses (e.g. storage costs).

(6) The rights of the purchaser pursuant to section 7 of these GT&C and our statutory rights, in particular when the obligation to perform has been excluded (e.g. because it is deemed impossible or unreasonable to perform and/or subsequently perform) remain unaffected.

Section 5 Retention of ownership

(1) We reserve the right of ownership of the goods until all claims against the purchaser have been fulfilled, even if the specific good has already been paid for.

(2) The purchaser must notify us without delay of any third-party immediate execution measures against the goods subject to retention and forward the documents necessary for contesting these measures. The purchaser must also inform the creditors levying the immediate execution of the existing rights relating to the goods.

(3) In the event that goods subject to retention are resold, for security reasons the purchaser must immediately assign to us any claims against his/her purchasers that arise from this resale until all of our claims have been fulfilled. If goods subject to retention are processed, transformed or connected to another object, we shall have direct ownership of the object produced. These are deemed to be goods subject to retention.

(4) If the value of the purchaser's securities exceeds our claims against him/her by more than 10%, we must accordingly release securities to which we are entitled at the purchaser's request and at our own discretion.

Section 6 Liability for defects

(1) Unless agreed otherwise in the following, statutory provisions govern the rights of purchasers in connection with defects as to quality and defects of title (including incorrect or short deliveries). Any statutory specific provisions on reimbursement of expenses upon final delivery of newly produced goods to a consumer (recourse claims pursuant to sections 478, 445a, 445b **BGB**) remain unaffected.

(2) On principle, we are not liable for any defects which the purchaser had knowledge of or had no knowledge of due to gross negligence at the time the contract was concluded (section 442 BGB). Furthermore, any claims of the purchaser based on defects are subject to his or her adherence to his or her duty to examine and to notify (sections 377, 381 of the German Commercial Code (HGB)). Any defects detected upon delivery, examination or at any point thereafter must be reported to us immediately in writing or electronically (e.g. letter, email, fax). In the event that the purchaser fails to conduct a proper examination and/or does not properly report defects, our liability for defects not reported or not reported on time or not properly reported is excluded in accordance with statutory provisions.

(3) In the event of a defect, we reserve the right to choose the method of subsequent performance (rectification of defects or replacement delivery).

(4) We shall be entitled to make any subsequent performance subject to the purchaser having paid the purchase price due. However, the purchaser shall be entitled to withhold an appropriate amount of the purchase price.

(5) Any claims for damages or reimbursement of expenses incurred in vain on the part of the purchaser in the event of defects only exist in accordance with Section 7 and are otherwise excluded.

Section 7 Other liabilities

(1) Unless otherwise specified by these GT&C including the following provisions, we are liable for breaches of contractual and non-contractual obligations in accordance with statutory provisions.

(2) We shall be liable for damages – irrespective of their legal grounds – within the scope of liability based on fault in the event of intent and gross negligence. In the event of simple negligence, we shall only be liable, subject to statutory limitations of liability (e.g. care in own affairs; insignificant breach of duty) for

a) damages from injury to life, body or health,

b) damages resulting from the breach of an essential contractual obligation (obligation whose fulfilment enables the proper execution of the contract in the first place and on the observance of which the contractual partner regularly relies or may rely); in this case, our liability shall however be limited to the compensation of foreseeable, typically occurring damages.

(3) Any limitations of liability pursuant to para. 2 also apply vis-a-vis third parties as well as in the event of breaches of duty on the part of persons (including in their favour) for which we are responsible in accordance with statutory provisions. These shall not apply insofar as a defect has been fraudulently concealed or a guarantee for the quality of the goods has been assumed and for claims of the purchaser under the German Product Liability Act (ProdHaftG).

(4) The purchaser may only withdraw or terminate the contract in the event of a breach of duty which does not consist of a defect if we are responsible for the breach of duty. A free right of termination on the part of the purchaser (in particular pursuant to sections 650, 648 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

Section 8 Limitation of actions

(1) In derogation of section 438 para.1 no. 3 BGB, the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. Any statutory special provisions on limitation, in particular section 438 para.3, sections 444, 445b BGB, remain unaffected.

(2) The aforementioned sales law limitation periods also apply to contractual and non-contractual claims for damages on the part of the purchaser which are based on a defect of the goods, unless the application of the regular statutory limitation period (sections 195, 199 BGB) would lead to a shorter limitation period in specific cases. Any claims for damages on the part of the purchaser pursuant to section 7 para.2 sentence 1 and sentence 2 lit. a) as well as pursuant to the Product Liability Act shall become statute-barred in accordance with statutory limitation periods only.

(3) Our claims to payment will expire after five years, in derogation of section 195 BGB. Section 199 BGB applies with regards to the start of the limitation period.

Section 9 Place of performance – Choice of law – Place of jurisdiction

(1) Unless otherwise stated in this contract, the place of performance and payment is our registered office.

(2) This contract is subject to the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

(3) For contracts with businesspeople, legal entities under public law or separate estates governed by public law, the exclusive place of jurisdiction – including internationally – is the court competent for our registered office.