

General Terms and Conditions of Sale (AGB-Verkauf)

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§ 1 – General Information / Scope

1. The Terms and Conditions of Sale apply to all our deliveries, performances, services and offers. These are part of all contracts which we conclude with our contractual partners (hereafter referred to as purchaser) containing our offered performances and services or deliveries.
2. Our Terms and Conditions of Sale apply exclusively; contrary or differing conditions are not accepted except we agree expressly to it in writing. Our Terms and Condition of Sale apply also if we know about the purchaser's contrary or differing conditions and arrange delivery unconditionally.
3. All agreements between us and the purchaser concerning the execution of this contract are to be put down on paper. Amendments and alterations of the agreed items including the Terms and Conditions of Sale have to be put down in writing. With the exception of the managing directors and authorized representative, the purchaser's employees have no right to make oral arrangements and deals which are contradictory to the above-mentioned agreements.
4. To keep the written form the transmission by fax, as well as other ways of telecommunication, especially e-mail.
5. Our Terms and Condition of Sale apply also for all deals with the purchaser in the future.
6. In the event of a delay in delivery or service due to a currently unexpected, strong spread of the corona virus Covid-19 and associated possible effects on employees and subcontractors or suppliers of Ganter Interior GmbH, we refer to the provisions for the occurrence of force majeure in § 286 para. 4 BGB.

§ 2 – Offer and Conclusion of Contract

1. Our offer is subject to alterations and non-binding, as far as they aren't marked as binding or contain a specific term of acceptance. We can accept orders within 14 days after receipt of our offer.
2. Our descriptions of the subject of the delivery or performance (e.g. weight, measurements, trade-in value, capacity, tolerance and technical details) as well as our illustrations (e.g. our drawings and figures) are only roughly decisive, as far as exact accordance with the plans is not required. They are not a guaranteed characteristic of state, but a description of the delivery or performance. Customary discrepancies and those who emerge due to legal instructions or which are technical improvements or replacements of units by equivalent items are permitted if they do not affect the usability for the contractual fixed function.
3. We reserve the right of propriety and the copyright on all the offers and cost estimates submitted by us as well as the provided drawings, illustrations, brochures, catalogues, samples, tools and other documents and auxiliary materials. The purchaser is not allowed to provide these materials as well as their content to third parties, to publish them or to use them on his own or through third parties or to copy. He has to give back the material on request and has to destroy eventual copies if they are not needed anymore for the execution of the deal or if negotiations do not lead to a conclusion of contract.
4. If samples are ordered from outside companies, we assume that orderer has reserved the right of use. Otherwise he has to release us from eventual claims caused by violation of alien rights.

§ 3 – Prices and Payment

1. Our prices apply to the performances and deliveries stated in the confirmations of order. Additional or special services are stated and charged separately. The prices are quoted in EURO ex works excluding packaging, the VAT, on exports excluding customs duty as well as public dues.
2. We are authorized to negotiate again about the prices if the agreed prices are on the basis of our price list and if the delivery is effected 3 months after conclusion of contract which is due to purchaser's fault.
3. Invoice amounts have to be settled within 10 days after receipt of invoice without any discount, as far as nothing else has been stipulated in writing. Decisive for the date of payment is the receipt of payment into our account. Cheques are only valid after cashing. If the purchaser does not settle payment on maturity, we are authorized to charge 5% p.a. interest on the outstanding amounts beginning on the due date. The assertion of higher interests and further disadvantages due to delay in payment remain unaffected. We do not grant a trade discount without having agreed it especially.
4. The purchaser has the right of offset only if his counterclaims are legally effective or undisputed. Furthermore the purchaser is only allowed to use the right of retention if his counterclaim is based on the same transaction.
5. We are entitled to effect outstanding deliveries and performances only against advance payment or a deposit of security if after conclusion of contract circumstances emerge which reduce the purchaser's credit-worthiness and through which the payment of our open accounts are endangered.
6. Ganter Interior GmbH is entitled to assign receivables against customers seated in

Germany and other countries which belongs to the EU, for refinancing purposes to the abcfinance GmbH, Kamekestr. 2-8 in 50672 Cologne, GERMANY. The buyer will be communicated at the conclusion of the contract whether the demand can be ceased. In this case, payments with guiltfree action can only be given to the abcfinance GmbH. The bank connection will be communicated to the buyer at the contract's conclusion. It is the material right of the Federal Republic of Germany. The UN agreement over contracts concerning the international purchase of goods (CISG) as well as foreign country rights cannot be applied

§ 4 – Delivery and Delivery Time

1. The begin of our stated delivery time implies the clarification of all technical questions and the confirmation of all necessary details as well as the receipt of the stipulated advance payment.
2. Deadlines, terms and dates are only approximate unless a date or a term has been fixed. Reasonable part deliveries are tolerable.
3. We are not liable for the impossibility of the delivery or for delays in delivery, as far as they are caused by force majeure or by other unforeseeable incidents or the wrong or delayed supply by our suppliers which we are not responsible for. If these incidents hinder our delivery and performances or make them impossible and the incidents are not short-lived, we are authorized to withdraw from the contract. If short-lived incidents occur, the terms of delivery and performances are extended or the production and delivery times are postponed on the time of the incident excluding the appropriate terms of start-up. The purchaser can withdraw from the contract promptly with a written explanation if he cannot accept the delivery and the performances owing to the delay.
4. The purchaser is authorized to withdraw from the contract after an unsuccessful expiration of an appropriate time limit set by the purchaser after we have defaulted. The purchaser has the right to make claims for compensation because of failure to perform at the amount of the foreseeable damage only if the delay is due to a considerable breach of duty or gross negligence. Furthermore the liability for compensation is restricted to 50% of the damage.
5. The restriction of liability as per para. 3 do not apply if a firm deal has been made. The same applies if, due to our delay, the purchaser demands the immediate assertion of the claim for compensation for the damage instead of the performance.
6. Delivery is conditioned upon timely and proper performance of all duties of the purchaser.
7. In case of default of acceptance or if the purchaser breaches his duties of collaboration, we are authorized to demand the value of the damage as well as eventual additional expenditures. In this case the risk of an accidental loss and accidental deterioration of the object of purchase is passed to the purchaser at the time of the default of acceptance or breach of duty to cooperate.

§ 5 – Place of Performance / Shipment / Packaging / Passing of Risk / Final Acceptance

1. The place of performance for all reciprocal duties under these Terms and Conditions will be Waldkirch, unless agreed otherwise. Is our duty the assembling, the place of performance will be the place where the assembling will take place.
2. The mode of dispatch and the packaging are subject to our dutiful discretion.
3. The risk will be passed on the purchaser on handing-over of the goods to the forwarder, freight carrier or to other third-parties who are responsible for the dispatch at the latest (the beginning of the loading is decisive). This applies also if part deliveries will be affected or if we will overtake other services (e.g. despatch or assembling). If the dispatch or the handing-over will be delayed because of circumstances for which the purchaser is responsible, the risk will be passed on to the purchaser the day we are ready for dispatch and have communicated this to the purchaser.
4. Storage costs after passing of the risk will be borne by the purchaser. On storage in our warehouse costs for used storage area per square meter and month are 9 €.
5. The assertion and the proof of further or lower storage costs remain reserved.
5. If we will effect delivery, we assume that the vehicle can be driven to and unloaded at the place of handing-over. Additional costs caused by long itineraries or hindered delivery will be settled by the purchaser.
6. If we have to collect the goods as agreed at the purchaser, he will bear he risk.
7. The consignment will be insured against theft, breakage, damage in transit, fire loss and damage by water and other insurable risks only on request of the purchaser and at his own expense.
8. If an acceptance has to take place, the object is accepted if
 - 8.1. the delivery and – as far as we are responsible for it - the assembling is finished.
 - 8.2. we have informed the purchaser about this with reference to the deemed acceptance as per §5 (8) and asked him to accept the object of purchase.
 - 8.3. if 12 days have gone by since delivery or assembling or 6 days have gone by since the purchaser has begun with the use of the object of purchase (e.g. has used the delivered goods).
 - 8.4. the purchaser has failed the acceptance within this period of time for another reason than the defect which makes the use of the object impossible or relevantly impairs.

§ 6 – Warranty

1. The purchaser's warranty rights requires that he has fulfilled properly his obligation to notify about defects and the obligation to investigate as per German Commercial Code §377.
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2. The characteristics of the presented samples are considered as warranted if they are marked as specimen. We will not guarantee a warranty for delivered goods which are expressively marked as used. Warranty claims cannot be asserted on negligible deviations or negligible impairment of serviceability. We are not responsible for material defects of the delivery which we bought from third parties and forwarded it unaltered; the responsibility on deliberate act or negligence remains unaffected.

3. As far as a defect on the object of purchase exists for which we are held liable, we are authorized to decide whether we want to make supplementary performances in the form of a rectification of defects or a replacement. In case of rectification of defects we are obliged to bear the costs for all the expenses necessary for the rectification of defects, especially costs for transport and tolls, for handling and material, as far as they do not arise because the object of purchase has been delivered to another place as the place of performances.
4. If the supplementary performance defaults, the purchaser is authorized to demand withdrawal from the contract or an appropriate reduction on the purchase price.
5. If nothing results from the hereafter paragraphs §6.6 and §6.7, further claims by the purchaser are excluded – irrespective for which causes in law. Therefore we are not liable for damages which have not occurred on the object of delivery itself. We especially are not liable for purchaser's lost profits or other financial losses.
6. We are liable as per the legal regulations if the reason of damage is due to deliberate act or gross negligence. This applies also if the purchaser requires compensation instead of the performance due to the lack of a guaranteed conditions and characteristics of the goods.
7. If we breach the relevant contractual obligations culpably, the liability is restricted to the contract coherent damage. Furthermore it is excluded as per

§6.5. A contractual

- obligation is called relevant if we breach this obligation culpably on whose proper fulfilling the purchaser trusts justifiably as they characterize the contract.
8. Purchaser's rights of recourse as per § 478 German Civil Code only apply if the purchaser has not made further agreements beyond the legal warranty claims with his customer.
 9. Warranty claims shall be time-barred after 12 month of the passage of risk.

§ 7 – Joint Liability

1. Further liability on compensations than stated in § 6.5 until 6.7 is excluded – disregarding the legal form of the asserted claim.
2. The regulations as per §7.1 does not apply in case of claims as per §1, 4 Product Liability Act. It does also not apply if we are liable for a bodily injury or damage caused to someone's health for other causes in law.
3. If the limitation of liability - as per §6.6 of these conditions on claims on the basis of manufacture's liability as per § 823 German Civil Code - does not infringe due to damages to property, our liability is restricted to the indemnification of the insurance. We are obliged to be liable for the amount of the limit of indemnity if this does not apply or not completely apply.
4. The regulations as per §7.1 does also not apply on initial inabilities or responsible impossibility.
5. If our liability is excluded or limited, this also applies to the personal liability of our employees, clerks, representatives and auxiliary persons.
6. If we provide the purchaser with technical information or give advices and these information or advices do not belong to the owed scope of services, they are free of charge and no responsibility is taken for the correctness of the information.

§ 8 – Assurance of Reservation of Title

1. We retain title to the object of purchase until receipt of all payments in full. In case of breach of contract by the purchaser, especially in case of default in payment, we are entitled to take or keep back the object of purchase. Keeping back the object from our side does not signify withdrawal from the contract unless we declare this expressively in writing. The distraint of the object of purchase does signify a withdrawal from the contract. After having kept or taken back the object, we are entitled to exploit it; the proceeds of sale, which remain after deduction of appropriate costs for exploitations deducted from the purchaser's financial liabilities –
2. The purchaser is obliged to treat the objects of purchase carefully. He is especially obliged to insure these objects at replacement value against fire, water damages and theft. If maintenance and inspection work have to be done, the purchaser has to arrange them at his charge and in time.
3. On distraint and other interferences caused by third-parties the purchaser has to contact and inform us immediately that we can take legal actions as per § 771 Civil Process. The purchaser is liable for the occurred losses if the third-party cannot reimburse the out-of-court expenses as well as the juridical costs for the legal action towards us as per § 771 Civil Process.
4. The purchaser is authorized to resell the object of purchase in the course of his regular business. At the agreed final invoice amount (including VAT) he hereby assigns all claims which arise from the resale towards his customers or third-parties to us whether the goods have been processed or not,. The purchaser is also entitled to collect the charges after the assignment of the claim. Our authorization to collect the outstanding amount will remain unaffected. However, we are obliged not to collect the outstanding amount as long as the purchaser discharges his financial liabilities out of received proceeds, is not delayed in payment and does not become subject to an application for insolvency or similar proceedings or to any stay of payments. In these cases we can demand the purchaser to inform us about the assigned claims and their debtors, to give us the necessary details of the collection, the according documents and to inform the debtor (third-party) about the assignment.
5. The working on or alteration of the object of purchase by the purchaser has always to be made for us. The purchaser's remainder on the object of purchase applies on the altered object. If the object of purchase is worked up with other objects and materials which do not belong to us, we acquire co-ownership on the new object proportional of the objective value of our object of purchase to the other worked up objects at the time of working. To the altered object applies the same as to the object of purchase which has been delivered under the above retention.
6. If the object of purchase is compounded inextricably with the objects which do not belong to us, we acquire co-ownership on the compounded object proportional of the objective value of the object of purchase to the other compounded objects at the time of the compounding. If the objects are compounded in that way that the object of the purchaser has to be regarded as main component, it is agreed that the purchaser assigns co-ownership pro rata. The purchaser stores and keeps the whole ownership or the co-ownership for us.

7. To provide a security for our trade receivables towards him the purchaser assigns to us the claims which arise from the connection of the object of purchase with premises towards a third-party.

8. We are obliged to release upon our election the securities upon demand of the purchaser insofar as the realisable value of our security exceeds the secured claims on more than 10% or the nominal value on more than 50%.

§ 9 – Confidentiality

1. Confidential information is all the company and business secrets of Ganter Interior GmbH and his clients as well as all the other information about which purchaser comes to know, irrespectively whether in writing, orally, in electronic or visual format, or during the briefing or at another time in connection with the respective- project. Information which is well-known before is no confidential information.
2. The purchaser is obliged to keep all the information secret and confidential towards third parties and not to publish them. The purchaser is also obliged to keep the confidential information save that third parties cannot inspect them. The use of the information for other purposes than the performances is strictly forbidden. The duties are applicable for an indefinite time. However, the non-disclosure agreement ends when the confidential information gets known without any effort of the purchaser's part or when Ganter Interior GmbH has agreed to the forwarding of single confidential information.
3. The purchaser is obliged not to contact our suppliers directly or via intermediary for the time of the collaboration.
4. The purchaser has to access the confidential information only to those employees who are involved in the process of project and who are obliged to keep the secret information for an indefinite time. The purchaser is responsible for the compliance with the regulations of the employees.
5. All the data media, documents and samples which are released to the purchaser remain our property. They have to be returned to us immediately on request. Stored confidential data, copies of confidential information as well as records kept by the supplier have to be destroyed on request but after the collaboration and consultation with us at the latest.
6. If the purchaser has to disclose the confidential information to a public authority or a public court of law, he has to announce it to us in writing and in time.
7. The provision of information or access in this contract or in drawings or documents of tender towards third parties is forbidden as far as such information or accesses are not necessary for the execution of the contract. Same applies on company secrets and other confidential information which are eventually published during the process of the projects.
8. Publications about the services and performances of the purchaser and parts of the project are only permitted after a written agreement from our side. Same applies to publication of our name or our clients by the purchaser, especially in advertisement of the purchaser, on his home page as well.
9. The purchaser has to pay for every case of culpable breach of secrecy or limitation of using our documents and name a contractual penalty in an appropriate amount but at least 10.000,00 EUR, unless a separate non-disclosure agreement has been signed. Irrespectively of indemnity claims, contractual penalty can be claimed but has to be credited against the indemnity claims.
10. The supplier is obliged to handle the provided access data and passwords for products which are available online strictly confidential and with high diligence.

§ 10 – Final Clause / Place of Jurisdiction / Agreement of the Applicable Law

1. If one or more provisions of this contract are partially invalid or impracticable, it does not affect the validity and the practicability of the other terms and conditions. The parties have to work together to replace the invalid and impracticable provisions by those who match the commercial aims of the party with the invalid and impracticable provision best. The above shall apply accordingly to the closing of any gaps in the Agreement.
2. This Agreement shall be governed by the law of the Federal Republic of Germany without conflict of laws rules. The application of the "United Nations Convention on Contracts for the International Sale of Goods" (CISG) is excluded.
3. Exclusive place of jurisdiction for all disputes which result from this contract is Waldkirch – as long as the supplier is a merchant as per Commercial Law.
4. A supplier who is not located in the Federal Republic of Germany is obliged to tell us his German authorized receiving agent within 14 days after the conclusion of the contract.
5. This agreement and its terms shall be governed by and constructed in accordance with the laws of Germany. If the English legal meaning differs from the German legal meaning of this agreement and its terms, the German meaning shall prevail.