



INKiESS[®]



General Terms and Conditions for Sale
valid from 1st January 2018



General Terms and Conditions for Sales, Deliveries and Payment

Scope of the Conditions

1. Our deliveries and services will be made or rendered exclusively pursuant to these terms and conditions of business.

Any diverging terms and conditions of business of the client's, which are not expressly recognized by us, shall be invalid.

Offers and Conclusion of Agreements

2. Our offers are subject to change without notice and not binding. Any orders / listings shall become binding only upon our written confirmation. The same shall apply to any supplements, changes or collateral agreements.

3. The information, drawings, illustrations and specifications contained in the catalogues, price lists or in the documentation forming part of the offer are typical approximations used in the trade and have only limited authority, unless they have been expressly described in the confirmation of the order as being binding. They do not constitute a guarantee. We reserve the right to make changes to models. Public comments, recommendations or advertisements do not constitute statements regarding the quality of the goods agreed upon.

Prices

4. Unless otherwise specified, we shall be bound to the prices set forth in our offers for the duration of 30 days from the date at which the offer was made. The prices stated in the confirmation of the order plus legally applicable turnover tax shall be authoritative. Any additional deliveries or services shall be charged separately.

5. For goods having a net value of upwards of € 200.-- to be delivered within Germany, we deliver free of any charges for postage, freight fees or packing. A lump sum charge for freight fees of € 7.-- shall be charged for orders having a lesser goods value. For any goods having a net value of upwards of € 200.-- that are to be delivered abroad, we deliver free of any charges up to the German border. Any additional costs engendered by a client's special transportation requirements and any other incidental charges shall be borne by the client or recipient.

6. Should any substantial changes accrue to the costs of labor, material or energy, we shall be entitled to make appropriate adjustments to the prices in the light of these factors.

Delivery and Passing of the Risk

7. Periods of delivery and deadlines as well as periods of performance and deadlines shall be binding only if they have been agreed in writing. The place of performance for all and any obligations shall be Berlin.

8. Force Majeure, industrial disputes, riots, measures taken by the authorities, disruption of operations, suppliers defaulting on their supply obligations or other unforeseeable, serious circumstances beyond our control shall discharge the contracting parties from their obligations to perform the contract or, respectively, to accept the performance for the duration of the disturbance and in the scope of its impact. This shall also apply if such events occur at a time when the party to the agreement concerned is in default, unless it has caused such default intentionally or grossly negligently. The parties to the agreement shall be under the obligation of immediately providing each other with the necessary information, within reasonable bounds, and to adapt their obligations to the changed circumstances in good faith. Damage claims may not be derived from any such situation.

9. Partial deliveries and partial performances are – to the extent they are customary in the trade – permissible and shall be invoiced separately. They shall only become inadmissible, this being an exception, should the partial performance of the contract not be of interest to the client.

10. Should later changes to the contract as made by the client affect the delivery period, a reasonable extension may be granted. Any follow-up orders or additional orders must be treated as new orders and can not be added to an already existing order. We reserve the right to choose the forwarding route.

11. The risk of accidental loss and accidental deterioration of the goods shall be passed on to the client upon handover or, in cases of sales shipment, once the goods have been delivered to the shipping agent, the carrier or any other person or institution designated to execute the delivery.

Reservation of Title

12. All delivered goods shall remain our property until all claims in conjunction with the business relationship with the client have been fulfilled.

13. The client is entitled to resell these goods in regular business transactions, provided he honors his obligations in the business relationship with us in good time. However, he shall not pledge the goods of reserved title or use them as collateral. He is under the obligation of safeguarding our rights when reselling

the goods of reserved title on credit.

14. We are entitled to rescind the contract and take back the reserved goods should we obtain knowledge of a breach of contract, particularly if the client is defaulting on payments for secured claims. In order for us to make use of the above right of reservation of title, the client shall be under the obligation of providing information to us regarding the whereabouts of the delivered goods and shall give us permission to inspect all relevant documents he has kept in this respect, should we so request.

15. The client assigns to us, as security, all claims and rights arising out of the sale of goods in respect of which we have rights of title. We hereby accept this assignment. This also applies to any modification or processing of the reserved goods that the client or recipient always carries out on our behalf. Should the reserved goods be processed or inseparably combined or mixed with other objects that do not belong to us, we shall acquire co-ownership in the new object in the proportion of the invoice value of the reserved goods to the other processed or combined or mixed objects at the time at which they were processed or combined. Should our goods be linked or inseparably combined or mixed with other movable objects to become one uniform article, and should this article then be deemed to be the main article, the client shall transfer co-ownership to us on a pro-rata basis, provided that the main article belongs to him. The client shall keep the ownership or joint ownership for us. The same provisions as apply to the reserved goods shall apply to the article that results from the processing, linking or combination process.

16. In the case of debt enforcement measures taken by a third party that affect the reserved goods, the claims assigned to us or any other collateral, the client shall be under the obligation of immediately informing us of this fact, also submitting to us any documents necessary for us to intervene in such enforcement proceedings. This also applies to any other kinds of detrimental impacts.

17. We shall release the securities that we are entitled to pursuant to the above provisions should the client so require, doing so at our choice, to the extent the realizable value of the goods delivered under reservation of title exceeds the claims to be secured by more than twenty (20) percent.

Material Defects

18. We guarantee that the material and working of the object of purchase is free of any defects, in accordance with the present state of technology.

19. We do not assume liability for any material defects resulting from unsuitable or improper use, faulty mounting or begin of operation by the client or by third parties, normal or regular wear and tear (such as, for example, of luminants), incorrect or careless treatment, nor do we assume liability for the consequences of improper modifications or repairs carried out by the client or third parties without our prior consent. The same applies to defects that reduce the value or the suitability of the goods only insignificantly.

20. The limitation period for any claims for material defects shall be that provided by the law, unless otherwise agreed.

21. The customer / recipient shall be under the obligation of carefully inspecting the goods we have delivered immediately after the goods have been turned over to him or to the third person he has appointed [as alternate recipient], and shall furthermore be obliged to give notice of any manifest defects immediately upon receipt of the goods, and notice of any latent defects immediately on discovery. Should this procedure not be adhered to, any warranty claims shall be excluded. The delivery item being objected to shall be returned to us, freight paid, should we so request. Should the notice of defects prove to be justified, we shall refund the client the costs that were necessary and of which he submits proof, pursuant to Section 439, paragraph 2 of the Bürgerliches Gesetzbuch (BGB, German Civil Code).

22. Should the delivered goods be defective, we shall be under the obligation of, within a reasonable time period and at our discretion, either remedying the defect or delivering a substitute. Should these measures fail, the client shall be entitled to, at his choice, rescind the contract, reduce the purchase price and claim damages, or demand compensation for his fruitless expenses. Should the client choose to rescind the contract, he shall not be additionally entitled to claim damages for the defects. Should the client choose to claim damages, the goods shall remain with the client if this can be reasonably demanded of him. The damage claims shall be restricted to the difference between the purchase price and the value of the defective object. In each case, we shall only replace those damages which can typically occur and which are foreseeable. Should performance not conform to what has been contractually assured only in a minor way, specifically in the case of only minor defects of the delivered goods, the client shall not be entitled to rescind the contract. Any cases of fraudulent intent and cases of recovery over the client pursuant to Section 478 of the Bürgerliches Gesetzbuch (BGB, German Civil Code) shall be excluded from this limitation of the warranty rights.

23. The client shall not receive guarantees within the meaning of the law.

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Terms of Payment

24. Unless otherwise agreed upon, all invoices shall be due for payment within thirty (30) days of the invoice date without any deductions. Payment within ten (10) days of the invoice date shall be entitled to a deduction of 2 %, provided the client is not in default with other payments. No discount shall be granted for repairs, replacements, lump sum forwarding charges or invoices made out for goods having a value of less than € 25.--. Those payments are due immediately. A 3 % deduction shall be granted for c.o.d. shipments, proforma invoices or direct debit authorizations. The following conditions shall apply for shipments abroad: For goods up to € 200.-- in net value - payment within fourteen (14) days with a 2 % discount or net payment within thirty (30) days. For goods over € 200.-- in value - payment by „cash against documents“ or as agreed upon.

Please make out your payments, all charges paid, to one of the accounts listed below:

Deutsche Bank AG
Swift-Code / BIC: DEUTDEB110
IBAN: DE26100708480512513300

Postbank Berlin
Swift-Code / BIC: PBNKDEFF
IBAN: DE75100100100056896104

25. Should we have indisputably delivered goods that are partially defective, the client shall nonetheless be under obligation of making payments for that part of the goods that is free from any defects, unless a partial delivery is of no interest to him. In all other respects, the client shall be permitted to set off claims only against counter-claims that have become res judicata or that are undisputed.

26. Should the credit period be exceeded, we shall be entitled to charge the client for costs incurred in making request for payment, while also charging default interest at the rate the bank charges us for overdraft facilities, but at a minimum rate of 8 % above the current basic interest rate (5 % for so-called consumer transactions).

27. Should payment be delayed, we shall be entitled to – after having correspondingly given notice in writing to the client – cease to fulfill our obligations until we have received payment.

28. Checks shall only be accepted on account of payment and shall be considered as payment only once they have been cashed. Should the checks be protested, all our invoices shall be due for immediate payment. No bills of exchange will be accepted.

29. Should the client involve a central settlement organization, the settlement of the invoice shall release him from his debt only once the amount has been credited to our account.

30. Should we establish, after conclusion of the agreement, that our claim for payment is in jeopardy, we shall be entitled to refuse performance and to set an appropriate time period within which the client must either concurrently make payment in exchange for delivery, or within which he must provide securities. Should the client refuse to pay or should he fail to do so within the time limit set, we shall be entitled to rescind the contract and claim damages for non-performance.

Return of Goods, Repairs

31. Delivered goods may only be returned upon prior agreement in writing and under condition they are returned in their original packaging, with a statement of the client’s tax authority reference number and our invoice number for the delivery. A handling fee of 10 % of the net goods value, or, as a minimum e 10.-, shall be levied when the amount is credited to the client’s account. The costs for the dispatch and return of the goods shall be borne by the client. Goods that are out-dated, damaged or that cannot be sold for any other reasons, as well as custom-made products may not be returned. If the client wishes to be given a quotation before repairs are done, this shall be stated explicitly.

Other Claims /Liability

32. Our liability for damages, to the extent it is an issue involving negligence, shall be excluded or limited according to the provisions set out below, independently of the legal reasons on which it may be based, specifically any liability for the infringement of contractual obligations with the client, for impossibility of performance, for delayed, failed, faulty or wrong delivery, for any infringement of obligations in the course of contract negotiations and for tortious acts (with the inclusion of the producer’s liability vis-à-vis the client):

a) We shall not be held liable in cases in which our legal representatives, executive personnel or other vicarious agents have acted slightly negligently. This shall not apply to those instances in which their actions jeopardize substantial objects of legal protection (life itself, protection from bodily harm, or personal health), in which essential contractual obligations have been infringed, or in which damages were caused that can be insured against.

b) We shall not be held liable in cases in which our non-executive personnel or other vicarious agents have acted grossly negligently, unless essential contractual obligations have been infringed or life itself has been jeopardized, bodily harm has been caused, or people’s personal health has been damaged.

c) We shall be held liable in all other cases in which we are at fault.

33. We shall not be held liable for any damages that we could not foresee or that are part of the client’s sphere of responsibility or risk. This exclusion or, respectively, limitation of liability does not apply to intentional or grossly negligent acts of our legal representatives or executive personnel. It shall furthermore not apply in cases in which essential contractual obligations vis-à-vis the client have been infringed or in which his life itself has been jeopardized, bodily harm has been caused to him, or his personal health has been damaged.

34. The preceding exclusions and limitations of liability apply to the same extent in favor of our legal representatives, executive and non-executive personnel, and other vicarious agents.

35. Claims brought forward pursuant to the Produkthaftungsgesetz (ProdHaftG, German Product Liability Law) shall not be affected. The provision made in Section 478 of the Bürgerliches Gesetzbuch (BGB, German Civil Code) shall also remain unaffected.

36. Any and all claims for damages must be filed with a competent court within a preclusive period of three months after having been rejected by ourselves.

Confidentiality and Data Protection

37. Unless otherwise and explicitly agreed in writing, the information underlying the contractual relationship shall not be deemed confidential. We have the right to process, using the technical means of our choice, any and all of the client’s data that we may have obtained from him or from any third party in the context of the business relationship, doing so according to the provisions of the Bundesdatenschutzgesetz (Federal Data Protection Act).

Applicable Law, Place of Jurisdiction, Partial Nullity, and Transferability of Contractual Rights

38. These General Terms and Conditions as well as any and all legal relationships between the contracting parties shall be subject to the laws of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG – „Vienna Sales Convention“) dated April 11th, 1980 is excluded.

39. For all legal disputes, also those arising in the context of proceedings for the enforcement of check payment, our officially registered place of business shall also be the place of jurisdiction, to the extent the client is a business man, a public law entity or a special fund under public law. We also have the right to file suit at the client’s registered place of business.

40. Should any provisions of these General Terms and Conditions or any provision made in the context of any other agreements be or become invalid, this shall not affect the validity of the agreement in other respects.

Should this event arise, the parties to the agreement shall be under the obligation of replacing the invalid provision by one whose economic results will most closely resemble those the invalid provision intended to achieve.

41. The contractual rights mutually granted may be assigned only by mutual consent.

42. Officially registered place of business: Berlin.
Registration Court: Berlin-Charlottenburg HR A 1070.
Personally liable partner: INKIESS Margot Voss GmbH (limited liability company), Berlin.
Registration Court: Berlin-Charlottenburg HR B 11022.
Managing directors: Ute Tuscher, Angelika Hauer.

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