

Terms of Payment and Delivery

1) Offers and conclusion of a contract

The seller's offers are without engagement and not binding. Offer letters provided by the seller only invite the buyer to submit a corresponding offer to the seller.

2) Scope of validity of the terms of delivery and payment

Seller's deliveries, performances and offers are exclusively made on the basis of these terms of delivery and payment. They will also be applicable to all future business relations even if not explicitly agreed upon anew. If an order is placed or – at the latest – if the goods or performances are received these terms are regarded as being accepted. Contrary statements on the part of the buyer indicating his own terms of business and purchase are contradicted.

3) Price

In commercial business the selling price corresponds to the seller's prices valid on the day of delivery. This is also valid for deliveries to non-merchants if the performance owed by the seller is to be effected later than four months upon conclusion of the contract.

4) Delivery

a. The seller is obliged to hand over the deliveries only at his registered office.

b. If the goods sold are sent to a different place than the seller's registered office, the buyer bears the costs for the packaging material necessary for sending the goods. The seller charges the buyer with a service fee of € 15,00 for carrying out the dispatch if the sales value is up to € 250,00.

c. If the sales value amounts to € 500,00 or more the seller pays the costs of dispatch and packaging material for deliveries within Germany.

5) Order quantities and transport material

a. If the quantities ordered by the buyer do not correspond to the seller's packaging and order units the goods ordered are rounded up or down to the valid packaging and order units by the seller unless something different is agreed upon in the individual case.

b. The pool pallets and barred boxes used for transportation are only given to the buyer on loan. He has to return them to the seller at the next delivery at the latest by handing them over to the carrier.

c. An obligation of the seller to take back the transportation and/or packaging material is excluded.

6) Payment

a. The invoice amount is due on receipt of the invoice at the buyer's.

b. If a direct debit authorization is granted the seller debits the account on the day of delivery deducting a 4% discount.

c. If the buyer pays in advance before delivery of the goods he is entitled to deduct a 4% discount of the net invoice amount.

d. If payment is effected within 8 days upon receipt of the invoice the buyer is entitled to deduct a 2% discount. The buyer claiming a right to deduct a discount has to provide evidence of the prerequisites thereof.

e. Against seller's claims the buyer can only balance such counter-claims which are legally binding and not denied. The same holds true for deriving a right of retention.

7) Shipment

a. When shipping the goods sold the risk of a loss by chance and the deterioration by chance passes to the buyer as soon as the seller has delivered the goods to the person defined to execute the shipment. If the delivery to the person responsible for the shipment is delayed for reasons out of the reach of the seller the risk passes to the buyer upon receipt of the message that the goods are ready to be shipped. The seller is only obliged to insure the goods against damage in transit if the buyer explicitly declares to bear the costs.

b. The seller is entitled to make partial deliveries unless accepting them involves excessive expenditure on the part of the buyer.

8) Delivery deadlines

In the case of non-compliance with the delivery deadlines the buyer is only entitled to resign from the contract if the seller has been granted an adequate period of grace of at least 3 weeks. An agreed delivery deadline is prolonged by the period during which the seller is temporarily prevented from performing by circumstances beyond his control, especially lack of material supplies or fuel, labour dispute, industrial breakdowns and all other delays for which the seller is not responsible.

9) Warranty

a. All warranty claims against the seller are limited to a period of 12 months upon delivery of the goods sold.

b. The buyer is obliged to examine the goods sold for apparent defects immediately upon delivery. The buyer must notify the seller at once if a defect is found. If the buyer does not make a notification the performance is considered to be approved with the defect.

c. The seller has the choice to subsequently fulfil his contract either by removing the defect or by supplying a faultless article.

d. If the seller subsequently fails to fulfil his warranty duty in spite of several attempts on his part the buyer is entitled to withdraw from the contract or to reduce the price of the goods. Further legal warranty claims are excluded unless a case of fraudulence exists.

e. If the buyer indicates a defect and if the seller delivers subsequent performance with regard to this defect the limitation of the warranty claim with regard to this defect is suspended for the period between receipt of the notification at the seller's and the subsequent performance. In this case the limitation of the warranty claim with regard to the defect notified will only become effective after three months at the earliest upon execution of the subsequent performance. Interrupting the running of the period of limitation by executing the subsequent performance with the consequence of a new start of the period of limitation is excluded.

f. Any further commercial duties of the seller concerning the examination of the goods and giving notice of defects remain untouched.

g. For performances effected by the seller on the basis of unjustified deficiency claims on the part of the buyer the latter owes him a compensation, the amount of which corresponds to the usual payment which would have become due if an explicit order to perform had been placed.

10) Limitation of liability

Seller's liability for damage caused by negligence is excluded unless there is a case of gross negligence or a damage injuring life, health or the body.

11) Place of performance

The place of performance for all mutual obligations within the scope of validity of seller's delivery and payment terms is the seat of the seller.

12) Place of jurisdiction

a. The place of jurisdiction for all disputes - arising from business relations with the seller including disputes involved in drawing bills of exchange or cheques - is Ravensburg provided that the buyer is a fully qualified merchant, a legal entity or a separate property under public law.

b. If the buyer is a non-merchant the agreement on the place of jurisdiction according to a) is also valid if the buyer moves his domicile or his permanent place of residence out of the reach of the code of civil procedure of the Federal Republic of Germany after signing the contract or if his domicile or his habitual residence is not known at the time of filing an action.

13) Reservation of ownership

a. The goods delivered remain the property of the seller until all debts are paid including balance on current account claims which the seller is entitled to against the buyer. Pursuant to this regulation the seller has the choice to release the goods on demand which are still in his property if their value persistently exceeds the nominal amount of the outstanding accounts by more than 20 %.

b. Manufacture or restructure of the goods supplied by the seller is always effected for the seller as the producer but without obligation for him. If seller's ownership or co-ownership extinguishes due to association it is already now stipulated that buyer's ownership and/or co-ownership in the coherent matter passes to the seller in proportion to its value., i.e. corresponding to the net amount of the invoice charged for the delivery of the goods in proportion to the total value of the matter which was created through the association. The buyer holds the seller's property and/or co-property in custody without charge. Goods, for which the seller holds a property and/or co-property right, are hereinafter called conditional goods.

c. The buyer is entitled to manufacture and sell the conditional goods within regular business unless he is in default with his payment obligations vis-à-vis the seller. He is not allowed to pledge the conditional goods nor to transfer their ownership by way of security. Already now and for security reasons the buyer fully assigns the outstanding amounts - falling due by re-selling the conditional goods or by another legal reason (insurance, forbidden act) - to the seller. This also includes all balance on current account claims. The seller vice versa accepts the assignment. Subject to withdrawal the seller authorises the buyer to collect the outstanding amounts assigned to him for his account but in buyer's own name. The direct debit authorization can only be withdrawn if the buyer does not duly fulfil his payment obligations. Then, on demand of the seller he is obliged to provide information whom he sold which conditional goods and at which price and /or which accounts receivable he acquired from third parties by reselling the conditional goods. Furthermore he is obliged to submit receipts.

d. If third parties access the conditional goods the buyer is to indicate seller's property and is to inform the latter immediately. Costs arising thereof and damage caused at the conditional goods by the access of third parties are borne by the buyer in ratio to the seller.

e. Should the buyer default, the vendor is entitled to take the goods subject to retention of title back and/or demand the assignment of any of the buyer's rights to recovery against third parties.

f. Neither the taking back of goods subject to retention of title under para. e) nor the pledging thereof by the vendor implies any rescission of the contract, unless this consequence is peremptorily prescribed in law.

14) Partial annulment

Partial annulment of a business within the scope of these delivery and payment terms does not affect its effectiveness as a whole.

15) Applicable law

For all contractual agreements concluded with the seller exclusively German law is applicable. Application of the UN accord on contracts concerning the international purchase of goods is excluded.

16) Effectiveness of the delivery and payment terms

The above delivery and payment terms are effective as from 2 February 2009 in lieu of the previously valid terms of business, which are dropped without substitute.

CIRET GmbH