

# General Terms and Conditions of Sale and Delivery of S&F GmbH

## I. General information and scope

1. These general terms and conditions of sale and delivery apply to all our commercial relationships with our customers, business persons pursuant to §14 of the German Civil Code (BGB) or a legal entity under public law or a special fund under public law.
2. The general contractual conditions apply to contracts concerning the sale and/or delivery of movable items, especially machines, irrespective of whether we produce these items or purchase the items from suppliers and therefore a contract for labour and materials pursuant to §651 of the BGB or a purchase contract pursuant to §433 of the BGB exists.
3. Our general terms and conditions of sale apply exclusively. Any differing, contradictory or supplementary general terms and conditions of sale or delivery belonging to the customer shall only form part of this agreement if S&F GmbH has expressly consented to their validity and inclusion. This consent requirement applies in all cases – even, for example, if S&F GmbH performs deliveries to the customer without reservation with knowledge of the purchasing conditions of the customer or other general conditions of the customer.
4. Individual agreements made with the customer in certain cases (including oral agreements, additions and changes) have priority over these terms and conditions of sale and delivery in all cases.
5. Information in these general terms and conditions of sale and delivery on the validity of statutory regulations serves only for clarification purposes. Even without such a clarification, statutory regulations shall of course apply unless they are directly amended or explicitly excluded by these terms and conditions of sale and delivery.

## II. Contract conclusion and documentation

1. The offers of S&F GmbH are non-binding. Dimensional specifications, weights and suchlike are only approximations unless something other has been agreed.
2. Acceptance by S&F GmbH can be declared orally, in writing (e.g. by means of order confirmation), by fax or email or by delivering the goods to the customer.
3. S&F GmbH reserves its right to title and copyright of all documentation handed over to the customer as part of contract implementation (e.g. calculations, drawings, 3D CAD models). This documentation must not be made accessible to third parties unless S&F GmbH expressly consents to this. If no contract transpires, documentation handed over must be returned to S&F GmbH. If the documentation is saved on data carriers, it must be deleted – unless their safekeeping is mandatorily prescribed by law.

### **III. Delivery dates, delivery arrears and cooperation obligations**

1. The delivery date is agreed individually.
2. If no delivery date is agreed individually, the delivery date cited in the order confirmation from S&F GmbH applies, unless the customer immediately objects. If the customer objects, S&F GmbH and the customer will begin negotiations about the delivery date.

If a delivery date is specified by S&F GmbH with 'approximately', the deadline is non-binding, and S&F GmbH will get into arrears at the earliest when a reminder is sent by the customer about the delivery following the lapsing of a delivery date designated 'approximately' and the appropriate period set by the customer for the delivery with or following a reminder has lapsed.

If neither a delivery time was agreed nor stated by S&F GmbH upon acceptance of the order, S&F GmbH is entitled at its own reasonable discretion to stipulate a delivery date pursuant to §315 of the BGB taking into account the time required for the manufacture of the item or, if the item is sourced from third parties, taking account of the lead times of the sub-supplier.

3. If S&F GmbH cannot meet binding delivery deadlines for reasons for which S&F GmbH is not responsible (unavailability of service), S&F GmbH shall notify the customer of this without delay while simultaneously providing a new predicted delivery date. If the service is subsequently not available within the new delivery deadline, S&F GmbH is entitled to withdraw from the contract either wholly or in part; S&F GmbH will immediately reimburse any return service already rendered by the customer.

An example of non-availability of service in this sense is in particular the non-punctual supply of goods and services to S&F GmbH through its sub-suppliers if S&F GmbH has concluded a congruent hedging transaction, neither S&F GmbH nor its suppliers are at fault or S&F GmbH has no obligation to procure in individual cases.

4. S&F GmbH entering into default in delivery is determined by the statutory regulations. In any case, a reminder from the customer is necessary.

The rights of the customer as per No. VIII. 'Other liability' of these general terms and conditions of sale and delivery and the legal rights of S&F GmbH, especially in the case of exclusion of the obligation to render services (e.g. due to the possibility or unreasonableness of the service and/or after fulfilment) remain unaffected.

### **IV. Delivery, transfer of risk, cooperation and delay of acceptance**

1. The delivery takes place ex-warehouse, which is also the place of fulfilment of the delivery and any supplementary performance. The item will be sent to another destination upon the demand of the customer, and to its cost (sales shipment) Provided nothing else has been agreed, S&F GmbH is entitled to determine the nature of the shipment (especially the transport company, shipping route, packaging) itself.
2. The risk of accidental loss or accidental worsening of the items shall be transferred upon handover to the customer at the latest. In the case of a sales shipment, however, the risk of accidental loss or accidental worsening of the items, including risk of delays, is transferred as early as the delivery of the items to the carrier, the freight forwarder or any other individual or institution designated for executing the shipment.

3. If the cooperation of the customer is required for the delivery or manufacture of the item, then the terms of §642 and §643 of the BGB apply accordingly. This means we can demand an appropriate level of compensation as per the requirements of §642 of the BGB or withdraw as per the requirements of §643 of the BGB.
4. If the customer is in default of acceptance, S&F GmbH is entitled to demand compensation for damage resulting from this, including any additional costs incurred (e.g. storage costs). We calculate a lump sum compensation fee for this amounting to €100.00 per calendar day, starting with the delivery date and, in the absence of a delivery date, starting with notification of readiness to dispatch the item.

Proof of greater damage and the statutory claims of S&F GmbH, especially compensation for additional costs, appropriate compensation and termination, remain unaffected. The lump sum fee must also take further monetary claims into account, however. The customer is at liberty to prove that S&F GmbH has incurred wither no damage at all or substantially less damage than that lump sum fee.

## **V. Prices and payment terms**

1. The prices stated by S&F GmbH when the contract was concluded are binding, subject to the respectively applicable statutory sales tax.

Provided nothing else has been agreed, the prices are ex works, including loading at the factory but exclusive of packaging, The packaging costs are separate; they are billed separately.

2. Provided nothing else has been agreed, the purchase price will be paid as follows:
  - 40% of the purchase price following conclusion of the contract, and
  - 60% of the purchase price upon delivery.

S&F GmbH is also entitled (also as part of an ongoing commercial relationship) to perform a delivery wholly or partially only against pre-payment. S&F GmbH will declare such an action at the time of contract conclusion at the latest.

3. In the case of a sales shipment (No. IV. 2.), the customer bears the transport costs ex warehouse and the costs of transport insurance that may be desired by the customer. The customer also covers any customs duties, fees, taxes and other public levies.
4. The customer is only entitled to offsetting or retention rights insofar as its claim has been established as legally valid or is undisputed. In the event of defects to the item, the reciprocal rights of the customer, especially pursuant to No. VII. 6), Line 2 of these terms and conditions of sale and delivery, remain unaffected.
5. If it becomes noticeable that the claims of S&F GmbH for the purchase price are at risk due to the customer experiencing financial difficulty (e.g. an application to open insolvency proceedings) after concluding the contract, S&F GmbH is entitled to refuse service in accordance with statutory regulations and – following the setting of a deadline where necessary – to withdraw from the contract (§321 of the BGB). In the case of contracts concerning the manufacture of non-fungible items – made to specification – we can declare our withdrawal immediately. Statutory regulations concerning the dispensability of setting deadlines remain unaffected.

## VI. Reservation of title

1. Until full payment of all current and future receivables of S&F GmbH vis-à-vis the customer are settled, S&F GmbH reserves title to the sold items.
2. The items under reservation of title may neither be pledged to third parties nor collateralised prior to full payment of the secured receivables. The customer must notify S&F GmbH immediately in writing if an application for opening insolvency proceedings is lodged or if attempts are made by third parties to seize (e.g. pledging) items belonging to S&F GmbH.
3. If the customer acts in violation of the contract, in particular in the event of non-payment of the due purchase price, S&F GmbH is entitled to withdraw from the contract in accordance with statutory regulations and/or to demand the item based on reservation of title. A demand to surrender items does not simultaneously indicate a declaration to withdraw. Instead, S&F GmbH is entitled to simply demand the item be returned and reserve the right to withdrawal. If the customer fails to pay the due purchase price, S&F GmbH may only assert these rights if they have already unsuccessfully set the customer an appropriate deadline for payment or such deadline setting is unnecessary according to statutory regulations.
4. Until revocation, the customer is authorised to sell on and/or further process the items under reservation of title as part of ordinary course of business as per c) below. In such cases, the following terms also apply.
  - a) Reservation of title covers products arising from the processing, mixing or connecting of the delivered items to their full value, whereby S&F GmbH is considered the manufacturer. If the ownership rights of third parties persist in the event of processing, mixing or connecting with their items, then S&F GmbH will acquire joint ownership as a ratio of the invoice values of the items processed, mixed or connected. In all other respects, the same applies to the creation of products as for the items supplied under reservation of title.
  - b) The customer will immediately assign by way of collateral to S&F GmbH any receivables arising vis-à-vis third parties from a subsequent sale of the item or product, in their entirety or to the proportion of joint ownership of S&F GmbH, in accordance with the above paragraph. S&F GmbH will accept this assignment. The obligations of the seller cited in Paragraph 2 also apply in consideration of the assigned receivable.
  - c) The customer and S&F GmbH remain entitled to recover the receivable. S&F GmbH obligates itself not to recover the receivable if the customer delivers on its payment obligations to S&F GmbH, there is no deficiency in its ability to perform and S&F GmbH is not asserting reservation of title by exercising a right as per Para. 3. If this is the case, however, then S&F GmbH may demand the customer notifies S&F GmbH of the assigned claim and its debts, provides all of the information that is needed to collect them, hands over the associated documentation and notifies the debtors (third parties) of the assignment. Furthermore, in such cases S&F GmbH is entitled to revoke the authorisation of the customer for further selling or processing of the items under reservation of title.
  - d) If the achievable value of the securities of S&F GmbH exceeds the claim by more than 10%, S&F GmbH is free to choose the securities to be released upon the request of the customer.

## VII. Claims for defects of the customer

1. For the rights of the customer in the event of material defects and defects of title – including incorrect and short deliveries, as well as improper assembly or poor assembly instructions – statutory regulations apply, provided nothing else is specified below. In all cases, the special statutory provisions for the final delivery of the goods to a consumer (supplier recourse and the statute of limitations relating to this) remain unaffected.
2. The basis for liability for defects on the part of S&F GmbH is primarily the agreement made concerning the condition of the item.
3. If a condition has not been agreed, one must apply statutory regulations to judge whether a defect exists or not (§ 434 I Line 2 and Line 3 of the BGB). S&F GmbH assumes no liability for the public pronouncements of the manufacturer or third parties (e.g. marketing statements).
4. Claims for defects of the customer require that the customer has complied with its statutory obligations for inspection and notification of defects (§377 and §381 of the HGB [the German Commercial Code]).
5. If the delivered item is defective, S&F GmbH can first choose whether it will provide supplementary performance by eliminating the defect (rectification) or by supplying a defect-free item (replacement delivery). The right of S&F GmbH to refuse supplementary performance under statutory regulations remains unaffected.
6. S&F GmbH is entitled to make the owed supplementary performance dependent on the customer paying the due purchase price. However, the customer is entitled to hold back a proportion of the purchase price corresponding to the scale of the defect.
7. The customer must provide S&F GmbH with the time and opportunity required for the owed supplementary performance; particularly to hand over the rejected goods for inspection purposes. In the case of a replacement delivery, the customer must return the defective item as per statutory provisions.
8. The supplementary performance includes neither the removal of the defective item nor its re-installation if S&F GmbH was not originally obliged to install the goods. The validity of the provisions of §439 III of the German Civil Code in the version applicable from 01/01/2018 is excluded.
9. Expenses necessary for the purpose of inspection and supplementary performance, especially transport, handling, labour and material costs – but not removal and installation costs – are to be borne by S&F GmbH if a defect actually exists. Otherwise, we can demand repayment of the costs incurred from the unjustified request for defect remedying – particularly inspection and transport costs – unless the lack of defectiveness of the goods was not recognisable to the purchaser.
10. In urgent cases, (e.g. if operational safety is endangered or to prevent disproportionate damage), the customer has the right to eliminate the defect itself and to demand from S&F GmbH compensation for the costs objectively required for this. Prior to such self-remedy, S&F GmbH must be notified immediately, beforehand where possible. The right to self-remedy does not exist if S&F GmbH were entitled to refuse appropriate supplementary performance in accordance with statutory regulations.

11. If supplementary performance has failed, a deadline set by the customer for supplementary performance has expired, or this is unnecessary according to statutory regulations, the customer may withdraw from the contract or lower the price. There is however no right of withdrawal for minor defects.
12. Claims from the customer for compensation or remuneration of wasted expenses also exist in the case of defects only to the extent specified in No. VIII. and are otherwise ruled out.

### **VIII. Other liability**

1. Unless otherwise specified in these terms and conditions of sale and delivery, including the following conditions, S&F GmbH shall be liable for infringements of contractual, pre-contractual and non-contractual obligations in accordance with the legal regulations.
2. S&F GmbH is liable for compensation claims – regardless of the legal reason – within the scope of the fault-based liability in the event of intent and gross negligence. In the event of ordinary negligence, subject to a more lenient standard of liability, in accordance with statutory regulations (e.g. for the care taken in its own affairs), S&F GmbH is liable only
  - a) for damages resulting from physical injury, damage to health and the loss of life,
  - b) for damages resulting from a not insignificant violation of an essential contractual obligation; i.e. essential contractual obligations, the fulfilment of which is essential for the proper performance of the contract and on the fulfilment of which the contractual partner relies on and may rely on. In such cases, however, the liability of S&F GmbH is restricted to compensation for foreseeable, typically occurring damage.
3. The liability limitations resulting from Para. 2 also apply to obligation violations by or to the detriment of persons the faults of whom S&F GmbH must take responsibility in line with statutory regulations. They do not apply if S&F GmbH has maliciously concealed a defect or has made a guarantee for the condition of the goods and for the claims of the customer in accordance with the German Product Liability Act.
4. In the case of a breach of duty which does not involve a defect, the customer may only withdraw from or terminate the contract if S&F GmbH is responsible for this breach of duty. A free right of termination of the customer, especially according to §651 and §649 of the German Civil Code in the version applicable up to 31/12/2017 and §648 of the German civil code in the version applicable from 01/01/2018 is excluded. Statutory requirements and legal consequences shall apply in all other respects.

### **IX. Statute of limitations**

1. In deviation of §438 I 3 of the BGB, the general period of limitation for claims for material defects and defects of title is one year from the time of delivery. If acceptance is agreed, the time period starts upon acceptance. If the delivered item is a building, the statutory regulations apply in this regard.
2. Additional, special statutory provisions concerning the period of limitation remain unaffected, especially §438 I 1, III and §444 of the BGB.

3. These periods of limitation of the law governing the sale of goods also apply to contractual, pre-contractual and non-contractual claims of the customer for compensation based on a defect of the item, unless the application of the regular statutory period of limitation – §195 and §199 of the BGB – would lead to a shorter period of limitation in certain cases. However, claims of the customer for compensation for damages as per No. VIII. Para. 2, Line 1 and Line 2a) and in accordance with the German Product Liability Act are subject exclusively to the statutory regulations on the statute of limitation.

## **X. Applicable law and place of jurisdiction**

1. The law of the Federal Republic of Germany applies to these general contractual terms and conditions and the legal relationship between us and the customer under exclusion of international uniform law, especially the UN Convention on Contracts for the International Sale of Goods (CISG). The German version is decisive in the event of disputes arising from or in connection with these conditions, especially concerning their formulation.
2. If the purchaser is a merchant in the sense of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, the sole place of jurisdiction responsible, even internationally, for all disputes arising directly or indirectly from this contractual relationship is where the S&F GmbH company headquarters are based, in 88287 Grünkraut-Gullen, Germany. In any event, S&F GmbH is also entitled to file suits at the place of fulfilment of the delivery obligation as defined in these general terms and conditions of delivery or in accordance with an overriding individual agreement or at the customer's general place of jurisdiction. Compulsory statutory provisions on competency which deviate from these terms and conditions of sale and delivery remain unaffected.
3. These general terms and conditions of sale and delivery apply to all contracts pursuant to I. of these conditions which are concluded from 01/05/2017.

- End of the General Terms and Conditions of Sale and Delivery of S&F GmbH -