

General Conditions of Sale for J&S GmbH

§ 1 General – Scope

- (1) Our conditions of sale apply exclusively; we do not recognise any purchaser/customer conditions which conflict with or differ from our conditions of sale, unless we have expressly consented to them in writing. Our conditions of sale continue to apply even if we complete the delivery to the purchaser/customer without reservation, in full knowledge of conflicting or differing purchaser/customer conditions.
- (2) Any agreements made between us and the purchaser for the purposes of contract execution are established in this contract in writing. Sub-agreements and changes/amendments must be made in writing. This also applies to waivers of the written form requirement.

§ 2 Quote – Changes to quote documents, presentations, services

- (1) Our offers are subject to change. Once the customer has placed their order, the contract takes effect by virtue of our written order confirmation, which is definitive for contract content.
- (2) We reserve ownership rights and copyright for illustrations, drawings, calculations, documents and other content (including in electronic form). The customer must obtain our express written consent before forwarding these to third parties.
- (3) Information on the delivery or service object is no guarantee of item quality, unless this is expressly marked.
- (4) We reserve the right to modify the contractual object during the delivery period without prior notice if the object and its appearance do not result in lost quality or other infeasible changes for the customer. Feasible changes for the customer particularly include technical modifications, improvements in keeping with the latest standard of technology and business, structural enhancements, and improvements in material selection.
- (5) If the customer wishes to change their order, this requires our express, written consent. We are entitled to make our consent contingent on appropriate adjustment of contractual conditions, particularly increased remuneration and/or postponement of deadlines. Agreements governing the changes must be in writing.

§ 3 Prices – Payment conditions

- (1) Unless otherwise stated on the order confirmation, our prices are “ex works”, excluding packaging, shipping, freight, postage, customs and insurance costs; these items are charged separately.
- (2) Our prices do not include the legal VAT, which is shown separately at the legal rate applicable on the date of invoicing.
- (3) We are unable to predict trends in material prices, especially in view of the unstable raw materials situation. For contractually agreed delivery periods of more than 3 months, we therefore reserve the right to increase or reduce prices according to the cost changes occurring after contract conclusion, particularly due to changes in material prices. Cost changes are proven to customers upon request.
- (4) Cash discounts are not permitted, except if expressly agreed on in writing. Unless otherwise stated in the order confirmation, invoices are payable net (in full) within 30 days of the invoice date. The legal regulations governing payment default apply.
- (5) The acceptance of cheques and bills of exchange require a separate written agreement. If bills of exchange requiring payment abroad or out of town are accepted, no liability is assumed for prompt presentation or protesting. Charges relating to bills of exchange or discounts are borne by the customer.
- (6) The customer is only entitled to offset if their counterclaims are legally established, undisputed or have been acknowledged by us. They may only exercise a withholding right if their counterclaim is based on the same contractual relationship. We are entitled to offsetting and withholding rights as per the legal regulations.
- (7) If the customer’s finances significantly deteriorate, after contractual conclusion, threatening our claims to return services, or if we learn that the customer does not have access to sufficient liquid funds, or if the customer has provided false information on their credit rating at the time of contract conclusion, we are entitled (if a duty of advance payment exists) to withhold our service until the return service or collateral is provided. If the customer is not prepared to provide the return service or collateral in exchange for our service, despite being requested to do so by an appropriate deadline, we are entitled to withdraw from the contract.

§ 4 Delivery, delivery period

- (1) Unless otherwise agreed, deliveries are made ex works/warehouse to the stated delivery address. The delivery period advised by us only commences once all technical and commercial issues have been clarified, and once it has been established in writing. Agreed delivery periods and deadlines are always approximate and generally non-binding, unless otherwise expressly agreed in individual cases. The delivery period is calculated from the day of order confirmation until notice of readiness for dispatch. All deliveries are subject to correct, punctual availability of supplies and raw materials.

- (2) Delivery schedules must be advised to us promptly (at least 8 weeks before delivery). Unless otherwise agreed, the following customer acceptance obligation for requested goods applies: 4 weeks from request for finished products, and a further 10 weeks for primary material for the quantities requested.
- (3) Adherence to our delivery obligation is also subject to prompt, correct fulfilment of the customer's obligation. We reserve the right to object to unfulfilled contracts. We particularly reserve the right to withhold further services if the customer has not paid for partial services already rendered.
- (4) Appropriate partial deliveries feasible for the customer are permitted, without the need for any separate agreement.
- (5) If the customer defaults on acceptance or culpably breaches other obligations to co-operate, we are entitled to demand compensation for any incurred damage, including any additional expenses, subject to further claims.
- (6) Cases of force majeure entitle us to defer delivery by the duration of the hindrance and an appropriate response time, or to fully or partly withdraw from the contract based on the unfulfilled component. Force majeure means strikes, lock-outs or unforeseeable, unavoidable circumstances, e.g. operational disturbances, which, despite all possible efforts, render punctual delivery impossible for us; we must provide proof of this. This also applies if the aforementioned hindrances occur during a delay or at the subcontractor's end. The customer can ask us to declare, within two weeks, whether we wish to withdraw from the contract or deliver within an appropriate extension period. If we fail to do this, the customer may withdraw from the unfulfilled section of the contract. We will immediately inform the customer if any case of force majeure as detailed above occurs.

§ 5 Transfer of risk

- (1) Unless otherwise stated in the order confirmation, deliveries are "ex works". The Incoterms 2000 EXW at the J&S production site apply as per the order confirmation.
- (2) The risk of any accidental loss or damage to the item is transferred to the customer upon handover of the item to the contracted transport company, including for carriage-paid deliveries. In the event of delivery delays caused by the customer, the risk is transferred upon notice of readiness for dispatch.

§ 6 Warranty

- (1) Customer warranty claims require that the customer duly comply with their duties of inspection and notification as per § 377 of the German Commercial Code.
- (2) In the case of justified warranty claims, we are only obliged to choose to either perform repairs (subsequent performance) to eliminate the defect or to deliver a flawless item (in exchange for the originally delivered item). In the case of subsequent performance, we are obliged to bear all expenses necessary to rectify the defect, particularly transportation, commuting, labour and material costs, insofar as these do not increase as a result of the purchased item being taken to a location other than the place of performance.

(3) If we do not comply with this obligation within an appropriate time frame, or if subsequent performance fails despite a repeated attempt, the customer is entitled to reduce the purchase price or withdraw from the contract. Further claims, particularly reimbursement or compensation claims for direct and consequential damages, only exist as per the rules in § 7.

(4) After consultation with the customer, we are entitled to have repairs performed by a third party contracted by us.

(5) The statute of limitation for warranty claims is 12 months, starting from the transfer of risk. The state of limitation remains unaffected in the event of delivery recourse claims pursuant to §§ 478, 479 of the German Civil Code.

(6) Liability for quality or service life guarantees, and liability for maliciously concealed defects, deliberate intent, gross negligence, death, physical injury or harm to health is not affected by the aforementioned provisions (particularly point 5). The legal regulations/warranty periods apply in these cases.

§ 7 Liability

(1) In all cases where we are obliged to provide compensation or reimbursement due to contractual or legal claim bases, we can only be held liable if we are responsible for gross negligence, death, physical injury or harm to health. No-fault liability as per the German Product Liability Act remains unaffected, as does liability for culpable breach of important contractual duties (duties which must be fulfilled in order for the contract to be duly executed, and which the contractual partner can rely on being fulfilled); however, liability is limited to typical, foreseeable damages, except for the cases in clauses 1 and 2. The aforementioned rules do not involve changes to the onus of proof which disadvantage the customer in any way.

(2) Insofar as liability for damages is excluded or limited in any way, this also applies in relation to personal liability for damages.

§ 8 Retention of title

(1) We reserve the right to ownership of the delivery object until receipt of all payments resulting from the supply contract. The items also remain our property until fulfilment of all claims we are entitled to raise against the customer, even if the purchase price has been paid for specifically listed receivables. In the case of running accounts, the reserved ownership of the deliveries (reserved items) is considered collateral for our invoice balance.

(2) Any processing or handling by the customer is performed on our behalf, under exclusion of ownership acquisition as per § 950 of the German Civil Code; based on the ratio between our items' net invoice value and the net invoice value of the processed/handled items, we become co-owner of the resulting products, which are considered reserved items to safeguard our claims as per paragraph 1.

(3) If the customer processes (combines/mixes) the items with other items not belonging to us, the provisions of §§ 947, 948 of the German Civil Code apply, and our co-ownership share in the new products are deemed reserved items as defined by these conditions.

- (4) The customer is only permitted to resell the reserved items as part of conventional business operations, and on condition that they also arrange retention of title with their customers as per paragraphs 1 to 3. The purchaser is not entitled to dispose of the reserved items in any other manner, particularly through pledging or use as collateral.
- (5) In the event of resale, the customer hereby assigns the receivables they incur as a result of the resale, including all ancillary rights, to us until fulfilment of all our claims as per paragraph 1. At our request, the customer is obliged to immediately provide us with all information and documents necessary to assert our rights against the customer's customer.
- (6) If the customer resells the reserved items in paragraph 2 and/or 3 together with other items not belonging to us, the assignment of the purchase price claim as per paragraph 5 only applies up to our reserved items' invoice value.
- (7) If the value of our collateral exceeds our total receivables by more than 10%, we are obliged, at the customer's request, to release collateral at our discretion.
- (8) We must be immediately advised if any third parties seize or confiscate the reserved items. Resulting intervention costs are always borne by the customer, unless they are to be borne by third parties.
- (9) In the event of illegal conduct by the customer, particularly payment default, we are entitled to retract the purchased items after setting an appropriate deadline – unless this is not required in individual cases. By retracting the purchased items, we withdraw from the contract. After reclaiming the purchased items, we are authorised to dispose of them, and this entitles us to sell them privately or by auction. The sales proceeds must be credited against the customer's liabilities, including damage claims (particularly lost profit) – minus appropriate exploitation costs.

§ 9 Tools, moulds etc.

- (1) The customer is charged a share of the tool costs for tools and moulds we manufacture, or have manufactured by a third party, to complete a customer order. One third of this must be paid in full at the time of order (order receipt), one third after the first parts produced using tools, and one third after serial production approval.
- (2) If the customer does not place an order for parts as per the quote within 6 months of the tool/mould being manufactured, we are entitled to charge the customer the full tool costs. In this exceptional case (cf. point 5), the tool becomes the customer's property once the tool costs have been paid in full.
- (3) Tool costs are charged separately from the item cost in the invoice.
- (4) The tools are carefully stored for repeat orders for the agreed duration, insured against fire damage, and undergo general maintenance. We only bear the costs for replacing old, unusable tools if a relevant breach of obligation can be proven.
- (5) As the tool cost share does not cover our expenses for tool design, construction, start-up, ongoing maintenance, servicing etc., tools shall remain our property. We are not obliged to return them, even after the order has been completed. Our storage obligation expires if the customer does not place any further orders within 2 years of the last delivery.
- (6) Tools and equipment provided by the customer are not covered by our insurance.

§ 10 Third-party proprietary rights

(1) The customer bears sole responsibility and liability for ensuring that trademarks, item designs, lettering etc. do not breach third-party rights. If the items are manufactured and delivered in a style particularly specified by the customer (based on diagrams, samples or other specific information), the customer must ensure this does not breach any third-party rights, especially patents, utility models or other proprietary rights or copyrights. The customer is obliged to exempt us from any third-party claims resulting from such a breach at our first request.

(2) In the case of our own creations, we will defend the customer against any claims resulting from the contractual delivery object breaching an industrial property right or copyright. We bear any costs or compensation charged to the customer by the courts, insofar as the customer immediately reports these claims to us in writing, has not acknowledged the claimed breach of proprietary rights, and either leaves any disputes (including any extra-judicial regulations) to us, or only engages in these with our consent.

If the customer stops using the delivery object for reasons of damage mitigation or other important grounds, they are obliged to advise the third party that this usage stoppage does not imply acknowledgement of the claimed breach of proprietary rights.

If claims have been raised, or are expected to be raised, against the customer as per the provisions of this section, we can modify or exchange the delivery item at our expense, insofar as this is feasible for the customer. If this or a usage right cannot be reasonably achieved, the contractual partners may withdraw from the purchase agreement. In this case, we are liable to the customer for the damages they incur as a result of this, pursuant to § 7.

Insofar as the customer is themselves responsible for the breach of proprietary rights, no claims can be raised against us.

No further customer claims can be raised for breach of third-party proprietary rights. This ruling does not apply in cases of deliberate intent, gross negligence, death, physical injury or harm to health.

§ 11 Jurisdiction – applicable law

(1) Insofar as the customer is a registered trader, public legal entity or special fund under public law, our headquarters are the place of jurisdiction; we are, however, also entitled to take action against the customer at their local court.

(2) Federal German law applies; the United Nations Convention on Contracts for the International Sale of Goods shall have no effect.

§ 12 Final provisions

(1) Rights resulting from the contractual relationship with us may only be transferred with our prior written consent.

(2) Should any of these conditions be null and void or invalid, or if we and the customer amicably agree for it/them not to be executed, this shall not affect the validity of the remaining provisions. The same applies in the event of omissions. The parties shall replace the invalid or infeasible condition, or fill the omission, with a ruling which best pursues the original economic purpose of the original provision as permitted by law.