

General Terms and Conditions

General Terms and Conditions
of Federntechnik Umformtechnik
Keltenstr. 16 - 18
D-72766 Reutlingen (Mittelstadt)
Germany
for domestical industrial sales

Important Note!

We do not close contracts with end-consumers. Only entrepreneurs within the meaning of §14 BGB (German Civil Code) may place orders.

§1 General/Conclusion of Contract

1. By placing the order, the purchaser exclusively agrees to our delivery and payment terms. These also apply to future orders, even if not stated or referred to explicitly, if they have been sent to the purchaser in a prior confirmed delivery. Even if the order is placed under terms differing from our delivery and payment terms, exclusively our delivery and payment terms shall be valid, even if we do not object. Therefore, deviating terms shall only be valid, if they have been explicitly accepted by us in written form.
2. We reserve the right to verify the completeness of the data provided by the ordering party. Should we require further data or in case of incompleteness, the ordering party is obliged to provide the missing data.
3. Our sales and delivery terms stated in the following shall apply, even if they stand in conflict with the purchase terms of the purchaser.
4. All our offers are non-binding. Verbal arrangements, agreements, warranties and guarantees of our employees in relation to the conclusion of contract shall only be applicable, if confirmed by us in written form.
5. Therefore, an order shall not become binding until we have officially confirmed it. All product-related information provided in the online catalogue is non-binding. It does not provide a guarantee for specific features.
6. In case of spelling, printing or calculation errors on the website or in the catalogue, the Schweizer GmbH & Co. KG is entitled to withdrawal from the contract.
7. Our statements shall be valid only if expressed in written form.

§ 2 Conclusion of Contract Only with Entrepreneurs within the Meaning of § 14 BGB.

1. Schweizer GmbH & Co. KG provides services and goods only to entrepreneurs within the meaning of § 14 BGB, not to end-consumers. Therefore, by placing the order, the ordering party explicitly agrees to being an entrepreneur within the meaning of § 14 BGB.
2. If Schweizer GmbH & Co. KG comes to know that the purchaser, contrary to his declaration, is not an entrepreneur within the meaning of § 14 BGB, Schweizer GmbH & Co. KG may resign from the contract.

§ 3 Prices and Terms of Payment

1. Unless otherwise stated in the order confirmation, our stated prices shall apply, exclusive of packaging, insurance, value added tax and postage. These additional costs will be charged to the purchaser's account.
2. The minimum order value shall be € 25. For special articles, other minimum order values may apply. These will be mentioned in the offer or order confirmation.
3. The postage method and its costs shall be calculated on an individual basis and depend on the Number of items Weight Destination (within Germany, within Europe, worldwide) Type of packaging.
4. Additional deliveries and services shall be charged separately.
5. If the recipient is a new purchaser, an international client or has outstanding bills or questionable credit levels, we shall reserve the right to deliver via cash on delivery or prepayment.
6. The following payment terms shall apply to our sales, unless otherwise contracted. Payments shall be payable within 30 days of receipt of invoice without any deductions. If payments are received within 10 days or receipt of invoice, we grant a 2% discount, if the purchaser is not in default with any other payments. If the due date is exceeded or the purchaser is in default with payments, interest of 8% above the respective statutory base interest rate p.a. shall accrue. The payment counts as belated at latest 10 days after the due date and shall not require an official reminder. The purchaser shall be entitled to offset only insofar as the purchaser's counterclaim is acknowledged, undisputed or assessed in a legally binding judgment and is entitled to claim retainer rights only on the basis of the mentioned judgment.
7. If the purchaser is in default with payments, we shall have the right to accelerate all of the purchaser's payments.
8. We shall have the right to assign receivables from our business relations.

§ 4 Content and Scope of Delivery

1. In case of custom manufactures of special products in our program, in particular fine springs, the piece number can not precisely be adhered to out of technical reasons. Therefore, we shall reserve the right to deliver a surplus of up to 10% and to add this amount to the calculations.
2. This divergence shall also be possible in deliveries packaged according to weight regulations.

§ 5 Drawings and Descriptions

1. If one of the contracting partners presents the other with drawings or technical documentation about the product to be delivered or its production, this documentation shall remain the property of the presenting partner.

§ 6 Samples and Manufacturing Equipment

1. Production costs for samples and manufacturing equipment (tools, designs, templates etc.) shall be charged separately from the delivered product, unless otherwise contracted. This also applies to manufacturing equipment needed as a result of abrasive wear.
2. We shall bear the costs for the manufacturing equipment's maintenance, appropriate storage and the risk of its damage or breakage.
3. If the purchaser refuses or ends his cooperation during the production of the samples or manufacturing equipment, he must accept all costs generated up to that moment.
4. The manufacturing equipment remains, even if paid for by the partner, in our property, at least until the delivery process is concluded. The partner has the right to claim the equipment only after completion of the contract and after fulfilling his contractual obligations completely.
5. We gratuitously keep the manufacturing equipment for three years after the last delivery to our partner. Subsequently, we enquire in written form about instruction on the equipment's further usage within 6 weeks. Our obligation to keep the equipment ends, if the purchaser does not instruct us or place a new order within these 6 weeks.
6. Manufacturing equipment produced exclusively for a partner shall only be used for the production of goods for third parties, if the partner permits.

§ 7 Confidentiality

1. All documentation (including samples, models and information) and knowledge the partners gained from the business relation, shall only be used for mutual purposes. They shall not be disclosed to third parties and be treated like private documentation, especially if the partner defines them as confidential and expresses his interest in their concealment.
2. This obligation shall begin upon initial receipt of the documentation or information and end 36 months after conclusion of the contract.
3. This obligation shall not apply to documentation and information of common knowledge or to information known to the partner previous to his obligation to confidentiality, or to information received from a third party having the full right to disclosure, or to information and knowledge the receiving party developed independently without access to any confidential information received from the disclosing party.

§ 8 Delivery Period

1. The delivery period shall begin as soon as the order confirmation is dispatched, however not before the ordering party has supplied all documentations, permits, approvals etc.
2. The delivery period shall count as adhered to, if the ordered product has left the manufacturing plant or is ready for shipping before the end of the delivery deadline.
3. The delivery period shall be extended appropriately, if unforeseen events that lie outside the deliverer's control occur, for example, operational disruptions, strikes, lock-outs, delayed deliveries by a sub-contractor, exclusion in our own works or a subcontractor's, insofar as these significantly influence the completion or shipping of the ordered product.
4. If the ordering party sustains damage due to a delay caused by the deliverer, the ordering party shall have the right to claim compensation, if he renounces his right to other claims. This compensation shall be ∞ %, all together however, shall not exceed 5% of the value of the ordered product part that could not be used or processed contractually due to its delay.
5. Adherence to delivery obligations shall be subject to due and proper fulfilment of the ordering party's obligations.

§ 9 Delivery Delay

1. If we can foresee a delivery delay, we shall inform the ordering party immediately in written form, naming the reasons and, if possible, the expected delivery time.
2. If the delivery period is delayed due to a circumstance named in § 14 or due to actions or failures by the ordering party, the delivery period may be extended appropriately.
3. The purchaser (ordering party) shall only have the right to withdraw from the contract, if we are responsible for a delivery delay and have not complied with a final deadline set by the ordering party.

§ 10 Right of Withdrawal

1. In the case of unforeseen events in the sense of § 3 of the Terms of Delivery, insofar as these events significantly alter the financial value or the essence of the service or product, or significantly affect the operation of the delivering party, and in the case of belatedly emerging unfeasibility, we shall reserve the right to withdraw from the contract partly or entirely. The ordering party shall not have a claim for compensation in case of such a withdrawal.

§ 11 Passing of Risk

1. The risk of loss and/or damage shall pass to the purchaser, also for partial deliveries and also if we are responsible for shipping or shipping costs, latest at dispatch of the product(s). If the delivery is delayed due to reasons caused by the purchaser, the risk shall pass to the purchaser as soon as the product is ready for delivery. The delivering party is, however, obliged to arrange adequate insurance of the products, paid for by the purchaser, if he demands so.

§ 12 Retention of Title

1. We retain title to the products and goods delivered by us until receipt of all payments and fulfilment of all claims, including future, provisory and current account balance claims.

2. Handling and processing of goods subject to retention of title is conducted by us as manufacturer within the meaning of § 959 BGB (German Civil Code), without obligations. In case of processing, amalgamation or combination of goods subject to retention with other goods by the purchaser, we gain the right of ownership of the resulting goods in the proportion of the invoice value of the goods subject to retention of title to the other goods' value. If our right of property expires due to processing, amalgamation or combination of goods, the purchaser shall assign to us now by way of security and to the full extent any claims of property and expectant rights on the resulting product(s) or item(s), in the amount of the invoice value of the goods subject to retention of title and in the case of processing in the proportional amount of the invoice value of the good subject to retention of title to the invoice value of the other processed goods. The purchaser shall store these goods gratuitously for us. Our co-ownership of the processed or combined goods is valid in the meaning of § 1.
3. The purchaser shall be entitled to resell and dispose of goods subject to retention of title in the ordinary course of business, only if he claims retention of title of these goods and has duly met our obligations. However, the purchaser already assigns to us now by way of security and to the full extent any claims arising from re-sale or any other legal principle connected with the goods subject to retention of title (including all taxes, if applicable), regardless of whether the goods were sold with or without further processing. The purchaser shall remain authorized to collect these debts even after their assignment. Our authorization to collect the debts independently shall remain unaffected. We will, however, not collect the debts independently, if the purchaser meets his obligations towards us, is not in default of payment, no insolvency proceedings have been instituted and no other defaults exist, as described in § 2. If this is the case, we can require the purchaser to give full particulars about the assigned debts and the debtors, about all necessary information to collect the debts, to deliver the corresponding documents and to inform the debtor (the third party) about the assignment. The usage of goods subject to retention of title for the completion of contracts for work and material shall also count as resale.
4. In the event of attachment, confiscation or other injunctions or intervention by third parties, the purchaser shall notify us in written form immediately, in order to give us the opportunity to lodge third party proceedings.
5. The purchaser shall not have the right to assign the claim to a third party, also not based on a debt order by us. This prohibition of assignment of claims shall not apply if it is an old-line-factoring assignment, which is indicated to us and where the factoring profit exceeds the value of the claim secured by us. Our claim shall become payable immediately when the factoring profit is credited.
6. We shall be obliged to release the existing securities on request of the purchaser, if the realistic value of the security exceeds the accounts receivable to be secured by more than 20 %.
7. In the event of violations of obligations by the purchaser, such as default in payment, we shall be entitled to take back goods subject to retention of title and to enter the premises of the purchaser for this specific purpose. This shall also apply, if after conclusion of contract, it becomes evident that the purchaser will be unable to meet his financial obligations towards us. This taking back of goods is not a contract cancellation; hence the specifications of the Bankruptcy Act remain unaffected.

§ 13 Defect Liability

1. The condition of the goods complies solely on the prearranged technical delivery terms. In the case of delivery based on drawings, specifications, models etc., provided by our partner, he shall be liable for their fitness for the designated purpose. The crucial point for the contract-complying condition of the goods is the point of Passing of Risk according to § 8.
2. We shall not take responsibility for defects arising from improper or unsuited usage by the partner or a third party, by usual wear and tear or careless usage. We shall also not take responsibility for the consequences of improper modifications, alterations made without our consent, or repairs done by our partner or third parties. This also applies to damage and defects, which affect the functioning of the product only insignificantly.
3. Defective goods shall not be processed or altered and must be disclosed to us according to legal rights immediately.
4. If the defect disclosure was placed rightfully and within the limitation period, we may either repair the defect or replace the goods. Goods about which there have been complaints are to be returned to us immediately, transport costs shall be paid by us, if the claim is rightful. If the partner does not comply with these regulations or alters the mentioned goods without our consent, he shall lose any rights on repair or replacement of the goods.
5. We shall only pay for the costs for the replacement of the goods, if these are appropriately proportional to the purchasing price of the goods. We shall not pay for delivery costs if the goods are to be delivered to a different address than the previously agreed, unless this address corresponds to the goods' usage place according to the contract.
6. After the purchaser has accepted the goods, he shall have no right claim the repair or replacement of the goods, if their defectiveness was noticeable at the point of delivery acceptance (risk passing). If the defects remained unnoticed by the purchaser due to negligence, he shall only have the right to make claims, if we have withheld the damage deliberately, or given a guarantee for the quality of the goods.
7. If the purchaser does not immediately give us the opportunity to verify the claimed defects, in particular if he refuses to present the goods or samples of the goods about which there have been complaints for examination upon request, any compensatory rights shall expire.
8. Other compensatory rights of the purchaser shall comply with § 10 of these Terms and Conditions. The purchaser's right of recourse according to Articles 478, 479 of the BGB (company rights of recourse), shall remain unaffected.

§ 14 General Liability Exemptions and Limitation

1. We shall be liable for the violation of contractual and non-contractual duties, in particular on account of impossibility, delay, faulty contract conclusion and illegal actions – also for our leading employees, representatives and agents – only in cases of intent or gross negligence on our or our employees' part, limited however to the foreseeable damage in standard contracts. This liability exemption shall also apply to defects and consequential losses.

2. This shall not apply to culpable breach of essential contractual obligations, in so far as the fulfilment of the contract is jeopardized, to intentional injury to life, body or health and also not, if and so far as we have given a guarantee for the quality of the sold goods, as well as to deficiency claims in accordance with the German Product Liability Act. The regulations about the burden of proof remain unaffected.
3. The above provisions shall not apply to our liability in the case of intended or gross negligence of our duties, culpable injury to life, body or health, as well as to the limitation of the rights of recourse according to §§ 478, 479 of the BGB.
4. The statutory regulations shall apply to the limitation period.

§ 15 Force Majeure

1. Force majeure, labour disputes, riots, measures by public authorities, suspensions or delays of deliveries by suppliers, and similar unforeseeable, unavoidable and serious occurrences shall relieve the parties to the contract from their obligations for the time of the disturbance and to the extent of its effect. This also applies, if the disturbance occurs at a time when the party affected is in delay, unless the delay was caused by intent or gross negligence on his behalf. The parties to the contract shall be obliged to provide all necessary information within their bounds of possibility and to adjust their duties to the altered circumstances.

§ 16 Validity, Data Protection

1. Even if individual provisions of these General Terms and Conditions are or become ineffective, the remaining parts of the contract and its validity in general shall remain unaffected. Statutory regulations shall replace the provision in question. In no case shall this provision of the General Terms and Conditions be replaced by the purchaser's Terms and Conditions.
2. Any alterations or additions to this contract shall require a written verification by us to become effective, this also applies to the deviation from the requirement of written consent itself.
3. We shall be authorized to process and archive the data given to us within the framework of the mutual business relations, or to give the task to process and archive this data to a third party – even if this data belongs to third parties – according to the German Data Protection Act.

§ 17 Applicable Law, Place of Performance and Jurisdiction

1. Only the laws of the Federal Republic of Germany shall apply to this legal relationship. The Convention on Contracts for the International Sale of Goods (CISG) as well as international conventions, even after their acceptance as German law, shall not apply.
2. Unless stated otherwise in the order, the place of performance shall be the location of our registered offices.
3. Place of jurisdiction shall be the location of our registered offices.