

Standard Terms and Conditions of Sale for use in business with companies

I. General Terms

1. These standard terms and conditions of delivery and payment apply exclusively. The validity of conflicting or divergent terms of business of the buyer is subject to our express written consent.
2. In accordance with the Federal Data Privacy Protection Act (*Bundesdatenschutzgesetz*) we hereby point out that we will electronically process the data required for business transactions.

II. Prices and Terms of Payment

1. Our offers are subject to change as regards the price, quantity, delivery period and possibility of delivery. Orders and oral covenants shall not be deemed accepted until they have been confirmed by us in writing or executed.
2. Changes in prices are permitted if a period of more than six (6) weeks lies between conclusion of the contract and the agreed delivery date. Accordingly, if there is an increase in wages, material costs or a market-induced increase in cost prices up to the time of completion of the delivery, we shall be entitled to raise the price reasonably in accordance with the increase in costs. The buyer may only withdraw if the price increase is considerably higher than the increase in the general costs of living for the period between the order and the delivery, as published by the Federal Statistics Office (*Statistisches Bundesamt*).
3. The purchase price and the charges for ancillary services shall be due for payment upon delivery of the contractual goods.
4. Cheques and bills of exchange provided shall only be deemed payments after they have been cashed. Acceptance of bills of exchange shall always be subject to a prior written agreement with us. If bills of exchange are accepted, the discount and collection fees of the banks shall be charged. They are due immediately and shall be borne by the buyer.
5. In export transactions the costs entailed by receipt of payment shall be borne by the buyer insofar as such costs are incurred in the country in which the buyer's enterprise is seated.
6. Default interest shall be charged at the rate of 8% p.a. above the basic interest rate applicable at any time.
7. The buyer shall only be entitled to rights of set-off and rights of retention if its counter-claims based on agreements concluded with us have been established by final judgment, are undisputed or have been recognized by us.

III. Retention of Title

1. The goods delivered by us shall remain our property until payment in full of all claims against the buyer under the business relationship.
2. If the goods to which the title is retained are combined or mixed with other goods which are not our property, we shall become a co-owner in proportion to the invoice value of the goods to which title is retained vis-à-vis the other goods. Processing and adaptation of the goods shall take place for us as the manufacturer in the sense of § 950, German Civil Code (BGB), without any obligation being imposed on us. We shall become a co-owner of the products created by modification or processing in accordance with the above provision.
3. The buyer may not pledge or transfer as security the goods to which title is retained. The buyer may pass on the goods subject to a retention of title within the course of proper business insofar as it agrees on a retention of title. The buyer now assigns to us the claims, including all ancillary rights, accruing to it against the buyer from the sale or other disposal and from the retention in title, until our claims against him have been satisfied. The buyer shall remain entitled to collect such claims also after the assignment. Our right to collect the claim ourselves shall remain unaffected. However, we undertake not to collect the claim as long as the buyer complies with its payment obligations out of the proceeds collected, does not default on payment and, in particular, as long as no petition for the commencement of insolvency or composition proceedings has been filed and payments have not been discontinued. In that case, however, we may require the buyer to notify us of the

assigned claims and the relevant debtors, to provide all information required for collection, hand over the relevant documents, and to notify the debtors (third parties) of the assignment. Insofar as claims from re-selling do not pass to us, the buyer irrevocably authorizes us at the time of placing the order to collect for its account its claims deriving from the re-selling of the goods to which title has been retained, and at the same time irrevocably instructs the debtors of such claims to make payments on the relevant claims directly to us, at our request. We on our part undertake to avail ourselves of the payment order only in the event of arrears on payments on the part of the buyer. Upon the satisfaction of this prerequisite, the buyer's authorization to collect the relevant claims shall expire.

4. We may require the goods delivered to be returned if
 - a) the buyer defaults on its contractual obligations, or
 - b) if there are reasonable doubts as to the buyer's credit-worthiness based on facts, or
 - c) in case of discontinuation of payment, a petition for insolvency or composition filed by the buyer or a third party.
5. We may at any time execute the best possible realization of goods to which title was retained and which have been returned to us, by way of a private sale or a public auction. The proceeds shall be provided to the buyer following the deduction of costs, unless they serve to cover existing claims.
6. If goods subject to a retention of title are attached or seized by third parties, the buyer shall point out our proprietary right and notify us without undue delay.
7. We undertake to release the security to which we are entitled, at the buyer's request, insofar as the value of our security exceeds the claims to be secured by more than 20%; we are free to select the security to be released.

IV. Delivery Period

1. The delivery period shall commence upon dispatch of the confirmation of order, yet not before documents, permits and exemptions to be provided by the buyer as the case may be have been furnished, and, if appropriate, not before the receipt of an agreed down payment.
2. Compliance with the delivery period shall be decided by the date of dispatch ex works. If the buyer has chosen a different manner of shipping in accordance with Clause V below, the delivery period shall be observed by us if we have notified the buyer of our willingness to dispatch.
3. In cases of force majeure the delivery periods shall be extended or postponed appropriately. Cases of force majeure are also industrial action in one's own or another company, delays in transit lying outside our intent and possibility to exercise influence, machinery breakage, measures in the exercise of jurisdiction, and other circumstances for which we are not responsible. We shall notify the buyer of the event without undue delay. The buyer may withdraw from the contract no earlier than six (6) weeks after having received our notification.
4. Partial deliveries are permissible provided they do not lead to disadvantages for the buyer.
5. If we fail to comply with delivery periods, the buyer shall not be entitled to the rights under § 281, § 323, German Civil Code (BGB), until it has granted us a reasonable set period for delivery which - diverging in this respect from the statutory provision - is combined with a declaration that the buyer will refuse to accept performance after expiry of the set period; following expiry of the set period without results the claim for performance shall be excluded. If the dispatch or delivery is delayed at the buyer's request by more than one (1) month after notification of willingness to dispatch is provided, a storage fee of 0.5% of the price of the goods to be delivered, up to a maximum of 5% of that price in total, may be charged to the buyer for each month commenced. The right to present proof of higher or lower storage costs shall remain unaffected

V. Passing of the Risk

1. All goods are in transit at the buyer's risk as soon as they leave our works or the distribution centre, irrespective of which party bears the freight charges. We will select the shipping route and the manner of shipping. If the buyer desires a different shipping route or different manner of shipping, we will accommodate that wish at the buyer's risk and expense. In case of agreed delivery freight paid, the additional freight in such cases vis-à-vis the cheapest shipping possibility shall be borne by the buyer.
2. Packaging will become the property of the buyer. Unless otherwise agreed, the costs for postage and packaging shall be charged by us and invoiced separately. In case of damage in transit, the buyer shall cause the relevant ascertainment of facts to be conducted by the competent offices without undue delay.
3. Discharged packaging of hazardous substances may be returned to our headquarters if in a condition that does not exclude reuse or material recycling. Furthermore, the buyer may return transport and/or sales packaging to our headquarters if the packaging is not impurified or in a condition that does not exclude reuse or material recycling. In case the buyer disposes of the packaging himself, he will ensure legal compliance.

VI. Acceptance Obligation; Costs of Cancellation

1. The buyer shall accept delivery of the goods at the place of performance. The buyer may examine the goods at the place of delivery within five (5) working days after receipt of the notice of availability or other notice of completion.
2. If the buyer withdraws without justification from an order placed, we may charge 10% of the purchase price for costs incurred due to processing of the order and for lost profit. The buyer is at liberty to prove lower damage and we are at liberty to claim higher actual damage.

VII. Liability for Defects

1. Unless otherwise agreed the quality of the goods owed shall depend on our specifications in force at the time of conclusion of the contract.
2. As a businessman the buyer has to observe the obligation to examine and file a complaint pursuant to § 377 of the German Commercial Code (HGB). Hidden material defects have to be notified immediately after they are detected.
3. For material defects in existence at the time the risk passes we shall provide rectification of defects or a replacement product at our discretion. The right to refuse rectification or a replacement due to disproportionately high costs shall remain unaffected.
4. Insofar as permissible under the statutory provisions (§ 440, 1st sent., § 323 (2), § 281 (2), German Civil Code (BGB)), the buyer shall be entitled to claim damages in lieu of performance, to reduce the purchase price or, in case of a significant defect, to withdraw from the contract only if it first grants us a reasonable set period - of at least two (2) weeks - in order to rectify defects or provide a replacement.
5. Apart from this, damages claims based on a material defect are governed by the restrictions of Clause VIII below.
6. Claims based on defects shall become statute-barred, except in cases of intent or fraudulent concealment of a defect, within twelve (12) months as of delivery. This shall not apply to damages claims due to a defect insofar as such claims are based on injury to life of limb or health, or insofar as we are guilty of gross negligence.

VIII. Damages and Compensation for Futile Expenditure

1. We are liable for damages and compensation for futile expenditure, except in cases of a breach of essential contractual obligations, only if we, our statutory representatives or persons employed in the performance of our obligations, are guilty of intent or gross negligence.
2. Other than in cases in which we, our statutory representatives or executive officers are guilty of intent or gross negligence, the expenditure shall be limited to the typically foreseeable damage at the time of conclusion of the contract.
3. The above limitations on liability shall also apply to any concurrent claims based on tort.

4. Damages claims based on injury to life or limb or health as well as claims based on the German Product Liability Act (*Produkthaftungsgesetz*) shall remain unaffected.

IX. Withdrawal

1. The customer may not withdraw on the basis of a breach of obligations which is not a defect in the goods delivered unless we are responsible for the breach of obligations, even though the other statutory prerequisites are given.
2. Withdrawal is excluded if the breach of obligations is insignificant.

X. Proprietary Rights of Third Parties

1. The buyer shall notify us in writing at the earliest possible point in time if a third party claims or asserts in or out of court a proprietary right in respect of the goods delivered. We shall be given an opportunity to comment before a claim based on an alleged infringement of a proprietary right is recognized. On request we shall also be provided with authorization to conduct the negotiations or the litigation with the third party for our own account and at our own responsibility.
2. In case of a culpable breach by the buyer of its obligations pursuant to Clause X.1 above, the buyer shall be liable to us for the resulting damage.

XI. Business Secrets

1. The Supplier shall treat our orders and all related commercial and technical details as business secrets.
2. Our business partners agree not to pass on to any unauthorised third parties any data arising in the context of the business relationships and to protect and hold such data in custody against access and abuse by unauthorised persons"

XII. Choice of Law - Venue - Safeguard Clause

1. The substantive law of the Federal Republic of Germany shall govern the contractual relationship to the exclusion of the UN CISG. Place of performance for delivery and payment is Rothenburg ob der Tauber.
2. If the buyer is a businessman in the sense of commercial law or has no general venue within Germany, the exclusive venue for all legal disputes arising between the parties under or in connection with the agreement shall be Ansbach. We are, however, entitled to sue the buyer at any other place at which it has a venue.
3. The transfer of rights and obligations of the buyer under agreements concluded with us is subject to our written consent in order to be valid.
4. Should individual provisions of these standard terms and conditions of delivery and payment be invalid, this shall not affect the validity of the remaining provisions of the agreement or of these standard terms and conditions.

XIII. Reservations of proprietary rights - only for ebalock® products

1. The goods delivered by us shall remain our property until payment in full of all claims against the buyer under the business relationship. The buyer may sell the goods within the course of proper business. The buyer may not pledge or transfer as security the goods.
2. The buyer already transfers all claims from selling- on or other legal ground for goods to which title is retained to us. We accept this transfer.
3. Any buyers action contrary to contract, in particular non-payment of the purchasing price, authorizes us to withdraw from the contract based on the legal provisions and to request the return of the goods based on the reservation of proprietary rights and the withdrawal. In case of non-payment of the purchasing price by the buyer, we may only claim our rights after having unsuccessfully set an appropriate period for payment or such an appointment of date is unnecessary per legal provisions.
4. Should the realizable value of securities exceed our claims by more than 10% we will release securities at our discretion upon written buyers request. In the choice of released securities we will duly consider the justified interest of the buyer