



General Terms and Conditions for Sales and Delivery of Töpfer GmbH for Entrepreneurs

Section 1

General / scope of application

1. Our sales and delivery terms solely apply. We do not recognise contrary conditions or conditions of the customer deviating from our conditions of sale, this does not apply if we have expressly agreed to the conditions of the customer in writing.

Our sales and delivery terms and conditions also apply, if we carry out the delivery to the customer unconditionally having knowledge of conditions which are contradictory or conditions of the customer deviating from our sales and delivery conditions.

2. Our sales and delivery conditions only apply towards entrepreneurs in the sense of Section 310, paragraph 1, BGB.
3. Our sales and delivery conditions also apply to all future business dealings with the customer.

Section 2

Offer / offer documents

1. Our offers are without engagement. Technical changes, especially changes in form, colour and/or weight remain within reasonable limits.
2. As supplier of natural products, we indicate that natural materials are generally subject to the natural fluctuations regarding form, colour, taste and structure, so that the differences caused by this, also to samples sent are not to be regarded as defects. Even samples provided can only indicate an approximation of the natural material.
3. By ordering the goods, the customer makes a binding declaration to buy the goods. The order has to ensue in written form. The contract for the ordered goods is only deemed concluded when we can confirm the order within two weeks after we have received it or carry out the order.
4. We have the right to include subcontractors to fulfil our contractual duties. For the purpose of the manufacture and/or delivery by subcontractors in accordance with the contract, we are entitled to pass on documents needed for this to the subcontractor, as e.g. illustrations, drawings, raw materials and production specifications. The subcontractor is committed to maintaining confidentiality.
5. We are entitled to excess or short deliveries, insofar as this is reasonable.

Section 3

Prices / payment conditions

1. Insofar as nothing else ensues from the order confirmation, our prices apply "ex works".
 2. The legal VAT is not included in our prices. It shall be shown separately on the invoice at the rate applicable at the time of invoicing.
 3. The deduction of discount requires a separate written agreement.
 4. Insofar as nothing else ensues from the order confirmation, the purchase price (without deduction) is due net for payment within 14 days from the date of the invoice. The statutory regulations regarding the consequences of the delay of payment apply.
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5. The customer can only set off his claims if his legally established, undisputed or accepted by us. The customer is only authorized to exercise a right of retention insofar as his claim is based on the same contractual relationship.

Section 4

Delivery period

1. A delivery deadline is only approximately valid insofar as it has not been expressly assured to be binding in writing.
2. The delivery deadline begins with the date of the order acceptance. If the confirmed order is changed, the delivery deadline begins with the confirmation of the change.
3. If the customer is in delay in acceptance or he culpably violates other obligations to cooperate, we are entitled to demand the compensation for the losses that arise to us as a result, including any additional expenditures. Any further claims remain reserved.
4. Insofar as the requirements of paragraph 3 exist, the risk of an accidental loss or the accidental deterioration of the purchased item transfers to the purchaser at the time in which he has got into acceptance or debtor's delay.
5. We are liable according to the legal regulations insofar as the underlying contract of purchase is a fixed transaction as defined by Section 286, paragraph 2, No. 4, BGB or Section 376, HGB. We are also liable according to the legal regulations insofar as a consequence of a delay in delivery we are responsible for, the purchaser is entitled to assert that his interest in a further performance of contract has become void.
6. We are liable according to the legal regulations insofar as the delay in delivery is caused by an intentional or grossly negligent violation of contract we are responsible for; the fault of our representatives or vicarious agents is to be attributed to us. Insofar as the delay in delivery is not caused by an intentional violation of contract we are responsible for, our liability for damage shall be limited to the foreseeable typical damage.
7. Further legal claims of the customer remain unaffected.

Section 5

Force majeure

1. In case as a result of force majeure the execution of the order is delayed, thus the delivery period agreed on extends by the duration of the disruption. We will inform the contractor about the occurrence of a case of force majeure without delay. Apart from that, the contract will continue to exist unchanged.
2. If the disruption lasts longer than six weeks, thus both contractual parties have the right to rescind from the contract.

Section 6

Transfer of risk

1. Insofar as the order confirmation states nothing else, the delivery "ex works Dietmannsried" is agreed on. With handing over the goods to the transport company the risk is passed to the customer.
 2. On the customer's wish, we will cover the delivery with a transport insurance; the costs accruing insofar are borne by the customer.
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Section 7

Quality / warranty

1. We are bound to observe the foodstuff regulations valid in Germany and the EU. Beyond this, our goods comply with special specifications (Töpfer specification). These Töpfer specifications are known to our customers and can be requested at any time from us, either in writing or via internet under www.toepfer-gmbh.de.

Insofar as nothing else is agreed on expressly in written form, the descriptions of our products are pure quality specifications and not warranty statements or certain assurances.

2. On demand of the customer and against appropriate remuneration, we are ready to send samples of the ordered goods and the packaging materials used for this. The inspection of such a sample however, does not release the customer from the legal obligations of examination of contracted goods upon delivery.
3. Apparent defects are to be reported by the customer at the latest within 10 days after reception of the goods. The timely dispatch of the notification of defects is sufficient to comply with the deadline.
4. If the delivered goods have defects, the customer can demand the elimination of the defect or the delivery of flawless goods according to his choice. In the case of the defect elimination we are bound to bear all expenses, especially transport, road, labour and material costs necessary to achieve the elimination of the defects, insofar as they have not increased by the purchase item having been brought to a place different from the place of fulfilment.
5. If the subsequent fulfilment fails, thus the customer is entitled to demand rescission or price reduction according to his choice .

Section 8

Liability for defects

1. Claims for defects of the customer presuppose that he has duly complied with his obligation to examine and complain according to Section 377, HGB.
2. We are liable according to the legal regulations insofar as the customer has asserted claims for damages which are caused by intent or gross negligence, including intent or gross negligence of our representatives or vicarious agents. Insofar as we are not held responsible for the intentional violation of the contract, the liability for damages is limited to the foreseeable typically occurring damage.
3. We are liable according to the legal regulations insofar as we have culpably violated an essential contractual obligation. In this case, however, the liability for damages is limited to the foreseeable typically occurring damage. Insofar as the customer is entitled to compensation for the damage, our liability is limited to the compensation of the foreseeable typically occurring damage.
4. The liability due to culpable injury to life, the body or health remains untouched; this also applies to the compulsory liability according to the product liability law.
5. Unless specified otherwise further above the liability is excluded.

Section 9

Total liability

1. A further liability to damages than intended in Section 8 is excluded – regardless of the legal nature of the claim asserted. This especially applies to compensation claims from fault at contract conclusion, due to other obligation violations or due to tortious claims for compensation for property damages according to Section 823, BGB.
 2. Insofar as the liability for damages towards us is excluded or limited, this also applies regarding the personal liability for damages of our salaried employees, employees, staff, representatives and vicarious agents.
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Section 10
Retention of title

1. We shall reserve title to the goods until the full payment of all claims from the current business relationship with our customers.
2. With behaviour in violation of the contract, especially with delay in payment, we are entitled to take back the goods. When we take back the goods, this is no rescission of the contract, unless we had expressly declared it in writing. The event of our seizure of the delivered objects is always a cancellation of the contract. After taking back the goods, we are entitled to their exploitation; the proceeds of the exploitation are to be set off against the obligations of the customer - less appropriate exploitation costs.
3. With seizure or other intervention of third parties, the customer has to inform us without delay in writing, so that we can file a suit according to Section 771, ZPO. Insofar as the third party is not in a position to refund the court and extrajudicial costs of an action to us according to Section 771, ZPO, the customer is liable for the loss which has occurred to us.
4. The customer is entitled to sell the delivered goods in the ordinary course of business; however, he already assigns to us all demands in the final invoice amount (including VAT) of our claim which arise from reselling to his customers or third parties.

The customer shall still be authorised to collect this claim after the assignment. Our authorisation to collect this claim ourselves is not affected thereby. However, we are bound not to collect the claim as long as the customer complies with his payment obligations from the collected proceeds, is not in delay of payment and especially has not filed for insolvency proceedings or a suspension of payment has occurred. However if this is the case, thus we can demand that the customer makes the assigned claims and their debtors known to us, makes all information necessary for the collection and hands out the relevant documents and informs his debtors of the assignment.

We are bound to release the securities available to us on demand of the customer, as the realisable value of our security exceeds the claim to be secured by more than 10%. We shall be responsible for selecting which securities to release.

Section 11
Place of jurisdiction / place of fulfilment

1. Insofar as the customer is a merchant, our place of business is place of jurisdiction; however, we are entitled to also sue the customer at the local courts at his place of residence.
 2. The law of the Federal Republic of Germany shall apply.
 3. Insofar as nothing else is stated in the order confirmation, our place of business is the place of fulfilment.
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