

General Terms and Conditions of Sale

Nölle Profi Brush registered trader, owner: Richard Nölle

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§ 1 Scope, form

- (1) These General Terms and Conditions of Sale (GTC) shall apply to all our business relationships with our customers ('Buyers'). The GTC shall only apply if the Buyer is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law.
- (2) The General Terms and Conditions of Sale shall apply in particular to contracts for the sale and/or delivery of movable items ('goods'), regardless of whether we manufacture the goods ourselves or purchase them from suppliers (Sections 433, 650 of the German Civil Code (BGB)).
- (3) Our GTC apply exclusively. Any deviating, conflicting or supplementary general terms and conditions of the Buyer shall only become part of the contract if and to the extent that we have expressly agreed to their applicability. This requirement of consent applies in all cases, for example even if the Buyer refers to its general terms and conditions in the context of the order and we do not expressly object to this.
- (4) Unless otherwise agreed, the GTC in the version valid at the time of the Buyer's order or, in any case, in the version last communicated to the Buyer in text form shall also apply as a framework agreement for similar future contracts without us having to refer to them again in each individual case. Individual agreements (e.g. framework supply contracts, quality assurance agreements) and information in our order confirmation shall prevail over the GTC. In case of doubt, trade clauses shall be interpreted in accordance with the Incoterms® published by the International Chamber of Commerce in Paris (ICC) in the version valid at the time of conclusion of the contract.
- (5) Legally binding declarations and notifications by the Buyer in relation to the contract (e.g. setting of deadlines, notification of defects, withdrawal or reduction) must be made in writing. Written form within the meaning of these GTC includes written and text form (e.g. letter, email, fax). Statutory formal requirements and further evidence, in particular in cases of doubt regarding the legitimacy of the declarant, remain unaffected.
- (6) References to the applicability of statutory provisions are for explanatory purposes only. Even without such an explanation, the statutory provisions apply insofar as they are not directly amended or expressly excluded in these GTC.

§ 2 Conclusion of contract, content of contract

- (1) Our offers are subject to modification and non-binding. This also applies if we have provided the Buyer with catalogues, other product descriptions or documents – including in electronic form – to which we reserve ownership rights and copyrights.
- (2) The order of goods by the Buyer is considered a binding contractual offer. The same applies to individual orders within any framework agreements that may exist with the Buyer. We are entitled to accept this contractual offer within five working days of its receipt by us.
- (3) Acceptance shall be declared in writing (e.g. by order confirmation).
- (4) Our information on the subject matter of the delivery or service (e.g. weights, dimensions, load capacity, tolerances and technical data) as well as representations thereof (e.g. drawings and illustrations) are therefore only approximate, unless the usability for the contractually intended purpose requires exact conformity. They are not guaranteed characteristics, but descriptions or identifications of the delivery or service. Deviations customary in the trade and deviations due to legal regulations or technical improvements are permissible, provided they do not impair the usability for the contractually intended purpose.

§ 3 Delivery terms and delays

- (1) The delivery term shall be agreed individually. Compliance with the agreed delivery term requires that all commercial and technical issues between the Buyer and us have been clarified and that the Buyer has fulfilled all obligations imposed on them.
- (2) If we are unable to meet binding delivery deadlines for reasons beyond our control (non-availability of the service), we will inform the Buyer immediately and at the same time notify it of the expected new delivery term. If the service is still not available within the new delivery term, we are entitled to withdraw from the contract in whole or in part; we will immediately refund any consideration already paid by the Buyer. Non-availability of the service occurs, for example, in the event of late delivery by our supplier, if we have concluded a congruent covering transaction, in the event of other disruptions in the supply chain, for example due to force majeure, or if we are not obliged to procure the goods in individual cases.
- (3) The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a payment notice by the Buyer is required.
- (4) The rights of the Buyer pursuant to § 8 of these GTC and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), remain unaffected.

§ 4 Delivery, transfer of risk, acceptance, default of acceptance

- (1) Unless otherwise agreed in individual cases, delivery shall be ex works, which shall also be the place of performance for the delivery and any subsequent performance. If expressly agreed in individual cases, the goods shall be shipped to another destination at the Buyer's expense (sales shipment). Unless otherwise agreed, we shall be entitled to determine the type of shipment (in particular the transport company, shipping route, packaging) ourselves.
- (2) The risk of accidental loss and accidental deterioration of the goods shall pass to the purchaser at the latest upon delivery. In the case of sale by delivery to a place other than the place of performance, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass to the Buyer upon delivery of the goods to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. If acceptance has been agreed, this shall be relevant for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services shall apply mutatis mutandis to an agreed acceptance. The handover or acceptance shall be deemed to have taken place if the Buyer is in default of acceptance.
- (3) If the Buyer defaults on acceptance, fails to cooperate or delays our delivery for other reasons for which the Buyer is responsible, we shall be entitled to demand compensation for the resulting damage, including additional expenses (e.g. storage costs).
- (4) We are entitled to make partial deliveries if
 - the partial delivery is usable for the Buyer within the scope of the contractual purpose,
 - delivery of the remaining ordered goods is ensured, and
 - this does not result in significant additional expenditure or costs for the Buyer (unless we agree to bear these costs).

§ 5 Prices and payment terms

- (1) Unless otherwise agreed in individual cases, our current price lists at the time of conclusion of the contract shall apply, ex works, plus statutory value added tax.
- (2) In the case of sales shipment (§ 4 (1)), the Buyer shall bear the transport costs ex works and the costs of any transport insurance requested by the Buyer. Any customs duties, fees, taxes and other public charges shall be borne by the Buyer.
- (3) Unless otherwise agreed in individual cases, the purchase price is due and payable immediately net after invoicing and delivery (i.e. notification that the goods are ready for collection or, in the case of sales shipment, notification that the goods are ready for handover).
- (4) Upon expiry of the above payment period, the Buyer shall be in default. During the period of default, interest shall be charged on the purchase price at the applicable statutory default interest rate. We reserve the right to assert further claims for damages caused by default.
- (5) The Buyer shall only be entitled to set-off or retention rights insofar as his claim has been legally established or is undisputed. In the event of defects in the delivery, the Buyer's counter-rights, in particular pursuant to Section 7 (6) sentence 2 of these GTC, shall remain unaffected.

§ 6 Retention of title

- (1) We retain title to the goods sold until all our current and future claims arising from the purchase agreement and an ongoing business relationship (secured claims) have been paid in full.
- (2) The goods subject to retention of title shall not be pledged to third parties or transferred as security before the secured claims have been paid in full. The Buyer shall notify us immediately in writing if an application for the opening of insolvency proceedings is filed or if there is a threat of third-party access (e.g. seizures) to the goods belonging to us.
- (3) In the event of breach of contract by the Buyer, in particular non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of retention of title. The demand for return does not simultaneously constitute a declaration of withdrawal; rather, we are entitled to demand only the return of the goods and to reserve the right to withdraw from the contract. If the Buyer fails to pay the purchase price due, we may only assert these rights if we have previously set the Buyer a reasonable deadline for payment without success or if such a deadline is dispensable in accordance with the statutory provisions.
- (4) Until revoked in accordance with (c) below, the Buyer is authorised to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition
 - (a) The retention of title extends to the full value of the products created by processing, mixing or combining our goods, whereby we are considered the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their ownership rights remain in force, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same shall apply to the resulting product as to the goods delivered under retention of title.
 - (b) The Buyer hereby assigns to us as security all claims against third parties arising from the resale of the goods or the product, either in full or in the amount of our possible co-ownership share in accordance with the above paragraph. We accept the assignment. The Buyer's obligations set out in paragraph 2 shall also apply in respect of the assigned claims.

- (c) The Buyer remains authorized to collect the claim alongside us. We undertake not to collect the claim as long as the Buyer meets its payment obligations to us, there is no deficiency in its ability to pay, and we do not assert our retention of title by exercising a right in accordance with paragraph 3. If this is the case, however, we may demand that the Buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents, and informs the debtors (third parties) of the assignment. However, we are also entitled to disclose the assignment to third parties ourselves. In addition, we shall be entitled in this case to revoke the Buyer's authority to resell and process the goods subject to retention of title.
- (d) If the realizable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the Buyer's request.

§ 7 Claims for defects by the Buyer

- (1) Unless otherwise specified below, the statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title (including incorrect and short delivery). In all cases, the statutory provisions governing the sale of consumer goods (Sections 474 et seq. BGB) and the Buyer's rights arising from separately issued guarantees shall remain unaffected.
- (2) Unless explicitly agreed with the Buyer in individual cases, we do not grant any voluntary guarantees.
- (3) We shall not be liable for defects that the Buyer is aware of at the time of conclusion of the contract or is unaware of due to gross negligence (§ 442 BGB). Furthermore, the Buyer's claims for defects presuppose that he has fulfilled his statutory obligations to inspect and give notice (§§ 377, 381 HGB). In the case of goods intended for further processing, an inspection must in any case be carried out immediately before processing. If a defect becomes apparent during delivery, inspection, or at any later point in time, we must be notified of this in writing without delay. In any case, obvious defects must be reported in writing within seven working days of delivery at the latest, and defects that are not apparent during inspection must be reported in writing within the same period after discovery at the latest. If the Buyer fails to carry out the proper inspection and/or notification of defects, our liability for the defect that was not reported or not reported in a timely or proper manner is excluded in accordance with the statutory provisions.
- (4) If the delivered good is defective, we may initially choose whether to provide subsequent performance by remedying the defect (repair) or by delivering a defect-free good (replacement delivery). If the type of subsequent performance chosen by us is unreasonable for the Buyer in individual cases, the Buyer may reject it. Our right to refuse subsequent performance under the statutory conditions remains unaffected.
- (5) We shall be entitled to make the subsequent performance owed conditional upon the Buyer paying the purchase price due. However, the Buyer shall be entitled to retain a portion of the purchase price commensurate with the defect.
- (6) The Buyer shall give us the time and opportunity necessary for the subsequent performance due. In the event of a replacement delivery, the Buyer shall return the defective item to us at our request in accordance with the statutory provisions; however, the Buyer shall not be entitled to a claim for return. Subsequent performance does not include the removal, dismantling, or similar of the defective item, nor the installation, fitting, or similar of a non-defective item, if we were not originally obliged to provide these services; claims by the Buyer for reimbursement of corresponding costs ("removal and installation costs") remain unaffected.
- (7) We shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor, and material costs, as well as any removal and installation costs, in accordance with the statutory provisions and these GTC, if a defect actually exists. Otherwise, we may demand reimbursement from the Buyer for the costs incurred as a result of the unjustified request to remedy the defect if the Buyer knew or could have recognized that there was in fact no defect.
- (8) If a reasonable period set by the Buyer for subsequent performance has expired without success or if it is dispensable according to the statutory provisions, the Buyer may withdraw from the purchase contract or reduce the purchase price in accordance with the statutory provisions. However, there is no right of withdrawal in the case of an insignificant defect.
- (9) Claims by the Buyer for reimbursement of expenses pursuant to Section 445a (1) BGB are excluded, unless the last contract in the supply chain is a consumer goods purchase (Sections 478, 474 BGB). Claims by the Buyer for damages or reimbursement of futile expenses (§ 284 BGB) shall also exist in the event of defects in the goods only in accordance with §§ 8 and 9 below.

§ 8 Other liability

- (1) Unless otherwise specified in these GTC, including the following provisions, we shall be liable for any breach of contractual and non-contractual obligations in accordance with the statutory provisions.
- (2) We shall be liable for damages—regardless of the legal basis—within the scope of fault-based liability in cases of intent and gross negligence. In cases of simple negligence, we shall be liable, subject to statutory limitations of liability (e.g. diligence in our own affairs; insignificant breach of duty), only for damages resulting from the breach of an essential contractual obligation (an obligation whose fulfillment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.
- (3) No limitations of liability shall apply to damages resulting from injury to life, limb, or health. Furthermore, they shall not apply if a defect has been fraudulently concealed or a guarantee has been given for the quality of the goods, or to claims by the Buyer under the Product Liability Act.
- (4) The limitations of liability arising from this § 8 shall also apply to third parties and in the event of breaches of duty by persons (including for their benefit) for whose fault we are responsible in accordance with statutory provisions.
- (5) In the event of a breach of duty that does not constitute a defect, the Buyer may only withdraw from the contract or terminate it if we are responsible for the breach of duty. The Buyer's right to terminate the contract at will (in particular pursuant to Sections 650, 648 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

§ 9 Limitation period

- (1) Notwithstanding § 438 (1) No. 3 BGB, the general limitation period for claims arising from material defects and defects of title is one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance.
- (2) The above period shall not apply to claims for damages by the Buyer arising from injury to life, limb, or health or from intentional or grossly negligent breaches of duty by us or our vicarious agents, which shall become time-barred in accordance with the statutory provisions.

§ 10 Choice of law and place of jurisdiction, final provisions

- (1) These GTC and the contractual relationship between us and the Buyer shall be governed by the laws of the Federal Republic of Germany, excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods (CISG), and excluding the conflict of law rules of private international law.
- (2) If the Buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law, or a special fund under public law, the exclusive—including international—place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Wuppertal. The same shall apply if the Buyer is an entrepreneur within the meaning of Section 14 of the German Civil Code (BGB). However, we shall also be entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these GTC or a prior individual agreement or at the Buyer's general place of jurisdiction. Overriding statutory provisions, in particular those relating to exclusive jurisdiction, shall remain unaffected.
- (3) Should individual provisions of the contract be invalid, this shall not affect the validity of the remaining provisions. In the event of an invalid provision, the parties are obliged to negotiate a valid and reasonable replacement provision that comes as close as possible to the economic purpose pursued by the parties with the invalid provision.