

Standard Terms and Conditions of Sale and Delivery of Falken GmbH

§ 1 Application

1. We deliver stationery and office supplies (hereinafter the 'Goods') to our customers (hereinafter the 'Buyers') strictly on the basis of these Standard Terms and Conditions of Sale and Delivery. They will become integral part of the purchase contract. Any purchase terms and conditions of the Buyer which are inconsistent with the terms and conditions herein, are hereby rejected. These Terms of Sale also apply to all future transactions. Any variation to these Terms shall require our express consent, even if we make unreserved deliveries to the Buyer despite our awareness of the Buyer's terms and conditions.
2. These Standard Terms and Conditions apply exclusively to entrepreneurs as defined and referred to in sections 310 (1) and 14 of the German Civil Code (BGB), to legal entities under public law and special funds under public law.

§ 2 Contract, reservation of right to cancellation

1. Our offers are non-binding and are only invitations to the Buyer to make a purchase offer. Images, drawings, technical specifications and particulars of weights constitute mere agreements on specifications, but no warranties of specifications. The contract is concluded by the Buyer's placement of an order (offer) and our subsequent acceptance. We will accept the order in writing or by shipment of the ordered goods.
2. If instalment deliveries are agreed with the Buyer, each instalment shall be deemed to be a separate transaction. Complaints regarding an instalment shall not affect the fulfilment of the remainder of an order.
3. If it becomes apparent, after the contract is concluded, that the payment of the purchase price is jeopardised by the Buyer's inability to perform, for instance by filing an application for the institution of insolvency proceedings, we will have the right to refuse performance and cancel the contract, with a notice period if required, in accordance with the law (section 321 of the German Civil Code).

§ 3 Agreed specifications

1. Only the specifications contained in our product descriptions shall be deemed agreed.
2. Where we provide samples or prototypes to the Buyer, their specifications shall be binding only if these specifications are explicitly agreed as the specifications of the Goods.
3. Information on the Goods, especially information on properties and usability, shall be deemed warranties only if agreed as such.

§ 4 Delivery

- 1.** Delivery dates are agreed individually with the Buyer or notified with the acceptance of the order.
- 2.** The fulfilment of the contract will be conditional on timely deliveries by our suppliers if a matching cover transaction has been entered into and the delay was caused by neither our fault nor the fault of our supplier.
- 3.** The delivery is deemed made in time if the Goods have left our factory within the agreed timeframe for delivery. If despatch is delayed for reasons for which we are not responsible, the delivery timeframe shall be deemed met if readiness for despatch is notified within the agreed timeframe.
- 4.** If we are unable to meet our delivery obligation due to unforeseen circumstances that are not our fault (non-availability), we will promptly notify the Buyer and at the same time inform the Buyer if and when delivery is expected to take place. Continued non-availability for more than three months will entitle the Buyer to cancel the contract in respect of the unfulfilled part thereof.
Once fulfilment has become absolutely impossible, we will have the right to cancel the contract in whole or in part and will refund payments made by the Buyer without undue delay. Fulfilment will be impossible especially in the event of war, natural disaster, lock-out, strike and traffic disruption.

§ 5 Shipment

- 1.** Unless agreed otherwise, we shall choose the route and type of shipment. We will accommodate for requests of the Buyer where this is possible. Any additional costs so caused shall be borne by the Buyer.
- 2.** The risk of accidental destruction and deterioration of the Goods shall pass to the Buyer no later than upon hand-over of the Goods; if the Goods are shipped, the risk shall pass to the Buyer upon hand-over of the Goods to the carrier. If a shipment is postponed upon request of the Buyer, the risk shall pass to the Buyer upon notification of the readiness for despatch.
- 3.** Reusable packaging shall be returned at the times indicated by the Seller. Reusable pallets shall be exchanged 'pallet for pallet' in accordance with the exchanging criteria of the European Pallet Pool (<http://www.epal-pallets.org>). For each pallet that is not exchanged, the Buyer shall pay a loss fee of EUR 12.00.
- 4.** Shipped Goods will be insured by us only if expressly requested by the Buyer and at the Buyer's expense. Fragile Goods, however, will be insured by us, at the Buyer's expense, against transport damage, including normal breakage, without any specific instruction by the Buyer.

§ 6 Prices, payment terms

- 1.** We charge the prices for the Goods in accordance with the price list valid at the time the contract is concluded. Unless agreed otherwise, our prices are quoted in EUROS 'ex works', exclusive of shipment fees and VAT and exclusive of packaging, which will be charged extra.
- 2.** Our invoices are payable within 14 days from delivery of the Goods with a 2% discount or within 30 days net. The payment is deemed made at the time the monies are credited to our bank account. If the Buyer defaults on a payment, all invoices outstanding at the time of the default event shall become payable immediately without any discounts.
- 3.** Our pricing is based on costs at the time the order is placed. If costs change significantly after the placement of the order, specifically the costs of production and operating materials, energy, wages and salaries, we shall have the right to change our prices accordingly.
- 4.** The Buyer shall be entitled to set off against sums owed only if the Buyer's counterclaim is uncontested or finally established in law. The Buyer shall be entitled to make retentions only if the Buyer's counterclaim is based on the same contract and uncontested or finally established in law.

§ 7 Retention of Title

- 1.** We shall remain the owner of the delivered Goods until they have been paid in full. If the Buyer has paid the purchase price for the delivered Goods and there are other outstanding amounts owed by the Buyer under any other contract with us, we further reserve property in and title to the delivered Goods until all amounts owed to us have been paid in full, including any negative current account balance.
- 2.** The Buyer is not entitled to pledge or assign the Goods as security until all our claims from the purchase contract and the business relationship have been paid in full. The Buyer shall promptly inform us of any access by third parties to any Goods or any assigned receivables.
- 3.** The Buyer may use the Goods delivered by us in the ordinary course of business once the Buyer has met the obligations from the business relationship on time. At the time of the conclusion of the contract, the Buyer assigns to us all claims from the sale of Goods to which we have retained title. At the time of the conclusion of the contract, the Buyer assigns to us acknowledged current account receivables from the Buyer's customers in the amount of our claims against the Buyer.
- 4.** Upon request, the Buyer will shall give us all necessary information on the amount of Goods in our ownership and the receivables assigned to us. Upon our request, the Buyer shall also label the Goods in our ownership accordingly and inform the Buyer's customers of the assignment.
- 5.** If the Buyer defaults on payment, we will have the right to rescind the contract in accordance with the law and/or request immediate temporary return, at the Buyer's expense, of the Goods in our ownership. Such request shall not be construed as a declaration of rescission; we shall be entitled to only request return of the Goods and reserve the right to rescind the contract.

6. If the value of the collateral exceeds our claims by more than 10%, we will be obliged to release the collateral upon request of the Buyer in so far.

§ 8 Rights of the Buyer in the event of defects

1. The Buyer shall check the Goods immediately after receipt for quantity, quality and transport damage. The Buyer shall make complaints based on transport damage directly to the carrier, with a copy to us, immediately after delivery and together with the carrier prepare a damage report.

2. The Buyer shall notify us in writing of apparent defects, including wrong or short delivery not related to transportation, within 7 days from receipt of the Goods, detailing the reported defects. We shall not be liable for defects not reported to us.

3. If Goods are defective, the Buyer will have the statutory warranty rights as provided below:

- a) We will first have the right, at our option, to repair the defect or deliver to the Buyer Goods that are free from defects (subsequent performance).
- b) We reserve the right to attempt subsequent performance twice. If such subsequent performance fails or cannot reasonable be expected to be accepted by the Buyer, the Buyer may either rescind the contract or demand a reduction of the purchase price.
- c) Claims for damages and for reimbursement of futile expenditure shall be governed by article 9 below.

4. The Buyer's warranty rights will become time-barred after one year from the date on which the Goods are delivered. In the following cases, the rights will not become time-barred after one year but in accordance with the statute of limitations:

- a) warranty for the specification of the Goods;
- b) deliberate concealing of a defect;
- c) recourse claims against the supplier (section 479 of the German Civil Code).

§ 9 Liability

1. We assume liability in accordance with the law for claims of the Buyer for damages and reimbursement of expenses (hereinafter 'claims for damages') that are based on wilful actions or gross negligence. If a material contractual obligation, i.e. an obligation the fulfilment of which is vital for the proper fulfilment of the contract and which a contractual partner may normally rely on, we will assume liability also in the event of simple negligence, but will limit our liability to the foreseeable, typical damage.

2. Our liability for culpable damage to life, limb or health shall remain unaffected; this shall also apply to mandatory liability under the German Product Liability Act (Produkthaftungsgesetz) and to events for which we have assumed a warranty for the quality of the Goods.
3. Claims for damages that a Buyer may make under this article 9 will become time-barred after twelve months from the delivery date. Claims for damages based on wilful actions or or gross negligence , damage to life, limb or health and claims for damages under the German Product Liability Act shall become statute-barred.

§ 10 Final Terms

1. Place of performance for our deliveries shall be the relevant shipping point, otherwise Peitz.
2. The courts of Cottbus shall have exclusive jurisdiction over all disputes resulting from the contractual relationship with the Buyer, including actions on bills of exchange, promissory notes and cheques. We do reserve the right, however, to alternatively choose the place of the Buyer's registered office as venue.
3. The contracts between us and the Buyer are governed by the laws of the Federal Republic of Germany without regard to the United Nations Convention on Contracts for the International Sale of Goods (CISG).

valid from 29.08.2014