



## General Terms and Conditions of Sale

### § 1 Scope of application, form

(1) These General Terms and Conditions of Sale (GTCS) apply to all our business relationships with our customers ("Buyers"). The GTCS shall only apply if the Buyer is an entrepreneur (§ 14 of the German Civil Code (BGB)), a legal entity under public law or a special fund under public law.

(2) The GTCS apply in particular to contracts for the sale and/or delivery of movable goods ("Goods"), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (§§ 433, 650 BGB). Unless otherwise agreed, the GTCS in the version valid at the time of the Buyer's order or in any case in the version last communicated to him 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.

(3) Our GTCS shall apply exclusively. 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 validity. This requirement of consent shall apply in any case, for example, even if the Buyer refers to his General Terms and Conditions in the context of the order and we do not expressly object to them.

(4) If the customer's order requires customised products or specific adaptations of the goods, we must confirm this in writing.

(5) The contractual relationship as well as future contractual relationships between the parties shall be governed by the Rules of the Bremer Baumwollbörse (Bremen Cotton Exchange) in the respective current version (these can be viewed and downloaded [here](#)). In addition to the Rules of the Bremer Baumwollbörse and even if the contractual relationship is not based on the Rules of the Bremer Baumwollbörse in individual cases, the deviating provision in the following Conditions shall take precedence. If no provisions are contained in the Rules of the Bremer Baumwollbörse or in the provisions of these General Terms and Conditions, the law of the Federal Republic of Germany shall apply in addition, as it applies to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods. Individual agreements (e.g. framework supply agreements, quality assurance agreements) and information in our order confirmation shall take precedence over the GTCS.

(6) Legally relevant declarations and notifications by the Buyer in relation to the contract (e.g. setting of deadlines, notification of defects, cancellation or reduction) must be made in writing. Written form within the meaning of these GTCS includes written and text form (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, in particular in the event of doubts about the

[www.heinrichotto.com](http://www.heinrichotto.com)

Heinrich Otto KG (GmbH & Co.)  
Industriestraße 15  
41516 Grevenbroich

**Telefon** +49-2182-1706-0  
**Telefax** +49-2182-1706-99  
**E-Mail** [info@heinrichotto.com](mailto:info@heinrichotto.com)

**Ust ID** DE119957433  
**Steuernummer** 114/5986/4100

Heinrich Otto KG (GmbH + Co.) | Sitz: Industriestraße 15, 41516 Grevenbroich, Amtsgericht Mönchengladbach HRA 4039 | Persönlich haftende Gesellschafterin: Otto-Verwaltungs-GmbH, Amtsgericht Mönchengladbach HRB 7377, Geschäftsführer: Markus Hink



legitimacy of the declaring party, shall remain unaffected.

(7) References to the validity of statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTCS.

## **§ 2 Conclusion of contract**

(1) Our offers are subject to change and non-binding. This shall also apply if we have provided the Buyer with catalogues, documentation, other product descriptions or documents - also in electronic form - to which we reserve ownership rights and copyrights.

(2) The order of the goods by the Buyer shall be deemed a binding contractual offer. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within 14 days of its receipt by us.

(3) Acceptance can be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the Buyer.

## **§ 3 Delivery period and delay in delivery**

(1) The delivery period shall be agreed individually or specified by us upon acceptance of the order

(2) If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (non-availability of the service), we shall inform the Buyer of this immediately and at the same time inform the Buyer of the expected new delivery deadline. If the service is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately reimburse any return consideration already performed by the Buyer. Non-availability of the service exists, for example, in the event of late delivery by our suppliers, if we have concluded a congruent hedging 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 in individual cases.

(3) The existence of a delay in delivery by us shall be determined in accordance with the statutory provisions. In any case, however, an overdue notice by the buyer is required.

(4) The rights of the Buyer pursuant to § 8 of these GTCS 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 fulfilment), shall remain unaffected.



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

(1) Delivery shall be performed ex warehouse, which is also the place of fulfilment for the delivery and any subsequent performance. At the Buyer's request and expense, the goods shall be dispatched to another destination (sale to destination). Unless otherwise agreed, we shall be entitled to determine the type of dispatch (in particular transport company, dispatch route, pack-aging) ourselves.

(2) The risk of accidental loss and accidental deterioration of the goods shall pass to the Buyer at the latest upon handover. In the case of sale to destination, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall already pass upon delivery of the goods to the forwarding agent, the carrier or the person or institution otherwise designated to carry out the dispatch. If acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services shall also apply accordingly to an agreed acceptance. If the Buyer is in default of acceptance, this shall be deemed equivalent to handover or acceptance.

(3) If the Buyer is in default of acceptance, fails to cooperate or if our delivery is delayed 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).

In the case of call-off orders with call-off dates specified in the calendar, we shall be entitled to invoice the goods or cancel the order and dispose of the goods elsewhere if they are not called off on time or properly. In the case of unspecified call-off dates, we shall be entitled to the same right after we have previously requested the buyer to call off the goods, setting a deadline, and have then specified a binding call-off date.

#### **§ 5 Prices and terms of payment**

(1) Unless otherwise agreed in individual cases, our current prices at the time of conclusion of the contract shall apply, ex warehouse, plus statutory VAT.

(2) In the case of sale to destination (§ 4 para. 1), the Buyer shall bear the transport costs ex warehouse 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 shall be due and payable within 14 days of invoicing and delivery or acceptance of the goods. However, we are authorised at any time, even within the framework of an ongoing business relationship, to make a delivery in whole or



in part only against advance payment. We shall declare a corresponding reservation at the latest with the order confirmation.

(4) The Buyer shall be in default upon expiry of the above payment period. 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 claim further damages caused by default. Our claim to commercial maturity interest (§ 353 HGB) against merchants remains unaffected.

(5) The Buyer shall only be entitled to rights of set-off or retention to the extent that his claim has been recognised by declaratory judgement or is undisputed. In the event of defects in the delivery, the Buyer's counter-rights shall remain unaffected, in particular pursuant to § 7 para. 6 sentence 2 of these GTCS.

(6) If it becomes apparent after conclusion of the contract (e.g. through an application for the opening of insolvency proceedings) that our claim to the purchase price is jeopardised by the Buyer's inability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of non-fungible goods (customised products), we may declare our withdrawal immediately; the statutory provisions on the dispensability of setting a deadline shall remain unaffected.

## **§ 6 Retention of title**

(1) We reserve title to the goods sold until full payment of all our current and future claims arising from the purchase contract and an ongoing business relationship (secured claims).

(2) The goods subject to retention of title may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The buyer must inform us immediately in writing if an application is made to open insolvency proceedings or if third parties seize the goods belonging to us (e.g. seizures).

(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 the retention of title. The demand for the return of the goods does not at the same time include the declaration of cancellation; we are rather entitled to demand only the return of the goods and to reserve the right to cancel the contract. If the buyer does not 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 setting such a deadline is dispensable according to the statutory provisions.



(4) Until revoked in accordance with (c), 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 shall extend to the full value of the products resulting from the processing, mixing or combining of our goods, whereby we shall be deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, 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 any claims against third parties arising from the resale of the goods or the product in total or in the amount of our possible co-ownership share in accordance with the above paragraph. We accept the assignment. The obligations of the buyer stated in paragraph 2 shall also apply in consideration of the assigned claims.

(c) The Buyer shall remain authorised to collect the claim in addition to us. We undertake not to collect the claim as long as the buyer fulfils his payment obligations to us, there is no deficiency in his ability to pay and we do not assert the retention of title by exercising a right in accordance with paragraph 3. If this is the case, however, we can 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. In this case, we shall also be entitled to revoke the buyer's authorisation to resell and process the goods subject to retention of title.

(d) If the realisable 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 of the buyer**

(1) 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), unless otherwise specified below. In all cases, the special statutory provisions for final delivery of the goods to a consumer (supplier recourse pursuant to §§ 478, 479 BGB) shall remain unaffected.

(2) The basis of our liability for defects is above all the agreement reached on the quality of the goods. All product descriptions and manufacturer's specifications which are the subject of the individual contract or which were made public by us (in particular in catalogues or on our Internet homepage) at the time of conclusion of the contract shall be deemed to be an agreement on the quality of the goods.



(3) Insofar as the quality has not been agreed, it shall be assessed in accordance with the statutory provisions whether a defect exists or not (§ 434 Para. 1 S. 2 and 3 BGB). However, we accept no liability for public statements made by third parties (e.g. advertising statements).

(4) The Buyer's claims for defects presuppose that he has fulfilled his statutory duties of inspection and notification of defects (§§ 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 the Buyer discovers a defect during delivery, inspection or at any later point in time, we must be notified of this immediately in writing. In any case, obvious defects must be re-reported in writing within 5 days of delivery and defects not recognisable during the inspection within the same period from discovery. If the buyer fails to carry out the proper inspection and/or report defects, our liability for the unreported defect shall be excluded.

(5) If the delivered item is defective, we may initially choose whether to provide subsequent fulfilment by remedying the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery). Our right to refuse subsequent fulfilment under the statutory conditions remains unaffected.

(6) We are entitled to make the subsequent fulfilment owed dependent on the Buyer paying the purchase price due. However, the Buyer shall be entitled to retain a reasonable portion of the purchase price in proportion to the defect.

(7) The Buyer shall give us the time and opportunity required for the subsequent fulfilment owed, in particular to hand over the rejected goods for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective item to us in accordance with the statutory provisions.

(8) We shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs, in accordance with the statutory provisions if a defect actually exists. Otherwise, we may demand reimbursement from the Buyer of the costs incurred as a result of the unjustified request to remedy the defect (in particular inspection and transport costs), unless the lack of defectiveness was not recognisable to the Buyer.

(9) If the subsequent fulfilment has failed or a reasonable deadline to be set by the buyer for the subsequent fulfilment has expired without success or is dispensable according to the statutory provisions, the buyer may withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, there is no right of cancellation.

(10) Claims of the Buyer for damages or reimbursement of futile expenses shall only exist in accordance with § 8, even in the case of defects, and are otherwise excluded.



## **§ 8 Other liability**

(1) Unless otherwise stated in these GTCS, including the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.

(2) We shall be liable for damages - irrespective of the legal grounds - within the scope of fault-based liability in cases of intent and gross negligence. In the event of simple negligence, we shall only be liable, subject to a milder standard of liability in accordance with statutory provisions (e.g. for care in our own affairs), for

a) for damages resulting from injury to life, body or health,

b) for damages arising from the not insignificant breach of a material contractual obligation (obligation whose fulfilment 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) The limitations of liability resulting from paragraph 2 shall also apply to breaches of duty by or in favour of persons whose fault we are responsible for in accordance with statutory provisions. They shall not apply if we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods and for claims of the Buyer under the Product Liability Act (Produkthaftungsgesetz).

(4) The Buyer may only withdraw from or terminate the contract due to a breach of duty that does not consist of a defect if we are responsible for the breach of duty. A free right of cancellation of the Buyer (in particular pursuant to §§ 650, 648 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

## **§ 9 Limitation**

(1) Notwithstanding § 438 Para. 1 No. 3 BGB, the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance.

(2) However, in the case of a building or an item that has been used for a building in accordance with its customary use and has caused its defectiveness (building material), the limitation period shall be 5 years from delivery in accordance with the statutory provisions (§ 438 (1) No. 2 BGB). Other special statutory provisions on the limitation period (in particular § 438 Para. 3, §§ 444, 445b BGB) remain unaffected.



(3) The above limitation periods of the law on sales shall also apply to contractual and non-contractual claims for damages of the Buyer based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. However, the Buyer's claims for damages pursuant to § 8 para. 2 sentence 1 and sentence 2(a) and pursuant to the Product Liability Act shall become time-barred exclusively in accordance with the statutory limitation periods.

### **§ 10 Place of jurisdiction**

If the buyer is a merchant within the meaning of the German Commercial Code (Handelsgesetzbuch HGB), a legal entity under public law or a special fund under public law, the jurisdiction provisions of the Rules of the Bremer Baumwollbörse shall apply. If, in individual cases, the jurisdiction of the arbitration court regulated in the Conditions of the Bremer Baumwollbörse is not justified, the exclusive - also international - place of jurisdiction for all disputes arising from the contractual relationship shall be our registered office in Grevenbroich. The same shall apply if the buyer is an entrepreneur within the meaning of § 14 BGB. In all cases, however, we shall also be entitled to bring an action at the place of fulfilment of the delivery obligation in accordance with these GTCS or an overriding individual agreement or at the Buyer's general place of jurisdiction. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.