

General Terms and Conditions of Sale of the Dr. Hesse GmbH & Cie KG – version of 29 July 2016



1. General

1. These GTCS shall apply exclusively for all deliveries and services provided by us to the purchaser. Differing or contrary terms shall not apply except if expressly agreed upon in writing.
2. These GTCS shall also govern all future transactions between the parties and shall also apply if we perform delivery despite our knowledge of differing or contrary terms.
3. These GTCS shall only apply towards entrepreneurs, governmental entities, or special governmental estates.
4. Any individual agreements made with a purchaser on a case-by-case basis (including side agreements, addenda, and changes) shall take cover these GTCS. A written contract or written confirmation by us is decisive for the content of such agreements.
5. The purchaser may not assign any claims arising from transactions with us without our prior written approval.
6. All communications (e.g. declarations, notifications etc.) shall be drawn up exclusively in German or English and shall require the written form in order to be valid. Communications by means of fax or e-mail also fulfil the requirement of being in writing.
7. References to the validity of statutory regulations shall only have clarifying significance. Therefore, the statutory regulations shall also apply without such a clarification insofar as they are not directly changed or are explicitly excluded in these GTCS.

2. Offer, Acceptance

1. All quotations made by us are subject to confirmation and non-binding unless they are expressly labelled as binding or include a specific acceptance deadline.
2. Insofar as the order constitutes an offer under German law, we are entitled to accept the offer within two weeks.
3. We retain the ownership and copyrights for illustrations, drawings, calculations and other documents; they must not be made accessible to third parties. This particularly applies to those written documents which are labelled confidential; the purchaser shall require our express written consent before giving them to third parties. All documents must be returned to us or – in case digital documents were provided – deleted immediately upon our request if no contract is concluded.
4. Information provided by us about the goods (e.g. weights, dimensions, utility values, load capacity, tolerances and technical data) and representations of the same (drawings and diagrams) are only approximations unless their usability for the contractually intended purpose requires exact conformity. They are not guaranteed quality features but rather descriptions or characterisations of the goods. Standard deviations and those resulting from legal regulations or representing technical improvements are permitted if they do not impair the usability for the contractually intended purpose.

3. Prices, Payment

1. Prices are FCA (Incoterms 2010), exclusive of the respective statutory value added tax, except as otherwise expressly agreed upon.
2. If not otherwise agreed on, the purchase price is due and payable within 30 days from the date of the invoice. From the due date default interest in the amount of 9% above the respective base interest rate p.a. shall accrue. We reserve all rights to claim further damages for delay.
3. Checks are not deemed as payment until they are cashed.
4. We shall be authorized to make deliveries or perform services still pending only against advance payment or securities if circumstances become known following the conclusion of the contract which are adequate for substantially reducing the creditworthiness of the purchaser and which jeopardise the payment of our outstanding receivables from the respective contractual relationship.

4. Offset, Right to Retain

The purchaser shall be entitled to offset only insofar as the purchaser's counterclaim is acknowledged, undisputed or assessed in a legally binding judgement. The purchaser is entitled to claim retainer rights only to the extent such rights are based on the same transaction.

5. Delivery

1. Delivery is conditioned upon timely and proper performance of all duties of the purchaser. Defences based on non-performance of the contract are reserved.
2. In case of default in acceptance or other breach of duties to cooperate by the purchaser we are entitled to claim any resulting damage including but not limited to additional expenses, if any. Further damages are reserved. In this case, the risk of loss or damage to the goods passes to the purchaser at the time of such default or breach of duty to cooperate.
3. We shall not be liable for the impossibility of delivery or for delivery delays if they have been caused by force majeure or other events which were not foreseeable at the time of the contract's conclusion (e.g. all types of operational disturbances, difficulties in material and energy procurement, transport delays, strikes, legal lockouts, shortage of labour, energy or resources, flooding, fire, difficulty obtaining required legal approvals, legal actions or the lacking, incorrect or late delivery by suppliers) and for which we are not responsible. If such events significantly complicate the delivery and/or service by us or even make it impossible and the impediment is not merely temporary, then we can withdraw from the contract.
4. In the case of temporary impediments, the deadlines shall be extended or postponed by the time period of the interference with the addition of a reasonable start-up period. This also applies for impediments affecting subcontractors. We shall notify the purchaser as soon as possible about the start and end of such impediments.

6. Passing of Risk, Shipment

The risk of accidental loss or accidental deterioration of the goods shall be transferred to the purchaser in accordance with the "FCA" clause of Incoterms 2010.

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7. Retention of Title

1. We retain title to the goods until receipt of all payments in full. In case of breach of contract by the purchaser including, without limitation, default in payment, we are entitled to take possession of the goods.
2. The purchaser shall handle the goods with due care, maintain suitable insurance for the goods and, to the extent necessary, service and maintain the goods. The purchaser shall, upon first demand, indemnify us and hold us harmless from and against any and all liability or claims of third parties based on the purchaser's mishandling of the goods, false storage or any other infringement of the duty of good care.
3. As long as the purchase price has not been completely paid, the purchaser shall immediately inform us in writing if the goods become subject to rights of third persons or other encumbrances.
4. The purchaser may resell goods subject to the above retention of title only in the course of his regular business and only with our express written consent. For this case, the purchaser hereby assigns all claims arising out of such resale, whether the goods have been processed or not, to us. Notwithstanding our right to claim direct payment, the purchaser shall be entitled to receive the payment on the assigned claims. To this end, we agree to not demand payment on the assigned claims to the extent the purchaser complies with all his obligations for payment and does not become subject to an application for insolvency or similar proceedings or to any stay of payments.
5. Insofar as the above securities exceed the secured claim by more than 10 %, we are obligated, upon our election, to release such securities upon the purchaser's request.

8. Warranty

1. Precondition for any warranty claim of the purchaser shall be the purchaser's full compliance with all requirements regarding the immediate inspection of the goods upon receipt and a proper objection in accordance with the following provisions:
 - a. Goods shall be deemed approved by the purchaser with respect to obvious or other defects which would be recognizable in a prompt and thorough inspection if we do not receive a notification regarding the defect(s) within 3 business days following receipt.
 - b. With regard to hidden defects, the goods shall be deemed approved by the purchaser if the notification regarding the defect(s) is not received by us within 3 business days from the moment of the defect's discovery; if the defect was already noticeable to the purchaser at an earlier date during the normal usage, then this earlier date shall be decisive for the start of the complaint period.
2. The detailed notice shall be delivered to us within the aforementioned deadlines in writing. Any notice by telephone conversation shall not be accepted.
3. The notice must clearly specify the kind and amount of the alleged defect.
4. Any goods to which objections have not been raised in accordance with the procedures and deadlines set out above shall be regarded as approved and accepted.
5. If not expressly otherwise agreed on, warranty claims shall be time-barred after 12 months of the passage of risk or the noted on the product label the shelf life of the product.
6. In case of non-conformity of the goods the purchaser is entitled to alternative performance in the form of subsequent improvement or delivery of conforming goods. If such alternative performance has failed, the purchaser is entitled to reduce the purchase price or to withdraw from the contract.

9. Liability

1. In case of intent or gross negligence on our part or by our agents or assistants in performance we are liable according to the provisions of applicable law; the same applies in case of breach of fundamental contract obligations. To the extent the breach of contract is unintentionally our liability for damages shall be limited to the typically predictable damage.
2. Our liability for culpable damage to life, body or health as well as our liability under the German Product Liability Act shall remain unaffected.
3. Any liability not expressly provided for above shall be disclaimed.

10. Final Provisions

1. Purchaser data saved by us in connection with the movement of goods and payment transactions are processed internally for the purpose of the contract's implementation and are generally transmitted to credit rating organisations, banks and credit agencies solely for business-related calculation of creditworthiness. In addition, we will process and use the purchaser data made available to us solely within the limits allowed by law, in particular in accordance with the German Data Protection Act.
2. This contract shall be governed by the laws of the Federal Republic of Germany. International purchase laws shall not apply. This shall, in particular, refer to the United Nations Convention on Contracts for the International Sale of Goods (CISG).
3. Place of performance and exclusive place of jurisdiction for all disputes arising out of or in connection with this contract shall be Bielefeld/ Germany.
4. If one or more provisions of these GTCS are or become partly or wholly invalid or void, or if they contain a gap, the validity of the remaining arrangements shall not be affected thereby and shall continue to apply. The parties are obliged to replace any invalid or void provision with a valid provision which comes closest to what the parties had intended with respect to the commercial meaning and purpose under the invalid or void provision.