

**General Terms and Conditions of Sale and Delivery**  
**August Pohli GmbH & Co. KG**  
**Hölker Feld 10-12**  
**D-42279 Wuppertal**

## **I. General matters and scope of validity**

1. These General Terms and Conditions of Sale and Delivery apply to all of our business relationships with the customer (the “Buyer”). They apply only if the Buyer is an entrepreneur within the meaning of section 14 of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB), a legal person under public law, or a special fund under public law.

2. These General Terms and Conditions of Sale and Delivery apply in particular to contracts for the sale and/or delivery of moveable items (the “Goods”), irrespective of whether we manufacture the Goods ourselves or purchase same from suppliers (sections 433 and 651 BGB). Unless agreed otherwise, these General Terms and Conditions of Sale and Delivery apply as a master agreement in the version in effect at the time the order was placed or that was most recently notified to the Buyer in writing, including for similar future contracts, without our having to make reference to them again in each individual case.

3. Our General Terms and Conditions of Sale and Delivery apply exclusively. General terms and conditions of the Buyer that deviate from, stand in opposition to, or supplement our General Terms and Conditions of Sale and Delivery become part of the contract with the Buyer only and insofar as we have given our express consent to their applicability. This requirement of consent applies in every instance, including where, despite our awareness of the Buyer’s general terms and conditions, we make deliveries to it without reservation.

4. Individual arrangements made with the Buyer in specific cases (including side agreements, supplementations, and amendments) always have priority over these General Terms and Conditions of Sale and Delivery. A written contract or our written confirmation is controlling with respect to the content of such arrangements, subject to proof to the contrary.

5. Legally relevant declarations and notifications by the Buyer with respect to the contract (e.g. setting of deadlines, notification of defects, rescission of contract, reduction of the purchase price) must be submitted in writing (e.g. letter, email, fax). The foregoing does not affect statutory form requirements and other forms of proof, including in the event of doubt as to the identity of the party making the declaration.

6. If reference is made to the applicability of statutory provisions, this has merely clarifying significance. For this reason, even absent such clarification, statutory provisions are applicable unless directly modified or expressly precluded by these General Terms and Conditions of Sale and Delivery.

## **II. Offer, conclusion of contract**

1. Our offers are non-binding and subject to change. The foregoing also applies where we have previously provided the Buyer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions, or documents, including in electronic form.



2. Documents provided by us, such as drawings, drafts, technical documentation, and other templates and documents, irrespective of whether these are originals or reproductions, are made available on a loan basis only and remain our property. They may not be used for other purposes or reproduced, nor may third parties be made aware of them.
3. For the determination of our contractual duties and/or of features of our deliveries and performance, solely controlling are the information and declarations that have expressly and in writing become a part of the contractual relationship.
4. The order for the Goods constitutes a binding offer of contract. Unless specified otherwise in the order, we are entitled to accept this offer of contract within three weeks of its receipt by us. Acceptance can be declared either in writing (e.g. through order confirmation) or through delivery of the Goods to the Buyer.
5. Contracts, orders, and performance requests, as well as their amendments and supplementations, and all other agreements relating to a contract or its execution must be made in writing. We are entitled to use electronic form or written form. In such case, the Buyer is also entitled to submit declarations in this way. Verbal agreements are effective only if they are promptly confirmed in writing by a party. An order issued to us verbally does not become binding until we have confirmed it in writing.
6. Our information regarding the subject of the delivery or performance (e.g. weights, measurements, use values, load-bearing capacity, tolerances, and technical data), as well as our depictions of same (e.g. drawings and images), are approximate only, unless utility for the contractually intended purpose requires precise conformity. These do not constitute guaranteed attributes as to quality but are merely descriptions or identifications of the delivery or performance. Deviations that are customary in the trade and deviations that are occasioned by legal requirements or constitute technical improvements, as well as the replacement of components with parts of equal value, are permissible as long as they do not interfere with the utility of the contractually intended purpose.

### III. Prices, payment, due date

1. Unless agreed otherwise in a particular case, the applicable prices are our prices in effect at the time of conclusion of contract, ex works and net of value-added tax. If the agreed prices are based on our list prices, and if delivery is not to be made until at least four months following conclusion of contract, the applicable prices are our list prices in effect upon delivery (in each case, less any agreed percentage or fixed rebate).
2. In the case of a sales shipment, the Buyer bears the transport costs ex works. Any customs duties, fees, taxes, and other public charges are for the account of the Buyer.
3. If packaging material, such as EURO pallets, is provided on a loan basis and not returned on time, we are entitled to invoice the Buyer for the full replacement value.
4. Deduction for early payment requires a special written agreement and is otherwise not permitted.
5. Unless agreed otherwise in writing, we will submit our invoice at the time of delivery. The purchase price is due and payable within 30 days of invoicing and delivery or acceptance of the Goods. However, we are at all times entitled, including in connection with an ongoing



business relationship, to carry out delivery in full or in part only against advance payment. We will declare a corresponding condition not later than with order confirmation.

6. Upon expiry of the aforementioned payment deadline, the Buyer is in default. During the period of default, the purchase price bears interest at the applicable statutory default interest rate. We reserve the right to assert more extensive damages from default. If the Buyer is a merchant, our claim to commercial interest accruing as of the due date remains unaffected (section 353 of the German Commercial Code (*Handelsgesetzbuch*, HGB)).

7. The Buyer is entitled to rights of set-off or retention only to the extent that its claim is uncontested or has been reduced to an enforceable judgment. In the event of defects in the delivery, the Buyer's corresponding rights remain unaffected.

8. If following conclusion of the contract it becomes apparent (e.g. through application for commencement of insolvency proceedings) that our claim to the purchase price is jeopardised by the inability of the Buyer to perform, then in accordance with statutory provisions, we are entitled to refuse to perform and – following the setting of a potential grace period – to rescind the contract (section 321 BGB). In the case of contracts for the manufacture of non-fungible items (custom manufacture), we may declare rescission immediately. The statutory arrangements concerning the dispensability of the setting of a deadline remain unaffected.

#### **IV. Delivery, performance**

1. The delivery deadline is either agreed upon on a case-by-case basis or specified by us with acceptance of the order. It begins to run when the order confirmation is sent to the Buyer. However, the start of the delivery period specified by us in every case requires clarification of all technical questions and the details of execution, along with fulfilment of the Buyer's duty of cooperation.

2. If, for reasons for which are not responsible, we are unable to meet binding delivery deadlines (non-availability of performance), we will give the Buyer prompt notice thereof and concurrently advise the prospective new delivery deadline. If performance continues to be unavailable by the new delivery deadline, we are entitled to rescind the contract in whole or in part. We will promptly refund any consideration paid by the Buyer. Non-availability of performance in this sense means, in particular, untimely delivery to us by our suppliers, provided that we have concluded a congruent covering transaction, neither we nor our suppliers are at fault, or we are not obligated to procure in a given case.

3. Whether we are in default in delivery is determined by statutory provisions. In any case, however, the Buyer must give notice of default. The Buyer's rights under Section VIII of these General Terms and Conditions of Sale and Delivery and our statutory rights, including in the event of exclusion of the duty to perform (e.g. due to impossibility or unreasonableness of performance and/or cure), remain unaffected.

4. We will comply to the best of our ability with the piece numbers indicated in the order confirmation. Over- or under-deliveries of 10% in relation to the ordered quantity are to be accepted by the customer as proper delivery. Reasonable partial deliveries are permissible if

- the partial delivery is utilisable by the Buyer in connection with the intended contractual purpose,



- the delivery of the balance of the ordered Goods is assured, and
- the Buyer does not incur any substantial added effort or expense as a result (unless we declare our willingness to assume these costs).

5. For follow-up orders (contracts), we undertake to manufacture the ordered quantity in its entirety or in the necessary parts and to keep it in stock for the Buyer during the contract period. The ordered quantity must be delivered on or before the agreed date of final acceptance. The date of final acceptance is specified in the order confirmation. Continual acceptance of partial amounts during the contract term is deemed agreed upon.

6. If it becomes apparent at the half-way point of the contract term that the contract will not be fulfilled by the date of final acceptance, we are entitled at this time to invoice the quantity that would have been delivered in the case of continual acceptance. In addition, starting at this time, we are entitled to invoice each month an amount that would have been charged in the case of continual acceptance.

## V. Transfer of risk, shipment, duties to inspect and object

1. Unless provided otherwise in the order confirmation, delivery is agreed to be “ex works” (EXW – D-42279 Wuppertal – INCOTERMS 2020), which is also the place of performance for the delivery and any cure. At the Buyer’s request and expense, the Goods will be sent to a different place of destination (sales shipment). Unless agreed otherwise, we are entitled to determine in our discretion how shipment is accomplished (in particular, transport company, method of shipment, packaging).

2. The risk of accidental loss and accidental deterioration of the Goods passes to the Buyer, at the latest, with hand-over or, in the case of a sales shipment, with the transfer of the item to the shipping company, the freight forwarder, or other person designated with carrying out the shipment. If an acceptance inspection has been agreed upon, this is controlling with respect to transfer of risk. In addition, in all other respects, the statutory provisions of the law on contracts to produce a work apply mutatis mutandis to an agreed acceptance inspection. It is equivalent to hand-over or acceptance inspection if the Buyer is in default in acceptance.

3. If the Buyer so desires, we will cover the delivery with transport insurance. The costs for this are for the account of the Buyer.

4. Other than pallets, we do not take back transport packaging or any other packaging.

5. If hand-over or shipment is delayed due to circumstances for which we are not responsible, risk passes to the Buyer on the date that readiness for hand-over or shipment is notified.

## VI. Defects, warranty, statutory duties to inspect and object, prescription

1. Unless specified otherwise below, statutory provisions are applicable to the Buyer’s rights in the event of material or legal defects (including incorrect delivery or under-delivery, as well as improper assembly or defective assembly instructions). In all cases, the special statutory provisions concerning final delivery of the newly manufactured Goods to a consumer remain unaffected (supplier recourse pursuant to sections 478, 445a, 445b or §§ 445c, 327 (5), 327u BGB), unless an equivalent compensation has been agreed, e.g. within the framework of a quality assurance agreement.



2. The basis for our liability for defects is, above all, the agreement as to the quality of the Goods and the presumed use of the Goods (including accessories and instructions). An agreement as to the quality of the Goods in this sense is considered to be all product descriptions and manufacturer's specifications that form part of the specific contract or which were publicly announced by us (in particular in catalogues or on our Internet homepage) at the time of the conclusion of the contract.

3. If quality was not agreed upon, the determination of whether a defect exists is made in accordance with statutory provisions (section 434 (3) BGB). Our public statements and/or public statements by the manufacturer or on its or our behalf, in particular in advertising or on the label of the goods, take precedence over statements by other third parties.

4. The Buyer's claims for defects presuppose that it has met its statutory duties to inspect and object (sections 377 and 381 HGB). The foregoing also applies where delivery is made not to the Buyer but instead to a third party designated by it. If the Buyer becomes aware of defects during use, e.g. filling, it must immediately discontinue use. If a defect becomes apparent during delivery, during inspection, or at a later point, we must be given prompt written notice thereof. In any case, written notice of obvious defects must be given within 72 hours of delivery or, for defects not ascertainable during inspection, within the same period following discovery. If the Buyer fails to undertake proper inspection and/or give notice of defects, our liability for defects that were not notified, not notified in a timely manner, or not properly notified is precluded in accordance with statutory provisions.

5. If the purchased item has a defect, we will first either repair it or provide replacement delivery at our choice. If we choose to eliminate the defect, we are obligated to bear all expenses necessary for this purpose, including transport, labour, and materials costs. The foregoing does not apply to the case where the ordered Goods were brought to a location different than the place of performance and this increases the costs. Our right to refuse to cure in accordance with statutory prerequisites remains unaffected.

6. The Buyer must give us the time and opportunity necessary to provide the cure owed by us, in particular, to hand over the contested Goods for the purposes of testing. In the case of replacement delivery, the Buyer must return the defective item to us in accordance with statutory provisions. Cure does not cover uninstallation, removal or disinstallation of the defective item or reinstallation, attachment or installation of a defect-free item, unless we were originally obligated to perform these services. Claims of the purchaser for reimbursement of corresponding costs ("removal and installation costs") remain unaffected.

7. We bear the expenses required for the purposes of testing and cure, in particular, transport, road, work, and materials costs, provided that a defect actually exists. Otherwise, we may demand that the Buyer reimburse us for the costs incurred as a result of the unwarranted demand to eliminate defects (including testing and transport costs), unless the absence of defectiveness was not evident to the Buyer.

8. Defects in a portion of the delivery do not entitle the Buyer to object to the delivery as a whole.

9. If the cure failed, or if a reasonable deadline set by the Buyer for cure expired without success or can be dispensed with in accordance with statutory provisions, the Buyer may rescind the contract or reduce the purchase price. However, there is no right of rescission for





a minor defect. The Buyer's claims for compensation of damages or reimbursement of futile expenses, including in the case of defects, exist only in accordance with Section VIII and are otherwise precluded.

10. Damage attributable to improper treatment is excluded from the warranty. In particular, we are not liable for changes in the condition of our product due to improper storage or unsuitable operating supplies, as well as climatic or other effects that were not presumed under the contract. The warranty does not cover defects that are based on the choice of unsuitable materials.

11. In departure from section 438 (1) No. 3 BGB, the general prescription period for claims for material and legal defects is one year, beginning with delivery. If an acceptance inspection has been agreed upon, the prescription period begins to run upon acceptance. The aforementioned prescription periods under the law of the sale of goods also apply to the Buyer's contractual and extra-contractual claims for compensation of damages that are based on a defect in the Goods, unless the application of the regular statutory prescription period (sections 195 and 199 BGB) would result in a shorter prescription period in a given instance. However, the Buyer's claims for compensation of damages pursuant to Section VIII (2) sentences 1 and 2(a), as well as those under the German Product Liability Act (*Produkthaftungsgesetz*), are prescribed exclusively in accordance with the statutory prescription periods.

12. Deliveries are made in accordance with the currently applicable AQL guidelines are the currently applicable FBL.

## VII. Intellectual property rights, intangible rights

1. Unless expressly agreed otherwise by contract, we are obligated only to deliver the Goods in the country of the place of delivery free of industrial property rights and copyrights.

2. If our Goods infringe an intellectual property right or a copyright, or if such infringement is asserted, then we are entitled, at our choice, either to acquire a license for the infringing Goods for the Buyer or to modify them to such an extent that they no longer infringe the intellectual property right or copyright or replace them with an equivalent product that no longer infringes the intellectual property right or copyright. For this purpose, the Buyer must make the Goods available to us at our expense when we so request.

3. In the case of custom manufacture, the Buyer confirms by way of order issuance that the Goods specially produced for it in accordance with its design request and its specifications and delivered by us will not infringe any intellectual property rights or copyrights and thus that it will indemnify us against liability claims. We are also not liable if the asserted infringement of the intellectual property right or copyright is attributable to use in combination with another object not originating from us or if the object is used in a manner that we could not foresee

4. The foregoing Sections definitively address the liability for freedom from intellectual property rights and copyrights and apply mutatis mutandis also to our performance.

## VIII. Liability



1. Unless provided otherwise by these General Terms and Conditions of Sale and Delivery, including the following provisions, we are liable for a breach of contractual and extra-contractual duties in accordance with statutory provisions.

2. We are liable for compensation of damages – irrespective of the legal basis – in connection with fault-based liability in the event of wilful misconduct or gross negligence. In the event of simple negligence, we are liable, subject to a lower standard of liability, in accordance with statutory provisions (e.g. for due care in one's own matters) only for

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

b) damages for breach of a not immaterial contractual duty (obligation whose fulfilment is essential for the proper performance of the contract and upon whose observance the contractual partner normally relies and is entitled to rely); in such case, however, our liability is limited to compensation of foreseeable damages that typically arise.

3. The limitations of liability resulting under Subsection 2 also apply in the case of breaches of duty by or in favour of persons whose fault is our responsibility in accordance with statutory provisions. They do not apply if we fraudulently concealed a defect or provided a guarantee for the quality of the Goods or to the Buyer's claims under the German Product Liability Act.

4. In the event of a breach of duty that does not consist of a defect, the Buyer may rescind or terminate only if we are responsible for the breach of duty. An unrestricted right of the Buyer to terminate (in particular, pursuant to sections 650 and 648 BGB) is precluded. In all other respects, the statutory prerequisites and legal consequence apply.

## IX. Retention of title

1. We retain title to all delivered Goods until payment in full of all performance under the business relationship.

2. Until such time of payment in full of the secured claims, the goods subject to retention of title may not be pledged to third parties or otherwise assigned for the purposes of security. The Buyer must give up prompt written notice if an application for commencement of insolvency proceedings has been lodged or if third parties attach the Goods belonging to us (e.g. liens). The Buyer is obligated at all time to treat the delivered Goods with care and to insure them at its own expense against damage due to fire, water, or theft.

3. Retention of title also extends to the full value of products resulting from the processing, co-mingling, or combining of our Goods, whereby we are deemed to be the manufacturer. If following processing, co-mingling, or combining with third-party goods, such third party continues to have a right of ownership, then we acquire co-ownership in the ratio of the invoice values of the processed, co-mingled, or combined Goods.

4. Pursuant to the foregoing paragraph, the Buyer hereby assigns to us as security, either in full or in the amount of our possible co-ownership share, its claims against third parties resulting from the resale of the Goods or the product. We hereby accept the assignment.

5. The Buyer is entitled to resell the Goods subject to retention of title in the normal course of business, and it hereby assigns to us also all claims to the extent of the invoice amount (including VAT) that it has from the resale. We hereby accept the assignment. The Buyer is in



no event entitled to assign the claims to third parties. When we so request, the Buyer must provide information about the assigned claims that is necessary for the purposes of collection, to provide us with originals of all documents concerning such claims or for review, including specifying the names of the debtors with full address, along with the amount and reason for their debt, and to notify the debtors of the assignment.

6. The foregoing powers granted to the Buyer end if the Buyer fails to meet its obligations to us in a timely manner, suffers financial difficulties, ceases making its payments, or applies for the commencement of insolvency proceedings in respect of its assets.

7. The Buyer must give us prompt written notice of compulsory enforcement measures undertaken by third parties.

8. In the event that the Buyer acts in breach of contract, in particular, by failing to pay the purchase price when due, we are entitled in accordance with statutory provisions to rescind the contract and/or to demand surrender of the Goods on the basis of retention of title. The demand for surrender does not simultaneously constitute a declaration of rescission; rather, we are entitled to demand solely the surrender of the Goods and reserve the right of rescission. If the Buyer fails to pay the purchase price when due, we may assert these rights only if we have previously given the Buyer a reasonable deadline to make payment and such deadline went unmet or if the setting of such a deadline may be dispensed with pursuant to statutory provisions.

9. When so requested by the Buyer, we undertake to release the security to which we are entitled in accordance with the foregoing provisions, in our discretion, if the value of the security exceeds the secured claims by 10% or more.

## **X. Place of performance, place of jurisdiction, effectiveness**

1. If the Buyer is a merchant within the meaning of the German Commercial Code, a legal person under public law, or a special fund under public law, the sole place of jurisdiction – including internationally – for all disputes arising directly or indirectly out of the contractual relationship is our place of business in Wuppertal. The same applies if the Buyer is an entrepreneur within the meaning of section 14 BGB. However, in all cases we are also entitled to file suit at the place of performance for the delivery obligation pursuant to these General Terms and Conditions of Sale and Delivery or an individual understanding that takes precedence or at the Buyer's general place of jurisdiction. Statutory provisions that take precedence, including those concerning exclusive jurisdiction, remain unaffected.

2. The law of the Federal Republic of Germany is applicable to all legal relationships between us and the Buyer, under exclusion of international uniform law, including CISG.

3. If individual provisions of these General Terms and Conditions of Sale and Delivery are ineffective, all other provisions remain in full force and effect.

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