

General Terms and Conditions of Delivery and Payment of COLORTEC GmbH

Latest version: February 2023

I. Scope of application

1. The following General Terms and Conditions of Delivery and Payment solely apply to entrepreneurs, legal entities under public law or special funds under public law in terms of § 310 section 1 of the German Civil Code (BGB). They do not apply to consumers.
2. Our Terms and Conditions of Delivery and Payment apply exclusively. We do not recognise purchasers' terms and conditions which conflict with or deviate from our Terms and Conditions of Delivery and Payment unless we explicitly agreed to the validity of said terms and conditions in writing. Our offers are subject to change unless expressly agreed otherwise.
3. Our General Terms and Conditions of Delivery and Payment also apply to all future transactions between the parties as well as in cases when we complete the delivery of the goods in the knowledge of deviating or conflicting terms and conditions.
4. Additional agreements as well as amendments to and deviations from these terms and conditions shall be agreed in writing.

II. Prices

1. The agreed prices are ex works or, by arrangement, carriage-free and apply in addition to the statutory value-added tax (VAT) applicable on the date of delivery unless expressly agreed otherwise.
2. The weights, piece numbers and quantities determined by us are decisive for the calculation unless the customer objects promptly, at the latest within 14 days after receipt.
3. If we reduce or increase our prices generally during the term of the contract, the altered prices shall apply for the quantities that are still to be purchased. In the event that we increase our prices, the purchaser is entitled to withdraw from the contract by written declaration promptly, but at the latest within 4 weeks, after receipt of the notification about the price increase. The withdrawal has no effect on the deliveries completed before the price increase.

III: Technical application advice

We provide technical application advice to the best of our knowledge. None of the statements or information about the suitability and application of our goods exempt the purchaser from the need to conduct his own checks and tests to determine the suitability of the products for the intended processes and purposes. This applies in particular if thinners, curing agents, additional paints or other components not purchased from us are mixed with the products.

IV. Delivery

1. Unless expressly agreed otherwise, the delivery is completed from our factory or distribution warehouse. The place of performance is our headquarters in Hockenheim.
2. In the event that the goods are collected, the risk of accidental loss and accidental deterioration of the delivery items passes to the purchaser upon notification that the goods are ready for collection.
3. If the goods are shipped at the request of the purchaser, the risk of accidental loss and accidental deterioration shall pass to the purchaser at the latest when the delivery item is handed over (the start of the loading process is decisive here) to the forwarding agent, carrier or other third party designated to carry out the shipment, unless we are responsible for transport or installation. If the shipment or the handover is delayed due to a circumstance caused by the purchaser, the risk passes to the purchaser as of the day when the delivery item is ready for shipment and we have notified the purchaser accordingly.
4. We do not choose the shipping method or route. The purchaser shall bear any additional costs arising due to their special requests. We only insure a shipment against theft, breakage, transport, fire and water damage or other insurable risks at the purchaser's express request and at the purchaser's expense.
5. The delivery requires the timely and proper fulfillment of the purchaser's obligations. The right to raise objection to the non-fulfilment of the contract is reserved.
6. Partial deliveries reasonable for the purchaser are permissible.
7. Delivery periods are agreed on an individual basis or specified by us upon acceptance of the order. If we cannot adhere to binding delivery periods for reasons we are not responsible for (unavailability of the service), we will inform the purchaser of this immediately and at the same time, communicate the estimated, new delivery periods. If the service is also not available within the new delivery periods, we are entitled to withdraw from the contract in its entirety or partially; we will immediately reimburse any already rendered return services to the purchaser. The service may be unavailable for example if our suppliers fail to deliver goods to us in time, if we have concluded a congruent cover transaction, if there are any other disruptions in the supply chain (e.g. due to force majeure) or if we are not obliged to procure the goods in a specific case. The purchaser's rights according to VII. of these General Terms and Conditions of Delivery and Payment and our statutory rights, especially in case of exclusion of the service obligation due to the service becoming impossible or unfeasible and/or after fulfillment of the service, remain unaffected.
8. If the goods are delivered in returnable containers, these containers must be returned free of contents within 90 days after receipt of the delivery. If the purchaser is responsible for any loss or damage to the returnable packaging, the purchaser shall bear the costs of this unless the packaging has been returned to the supplier. Returnable packaging must not be used for other purposes or for storing other products. It is solely intended for transporting the delivered goods. Labels must not be removed.
9. We do not take back single-use packaging; instead we inform the purchaser of a third party who will recycle the packaging in accordance with the Packaging Ordinance.

V. Payment

1. The invoice amount must be paid in full by the due date. Timely payment shall only be deemed completed when we have the money available to us in the account specified by us with the value date on the due date. Discounts and rebates are only granted on the basis of special agreements. A cash discount on new invoices is excluded if other invoices remain unsettled.
2. In the case of payment default, default interest in the amount of respective base interest rate of the European Central Bank (ECB) plus 9% must be paid. We as well as the purchaser are at liberty to prove higher or lower damages.
3. Handing over bills of exchange does not constitute a cash payment and is only permissible with our prior consent on account of payment. Any discount or exchange charges incurred are payable by the purchaser.
4. The purchaser shall only be entitled to rights of set-off or retention to the extent that the claim has been legally established or is undisputed. In case of defects of the delivery, the opposing rights of the purchaser (cf. Item VII. of these General Terms and Conditions of Delivery and Payment) remain unaffected. Number 4 above does not apply to non-merchants.
5. Non-payment of due invoices or other circumstance which indicate a significant deterioration of the purchaser's financial circumstances after conclusion of the contract shall entitle us to immediately call in all our claims based on the same legal relationship.

VI. Retention of ownership

1. We retain title to the delivery item until the purchase price has been paid in full; if the customer is a merchant, the following shall apply: Until all claims resulting from the ongoing business relationship have been fulfilled with the purchaser, the delivered goods

shall remain our property. Title retention also continues to apply after individual claims of ours have been included in the current account and the account is balanced and confirmed. Purchase price claims shall be deemed not to have expired despite payment as long as a liability on a bill assumed by us in this context – for example in a cheque bill of exchange procedure – continues to exist.

2. Any processing or intermixture shall be carried out by the purchaser on our behalf without this producing any liability for us. In the event of processing or intermixture with other items not belonging to us, the purchaser hereby assigns to us co-ownership of the new item in the ratio of the value of the goods subject to retention of title to the other processed items as security for our claim, with the proviso that the purchaser shall store the new item safely on our behalf.
3. The purchaser has the right to dispose of the products in the ordinary course of business, as long as they meet their obligations resulting from the business relationship with us in a timely manner.
4. The purchaser assigns claims resulting from the sale of the goods by the purchaser, for which we are entitled to property rights, to us as security to the extent of our ownership interest in the goods sold. If the purchaser combines or intermixes the delivered goods with a main item of a third party against payment, he hereby assigns to us as security his claims for remuneration against the third party up to the amount of the invoice value of the delivered goods. We accept said assignments and transfers.
5. Upon our request, the purchaser must provide us with all essential information on the inventory of goods subject to our ownership rights and on the claims assigned to us as well as inform its customers of the assignment.
6. The purchaser is obliged to store the goods subject to retention of title safely and insure these against loss and damage at the purchaser's expense. The purchaser thereby assigns to us in advance their claims from the insurance policies. We accept said assignment and transfer.
7. If the value of the collaterals exceeds our claims by more than 10%, we will, at the purchaser's request, release collaterals at our own discretion.
8. The purchaser's right to dispose of the products subject to our title retention as well as to collect the receivables assigned to us expires as soon as the purchaser suspends the payment and/or falls into financial collapse. If these conditions occur, we shall be entitled to demand the immediate interim return of all goods subject to our title retention under exclusion of the right of retention without giving a period of grace or exercising the right of withdrawal.
9. Should the title retention not be valid according to the law of the country in which the delivered goods are located, the purchaser must supply an equivalent collateral at our request. Should the purchaser fail to comply with this request, we may, without consideration of agreed payment goals, demand immediate payment of all unsettled invoices.

VII. Warranty and liability

1. The prerequisite for all warranty rights of the purchaser is the proper fulfilment of all inspection and complaint obligations owed in accordance with § 377 of the German Commercial Code (HGB).
2. Obvious material defects, incorrect deliveries and quantity deviations of the delivered goods must be reported in writing immediately, but at the latest within 14 days after receipt. Hidden defects must be reported to us in writing within 7 days after their discovery.
3. The customer must check whether the delivered goods are suitable for the intended use, if necessary by means of sample processing. This applies in particular if thinners, curing agents, additional paints or other components not purchased from us are mixed with the products.
4. In the case of properly raised and substantiated notifications of defect, we shall be entitled at our own discretion to repair the defect or provide a replacement delivery. In the event of repair of defects, we shall bear all costs necessary for the purpose of removing the defect, unless these costs are increased due to the item purchased having been moved to a location different from the place of fulfilment. In the event that we are unwilling to repair the defect or provide a replacement or this is delayed for an unreasonable amount of time for reasons not in our control, or if the repair or replacement fails in any other way, the purchaser is at their discretion entitled to demand rescission of contract or a corresponding reduction in the purchase price.
5. Unless otherwise agreed in individual contracts or if the product does not show a different best-before date, warranty claims can be asserted within 12 months after the transfer of risk. This time period does not apply for goods that were used for a building according to their common use and caused its defectiveness. This period also does not apply to claims for damages of the purchaser arising from injury to life, limb or health or from intentional or grossly negligent breaches of duty on our part or on the part of our vicarious agents; these claims expire in accordance with the relevant legal provisions.
6. In the case of company recourse (§ 478 BGB), we are entitled to reject the purchaser's rights of recourse with the exception of the claims to redelivery of the goods and reimbursement of expenses, provided that we grant the purchaser equivalent compensation for the exclusion of their rights. Claims of the purchaser for damages are excluded without the need to grant compensation.
7. Liability for warranted characteristics is not restricted by the above provisions.
8. If thinners, curing agents, additional paints or other components not purchased from us are mixed or used together with the delivered products, warranty exists only if these components were free of defects and suitable.
9. In all other respects, unless otherwise agreed herein, the statutory provisions for warranty and liability shall apply to both parties.

VIII. Jurisdiction, place of performance and miscellaneous

1. The place of performance for all liabilities arising from the business relationship or from the individual agreement is our respective forwarding office and for payment our place of business.
2. The place of jurisdiction is, at our option, either our place of business or the purchaser's place of general jurisdiction. This shall also apply for disputes in proceedings concerning documents, bills of exchange or checks.
3. Numbers 1 and 2 do not apply to non-merchants within the meaning of the General Terms and Conditions Act, nor do they apply to small traders.
4. The laws of the Federal Republic of Germany apply for these GTC and the contractual relationship between us and the contractual partner, excluding international uniform law, particularly UN sales law.
5. If the contractual partner is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction – including internationally – for all disputes arising directly or indirectly from the contractual relationship shall be our place of business. The same shall apply if the contractual partner is an entrepreneur within the meaning of § 14 of the German Civil Code (BGB). However, we are also entitled to take action at the place of performance of the delivery commitment in accordance with these GTC or a predominant individual agreement, or at the contractual partner's place of general jurisdiction. Superordinate statutory provisions, in particular on exclusive competences, remain unaffected.

