

General conditions of sale and delivery of Magnetfabrik Bonn GmbH

I. General provisions

1. Deliveries and services of Magnetfabrik Bonn GmbH (hereinafter referred to as Supplier) will take place exclusively under the conditions of sale and delivery stated below.
2. Failure by the Supplier to disclose different provisions of the Ordering party is not to be regarded as agreement to the latter's conditions; their applicability is objected to.
3. Provisions of the Supplier which deviate from the General conditions of sale and delivery require written confirmation. Individual agreements concluded in an individual case with the Ordering party, including ancillary agreements, supplements and amendments, take priority over these General conditions of sale and delivery.

II. Scope of deliveries and services

1. All quotations provided by the Supplier remain subject to change. This also applies if the Supplier gives the Ordering party catalogues, technical documentation (such as drawings, plans, evaluations, calculations, references to DIN standards), other product descriptions or documentation – also in electronic form –, to which the Supplier reserves right of ownership and copyright.
2. The order for the goods is considered to be a binding offer of a contract. Insofar as nothing to the contrary arises from the order, the Supplier has the right to accept this offer of a contract within ten working days as of receipt.
3. The number of items ordered can be delivered with up to 10% over or under the quantity ordered if the Supplier's inventory control makes this necessary. The Supplier has the right to make partial deliveries if the partial delivery can be used by the Ordering party as part of the contractual purpose, the delivery of the remaining goods ordered is ensured and no considerable additional effort or costs are incurred by the Ordering party as a result (unless the Supplier declares that he is prepared to accept these costs).
4. The date of the last call-off is agreed as the final acceptance date for call-off orders. If the final date is exceeded, but in any case 12 months after the order is issued, the Supplier has the right to make deliveries which are still outstanding overall or withdraw from the contract for deliveries which are still outstanding.
5. Ancillary agreements, reservations, amendments or supplements to a contract as well as declarations by representatives of the Supplier require the written confirmation of the Supplier to be valid.
6. Specimens are merely samples for orientation and a purchase in line with a specimen or sample does not guarantee the characteristics of the specimen/sample.

III. Prices and payment terms

1. Prices apply from the Supplier's stock plus the valid statutory value added tax and if applicable packaging and shipping costs.
2. The Supplier's entitlement to payment falls due at the latest with the provision of the delivery for the Ordering party and is to be paid within 14 days as of the date the invoice is issued and delivery or acceptance of the goods. However, the Supplier has the right at any time, also as part of an ongoing business relationship, to implement a delivery in full or in part only against advance payment. The Supplier will declare a corresponding reservation no later than with the confirmation of the order. Deliveries to an Ordering party, which is so far unknown to the Supplier, will in principle take place by using the surname, if payment is not made in advance.
3. The Ordering party will enter into arrears at the end of the above-mentioned payment period. Interest will be charged on the purchase price during the period of the arrears at the relevant statutory interest on arrears applicable at that time. The Supplier retains the right to assert a more extensive loss owing to arrears. The Supplier's claim to commercial interest as of the due date (§ 353 German Commercial Code, HGB) against merchants remains unaffected.
4. The Supplier will charge the processing costs plus materials used for samples which are made specifically.
5. If after the conclusion of the contract it becomes evident (for example through an application for the initiation of insolvency proceedings) that the Supplier's claim to the purchase price is being endangered by lack of capability of the Ordering party, the Supplier has the right to refuse performance and - if applicable after setting a period of notice - to withdraw from the contract in accordance with the statutory provisions (§ 321 German Civil Code, BGB). For contracts regarding the creation of unreasonable items (individual production), the Supplier can declare withdrawal immediately; the statutory regulations about the expendability of setting a deadline remain unaffected.
6. The Ordering party is entitled to rights of offsetting or retention only to the extent that his claim has been determined lawfully or is undisputed.

IV. Deadline for deliveries or services

1. With regard to the deadline for deliveries or services, the written declarations made by both sides are decisive.
2. Delivery periods are regarded as agreed only approximately, unless a fixed deadline has been expressly promised for the delivery. The delivery period will be extended by the period of a temporary obstacle preventing delivery for the Supplier, for which the latter is not responsible.
3. An agreed period is regarded as being complied with when the delivery is provided to the Ordering party. If shipping is agreed, a delivery period is regarded as being complied with when the operational shipment is ready for dispatch.

V. Delivery delay

1. Insofar as the Supplier cannot meet binding delivery deadlines for reasons for which he is not responsible (non-availability of the service), he will immediately inform the Ordering party of this and at the same time notify the expected new delivery deadline. If the service is also not available within the new delivery deadline, the Supplier has the right to withdraw from the contract in full or in part; consideration which has already been provided by the Ordering party will be reimbursed immediately. Deliveries by the Supplier's own suppliers which are not made on time apply in particular as a case of non-availability of the service to this effect, if the latter has concluded a matching cover transaction, neither the Supplier nor the latter's own suppliers are at fault or the Supplier is not obliged to provide procurement in an individual case.
2. The start of the delivery delay will be determined in accordance with the statutory provisions. However, in all cases a warning is required from the Ordering party. If the Supplier delays delivery, the Ordering party can request flat-rate compensation for its losses resulting from the delay. The flat-rate loss will amount to 0.5% of the net price (delivery value) for each completed calendar week of the delay, however in total a maximum of 5% of the delivery value of the goods which were delivered with a delay. The right is reserved for the Supplier to provide evidence that the Ordering party has not suffered any loss at all or only a considerably lower loss than the above-mentioned flat rate.
3. The rights of the Ordering party in accordance with Section IX of these General conditions of sale and delivery and the statutory rights of the Supplier, in particular when the obligation to perform is ruled out (such as owing to the impossibility or unreasonableness of performance and/or subsequent satisfaction), remain unaffected.

VI. Reservation of ownership

1. Until all current and future claims of the Supplier arising from the contract and an ongoing business relationship (secured claims) have been paid in full, the Supplier will retain ownership of the goods sold.
2. The goods under reservation of ownership must not be pledged to a third party nor assigned as security before they have been paid for in full. The Ordering party must notify the Supplier immediately in writing if an application is made to initiate insolvency proceedings or insofar as access is made by a third party (e.g. attachment) regarding the goods belonging to the Supplier.
3. If the Ordering party behaves in a manner contrary to the contract, in particular by not paying the purchase price which is due, the Supplier has the right to withdraw from the contract in accordance with the statutory provisions and / or demand back the goods owing to reservation of ownership. The demand for the goods does not include the declaration of withdrawal at the same time; in fact, the Supplier has the right to merely demand the goods back and reserve withdrawal. If the Ordering party does not pay the purchase price which is due, the Supplier is permitted to assert these rights only if he has previously set the Ordering party an appropriate period for payment without success or such a period is expendable under the statutory provisions.
4. The Ordering party is authorised to resell and / or process the goods under reservation of ownership further in the ordinary course of business until revocation in accordance with Para. (4) c). In this case the following provisions apply supplementarily.
 - a) The reservation of ownership covers the products arising from the processing, mixing or combining of the Supplier's goods at their full value, whereby the Supplier is regarded as the producer. If the right of ownership remains in existence after processing, mixing or combining with goods from a third party, the Supplier will acquire joint ownership in proportion of the invoice values of the processed, mixed or combined goods. As for the rest, the same applies to the product created as to the goods delivered under reservation of ownership.
 - b) The claims arising from the resale of the goods or the product against a third party are already assigned now by the Ordering party in full or at the level of any joint ownership proportion of the Supplier in accordance with the above-mentioned clause for security to the latter. The Supplier accepts the assignment. The obligations of the Ordering party stated in Para. (2) also apply with regard to the assigned claims.
 - c) The Ordering party remains authorised to collect the debt in addition to the Supplier. The Supplier undertakes not to collect the debt as long as the Ordering party complies with its payment obligations towards the Supplier, there

is no deficiency in its ability to perform and the Supplier does not assert reservation of ownership by exercising a right in accordance with Para. 3. However, if this is the case, the Supplier can demand that the Ordering party notifies the Supplier of the assigned claims and their creditors, provides all the information required for the collection, hands out the associated documentation and notifies the debtors (third parties) of the assignment. In addition, the Supplier has the right in this case to revoke the authority of the Ordering party for further disposal and processing of the goods under reservation of ownership.

- d) If the achievable value of the securities exceeds our claims by more than 10%, at the request of the Ordering party the Supplier will release securities of his choice.
5. The Ordering party is obliged to inform the Supplier immediately of compulsory execution measures by a third party regarding the goods under reservation of ownership and other securities by handing over the documentation necessary for the revocation.
 6. At the request of the Supplier, the Ordering party must immediately make available a list from the purchaser.

VII. Transfer of risk and shipping

1. The risk of accidental destruction and the accidental deterioration of the goods is transferred to the Ordering party as soon as the shipment is prepared in the warehouse of the Supplier for the Ordering party, in the event of an agreed dispatch, as soon as the operational shipment is brought to the dispatch department or has been collected.
2. The packaging and shipment will take place with the normal care – at the expense of the Ordering party. If requested and at the expense of the Ordering party, the shipment will be insured against the risks stated by the Ordering party – if they are insurable.

VIII. Warranty claims

The Supplier is liable for defects, which also include the lack of promised properties, in accordance with the following provisions:

1. The basis for liability for defects is above all the agreement reached about the features of the goods. All product descriptions and information from the manufacturer, which are the subject of the individual contract or were made public by the Supplier (in particular in catalogues or on the website homepage) at the time the contract was concluded are considered to be an agreement about the features of the goods.
2. Claims for defects by the Ordering party are limited to the right to subsequent satisfaction. The Supplier has the option of providing subsequent satisfaction through correction of the defect (subsequent improvement) or through the delivery of a defect-free item (replacement delivery). The right of the Supplier to refuse subsequent satisfaction under the statutory conditions remains unaffected. The Ordering party must give the Supplier the necessary time and opportunity to provide the subsequent satisfaction owed, in particular to hand over the goods about which a complaint has been made for examination. In the event of a replacement delivery, the Ordering party must hand the defective item back to the Supplier in accordance with the statutory provisions. Subsequent satisfaction includes neither the dismantling of the defective item nor re-installation if the Supplier was not originally obliged to install it.
3. If subsequent satisfaction by the Supplier fails, the Ordering party can reduce the purchase price or withdraw from the contract as it chooses. However, there is no right of withdrawal in the event of a negligible defect. Claims for compensation in accordance with Section IX remain unaffected by this.
4. The claims for defects by the Ordering party require that the latter has complied with its statutory obligations to investigate and give notice of defects (§§ 377, 381 HGB). With regard to goods specified for installation or other further processing, an investigation must take place in any case immediately before processing. If a defect becomes evident during the delivery, investigation or at any later time, the Supplier must be notified of this immediately in writing. In any case, obvious defects are to be notified in writing within ten (10) working days as of delivery and defects, which were not identified in the investigation within the same period, as of the time they are discovered. If the Ordering party delays the correct investigation and/or notification of defects, the liability of the Supplier for defects which are not notified or not notified with the deadline or not notified correctly, is ruled out in accordance with the statutory provisions.
5. Claims by the Ordering party owing to expenditure required for the purpose, in particular transport, travel, work and material costs, are ruled out insofar as the expenditure increases because the delivery item has been brought subsequently to a location other than that of the delivery, unless this transport corresponds to use in accordance with regulations. Goods about which a complaint has been made must be sent back only with the express agreement of the seller.
6. The agreement of a guarantee requires the written form in every case. Such a guarantee declaration is effective only if it provides a sufficient description of the content of the guarantee and the duration as well as the territorial area of validity of the guarantee protection.

IX. Claims for compensation

1. Insofar as nothing to the contrary arises from these General conditions of sale and delivery including the subsequent provisions, the Supplier is liable in accordance with the statutory provisions for a breach of contractual and non-contractual obligations.
2. The Supplier is liable for compensation – regardless of the legal grounds - as part of fault-based liability in the event of intent and gross negligence. In the event of simple negligence, the Supplier is liable subject to the statutory restriction of liability (e.g. care of one's own affairs; negligible breach of obligations) only
 - a) for losses from injury to life, the body or health,
 - b) for losses arising from the breach of a major contractual obligation (obligation whose satisfaction makes the correct implementation of the contract possible in the first place and on whose compliance the contracting partner regularly trusts and is permitted to trust); however, in this case the liability of the Supplier is limited to compensation for the foreseeable loss which occurs typically.
3. The limitations of liability which arise from the above also apply in the event of breaches of obligations by or in favour of persons for whose culpability the Supplier is responsible in accordance with the statutory provisions. They do not apply insofar as the Supplier has maliciously concealed a defect or has assumed a guarantee for the features of the goods and to claims by the Ordering party in accordance with the Product Liability Act.

X. Statute of limitations

Claims for defects fall under the statute of limitations in the event of § 438 Para. (1) No. 3 BGB one year after delivery. Insofar as acceptance has been agreed, the period of the statute of limitations begins with acceptance. However, if the goods are a structure or an item, which has been used in line with its usual type of use for a structure and has caused the latter's defect (building material), the statute of limitations amounts to five years as of delivery in accordance with the statutory stipulation (§ 438 Para. 1 No. 2 BGB). The above-mentioned periods under the statute of limitations of purchase law also apply to contractual and non-contractual compensation claims by the Ordering party, which are based on a defect of the goods, unless the application of the regular statutory period of limitations (§§ 195, 199 BGB) would lead to a shorter period of limitation in an individual case. However, claims for compensation by the Ordering party in accordance with Section IX as well as in accordance with the Product Liability Act will fall under the statute of limitations exclusively in accordance with the statutory periods of limitation.

XI. Instructions and product monitoring

1. The Ordering party is obliged to comply with the product instructions issued by the Supplier or his own suppliers and pass them on to his purchasers also in the event of combining, mixing, blending and processing with a special reference, in particular safety instructions and technical delivery conditions.
2. The Ordering party is obliged to agree a stipulation corresponding to Section 1 above with its buyers of products of the Supplier.
3. If the Ordering party does not satisfy its obligations in accordance with Sections 1 and 2 above and if as a result this triggers product or producer liability claims against the Supplier, the Ordering party must release the latter from the claims in their internal relationship; if circumstances for which the Supplier is responsible have become part of the cause, release will take place in accordance with the proportion of the cause.
4. The Ordering party is obliged to monitor the Supplier's products and their practical use. This also applies after resale, regardless of whether this is in an unprocessed, processed, combined, mixed or blended form. The product monitoring obligation refers in particular to still unknown damaging properties of the product or uses and consequences of use, which create a dangerous situation. The Supplier must point out information he acquires immediately.

XII. Place of jurisdiction and applicable law

1. The sole place of jurisdiction, if the Ordering party is a registered trader, is Bonn for all the disputes arising directly or indirectly from the contractual relationship. The Supplier also has the right to assert a claim against the Ordering party in his general place of jurisdiction.
2. The contractual relationships to the Supplier and these General conditions of sale and delivery are subject to the law of the Federal Republic of Germany excluding all references to other legal systems and international contracts. The validity of the United Nations Convention on Contracts for the International Sale of Goods is ruled out.