

Sonnländer Getränke GmbH
General Terms and Conditions of Sale

I. Scope, defence clause

1. We sell and deliver solely to businesses. The goods that we offer are intended exclusively for resale or for commercial use.
2. All of our deliveries, our selling of goods, and other performances, also in the future, shall be governed exclusively by these Terms and Conditions of Sale. Any contrary, divergent, additional, and/or supplementary general terms and conditions of the Customer shall apply only if we have given them our explicit written approval. Silence on our part with regard to terms and conditions of the Customer and the receipt of the payment in question shall not imply agreement with the Customer's terms and conditions. If the Customer does not agree with the above provisions, he must notify us of this immediately in writing. In this case we can retract our order confirmations and declarations of acceptance for orders placed by the Customer without making ourselves liable to any claims of any kind whatsoever against us. In this respect we explicitly contradict the pre-formulated reference to one's own terms and conditions of business.

II. Conclusion of the Contract, prices, samples, quantities

1. Our written and oral offers are non-binding as regards price and quantity. A contract shall not come into being until we have issued a declaration of acceptance. If no order confirmation is made in writing, such a declaration shall be inherent in the delivery of the goods. If we issue an invoice for the ordered goods and neither a written order confirmation nor the delivery of the goods has ensued by that point in time, our declaration of acceptance shall be inherent in the issuing of our invoice.
2. All prices are net prices. They do not include the currently valid rate of value-added tax. The prices specified in our offers are current daily prices in euros and do not include value-added tax. The prices indicated do not include deposits, unless some particular arrangement has been stipulated.
3. Any samples which are handed over are type samples, not reference samples for the consignment.
4. If a significant deterioration in the financial position occurs, or if we receive reports of such a deterioration which are so unfavourable that our claim to payment seems to be endangered, after the Contract comes into being (through our sending of a confirmation letter or the invoice or the goods) we shall be entitled to rescind the Contract over and above the provisions of Section 321, German Civil Code (BGB).
5. There shall be no deliveries of goods below the minimum order quantity of one pallet.

III. Delivery, liability for defects

1. The delivery period that we specify presupposes the prior clarification of all relevant technical issues as well as the timely fulfilment of the ordering party's obligation.
2. If the ordering party defaults on acceptance or culpably infringes other duties to cooperate, he must compensate us for any loss or damage which we consequently incur, including any additional expenses. The risk of accidental loss or accidental deterioration shall pass to the ordering party as soon as default in acceptance or debtor's default regarding the duties to cooperate occurs. We reserve the right to assert further-reaching claims.
3. Force majeure events or official action of any kind which hinders production or makes the fulfilment of received delivery obligations impossible shall entitle us to withdraw either partly or wholly from the delivery obligations.

4. We must be notified of complaints (notices of defects) about unpacked goods within three hours by telephone or in text form (in writing, by fax or by e-mail) and within eight days in writing in the case of bottled goods. The weights and measures ascertained at the dispatch station shall always be authoritative.

5. If the ordering party neglects to send a timely notice of defects in the proper form, the goods shall be deemed to be approved, unless their quantity or condition diverges so substantially from the order that we must regard their approval as out of the question. Notices of defect shall also be precluded when the goods are improperly altered, treated, stored, handled or processed after being received, unless the ordering party proves that the defects being complained about did not result from the above.

6. We safeguard against defects by rendering supplementary performance, i.e. by, at our discretion, replacing the returned defective goods with faultless goods or, if possible, improving the goods at no extra cost. The ordering party can choose whether to demand a price reduction or to rescind the Contract if supplementary performance proves to be abortive twice, is impossible, or is unreasonably delayed or earnestly and definitively refused by us. Further claims, in particular any claim to compensation for loss or damage not sustained by the delivered items themselves, shall be precluded. In derogation from this, we are held liable under the statutory provisions if there is any case of intent, gross negligence, culpable infringement of significant contractual obligations, liability under the German Product Liability Act (ProdHaftG), the assumption of a guarantee or the causing of loss or damage resulting from loss of life, bodily injury or damage to health. In the event of significant contractual obligations being infringed, we shall be liable solely for loss and/or damage that can reasonably be foreseen and is typical of such contracts.

7. The statutory provisions shall apply in place of Item 6 above if the Customer had to take back goods that were resold to a consumer within the meaning of Section 13 BGB (consumables) because they were defective or the consumer justifiably reduced the purchase price due to existing defects.

8. In the cases covered by Item 6, goods shall be taken back only after a prior agreement with the management or with those employees who are explicitly authorised for this purpose.

9. All claims which are derived from the defectiveness of the goods, including any claims to compensation, shall become statute-barred after twelve months, commencing from the passing of risk, except in cases of gross negligence and of compensation claims for loss of life, bodily injury or damage to health. This shall also apply to any concurrent, congruent compensation claims arising from non-contractual liability. In derogation from the above, Section 479 BGB shall apply for rights of recourse for a consumer as defined by Section 13 BGB concerning resold goods (consumables).

10. No compensation claims can be asserted against us as a result of defaults in delivery or delays caused by force majeure.

IV. Bottle deposit

1. Non-returnable bottles are not invoiced separately and are not taken back. In derogation from the above, we charge empties deposit amounts plus the respective statutory rate of value-added tax for the non-returnable bottles in the case of fizzy and still soft drinks and other drinks whose vendors are obliged to take back the non-returnable packing units; these charges must be paid with the purchase price of the goods. The same applies for deposit bottles, portable cases and pallets. Empties returned to our premises in an orderly condition shall be credited with the full empties deposit amount plus the current statutory rate of value-added tax.

2. If any empties on which deposits were charged are missing upon conclusion of a transaction, the missing quantities are set off against the replacement price.

V. Retention of title

1. All goods sold by us shall remain our property until all claims that we have or will acquire in the future against the ordering party as a result of the commercial relationship with the said ordering party have been paid in full.
2. The processing or conversion of the goods shall always be carried out for us by the Customer. If the goods are processed, inextricably merged or mixed together with other items which do not belong to us, we shall acquire the co-ownership of the new item in the ratio of the value of our goods to that of the other processed, merged or mixed items as of the time of processing, merging or mixing. In other respects, what applies to the goods subject to retention of title shall also apply to the item that results from the above activities.
3. You are entitled to continue selling the goods subject to our retention of title in the proper course of business. If the goods are resold in return for cash, the proceeds shall immediately take the place of the goods, i.e. they become our property, without transitional property being created for you. The transfer shall be replaced by an arrangement in which you hold the sum of money as trustee (ff 929, 930 in conjunction with Section 868 BGB). This means that the proceeds must be held in safe custody separately; commingling and other consumption are not permissible.
4. In the event of resale without cash payment, the purchase price demand which arises against the third party shall be deemed to be assigned to us upon its arising. At our request, the third-party buyer must be informed about our retention of title and/or the assignment to us of the purchase price. In addition, we must be notified of the name and address of the third-party debtor and of the amount of the claim against him on request. If the third party remains in default with his payment to you, the above provisions do not require any attachment by us for the receivable to be collected from the third-party debtor.
5. Any interventions made or steps taken by third parties in relation to the goods subject to our retention of title must be indicated to us without undue delay by the Customer. In the case of attachments, the Customer must notify the bailiff that the attached items are our goods subject to retention of title and that he should send us a copy of the attachment record without delay.
6. If the Customer acts in violation of the Contract, particularly by defaulting on payment, the goods subject to retention of title can be demanded, taken possession of and exploited by us. If we assert the retention of title in this way or explicitly, or if we attach the goods subject to retention of title, such activity shall always imply a rescission of the contract of sale.

VI. Payment

1. Invoices shall be due immediately. The invoice shall be paid in cash on a performance upon counter-performance basis without deductions in return for the supply of the goods. Other payment methods shall be possible only with the explicit approval of the management. Bills of exchange shall not be accepted.
2. If there is an appropriate agreement with the Customer, due payments shall be settled by means of direct debit. If the debit entry is not honoured, default in payment shall apply with no further reminder as of the date when our direct debit was charged back to us. All return debit charges incurred in connection with this must be settled by the Customer.
3. In the event of bank transfers by the Customer, payment must be made within the agreed payment period. If we do not receive any payment during this period, default in payment shall apply without any further reminder as from two days after the payment time limit was exceeded, unless the Customer was not responsible for the time limit being exceeded.

4. In every case of default, the statutory default interest rate of 8 percentage points above the German Bundesbank's base rate shall apply. In addition, further deliveries can be suspended when default arises. In such cases, moreover, we can demand the immediate payment of all unpaid invoices, even those which are not yet due. The above steps do not preclude the assertion of further claims.

VII. Final provisions

1. Any price lists and/or order records that we may have issued shall remain our property and must be treated as strictly confidential.

2. Place of performance for all performances arising from the contractual relationship shall be the location of the warehouse from which the goods are obtained. The places of jurisdiction shall be the courts with jurisdiction for our company's headquarters. Irrespective of the buyer's headquarters, the contractual relationship, including any claims which arise from it, shall be governed solely by the law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

3. Invalidity of any individual provisions in these General Terms and Conditions shall have no effect on the validity of the remaining provisions.