

General Conditions of Sale and Delivery (Status: December 2022)

1. **Scope of Validity:** Our delivery of goods and services are subject to these Conditions of Sale and Delivery ("Conditions of Sale") only. Terms that vary from or add additional terms to (a) these Conditions of Sale, including any general conditions of purchaser, or (b) those specified by law, shall not be accepted by us unless they have been confirmed by us in writing. Our delivery of goods, performance of services or acceptance of payments does not constitute recognition on our part of terms that vary from or add additional terms to these Conditions of Sale.
2. **Offers, Contracts:** Our offers are made subject to confirmation. A contract is only formed when we give written order confirmation or when orders are fulfilled by us.
3. **Written Clause**
 - 3.1. Amendment, supplement and/or amicable termination of a contract or these Conditions of Sale, including this requirement of written form, must be made in writing and agreed by both parties.
 - 3.2. Any statement or notification (including notice of termination) issued by purchaser after execution of the contract must be made in writing in order to be valid.
4. **Prices:** Unless otherwise agreed, our prices are quoted ex works and do not include the cost of packing or delivery. Value added tax shall be payable additionally at the statutory rate in effect on the invoice date.
5. **Payment, Set-off**
 - 5.1. Unless agreed otherwise, payment to us by purchaser has to be effected 5 days after the delivery of goods or the performance of services. The purchaser shall be in default of payment irrespective of any reminder. In case of default of payment, a flat rate compensation shall be invoiced for recovery costs. The fixed amount is 40 €. Additional charges and interest remain unaffected and may be imposed according to statutory law.
 - 5.2. Set-off by purchaser is permitted only with claims that are undisputed or have been upheld by final decision of a court of competent jurisdiction. Set-off is also possible if purchaser's claim and our claim are legally based on a mutual relationship.
6. **Place of Performance, Shipment**
 - 6.1. The place of delivery of goods or performance of services shall be our place of supply or storage.
 - 6.2. If shipment has been agreed to be included, we shall ship the goods at purchaser's risk and expense. Furthermore, we shall specify the manner of shipment, shipment route and carrier.
7. **Partial Delivery and Performance:** Partial delivery and performance shall be possible to a reasonable extent where this is appropriate for the purchaser. The purchaser's rights in respect of full performance or residual performance, particularly rights of retention, rights/claims with regard to default or claims in damages instead of full performance, shall not be affected by any partial performance.
8. **Delivery Schedules, Delay**
 - 8.1. If we fail to comply with the agreed schedules of delivery or performance or other contractual obligations in time, purchaser shall establish an additional delivery period of reasonable length. Such additional delivery period shall be at least three (3) weeks.
 - 8.2. If delivery or performance does not occur by the end of the additional delivery period and if purchaser for this reason intends to exercise its option to rescind the contract or claim damages instead of delivery, purchaser shall notify us thereof expressly by requesting delivery and establishing a further reasonable period for delivery or performance. Purchaser shall, upon our request, notify us within a reasonable time period, whether purchaser - because of the delay in delivery/performance - rescinds the contract and/or claims damages instead of delivery, or insists on delivery/performance.
9. **Transport Insurance:** Due to the sensitive nature of the goods, we are authorized to cover appropriate transport insurance on behalf and at the expense and after notification of the purchaser in an amount at least equal to the invoiced value of the goods.
10. **Retention of Title**
 - 10.1. The goods sold shall remain our property until all our claims against purchaser arising from our business relationship with purchaser have been satisfied ("Reserved Goods").
 - 10.2. If the Reserved Goods have been processed or finished, combined or mixed by purchaser with goods of others inseparably, we acquire joint title pro rata to that part of the new products representing the invoiced value of the Reserved Goods in relation to the total value of the other goods which have been processed, finished, combined or mixed. Processing, combining or mixing with goods of others by purchaser shall always be undertaken on our behalf.
 - 10.3. In the event our goods are combined or mixed with finished goods of purchaser or of any third party, purchaser hereby assigns to us its rights with regard to such new goods and shall keep the goods safe for us free of charge. If purchaser combines or mixes our goods with finished goods of a third party for a payment, purchaser hereby assigns to us its right to payment from such third party.
 - 10.4. Purchaser may, in the ordinary course of its business, resell Reserved Goods. If, upon such resale of Reserved Goods, purchaser does not receive the full purchase price in advance or upon delivery of such Reserved Goods, it shall agree with its customer a retention of title in accordance with these conditions. Purchaser hereby assigns to us all its claims arising from such resale and its rights arising from the said agreement for retention of title. When requested by us, purchaser shall advise its customer of such assignment of rights and provide us with the information and documents necessary to enforce our rights. Notwithstanding the foregoing, purchaser shall only be entitled to collect payments from claims arising from such resale if purchaser has properly satisfied its liabilities to us.
 - 10.5. In the event that the security interests granted to us exceed the value of our claims, we shall, when requested, release the security interests as we deem appropriate. In the exercise of our retention of title, a rescission of contract can only be made with our prior express written consent.
11. **Force Majeure**
 - 11.1. Conditions of force majeure shall release us from our delivery and performance obligations. The same release shall apply in cases of pandemics, shortage of energy or raw materials supplies or in cases of industrial disputes, governmental decrees, breakdowns of transport or of our operations or if our suppliers, due to force majeure events or to the foregoing reasons, fail to deliver at all or fail to deliver in a proper or timely manner.
 - 11.2. Irrespective of the above provisions, the parties agree under the impression of the coronavirus crisis that arose in 2020 and the war in the Ukraine 2022 that a situation can always arise unexpectedly in which we, through no fault of our own, may only fulfill our contractual obligations under significantly more aggravated conditions. In such a case, we have the right to suspend performance for the duration of the aggravated conditions until either the aggravated conditions end or a solution is worked out with the customer. If our performance obligations are not only temporarily suspended, both contracting parties shall be entitled to rescind with respect to the suspended performance.
12. **Product Information:** Our end products produced at one production site or from one particular product line may contain product from one or more of our other production sites or from other product lines. Unless otherwise agreed, the contractual characteristics of our goods shall exclusively be based on our product specifications in their current version. Any information about properties, durability and other data shall represent guarantees only if they are expressly agreed and indicated by us as such in writing. Written and verbal information about our goods, equipment, plant and processes is based on research and our experience in the field of applied engineering. We provide this information, which is accurate to the best of our knowledge, and reserve the right to make modifications and upgrades to it. The aforesaid shall not release purchaser from its obligation to verify the suitability of our goods and processes for the use intended by purchaser. This shall also apply to the protection of third parties intellectual property rights as well as applications and processes.
13. **Complaints:** All purchaser complaints, particularly those regarding defect claims, must be submitted to us in writing without delay, but not later than ten (10) calendar days from the delivery of goods or, in the case of latent defects, within ten (10) calendar days from the date such defect(s) is discovered or should have been discovered through the exercise of investigation in accordance with purchaser's duties. If purchaser does not notify us of complaints or defects within such time period or in the agreed form, our goods and services referred to in the notice which has not been made timely and in the agreed form are deemed to be approved. If purchaser, knowing of defects, accepts our deliveries or services, purchaser shall only be entitled to complain for such defects if purchaser has expressly reserved such rights in writing at the time of delivery.
14. **Rights of Purchaser in Case of Defects**
 - 14.1. Purchaser shall have no right to remedies for a defect in our goods or services if only negligible impairment of the value or the usage of our goods and services exists.
 - 14.2. A premised use according to the contract only exists if it is expressly stated in the contract, unless it is obvious to both parties.
 - 14.3. In the event of justified and rightfully raised defect claims of the delivered goods or services, we reserve the right, solely at our discretion, to either replace or repair the goods (Nacherfüllung). For this, we shall always have reasonable time to replace or repair, in so far as such a time period is not expendable according to mandatory laws (e.g. in case of our refusal to accept repair or replacement). If our repair or replacement fails to remedy the defects, purchaser shall be entitled to either adjust the purchase price or rescind the contract. Such repair or replacement measures shall not include any installation or removal of our deliveries or performances and shall also not include the assumption of costs and expenses for such measures.
 - 14.4. Furthermore, purchaser may claim – under reserve of Section 15 – damages pursuant to statutory requirements and refund of its actual out-of-pocket expenses necessary for the purpose of repair or replacement. Refund shall be precluded should such expenses be increased because the goods were later transported to a place other than the agreed place of delivery, unless such transport corresponds to the intended use of the goods or has been agreed between the parties. Otherwise Section 15 shall apply accordingly for claims for damages and refunds.
 - 14.5. Claims by purchaser for recourse against us as provided for by statutory law can only be made to the extent purchaser has not agreed with its customers to provisions exceeding the statutory rights in case of defects. Where such claims are for refund of expenses, Sections 14.3 and 15 apply accordingly.
 - 14.6. The regulations of the supplier recourse according to § 445 a BGB (German Civil Code) do not apply, unless the end customer is a consumer in the sense of § 13 BGB.
15. **Liability**
 - 15.1. We, our legal representatives, employees, and persons employed in performing our obligations shall only be liable for damages and claims, no matter on which legal grounds, for expenses of purchaser, irrespective of the legal basis therefore but particularly based on breach of obligations deriving from the contract and/or tort, (i) in case of intentional misconduct or gross negligence (grobe Fahrlässigkeit) on our part, the part of our legal representatives, employees or persons employed in performing our obligations, or (ii) in the event of breach of a material contractual obligation. A material contractual obligation for this purpose shall mean an obligation the fulfillment of which is essential to the proper performance of the contract and upon compliance with which purchaser is duly entitled to rely (essential obligation). In case of slight negligence (leichte Fahrlässigkeit) in breach of essential obligations, our liability for damages shall be limited to the foreseeable damage typical for a contract of this nature.
 - 15.2. The aforementioned exclusion or limitation of liability shall not apply in cases of negligent damage to life, body or health, and not in case of intentional omission to make a notification with regard to a known defect and shall also not apply as far as a guarantee of quality was not complied with or as far as there is a liability in accordance with the German Product Liability Act (ProdHaftG).
 - 15.3. The mandatory rules with regard to the burden of proof shall remain unchanged by the aforementioned terms.
16. **Time Limits:** Purchaser's right to claim for warranty, damages or expenses shall expire one year from the commencement of the time limit stipulated by law. In cases of §§ 438 para. 1 Nr. 1 and Nr. 2, 438 para. 3, 634 a para. 1 Nr. 2 and Nr. 3, 634 a para. 3 BGB, the time limits stipulated therein shall apply. In case a defect was willfully omitted to disclose or with regard to the time limitation of a claim for damages the mandatory rules with regard to time limitation of claims shall apply.
17. **Compliance with Statutory Regulations, Rescission**
 - 17.1. Unless otherwise agreed in writing with purchaser in individual cases, purchaser shall be responsible for compliance with statutory and regulatory requirements for the import, transport, storage, and use of the goods. 17.2 Where a statutory or regulatory approval requirement applies to the export of our goods/services at the time of delivery/performance and such export approval is not granted upon request, we shall be entitled to rescind the contract.
 - 17.2. We are also entitled to rescind the contract in the event a product registration obligation applies and registration at the time of delivery/performance has not been applied for or granted.
18. **Declaration of Preferential Origin:** If the purchased goods are subject to customs preferences due to their preferential origin, all declarations regarding the preferential origin of the goods (suppliers declaration, invoice declaration) will be automatically generated and issued by us, valid without signature. We confirm that the declaration of preferential origin will be issued to the purchaser in accordance with our obligations set forth in Art. 5 par. 3 Council Regulation (EC) No. 1207/2001.
19. **Place of Jurisdiction:** If purchaser is a merchant, a legal entity pursuant to public law or a special public fund, the place of jurisdiction shall be our commercial domicile. If we institute legal proceedings against purchaser, we shall also have the option to institute legal proceedings at purchaser's place of jurisdiction.
20. **Applicable Law:** The contract and the legal relationship with purchaser shall be governed exclusively by the law applicable within the jurisdiction of the selling entity with the exclusion of the UN Convention on the International Sale of Goods (CISG).
21. **Trade Terms:** If any trade terms have been agreed pursuant to the International Commercial Terms (INCOTERMS), they shall be interpreted and apply according to INCOTERMS 2020.
22. **Severability:** Should any of these Conditions of Sale be deemed wholly or partly invalid, this shall have no effect on the validity of the remaining conditions.
23. **Observation of our Code of Conduct:** Our Code of Conduct (reviewable under http://www.orioncarbons.com/compliance_guidelines) applies to this business relationship and is hereby binding for us and the purchaser.