

# Terms of sale for the product „Partner“

## § 1 Information of the seller

The parties hereby agree that they are not intending any form of cooperation under company law whatsoever. The agreement further does not establish any commercial agent relationship. This shall also apply if claims under commercial law could be objectively fulfilled. In particular claims from Section 89 b German Commercial Code [HGB] are therefore explicitly excluded once again.

## § 2 Scope of the Terms of Sale

(1)

Our Terms of Sale shall apply exclusively; we do not recognise contradictory terms and conditions of the customer or terms and conditions which deviate from our Terms of Sale, unless we had explicitly approved their validity in writing. Our Terms of Sale shall also apply if we carry out the delivery to the customer without reservation in the knowledge of contradictory terms and conditions of the customer or terms and conditions which deviate from our Terms of Sale.

(2)

All agreements which are reached between us and the customer for the purpose of executing this contract are to be recorded in this contract in writing.

(3)

Our Terms of Sale shall only apply towards merchants and entrepreneurs within the meaning of Section 14 German Civil Code (BGB).

(4)

The Terms of Sale shall only apply to the product „Partner“.

## § 3 Offer, offer documents, retrievability and storage of the Terms of Sale

(1)

If the order is to be qualified as an offer according to Section 145 German Civil Code (BGB) then we can accept this within two weeks after receipt by us. We shall confirm the receipt of your order by e-mail. This confirmation of receipt shall not represent an acceptance of your offer, but is only intended to inform you that we have received your offer. The purchase contract shall be concluded by the sending of an explicit order confirmation by e-mail. Therefore, please check the details in your order precisely with regard to the number of goods that are to be ordered and, if applicable, correct this before sending.

(2)

We reserve the property rights and copyrights to diagrams, drawings, calculations and other documents; they may not be made accessible to third parties. This shall in particular apply to those written documents, which are described as „confidential“; the customer requires our explicit written consent before forwarding these to third parties.

(3)

The Terms of Sale can be called under [partner.com/terms](http://partner.com/terms) and will be sent to the customer by email upon acceptance of the offer.

#### **§ 4 Prices and terms of payment**

(1)

Insofar as not otherwise derived from the order confirmation, the following will apply:

We deliver to the customer's warehouse at the price stipulated according to the order confirmation. The sales price stated in the order confirmation is deemed including standard packaging. We will bear the freight costs incl. air freight costs. Should a customs clearance of the goods be necessary, the costs and customs duties will be taken over by the customer.

(2)

The statutory value added tax is not included in our prices; it will be shown separately in the invoice in the statutory amount on the day of the invoicing.

(3)

The deduction of cash discount requires a special written agreement.

(4)

Insofar as not otherwise derived from the order confirmation, the purchase price is due and payable net (including value added tax, without deduction) at least 10 workdays before the day of shipment by air cargo as agreed and/or stipulated by us. Deemed as workdays are Mondays to Fridays, except church and statutory public holidays at our registered seat.

If the customer is in default of payment we are entitled to request statutory interest on default. The customer is permitted to prove at all times that the interest on default was lower in an individual case. In that case the customer is also only obliged to pay the lower amount.

(5)

The customer is only entitled to rights to offset if his counterclaims have been declared final and binding, are undisputed or have been recognised by us. In addition, he is authorised to exercise a right of retention to the extent that his counterclaim is based on the same contractual relationship.

#### **§ 5 Delivery, minimum order quantity, delivery reservation and default of delivery**

(1)

The adherence to deadlines for deliveries presumes the timely receipt of all documents that are to be supplied by the customer, necessary permits and releases as well as the compliance with the agreed terms of payment and other obligations by the customer. The customer is further obliged to provide all information and documents which are required for the export, shipment or import. If these pre-requisites are not fulfilled in time the deadlines will be extended by a reasonable period of time; this shall not apply if we are responsible for the delay.

**(2)**

The deadlines laid down for us to make the delivery shall be extended in the following cases and their occurrence by a reasonable extent:

**(a)**

force majeure, e.g. mobilisation, war, act of terrorism, civil commotion or similar events (e.g. strike, lock-out),

**(b)**

attacks of third parties on our IT system (e.g. viruses, Trojans, DDos attacks) insofar as these were carried out despite showing the customary care and attention in case of protective measures,

**(c)**

impediments owing to German, US as well as other applicable national, EU or international regulations of Foreign Trade law or owing to other circumstances for which the supplier is not responsible or

**(d)**

late or improper delivery to us.

**(3)**

If we are in default of delivery for reasons for which we are responsible, then the customer can cancel his goods order and is entitled to repayment of the payment already made to us. The repayment shall be made within a deadline of 15 workdays (Monday to Friday, with the exception of statutory and/or church bank holidays at our registered seat) into that bank account of the customer which he stated with the order in our company and/or which is known to us from the previous goods orders of the customer.

If the default is due to wilful intent or gross negligence or represent an essential breach of obligations, the statutory liability shall continue to apply, which however in the event of an only negligent breach of obligation is limited to the respective foreseeable damage.

**(4)**

If the customer sets us a reasonable final deadline after we are already in default, then after the unsuccessful expiry of this final deadline we are entitled to cancel the contract; the customer will only be entitled to claims for damages instead of performance in the amount of the foreseeable damages if the default is due to wilful intent or gross negligence or to an essential breach of obligation; otherwise the liability for damages is limited to 50% of the occurred damages.

**(5)**

The limitations to liability according to § 5 Par. (3) and § 5 Par. (4) shall not apply if an essential contractual obligation was breached.

**(6)**

The compliance with our delivery obligation presumes the timely and proper fulfilment of the customer's obligations.

(7)

If the customer is in default of acceptance or if he breaches other obligations to provide assistance we are entitled to request the damages suffered by us, including possible additional expenses. In this case the risk of an accidental loss or an accidental deterioration to the object of purchase shall also pass to the customer at the time, at which he is in default of acceptance.

(8)

If shipment or service are delayed by more than one month after report of the readiness for shipment at the customer's request, we can charge the customer storage fees in the amount of 0.5% of the price of the objects of delivery, a total maximum however of 5%, for each further started month. We and the customer reserve the right to prove higher or lower storage costs.

(9)

The minimum order quantity per order will be agreed with the customer.

## **§ 6 Passing of risk and acceptance of the goods**

(1)

Insofar as not otherwise derived from the order confirmation, delivery is agreed to the customer's warehouse. Shipment and transport shall always be carried out at the risk of the customer.

(2)

The customer may not refuse the acceptance of deliveries owing to insignificant defects.

## **§ 7 Warranty for defects**

(1)

The warranty rights of the customer presume that he has properly satisfied his responsibilities for inspection and filing of a complaint, which are owed according to Section 377 German Commercial Code (HGB).

(2)

Insofar as there is a defect to the object of purchase for which we are responsible we are, at our choice, entitled to subsequent fulfilment in the form of the remedy of a defect or a substitute delivery. In the event of the remedy of a defect we are obliged to bear all expenses which are necessary for the purpose of remedying defects, in particular transport, road, labour and material costs, insofar as these are not increased by the fact that the object of purchase was transported to another location than the place of fulfilment.

We are to be given the opportunity to subsequent fulfilment by the customer within a reasonable deadline.

(3)

If the subsequent fulfilment fails the customer is, at his choice, entitled to declare the cancellation or to request a corresponding reduction in the purchase price (reduction).

(4)

Insofar as not otherwise derived below (§ 7 Par. 5 and § 7 Par. 6), further claims of the customer – no matter for which legal grounds – are excluded. We shall therefore not be liable for damages which were not suffered to the object of delivery itself; we shall in particular not be liable for missed profit or other financial losses of the customer.

(5)

If the cause of the damages is due to wilful intent or gross negligence, we will be liable according to the statutory provisions. This shall also apply if the customer requests damages instead of performance owing to the absence of a condition of the object which was guaranteed by us.

(6)

If we culpably breach an essential contractual obligation, the liability is limited to the typical contractual damages according to § 5 Par. (4); otherwise it is excluded according to § 7 Par. (4). It can always be deemed an „essential“ contractual obligation within the meaning of these AGB [General Business Terms] if we culpably breach such obligations where the customer relies and may also rely on the proper fulfilment because they are significant for the contract.

(7)

The warranty period is 12 months, beginning from the passing of risk. The statutory regulations concerning inhibition to expiry, inhibition and new start of the deadlines shall remain unaffected.

(8)

Reports of defects of the customer have to be carried out immediately in writing.

(9)

Claims for recourse of the customer against us according to Section 478 BGB (Recourse of the entrepreneur) shall only exist to the extent that the customer has not reached any agreements with his buyers which go beyond the statutory claims for defects. § 7 Par. (2) shall further apply accordingly to the scope of the customer's claim for recourse against us according to Section 478 Par. 2 BGB.

## **§ 8 Joint and several liability**

(1)

A liability for damages further than envisaged in § 7 Par. (4) to § 7 Par. (6) is excluded – without consideration for the legal character of the asserted claim.

(2)

The regulation according to § 8 Par. (1) shall not apply to claims according to Sections 1, 4 German Product Liability Act. Neither will it apply if we are liable for a physical injury or health impairment for other legal reasons.

(3)

Insofar as the liability limit according to § 7 Par. (6) does not apply with claims from producer liability according to Section 823 BGB owing to pro-

perty damages, our liability is limited to the indemnification of the insurance. Insofar as this does not occur or not in full, we shall be obliged to assume liability ourselves up to the amount of the sum insured.

(4)

The regulation according to § 8 Par. (1) shall not apply either with the initial incapacity or impossibility for which we are responsible.

(5)

Insofar as our liability is excluded or limited this shall also apply to the personal liability of our employees, workers, representatives and vicarious agents.

## **§ 9 Property reservation protection**

(1)

We reserve the property to the object of purchase until the receipt of all payments from the supply contract. In case of a conduct of the customer in breach of the contract, in particular in case of default of payment, we are entitled to take the object of purchase back. The taking back of the object of purchase by us does not constitute any cancellation of the contract, unless we had explicitly declared this in writing. The attachment of the object of purchase by us shall always constitute a cancellation of the contract. We are authorised to sell the object of purchase after taking it back, the sales proceeds are to be offset against the liabilities of the customer – minus reasonable sales costs.

(2)

The customer undertakes to treat the object of purchase carefully; he is in particular obliged to sufficiently insure it at the value as new at his own costs against damages by fire, water and theft. If maintenance and inspection work are necessary the customer must carry this out in time at his own costs.

(3)

In case of attachments or other interventions of third parties the customer has to inform us immediately in writing so that we can file an action according to Section 771 German Code of Civil Procedure [ZPO]. Insofar as the third party is not in the position to reimburse us for the court and out-of-court costs of an action according to Section 771 ZPO the customer will be liable for the loss suffered to us.

## **§ 10 Industrial property rights and copyrights; defects of title**

(1)

Insofar as not otherwise agreed we are obliged to merely provide the delivery in the country of the place of delivery free of industrial property rights and copyrights of third parties (hereinafter: property rights). If a third party asserts justified claims against the customer owing to the infringement of property rights through deliveries which were provided by us and are used as per contract, we shall be liable towards the customer within the deadline determined in § 7 Par. (7) as follows:

a.)

We will, at our choice, i.e. after examining the factual and legal position, either obtain a right of use for the deliveries concerned at our costs, change the object of delivery so that the property right is not infringed, or exchange it. If this is not possible for us at reasonable conditions, the customer is entitled to the statutory rights of cancellation or reduction.

b.)

Our obligation to pay damages is oriented to § 7.

c.)

The obligations stated above in § 10 Par. (1) Subclauses a.) and b.) shall only exist for us insofar as the customer informs us immediately in writing about the claims asserted by the third party, does not recognise an infringement and insofar as we reserve the right to all defence measures and settlement negotiations. If the customer discontinues the use of the delivery in order to minimise the damages or for other important reasons, he undertakes to inform the third party that the discontinuation of the use is not associated with a recognition of an infringement of property right.

(2)

Claims of the customer are excluded insofar as he is responsible for the infringement of property right.

(3)

Claims of the customer are further excluded insofar as the infringement of property right is caused by special stipulations of the customer, by an application which is not foreseeable by us or by the fact that the delivery is changed by the customer or is used together with products or advertising material which were not delivered.

(4)

In the event of property right infringements the provisions of §7 Par.(2) and Par.(9) shall otherwise apply accordingly to the claims of the customer as regulated in § 10 Par. (1) Subclause a.).

(5)

The provisions of § 7 shall apply accordingly with the existence of other defects of title.

(6)

Further or other claims of the customer against us and our vicarious agents owing to a defect of title other than those regulated in in § 10 are excluded.

## **§ 11 Use of trademarks, advertising with trademarks, advertising material**

(1)

The customer undertakes to use the protected marks (e.g. company marks, registered trademarks, Internet domains) within the scope of advertising for the products so that neither the protected marks are impaired, nor protected marks of third parties are impaired hereby.

(2)

The customer can use the advertising materials made available by us for advertising the goods (e.g. online advertising, print advertising, radio advertising, television advertising, presentations at sales fairs, sale in the stationary trade). Own advertising materials and advertising (e.g. online advertising, print advertising, radio advertising, television advertising, presentations at sales fairs, sale in the stationary trade) are to be coordinated with us in advance with regard to the presentation of the products. The customer is responsible for the presentation conform to the law and the compliance with the basic legal conditions, regulations and laws in the country of his registered seat and/or sales territory himself, we do not assume any liability for the customer's advertising measures. In the event that a claim is asserted against the customer he shall indemnify us from all claims.

(3)

We shall make advertising materials available to the customer for the advertising. The customer must check these before using these for the purpose of advertising for the compliance with the basic legal conditions, regulations and laws in the country of his registered seat and/or sales territory. We do not assume any liability with regard to the contents of the advertising material that these comply with the basic legal conditions, regulations and laws in the country of the customer's registered seat. In the event that a claim is asserted against the customer he will indemnify us from all claims.

## **§ 12 Copyrights to product photographs and texts, use of product photographs and texts**

(1)

For the advertising of the products we grant the customer the simple, non-exclusive right of use to product photographs and texts for using for the resale of the products (B2B and B2C) and for advertising for the resale. The customer is not entitled to assign the rights of use granted to him in full or in part to third parties (third parties are natural persons and/or legal entities who have not become contractual partners; this shall also apply to third parties which are affiliated with the customer in a group and/or otherwise under company law and/or commercial law). The forwarding of the granted rights of use requires our prior written consent.

(2)

Rights of use within the meaning of § 12 Par. (1) are the following:

- Right to reproduction
- Right to distribution
- Right to exhibition
- Right to a lecture, performance and demonstration
- Right to make accessible to the public
- Broadcasting right

(3)

Changes to the product photographs, which are made available, by photo editing, photo montage or by using other electronic aids in order to create a new work are only permitted after obtaining our prior written consent.

(4)

The works named in § 12 Par. (1) will be made available for downloading by us. The customer undertakes when downloading that he must exchange product photographs and texts at our request. If the exchange is not carried out by the customer despite an explicit reference by us we shall not assume any further liability for the further use by the customer. Should a claim be asserted against the customer by third parties owing to the use of the product photographs or texts we shall not be liable for claims of any kinds, which are asserted by third parties, after the issued reference and the non-reaction by the customer. The customer explicitly indemnifies us from claims of third parties.

### **§ 13 Data protection**

(1)

Customer data which are personal data within the meaning of the Federal Data Protection Act (BDSG) will only be used by us for the processing of the contract with the customer.

Without the explicit consent of the customer the data will not be stored beyond this purpose.

(2)

For further information please refer to the privacy statement under:  
[www.partner.com/privacy](http://www.partner.com/privacy)

### **§ 14 Applicable law and contractual language**

(1)

This contract, including its interpretation, is subject to German law under the exclusion of the Convention of the United Nations on Contracts for the International Sale of Goods (CISG) as well as other, also future, interstate or international conventions, also after they have been taken over into German law.

(2)

The contractual language is German.

### **§ 15 Place of jurisdiction, place of performance**

(1)

If the customer is a merchant or entrepreneur within the meaning of Section 14 BGB, our registered seat is the place of jurisdiction, thus Bielefeld, Germany, we are however entitled to also file action against the customer at his registered seat.

(2)

Insofar as not otherwise derived from the order confirmation, our registered seat is the place of performance.

## **§ 16 Final provisions**

(1)

Amendments and addendums to this contract, including this written form clause, require a written form in order to be valid. The same shall apply to collateral and supplementary agreements.

(2)

Should one or several regulations of these Terms of Sale be invalid this shall not lead to the invalidity of the entire contract and these Terms of Sale. The invalid regulation will be replaced by the applicable statutory regulation.