

General terms and conditions of Tate Global GmbH

1. General information

1.1 The following sales and delivery terms apply to all contracts for the delivery of goods and the provision of services concluded between Tate Global GmbH (hereinafter referred to as Tate) and the contractual partners of Tate (hereinafter referred to as the ordering party) if the ordering party is a **business as defined in Section 14 of the German Civil Code (BGB)**. The ordering party's conditions that oppose or vary from the Tate general terms and conditions are only recognised if we explicitly agree to their application. Our payment terms also apply if we implement delivery to the ordering party without restriction even when aware of opposing or different sales or payment terms from the ordering party.

1.2 All agreements that are made between Tate and the ordering party with regard to contracts are laid down in the relevant contract, these terms and the order confirmation of Tate.

2. Quotations, quotation documents, concluding the contract

2.1 Our quotations are subject to change until the order is finally confirmed. Only an order signed by the ordering party is a binding offer to conclude a contract. We can accept this within two weeks by sending an order confirmation or delivering the ordered goods within this period. Tate is entitled to accept under certain conditions. In particular we refer here to Number 3.10.

2.2 Information and descriptions provided by Tate on the subject of delivery or performance (e.g. materials quality and characteristics, weights, measurements, usage values, loads, tolerances and technical data) are only given as approximations. Order-related approval drawings of Tate comply with the key DIN standards at the time that the order is confirmed by Tate. Explanations, performance information, assurances or discussions are only binding for Tate if they are confirmed by it in writing. Technical changes, variances in measurements, weight and characteristics are permissible under DIN or usual practice.

2.3 We reserve the ownership and copyrights to drawings and other quotation documents. These documents may not be made accessible to third parties unless we issue explicit written permission to the ordering party on this. The notes on technical standards and other information contained in these or our other documents are only used to describe the service and do not include guarantee assurances, in particular they are not guarantees for characteristics or usage periods.

3. Prices, payment terms, offsetting, assignment

3.1 If no agreement has been made with the ordering party to the contrary the prices are understood as ex works or warehouse and exclude packaging, transport costs, customs and the relevant applicable statutory value-added tax.

3.2 If nothing further is stated on the order confirmation, the payments are due immediately and must be provided 14 days from the invoice date whereby the payment term is complied with if Tate can access the payment method within this period. Interest on default payments is charged at **8 percent per annum** above the base interest rate. In the event that we assert higher damages due to default, the ordering party has the option to demonstrate that the asserted damages due to default did not occur or were at least at a much lower level.

3.3 If there are more than three months between the order being issued and delivery, and changes occur in this period to the calculation basis due to higher salary or material costs or due to other circumstances, in particular calculation changes for technical reasons, Tate is entitled to increase the contractual price in line with the change that occurred and the calculation basis. This also applies to call-off orders.

3.4 If after concluding the contract there are indications that the ordering party's ability to perform is at risk, e.g. payment default or stoppage, application to start insolvency proceedings, transfer of current asset collateral, unfavourable information from banks or loan insurers, Tate is entitled to refuse performance and, after unsuccessfully setting a period to provide collateral in the form of directly enforceable bank guarantees or payment in advance, to withdraw from the contract and/or demand damages. Setting a period lapses if the risk to the ability of the ordering party to perform is obvious.

The ordering party receives delivered goods within the goods credit limit granted and notified to the ordering party. The order confirmation by Tate is only valid if the ordering party is within the goods credit limit at the time of delivery and this is not exceeded by the delivery. Compliance with the goods credit limit is independent of the payment terms granted.

3.5 Payments by bills of exchange and cheques are only accepted by special agreement. Discount and bills of exchange fees are charged in all cases to the ordering party.

3.6 Incoming payments are used as selected by Tate to cover the oldest or lowest liability plus the default interest accumulated.

3.7 Payment terms that have been granted lapse and outstanding receivables are due for immediate payment if an application is made to start insolvency proceedings for the ordering party's assets if the ordering party does not comply with important obligations to Tate or third parties without presenting justifying reasons or if the ordering party has made inappropriate statements on its creditworthiness.

3.8 The ordering party only has a right to offset if the counterclaim has been determined in a legally binding manner or is undisputed by us. The ordering party is only permitted to exercise a retention right if the counterclaim is based on the same contractual relationship. The assignment by the ordering party of claims to which Tate is entitled is excluded.

4. Transfer of risk, packaging

4.1 The delivery is dispatched by Tate from the factory at the risk of the ordering party even if the freight and other costs are charged to Tate. Tate will insure the delivery against transport damage only at the explicit written request and at the expense of the ordering party. If the delivery is insured against transport damage the ordering party must inform Tate of transport damage immediately and request the forwarder to produce a factual report.

4.2 If collection is agreed and this does not take place within 14 days of the agreed deadline, Tate will send the goods using a shipment method that appears favourable to it at the ordering party's expense.

4.3 Transport and all other packaging is not returned. The ordering party is obliged to dispose of the packaging at their own expense. **Multiple use palettes, palettes with frames remain the property of Tate.**

4.4 If the loading or transport of the item being delivered is delayed for reasons for which the ordering party is responsible, Tate is entitled to store the delivery at the expense and risk of the ordering party as it sees fit, undertake all relevant measures considered necessary to maintain the delivery and will invoice the costs as delivered. This also applies if a delivery notified as ready for dispatch is not called off **within ten working days**. The statutory requirements for delayed acceptance remain unaffected.

5. Delivery, delivery time, self-delivery/force majeure

5.1 Delivery deadlines and periods are agreed separately. The start of the delivery period stated by us requires the prompt and proper fulfilment of the ordering party's obligations.

5.2. If delivery periods are agreed in days, only working days from Monday up to and including Friday apply. The delivery period is complied with if the item to be delivered has left the factory before it has ended or the ordering party has been informed that it is ready for dispatch.

5.3. The ordering party must set a subsequent period for delivery if the agreed delivery deadline is exceeded. This subsequent period must be appropriate and cover at least three weeks. After the unsuccessful end of the subsequent period, the ordering party can withdraw from the contract. This withdrawal right is excluded for goods that were produced individually and/or especially to the ordering party's specifications.

Additional rights, in particular claims for damages, are only granted to the ordering party for deliberate actions or gross negligence by Tate.

5.4 If Tate does not receive deliveries or services from sub-contractors despite proper coverage, or these are not correct, not on time or force majeure events occur, Tate will inform the ordering party of this without delay. Tate is not responsible for example for official intervention, business disturbances, strikes, lockouts, work disruptions due to political or economic conditions, faults to the necessary raw materials or consumables, energy supply problems, transport delays due to traffic problems or unavoidable events that occur with Tate's sub-contractors or third party businesses on which it depends to maintain its business. This also applies if these events occur at a time when Tate is in default.

5.5 In this case Tate is entitled to delay the deliveries or services for the duration of the hindrance and an appropriate start-up period or to withdraw from the as yet unfulfilled part of the contract in full or in part if it has complied with the information obligation stated above and has not accepted the procurement or manufacturing risk.

6. Warranty and complaints about defects, recourse/manufacture redress

6.1 The ordering party's warranty rights require that it has properly complied with the investigation and complaint obligations stated in **Section 377 of the German Commercial Code (HGB)**.

6.2 The agreed characteristics of the delivery to be provided by Tate arise exclusively from the contractual agreements with the ordering party and not any other commercial statements, brochures, consultations etc. Number 2.2 applies.

6.3 If the delivered goods have defects that already existed when the risk was transferred, we will at our own discretion improve the goods or deliver replacements, subject to on-time complaints being received. Recourse claims remain unaffected by this provision without restriction.

6.4 If the subsequent fulfilment fails, the ordering party can - notwithstanding any claims for damages - withdraw from the contract or reduce the fee.

6.5 Defect claims do not exist for simply insignificant variances from the agreed characteristic, only minor effects on usability, natural wear and tear or damage incurred after the transfer of risk as a result of defective or negligent treatment, excessive use, unsuitable operating materials, defective construction work, unsuitable construction foundations or due to special external influences not required in the contract. If the ordering party or third parties undertake improper repair work or changes, there are also no claims for damages for these and the resulting consequences.

6.6 The liability for material defects lapses if the ordering party does not give Tate the opportunity to view the contractual items complained about and check if the delivery was properly stored, used or installed by the ordering party or connected with unsuitable parts, in particular those not coming from Tate or was installed in such. The liability for material defects is also excluded if there is natural wear, for improper intervention into the delivery by the ordering party or third parties and for damage in connection with repairs or other work by third parties.

6.7 Tate must bear the expenses required for the purposes of subsequent fulfilment in line with Section 439 Para. 2 of the German Civil Code (BGB). This does not apply if the costs increase because the delivered goods were transported to a different location from the branch of the ordering party unless the transfer was for proper use.

6.8 Retention rights by the ordering party against Tate only exist to the extent to which the ordering party has not agreed anything beyond the statutory default claims. Numbers 6.5 and 6.6 apply accordingly for the scope of the retention right claim by the ordering party against Tate.

7. Claims for damages and reimbursement of costs

7.1 If nothing further has been agreed above, subject to Number 7.2 below, claims for damages and reimbursement of costs by the ordering party are excluded no matter the legal basis; this applies in particular to claims for damages from culpability during contractual negotiations, initiating a contract or similar business contacts, due to other duty infringements and for tort claims for the reimbursement of material damage pursuant to Section 823 of the German Civil Code (BGB) as well as the costs of the ordering party in place of a claim for damages instead of performance.

7.2 The liability restrictions in Number 7.1 above do not apply

a) if the damage was caused by deliberate action or gross negligence by us, our representatives or vicarious agents, whereby the claims for damages for gross negligence are restricted to the predictable damages typical of the contract,

c) to infringements of key contractual obligations the fulfilment of which only permit the proper implementation of the contract and on the fulfilment of which the ordering party may rely, whereby in this case the claims for damages for slight negligence are also restricted to the foreseeable damage that is typical of the contract when it was concluded,

c) in cases of binding liability under the German Product Liability Act,

d) to damages due to injury to life, limb or health,

e) to the malicious hiding of a material defect, the transfer of the characteristic or manufacturing risk as defined by Section 276 BGB or the exceptional written acceptance of a characteristic or storage guarantee as defined by Section 443 BGB.

7.3 Claims for damages by the ordering party are restricted to the amount of interest that they have in the fulfilment of the contract.

7.4 If our liability is excluded or restricted, this also applies to the personal liability of our staff, employees, representatives and vicarious agents.

8. Limitation of claims

8.1 Defect claims lapse after **12 months**. The limitation period starts when the risk is transferred. For deliveries and services relating to construction materials and/or for or on a construction site, the statutory periods remain in force; the limitation period for retention rights in the event of delivery redress also remain unaffected. In the event of goodwill, the limitation period for defect claims does not start again when a new attempt at subsequent fulfilment is made. If there is a claim for subsequent fulfilment in place, the recognition of the claim by us associated with the subsequent fulfilment for repairs or a replacement delivery relating to Section 212 Para. 1 No. 1 BGB is only for those claims that were the subject of the ordering party's subsequent fulfilment request or arise through a defective subsequent fulfilment; otherwise the limitation period continues for the original delivery item.

8.2 Other claims for damages that exist for the ordering party as a result of and in connection with a delivery lapse after **12 months** from the awareness or grossly negligent lack of awareness of the damage and the person causing the damage and without attention being paid to the knowledge or grossly negligent lack of knowledge 5 years after their creation.

8.3 In cases under Number 7.2 the statutory limitation period applies to claims for damages and reimbursement of costs.

9. Retention of title

9.1 The goods remain owned by Tate until the payment of all receivables - including all balance claims to which the ordering party is entitled from overdrafts - that Tate is entitled to against the ordering party no matter the legal basis. Tate will release the goods at the ordering party's request if the value of the collateral sustainably exceeds the claims by 20%.

9.2 Tate is entitled to return the item if the buyer acts in a manner contrary to the contract. The ordering party is obliged to treat the goods carefully if ownership has not yet been transferred to it. If the ownership has not yet been transferred, the buyer must inform us in writing without delay if the delivered item is pledged or exposed to other interventions by third parties. If the third party is not able to reimburse us for the costs of a lawsuit or other legal costs under Section 771 of the German Code of Civil Procedure (ZPO), the ordering party is liable for the loss incurred by us.

9.3 If the ordering party properly sells the goods delivered by Tate, it already assigns these to Tate in the amount of the final invoice agreed with Tate (including value-added tax). This assignment applies independently of whether the goods are sold on with or without processing. The ordering party remains permitted to collect the receivable even after assignment. This does not affect our entitlement to collect the receivable ourselves. We will however not collect the receivable as long as the ordering party complies with its payment obligations from the income received, is not in default of payment and in particular no insolvency proceedings have been started and payments have not stopped.

9.4. The processing or transformation of the goods by the ordering party always occurs in the name and on behalf of Tate. In this case the ordering party's vested rights to the goods remain in place for the modified item. If the goods are processed with other objects that do not belong to Tate, Tate acquires joint ownership of the new item in the same ratio as the value of the goods to the other processed items at the time of the processing. This also applies to any commingling. If the goods are commingled such that the ordering party's item is viewed as the main item, it is agreed that the ordering party transfers pro rata joint ownership to Tate and keeps the sole ownership or joint ownership thus created for Tate. To secure the receivables of Tate against the ordering party, the ordering party also assigns such receivables to Tate that are produced by connecting the retained goods with a property against a third person. Tate already accepts this assignment.

9.5 At our request the ordering party must name the debtor of the assigned receivables, provide all information required for collection, hand over the associated documents and inform the debtor of the assignment; we are authorised to inform the debtor of the assignment ourselves.

9.6 If payment is stopped or an application is made to start insolvency proceedings, the right to resale, use or install the retained goods lapses as does the authorisation to collect the assigned receivables.

9.7. If the ordering party acts contrary to the contract, in particular for payment default, and the existence of other requirements in Section 323 BGB, we are entitled to withdraw from the contract and take back the retained goods. After taking back the retained goods we are permitted to sell them and to offset the sales revenue against the ordering party's liabilities - after deducting appropriate sale costs.

10. Place of fulfilment, court of jurisdiction, choice of law

10.1 The place of fulfilment and place of subsequent fulfilment is our business headquarters.

10.2 The court of jurisdiction if the ordering party is a businessperson, legal entity under public law or public law investment fund is the one covering our business headquarters whereby we are also entitled to start lawsuits in another jurisdiction as permitted by statute.

10.3 The laws of the Federal Republic of Germany apply. If the ordering party has a branch (Art. 10 CISG) that is not in Germany, common UN procurement law (CISG) supplemented by the contractual agreements and our general sale and delivery terms have priority over the other statutory provisions of German law.