

Terms and Conditions, Imprint

General sales conditions of Perkeo-Werk GMBH+CO.GK

§ 1 General

Our terms and conditions shall apply exclusively; we shall not acknowledge any conditions to the contrary or conditions of the Purchaser that deviate from our terms and conditions unless explicitly agreed on by us in writing. Our terms and conditions shall also apply in the event of our carrying out delivery to the Purchaser unconditionally, in the knowledge of conflicting terms and conditions of the Purchaser or conditions that deviate from our terms and conditions.

All agreements made between us and the Purchaser for the purpose of executing this contract are set down in writing in this contact.

Our terms and conditions shall only apply to companies in compliance with § 310 Clause 1 of the German Civil Code (BGB).

German law shall apply exclusively, UN law on the international sales of goods is ruled out.

§ 2 Offer

In the event of our receiving an order that can be defined as an offer with the meaning pursuant to § 145 of the German Civil code (BGB), we can accept it within 2 weeks.

Our offers are without engagement unless otherwise specified in the order confirmation. The documents belonging to the offer may vary with regards to the illustrations, drawings, weights and measures, for example, unless it is explicitly specified that the documents are binding.

We reserve the right to alterations in the design and shape of our goods during the delivery period in as far as these are due to legal or technical developments and are reasonable for the buyer.

We reserve ownership and copyrights to illustrations, drawings, calculations and other documents. This also applies to such written documents designated as "confidential". Our explicit approval in writing is required prior to disclosure of such documents to third parties by the Purchaser.

§ 3 Delivery, delay in delivery

The start of the delivery time specified by us presupposes that all technical issues have been clarified.

The observance of our supply commitment also presupposes the punctual and orderly fulfillment of obligations on behalf of the Purchaser. The defense of non-performance of the contract remains reserved.

In the event of the Purchaser failing to accept the delivery or culpably infringing upon other obligations to cooperate, we shall be entitled to demand replacement of the loss suffered by us in this respect, including any extra expenses. We reserve the right to further claims.

Provided the requirements of Clause (3) have been met, the risk of accidental loss or accidental deterioration of the item being purchased shall pass to the Purchaser at the point in time in which the Purchaser has failed to take delivery or meet his obligations as debtor.

We shall be liable pursuant to the statutory provisions providing the underlying contract of sale is a transaction for delivery by a fixed date as defined in § 286 Clause 2 No. 4 of the German Civil Code (BGB) or § 376 of the German Commercial Code (HGB). We shall also be liable pursuant to the statutory provisions in the event that the Purchaser is entitled to enforce his wish to withdraw from the contract based on a failure to deliver for which we are responsible.

We shall furthermore be liable pursuant to the statutory provisions in the event that the delay in delivery is based on a breach of contract through willful or gross negligence on our behalf; a fault attributable to our representative or vicarious agent shall be attributed to us. In the event that the delay in delivery is not based on a willful breach of contract attributable to us, our liability for damages shall be restricted to the foreseeable, typical damage incurred.

We shall also be liable pursuant to the statutory provisions in the event that the delay in delivery for which we are responsible is based on a culpable breach of a major contractual obligation; in this case the liability for damages shall, however, be restricted to the foreseeable, typical damage incurred.

In other respects we shall also be liable in the event of delay in delivery for every full week of delay, within the framework of a lump sum compensation for damage incurred by delay, amounting to 3% of the declared value of goods to be delivered, a maximum, however, amounting to not more than 15% of the value of goods.

Additional legal claims and rights of the Purchaser shall remain reserved.

§ 4 Passing of risk

Unless otherwise specified in the confirmation of order, the delivery shall be "ex works".

Transportation packaging and all other packaging subject to the packaging order shall not be returnable; with the exception of pallets. The Purchaser is committed to dispose of the packaging at his own expense.

If so requested by the Purchaser, we shall cover the delivery with a transportation insurance; the Purchaser shall bear the costs for this insurance.

In the event of the Purchaser asking for the delivered goods to be stored by a third party, the Purchaser shall bear the occurring costs in this respect, the risk shall be passed to the Purchaser at the latest upon delivery of the goods to the third party. Any earlier passing of risk in compliance with Clause (1) shall remain unaffected.

§ 5 Prices and payment conditions

Unless otherwise specified in the order confirmation our prices shall apply "ex works", not including packaging; this will be charged for separately.

The statutory value added tax is not included in our prices; it shall be shown in the bill separately in the statutory amount on the day of billing.

The deduction of any discount shall require a specific written agreement.

Unless otherwise specified in the order confirmation, the net purchase price is payable (without deduction) within 30 days of the date on the invoice. Statutory regulations shall apply with respect to consequences resulting from delay in payment.

The Purchaser is only entitled to set-off rights in the event that his cross-claims are legally binding, uncontested or acknowledged by us. He is furthermore entitled to make use of a right of retention providing his cross claim is based on the same existing contractual relationship.

§ 6 Warrantee for defects

Claims of the Purchaser arising from defects require that the Purchaser correctly meets his obligation to inspect and give notification of any defect in accordance with § 377 of the German Commercial Code (HGB).

In the event of the item purchased showing a defect, the Purchaser is entitled to request subsequent performance in the form of removal of the defect or to request the delivery of a new satisfactory item. In the event of removal of the fault we shall be obliged to bear all expenses for the removal of the fault, especially costs of transportation, traveling expenses, work and material costs in as far as these are not increased through the item of purchase having been transported to a different place than the place of performance.

Should subsequent performance not be achieved, the Purchaser is entitled to either withdraw from the contract or to request a reduction.

We shall be liable pursuant to the statutory provisions in the event that the Purchaser claims for damages that may be caused by intentional or gross negligence, including intentional or gross negligence of our representatives or vicarious agents. In the event that we are not accused of intentional breach of obligations of the contract, the damage liability shall be restricted to the foreseeable, typical damage incurred.

We shall be liable pursuant to the statutory provisions in the event that we are culpable for non-observance of a major obligation of the contract; in this case the damage liability shall, however, be restricted to the foreseeable, typical damage incurred.

In the event of the Purchaser being entitled to claim for replacement of the loss and not for performance, our liability shall also be restricted to the claims in compliance with the above Clause (3) for replacement of the foreseeable, typical damage incurred.

Nothing shall affect the liability for culpable injury to life, the human body or health; this also applies to the obligatory liability in compliance with the product liability act.

Unless otherwise regulated hereinbefore, liability is excluded.

The limitation period for claims relating to defects is 12 months as from the passing of risk.

Nothing shall affect the limitation period in the event of a delivery recourse pursuant to §§ 478, 479 of the German Civil Code (BGB); this period is 5 years, calculated from the delivery of the defective item.

§ 7 Overall liability

Liability exceeding the scope specified in § 6 shall be ruled out – irrespective of the legal nature of the asserted claim. This applies in particular to any such claims for damages as may be based on culpa in contrahendo, on any other form of neglect of duty or on claims in tort for damage to property pursuant to § 823 of the German Civil Code (BGB).

In the event that our liability for damage is excluded or restricted, this shall also apply with respect to the personal damage liability of our employees, cooperators, representatives and vicarious agents.

§ 8 Reservation of title

We reserve the title to the item being delivered up until receipt of all payments from the delivery contract. In the event of the Purchaser not acting in conformity with the contract, especially with respect to the delay of payment, we shall be entitled to take back the delivered goods. Our taking back of the delivered goods shall not be seen as withdrawal from the contract, unless this is specifically expressed by us in writing. The seizure of the delivered goods through us shall always be seen as a withdrawal from the contract. After taking back the delivered goods we shall be entitled to exploit the goods, the sales from exploitation shall be appropriated to the payables of the Purchaser – deducting appropriate expenses for the exploitation.

The Purchaser shall be committed to treat the item of delivery with care, he is especially committed to provide at his own expense replacement value insurance for the item against damage from fire, water and theft. In the event that maintenance and inspection work should be necessary, the Purchaser must carry out this work in due time at his own expense.

In the event of seizure of the item of delivery or in the event of other forms of access through third parties, the Purchaser shall inform us immediately in writing in order for us to be able to file a suit pursuant to § 771 of the German Code of Civil Procedure (ZPO). In the event of the third party not being able to repay us the legal expenses and extrajudicial costs of a suit pursuant to § 771 of the German Code of Civil Procedure (ZPO), the Purchaser shall be liable for the loss we have suffered.

The Purchaser is entitled to sell on the item of delivery in the orderly course of business; at this moment, however, he shall assign all claims to us in the amount of the final total of the invoice (including value added tax) that he accrues from selling the item to his customer or third party, and irrespective of whether the item of delivery has been sold on without or after further processing. The Purchaser shall remain entitled to collect this sum due, also after assigning of the debt. The foregoing shall have no effect on our right to collect the sum due ourselves.

We shall commit ourselves, however, not to collect the sum due as long as the Purchaser meets his payment obligations from proceeds received, does not get into arrears and, in particular, a petition to commence insolvency proceedings has not been filed and no suspension of payments has occurred. Should this be the case, however, we shall be able to demand that the Purchaser shall give notice to us on assigned debts and debtors, shall disclose all information required for the collection, shall surrender all documents and notify the debtors (third parties) on the assignment of debt.

The processing or shaping of the item of delivery through the Purchaser shall always be carried out to our benefit. Should the item of delivery be processed together with other items not belonging to us, we shall then acquire co-ownership of the new item in the proportion of the value of the item of delivery (invoice final total, including value added tax) to the other processed items at the time of the processing. With regard to the item resulting from the processing the same shall apply as does to the item delivered subject to reservation.

In the event that the item of delivery is combined with other items not belonging to us in a non-separable manner, we shall then acquire co-ownership to this new item in the proportion of the value of the item of delivery (invoice final total including value-added tax) to the other combined items at the time of the combination process. In the event that the combination be such that the item of the Purchaser shall be considered the main item, it shall be considered as agreed that the Purchaser shall assign us proportional co-ownership. The Purchaser shall keep safe the exclusive ownership or co-ownership resulting therefrom for us.

The Purchaser shall also assign us those claims which arise against a third party through the embedding of the item of delivery in a property, as security for our claims against him.

We commit ourselves to release the securities due to us upon request of the Purchaser in the event of the realizable value of our securities exceeding the claims to be secured by more than 10 %; the choice of securities to be released shall remain with us.

§ 9 Place of performance – place of jurisdiction

In the event that the Purchaser is a merchant, our place of residence is the place of jurisdiction; we shall however also be entitled to file a suit against the Purchaser at his place of jurisdiction. Unless otherwise specified in the confirmation of order, our place of residence is the place of performance.

Impressum

In the course of technical progress and the adjustment to the requirements of our customers, illustrations, compositions, performance data, properties, dimensions and weights of products are non-binding and subject to change without notice. We are not committed to make corresponding alterations to products already delivered. We also reserve the right to remove articles from our product range.

All previous catalogs shall become void with the publication of this catalog. Specifications of standards are non-binding.