

GENERAL CONDITIONS OF SALE AND DELIVERY

As of: March 2021

I. General

The following General Terms and Conditions of Sale and Delivery of Meyer Burger (Industries) GmbH (hereinafter: SELLER) shall become part of every contract with customer (hereinafter: BUYER). They shall also apply to all future deliveries, services or offers to BUYER, even if they are not separately agreed upon again. Deviating provisions require written confirmation by SELLER. Terms and conditions of BUYER or third parties shall not apply, even if SELLER does not separately object to their validity in individual cases.

II. Offers, orders, conclusion of contract

1. Offers of SELLER are non-binding and subject to change with regard to price, quantity, delivery time and delivery possibility.
2. Orders of BUYER become binding for SELLER by written confirmation of SELLER (including invoice or delivery bill).
3. The legal relationship between SELLER and BUYER shall be governed solely by the written purchase contract, including these General Terms and Conditions of Sale and Delivery. This contract fully reflects all agreements between the contracting parties regarding the subject matter of the contract. Verbal commitments of SELLER prior to the conclusion of this contract are not legally binding and verbal agreements of the contracting parties shall be replaced by the written contract, unless it is expressly stated in each case that they shall continue to be binding.
4. Information provided by SELLER on the subject matter of the delivery or service (e.g. weights, dimensions, utility values, load capacity, tolerances and technical data) as well as representations of the same (e.g. drawings and illustrations) are only approximately decisive, unless the usability for the contractually intended purpose requires exact conformity. They are not guaranteed characteristics, but descriptions or identifications of the delivery or service. Customary deviations and deviations due to legal regulations or technical improvements as well as the replacement of components by equivalent parts are permissible, provided that they do not impair the usability for the contractually intended purpose.

III. Prices and Payment terms

1. SELLER's prices being valid at the time of delivery shall be charged for the scope of services and deliveries specified in the order confirmations; additional or special services shall be charged separately. The prices are in EUR ex works exclusive of packaging, the statutory value-added tax, in the case of export deliveries customs duties as well as fees and other public charges.
2. If the agreed prices are based on the SELLER's list prices and the delivery is to be made more than four months after conclusion of the contract, the SELLER's list prices being valid at the time of delivery shall apply (in each case less an agreed percentage or fixed discount).
3. Invoice amounts are due within thirty days without any deduction, unless otherwise agreed in writing. The date of receipt by SELLER shall be decisive for the date of payment. Payment by check is excluded unless it is agreed separately in individual cases. If BUYER fails to make payment when due, interest of 5% p.a. shall be charged on the outstanding amounts from the due date; the right to claim higher interest and further damages in the event of default shall remain unaffected.
4. Offsetting with counterclaims of BUYER or withholding of payments due to such claims shall only be permissible if the counterclaims are undisputed or have been established by a court of law.

5. SELLER shall be entitled to perform or render outstanding deliveries or services only against advance payment or provision of security if, after conclusion of the contract, circumstances become known to SELLER which are likely to substantially reduce the creditworthiness of BUYER and which jeopardize the payment of the outstanding claims of SELLER by BUYER under the respective contractual relationship.
6. Payments are considered to be effected only when the amount is finally available on an account of SELLER.

IV. Delivery

1. Delivery shall be made DAP to the place agreed in the order (Incoterms 2020), unless expressly agreed otherwise.
2. Deadlines and dates for deliveries and services put into perspective by SELLER are always just approximate unless a fixed deadline or a fixed date has been expressly promised or agreed. If shipment has been agreed, delivery periods and delivery dates refer to the time of handover to the forwarding agent, carrier or other third parties commissioned with the transport.
3. SELLER may - without prejudice to his rights resulting from default of the BUYER - demand from BUYER an extension of delivery and performance deadlines or a postponement of delivery and performance dates by the period of time during which BUYER does not comply with his contractual obligations towards SELLER.
4. SELLER shall not be liable for impossibility of delivery or for delays in delivery if these are caused by force majeure or other events not foreseeable at the time of conclusion of the contract (e.g. epidemics / pandemics, operational disruptions of any kind, difficulties in the procurement of materials or energy, transport delays, strikes, lawful lockouts, shortage of labor resources, energy or raw materials, difficulties in obtaining the necessary official permits, official measures or the non-delivery, incorrect delivery or late delivery by suppliers), as far as SELLER is not responsible for these. If such events make the delivery or performance of SELLER substantially more difficult or impossible and the hindrance is not only of temporary duration, SELLER shall be entitled to withdraw from the contract. In case of hindrances of temporary duration, the delivery or service deadlines shall be extended or the delivery or service dates shall be postponed by the period of the hindrance plus a reasonable start-up period. If BUYER cannot reasonably be expected to accept the delivery or service as a result of the delay, he may withdraw from the contract by immediate written declaration to SELLER.
5. If SELLER is in default with a delivery or service or if a delivery or service becomes impossible for SELLER, whatever legal basis, SELLER's liability for damages shall be limited in accordance with these General Terms and Conditions of Delivery.

V. Place of performance, shipment

1. Place of performance for all obligations arising from the contractual relationship is Dresden, unless otherwise specified.
2. SELLER reserves the right to choose the shipping route and the type of shipment at its own dutiful discretion. Additional costs caused by special shipping requests of BUYER shall be borne by BUYER. The same applies to increases in freight rates occurring after conclusion of the contract, any additional costs for rerouting, storage costs, etc., unless freight-free delivery has been agreed.
3. The risk shall pass to BUYER at the latest upon handover of the delivery item (whereby the start of the loading process shall be relevant) to the forwarding agent, carrier or other third parties designated to carry out the shipment. This shall also apply if partial deliveries are made or SELLER has assumed other services (e.g. shipping or installation). If the dispatch or the handover is delayed due to a circumstance being caused by BUYER, the risk shall pass to BUYER from the day on which the delivery item is ready for dispatch and SELLER has notified BUYER thereof.

VI. Retention of Title

1. The following agreed reservation of title serves to secure all current and future claims of SELLER against BUYER arising from the delivery relationship between the contracting parties (including balance claims from a current account relationship).
2. Delivery items delivered by SELLER to BUYER shall remain the property of SELLER until full payment of all secured claims is made. The delivery items as well as their replacement items according to the following provisions and covered by the retention of title are hereinafter referred to as "reserved goods".
3. BUYER is obliged to carefully store the reserved goods for SELLER, to maintain and repair them at his own expense, as well as to insure them against loss and damage at his own expense to the extent required by a prudent businessman. BUYER hereby assigns his claims from insurance contracts in advance to SELLER.
4. If SELLER withdraws from the contract in the event of a breach of contract by BUYER - in particular default of payment - SELLER shall be entitled to demand the return of the reserved goods.
5. BUYER shall be entitled to process and sell the reserved goods in the ordinary course of business until such time as they become realizable. Pledges and transfers of ownership as security assignments are not permitted.
6. If the reserved goods are processed by BUYER, it is agreed that the processing is carried out in the name and for the account of SELLER as manufacturer and that SELLER directly acquires the ownership or - if the processing is carried out from materials of several owners or the value of the processed item is higher than the value of the reserved goods - the co-ownership (fractional ownership) of the newly created item in the ratio of the value of the reserved goods to the value of the newly created item. In the event that no such acquisition of ownership should occur for SELLER, BUYER hereby already transfers his future ownership or - in the above-mentioned ratio - co-ownership of the newly created item to SELLER as security. If the reserved goods are combined or inseparably mixed with other items to form a uniform item and if one of the other items is to be regarded as the main item, SELLER shall, insofar as the main item belongs to it, transfer to BUYER pro rata co-ownership of the uniform item in the ratio stated in sentence 1.
7. In the event of resale of the reserved goods, BUYER hereby assigns to SELLER by way of security the claim against the purchaser arising therefrom - in the event of co-ownership of SELLER in the reserved goods in proportion to the co-ownership share. The same shall apply to other claims which take the place of the reserved goods or otherwise arise with regard to the reserved goods, such as insurance claims or tortious claims in case of loss or destruction. SELLER revocably authorizes BUYER to collect the claims assigned to SELLER in his own name. SELLER may revoke this direct debit authorization only in the event of liquidation.
8. If third parties access the reserved goods, in particular by seizure, BUYER shall immediately inform them of SELLER's ownership and inform SELLER thereof in order to enable SELLER to enforce its ownership rights. If the third party is not in a position to reimburse SELLER for the judicial or extrajudicial costs incurred in this connection, BUYER shall be liable to SELLER for these costs.
9. If the value of the securities to which SELLER is entitled exceeds SELLER's claims against BUYER by more than 20%, SELLER shall be obliged to release securities. The selection of the security to be released shall be made by SELLER.

VII. Liability, compensation

1. SELLER's liability for damages, irrespective of the legal grounds, in particular for impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties in contractual negotiations and

tort, shall be limited in accordance with this Clause VII, insofar as fault is relevant in each case.

2. SELLER shall not be liable in the event of simple negligence also not on the part of its executive bodies, legal representatives, employees or other vicarious agents, unless this involves a breach of major contractual obligations. Major contractual obligations are the obligation to deliver the delivery item in due time, its freedom from defects of title as well as such material defects which impair its functionality or usability more than insignificantly, as well as consulting, protection and care obligations which are intended to enable BUYER to use the delivery item in accordance with the contract or which are intended to protect the body and life of BUYER's personnel or to protect BUYER's property from considerable damage.
3. Insofar as SELLER is liable on the merits for damages in accordance with the above paragraph (2), this liability shall be limited to damages which SELLER foresaw as a possible consequence of a breach of contract at the time of conclusion of the contract or which it should have foreseen if it had exercised due care. Indirect damage and consequential damage resulting from defects of the delivery item shall also only be compensable insofar as such damage is typically to be expected when using the delivery item for the intended purpose.
4. The above exclusions and limitations of liability shall apply to the same extent in favor of SELLER's corporate bodies, legal representatives, employees and other vicarious agents.
5. The limitations of this Clause VII shall not apply to the liability of SELLER for intentional conduct, for guaranteed characteristics, for injury to life, body or health or under the German Product Liability Act. Mandatory statutory liability provisions shall remain unaffected.

VIII. Notification of defects

1. The delivered goods shall be inspected carefully immediately after delivery to BUYER or to a third party designated by BUYER. With regard to obvious defects or other defects which would have been recognizable in the course of an immediate, careful inspection, they shall be deemed to have been approved by BUYER if SELLER does not receive a written notice of defects within seven working days after delivery. With regard to other defects, the delivery items shall be deemed to have been approved by BUYER if the notice of defect is not received by SELLER within seven working days after the point in time at which the defect became apparent; if the defect was already apparent at an earlier point in time during normal use, however, this earlier point in time shall be decisive for the beginning of the deadline for giving notice of defects. Notices of defects shall be submitted in text form, enclosing receipts, samples, packing slips and stating the invoice number, the invoice date and the markings on the packages.
2. Complained delivery items may be returned only with the express consent of SELLER.
3. Furthermore, the provisions of § 377 of the German Commercial Code (HGB) shall apply.

IX. Warranty, material defects

1. The warranty period is one year from delivery. This period shall not apply to claims for damages by BUYER arising from injury to life, body or health or from intentional or gross negligent breaches of duty by SELLER or its vicarious agents, which shall in each case be time-barred in accordance with the statutory provisions.
2. In the event of material defects of the delivery items, SELLER shall first be obligated and entitled to repair the defect or to make a replacement delivery at its own discretion within a reasonable period of time. In case of failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay of the repair or replacement delivery,

BUYER may withdraw from the contract or reasonably reduce the purchase price.

3. If a defect is due to SELLER's fault, BUYER may claim damages under the conditions specified in Clause VII.
4. The warranty shall lapse if BUYER modifies the delivery item or has it modified by a third party without the prior consent of SELLER and if this makes it impossible or unreasonably difficult to remedy the defect. In any case BUYER has to bear the additional costs for the removal of defects resulting from the modification.

X. Technical advice, use and processing

1. Any technical application advice given by SELLER verbally, in writing and by means of tests shall be given to the best of SELLER's knowledge, but shall be deemed to be non-binding advice only, also with regard to any third-party property rights, and shall not release BUYER from its own examination of the products supplied by SELLER as to their suitability for the intended processes and purposes.
2. Application, use and processing of the delivery items are beyond SELLER's control and are therefore exclusively the responsibility of BUYER.

XI. Property rights

1. SELLER warrants in accordance with this Clause XI that the delivery item is free from intellectual property rights or copyrights of third parties. Each contracting party shall immediately notify the other contracting party in writing if claims are asserted against it due to the infringement of such rights.
2. In the event that the delivery item infringes an industrial property right or copyright of a third party, the SELLER shall, at his discretion and at his expense, modify or replace the delivery item in such a way that no rights of third parties are infringed any more, but the delivery item continues to fulfil the contractually agreed functions, or provide the BUYER with the right of use by concluding a license agreement with the third party. If the SELLER does not succeed in doing so within a reasonable period of time, the BUYER shall be entitled to withdraw from the contract or to reduce the purchase price appropriately. Any claims for damages of the BUYER are subject to the limitations of section VII of these General Terms and Conditions of Delivery.

XII. Miscellaneous

1. The contractual relations between SELLER and BUYER shall be governed exclusively by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11.4.1980 (CISG) shall not apply.
2. Exclusive place of jurisdiction for all disputes arising from the business relationship between SELLER and BUYER shall be Dresden. Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected by this provision.
3. If individual clauses of these Terms and Conditions of Sale and Delivery should be invalid in whole or in part, this shall not affect the validity of the remaining clauses or the remaining parts of such clauses. An invalid provision shall be replaced by the parties with a provision that comes as close as possible to the economic purpose of the invalid provision and is effective.
4. Insofar as these General Terms and Conditions of Sale and Delivery contain any gaps, those legally effective provisions shall be deemed to have been agreed to fill these gaps which the contracting parties would have agreed to in accordance with the economic objectives of the contract and the purpose of these General Terms and Conditions of Delivery if they had been aware of the gap.