

General terms and conditions

All of the following terms and conditions are binding for all current and future deliveries and services of the Carl Wilh. Meyer GmbH & Co. KG, Oldenburg. These conditions are exclusive. We do not acknowledge adverse conditions or customer's conditions which do not comply with our conditions, unless we have expressly agreed in written form. Our conditions also apply if we execute delivery without reservation, with knowledge of adverse conditions or customer's conditions which do not comply with our conditions.

1. Offer and pricing

All offers are subject to change and non-binding, so long as they are not acknowledged by us in written form. Prices apply for all deliveries that are valid on the day of delivery - excluding delivery costs and packaging; these costs shall appear in the invoice separately with a flat rate at normal price. We are no longer bound by the given prices should an order be changed.

Excess delivery and services shall be calculated at the common prices.

All agreements, which exist between us and the customer in order to execute the delivery contract, are recorded in written form in the contract; additional oral agreements are not valid and shall be regarded as "not concluded".

2. Payments

Invoices are payable net (without reduction) unless otherwise expressly stated. Invoices which include labour costs apart from the delivery of goods are generally payable after receipt without reduction. Should the client be behind schedule with the payment of an invoice, we shall calculate default interest of 8% above the base rate. Furthermore, liabilities of the customer shall be payable to us immediately. This also applies should payment be suspended, if credit rating is doubtful in terms of the customer or should the securities taken in by us be endangered. Should terms of payment not be met we are also entitled to withhold delivery without any need to extend the deadline, to demand compensation instead of delivery, to demand reimbursement instead of delivery or to demand withdrawal from the contract. Discount charges or other bill charges are at the expense of the customer and are payable immediately. Discounts shall not be acknowledged should payment be delayed. The customer shall have rights concerning withholding payment or set-off only provided that his counter claims have been judicially determined, are uncontested or are acknowledged by us.

Only employees with a letter of authority are entitled to undertake collection.

3. Delivery

Delivery times and delivery periods shall be deemed to be on time; however they are only legally binding through written confirmation by us. We are not liable for delays in delivery on our part or on the part of our suppliers due to force majeure. Should we exceed delivery time, a reasonable extension of the delivery time is to be granted to us. Compensation due to delayed delivery is excluded unless non-compliance with a written and confirmed delivery period is based on a proven default by us. In such a case our obligation to pay compensation shall be limited to a maximum of 10% of the agreed price of the delayed or undelivered goods. In the case of subsequently desired changes in the order and in the case of customised products, every claim for compensation or withdrawal from the contract is excluded.

4. Passing of risk

Unless not otherwise provided in the confirmation of order, an off-the-shelf delivery is expressly agreed; this applies regardless of whether we deliver directly to the customer or to construction sites. The customer must ensure that a person authorized for receipt as well as unloading personnel is at the site of delivery. Should this not be the case, we shall have the right to unload the goods at the site of delivery. We will cover the delivery with transport insurance at the customer's wish; all costs incurred as a result shall be paid by the customer.

5. Qualities of delivered goods

Only the qualities of delivered goods agreed at the time of sale shall apply. Should nothing be agreed, the attached descriptions apply to the delivered goods. Advertising messages of the manufacturer of delivered goods and our own advertising messages are only circa descriptions and do not exclude deviations within a tolerance limit. They will only be the object of the contract with these limits.

6. Liability for material defects

The customer's claim for defects requires that he fully satisfies the HGB [German commercial code] § 377 duties to inspection and notification. If the object does have a defect, the customer shall be entitled to choose between fulfilment either by rectifying the defect or by supplying a new defect-free object. If defects or replacements are rectified by us, we shall be obliged to bear all necessary expenses, so long as these costs are not increased due to the product being delivered to another location otherwise not agreed upon by us. If and when the subsequent fulfilment fails, the customer is entitled to reduce the purchase price or withdraw from the contract, at his choice. We shall be liable in accordance with statutory rights insofar as the customer asserts claims for compensation for damages which are based upon intent or gross negligence, including intent or gross negligence of our employees or our auxiliary persons. As far as we are not accused of wilful breach of contract, the liability for compensation shall be limited to damage of a foreseeable and typical nature. We shall be liable according to the legal requirements in case of culpable breach of a basic contractual obligation, however the liability for compensation shall be limited to damage of a foreseeable and typical nature in such cases as well. Liability for culpable injury to life, limb or health remains unaffected, this also applies to mandatory liability in accordance with the *Produkthaftungsgesetz* [German Product Liability Act]. Insofar as no other agreement differing from the above has been reached, liability will be excluded.

The limitation period for claims of defects shall be 12 months as of the passing of risk (Clause 4). The limitation period in the event of a delivery recourse according to §§ 478, 479 BGB [German civil code] remains unaffected; this is a period of 5 years, calculated from the delivery of the defective object.

Any additional liability on the basis of compensation for damages beyond that mentioned above - regardless of the legal nature of the asserted claims - is excluded. This shall apply in particular for compensation claims for damages arising from culpability at the time of contract conclusion, for other breaches of obligation and from tortious claims for compensation of material damage according to BGB [German civil code] § 823. This limit also applies providing the customer instead of a claim for compensation of the loss or instead of the performance demands the replacement of expenses incurred in vain. As far as our liability for damages is excluded or restricted, this shall also apply with regard to the personal liability for damages on the part of our employees and auxiliary persons

7. Assembly – installation

Should we carry out installation or assembly of delivered goods, this can also be fulfilled by subcontractors. In conjunction with our terms and conditions in such cases additionally applies the VOB [German construction contract procedures] in the valid version. All necessary drawings with all major details and precise figures shall be transferred to us when placing the order. The respective DIN-regulations apply for the dimensional tolerances. At the place of installation, the customer must make sure the presence of an authorised person, which can provide us with binding dimensions and show the place of installation. Failing this, our liability is omitted for the measurement and accuracy of the point of installation. Restrictive or additional special agreements remain reserved.

8. Reservation of title

We reserve title of the goods delivered until all payment as agreed in the contract has been made. Should the customer breach contract, especially in terms of late payment, we are entitled to take back the delivered goods. The collection of the delivered items by us means a cancellation of the contract. We are entitled to utilise the delivered goods after taking it back; the utilisation proceeds shall be set off against the customer's liabilities - less an appropriate amount of resale costs. The customer is obligated to treat the goods delivered with due care and to insure the goods at their replacement value, at his own expense, against fire and water damage and theft. Inasmuch as inspection work and maintenance work is necessary, the customer must carry this work out in good time and at his own expense. In the event of seizures or other actions by third parties, the customer must notify us immediately in written form so that we can lodge a lawsuit in accordance with § 771 ZPO [German Code of Civil Procedure]. So far as the third party is not in a position to reimburse us with the court and out-of-court costs according to § 771 ZPO, the customer shall bear liability for the incurred cost. The customer is entitled to sell the delivered goods in the proper course of business; however, he hereby assigns all claims in the sum of the final invoice amount (including current value of VAT) of our claim which accrue from the reselling to his purchaser or third party, independent of whether or not the delivered goods are resold after any further processing or without further processing. The customer shall still be authorised to collect such receivables after assignment. Our authorisation to collect the debt ourselves remains unaffected by this. However, we are obliged not to collect the outstanding money as long as the customer fulfills his payment obligations from the earned revenue, is not in payment delay and there is no claim for opening an insolvency case or stoppage of payment. Should this case arise, we may demand that the customer informs us of the assigned accounts receivable and the debtors, that he gives us all the information and relevant documents necessary to assert our rights and that he informs the debtors of the assignment. Processing or altering of delivered goods by the customer shall always be carried out for us. If the delivered goods are reprocessed with other objects that do not belong to us, then we shall acquire co-ownership of the new item created in the ratio of the value of the delivered goods (final invoice value including current VAT) with that of the other goods at the time of processing. The same shall apply to the item arising due to processing as to the object of sale delivered under reserve. In the event that the delivered goods are combined inseparably with other articles which do not belong to us, we shall acquire co-ownership of the new item created in the ratio of the value of the delivered goods (final invoice value including current VAT) with that of the other mixed goods at the time of mixing. If mixing is performed in such a manner that the item of the customer is to be regarded as the principal item, then it is deemed agreed that the customer transfers proportionate co-ownership to us. The customer shall take care of the goods in sole ownership or co-ownership for us.

In order to secure our claims against the customer, he shall also assign to us claims which he acquires against third parties as a result of the connection of the delivered goods to a property. We undertake to release the securities due to us at the request of the customer insofar as the realisable value of the securities exceeds the secured accounts receivable by more than 10%; the securities released shall be at our discretion.

9. Final provisions

This agreement is governed by the laws of the Federal Republic of Germany. The provisions of the UN Convention on Contracts for the International Sale of Goods do not apply here. As long as the customer is a commercially registered merchant, a legal entity governed by public law or a Federal Special Fund it is expressly agreed that our business headquarters be the legal venue for customers who live abroad or in the event of legal dispute or residence unknown, the legal venue of Oldenburg shall be agreed. Provided that this has not been otherwise agreed in the order confirmation, our business headquarters shall be the place of fulfilment.

If individual provisions of these general terms and conditions are or become invalid partly or wholly, the validity of these other provisions shall not be affected. The entire or partial ineffective regulation shall be replaced by such valid legal and economic provision as most closely approximates the intent and purpose in this event.

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