

General Business Terms and Conditions

General Business Terms and Conditions (German abbreviation: “AGB”) of svt Products GmbH (Status 2019)

§ 1 Scope

1. All deliveries and services shall be exclusively carried out based on these General Business Terms and Conditions (“AGB”). These General Business Terms and Conditions shall apply to all contracts with entrepreneurs (Section 14 Para. German Civil Code [*Bürgerliches Gesetzbuch - BGB*]), legal entities under public law and special funds under public law regarding deliveries and services.
2. Deviating, contradictory or supplementary General Business Terms and Conditions of the buyer will only become part of the contract to the extent that we have explicitly agreed to their validity in a written or text form.
3. Agreements, which we reach with the buyer in an individual case, including collateral agreements, addendums and amendments, shall have precedence over these General Business Terms and Conditions. A confirmation in a written or text form (letter or email) is necessary for the validity of these agreements.
4. These General Business Terms and Conditions shall also apply to all future business with the buyer. We can change the General Business Terms and Conditions at all times, the changes will become effective insofar as we notify the buyer of the new version of the General Business Terms and Conditions and it does not object hereto.
5. The German version of these General Business Terms and Conditions is decisive. Translations shall merely serve the purpose of information. The “Incoterms” in their respective most recent version are decisive for the interpretation of trade clauses.

§ 2 Offer and delivery

1. Our offers are non-binding; decisive for the scope and the condition of the delivery are solely our order confirmations in a written or text form.
2. This shall also apply in the cases, in which we have made catalogues, technical documentation, product descriptions or other documents available to the buyer. We reserve the ownership rights, copyrights and further industrial property rights to these documents. The buyer may not make these documents accessible to third parties without our consent in a written or text form.
3. Obvious errors, printing, computation, typing and calculation errors shall not establish any claim for fulfilment or damages.
4. Partial deliveries are permitted. For technical production reasons we reserve the right with certain products (special productions) to exceed or fall short of the order quantity up to 10%. The purchase price will be adjusted on basis of the actual delivery quantity. If, in such a case, a subsequent delivery of such a missing quantity is requested from the buyer, this request will be seen as a new order.
5. We can render the acceptance of orders and the execution of deliveries dependent on a provision of security or an advance payment. Until the fulfilment we are entitled to withhold our service and after the expiry of a deadline we are entitled to rescind the contract.

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§ 3 Prices and payment

1. The remuneration shall be calculated according to the price that is valid on the day of delivery pursuant to our price lists plus value added tax. The stated prices shall apply ex works. Freight and packaging of the goods will be charged additionally.
2. The invoice amount will be due net without deduction within 14 days net after the invoice date. We are entitled to request advance payment. Granted cash discount deadlines shall begin from the invoice date and the complete invoice settlement is assumed.
3. With the expiry of the aforementioned payment deadline the buyer will be in default, interest is to be paid on the purchase price during the default at the respective applicable statutory default interest rate. We reserve the right to assert a further claim for damages due to default. Discounts approved by us and other concessions shall cease to apply with the occurrence of default. Bills of exchange are not accepted.
4. Packaging will not be taken back by us and is to be disposed of by the buyer.

§ 4 Delivery time and passing of risk

1. The delivery deadline shall begin with the receipt of the order confirmation. The delivery deadline shall be deemed as adhered to if the object of delivery has left the plant or the readiness for shipment was communicated to the buyer until the expiry of this deadline.
2. The risk of the accidental loss and the accidental deterioration of the goods shall pass to the buyer with the hand-over at the latest, this shall also apply to partial deliveries. If the goods are sent to the buyer by sales shipment, the risk of the accidental loss and the accidental deterioration of the goods as well as the risk of the delay shall pass with the delivery of the goods to the carrier, the freight forwarder or the other person determined for the execution of the shipment already.
3. If we cannot adhere to binding delivery deadlines for reasons, for which we are not responsible, the buyer will be informed hereof without delay and we will at the same time communicate the expected, new delivery time. If the service is not available within the new delivery deadline either, we can rescind the contract in full or in part, we will refund the provided consideration of the buyer immediately. Claims for damages for the buyer do not exist.
4. If the buyer is in default of acceptance, it shall refrain from an act of assistance or if the delivery is delayed for other reasons, for which the buyer is responsible, then we are entitled to request compensation of the thus suffered damages including additional expenses such as storage costs. The proof of a higher damage shall remain unaffected.
5. The statutory regulations shall apply for the occurrence of the delay in delivery. The buyer must issue us a reminder. Discounts approved by us and other concessions shall cease to apply with the occurrence of default.
6. The delivery deadline shall be extended with the occurrence of impediments, which are a result of force majeure or unforeseeable impediments – also at sub-suppliers. Deemed as force majeure are especially but not exclusively exchange rate, trade political and other sovereign measures, strikes, lock-outs, interferences to operation which were not caused by us, impediment to the transport routes, delay with the customs clearance as well as all further circumstances, which render the deliveries and services substantially more difficult or impossible for us without our fault.
7. If the shipment of the ordered goods is delayed due to circumstances for which the buyer is responsible, the risk of the accidental loss shall pass to the buyer at the time of the originally envisaged shipping date.

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§ 5 Reservation of title

1. The delivered goods shall remain our property until the full payment.
2. The buyer is revocably entitled to resell the delivered goods within the scope of its proper business operation. The buyer hereby now already assigns us all claims and secondary rights to which it is entitled from the resale.
3. The goods subject to reservation of title may not be pledged to third parties or assigned as collateral before the full payment. The buyer undertakes to notify us in writing without delay if an application is filed for the opening of insolvency proceedings or in case of any accesses to our goods.
4. In case of a conduct of the buyer in breach of the contract, above all with the non-payment of the due purchase price, we are entitled to rescind the contract and to request hand over of the goods owing to the reservation of title.
5. At our request the buyer is obligated to announce the assignment to third parties for the purpose of payment to us and to provide the information and hand over the documents that are necessary for the assertion of our rights.
6. The buyer is permitted to process, convert the reserved goods and to connect these with other objects. The processing or conversion shall be carried out for us. We shall immediately become the owner of the object produced by processing or conversion.
7. As the reserved goods can be connected by the buyer or its purchasers with properties or movable objects, the buyer hereby now already assigns the claims with all secondary rights, to which it is entitled as remuneration for the connection, to us as a precautionary measure. The aforementioned assignments shall also comprise all claims of the buyer against its clients or third parties from the installation of the goods. The buyer is not authorised to other disposals over the reserved goods.

§ 6 Complaints and warranty

1. We do not assume any liability for public statements of third parties (e.g. advertising statements), which the buyer has not pointed out to us as decisive for its purchase decision.
2. The buyer undertakes to inspect the goods– each partial delivery separately – without delay after delivery and to notify us in writing of possible defects as well as of deviation from the order without delay, by no later than within 8 calendar days after receipt of the goods. If the complaint is not reported within the aforementioned deadline, the delivery shall be deemed as per contract in case of defects recognisable by way of a careful inspection.
3. If the buyer has properly satisfied its responsibilities for inspection and report of a complaint, we shall assume warranty for defects to the goods at our choice by subsequent improvement or a new delivery. A right to rescission, reduction or damages instead of the fulfilment only exists, if the subsequent improvement has failed twice or is deemed unreasonable.
4. The buyer will give us the time and the opportunity to examine the goods for which a complaint was made for defects. The subsequent fulfilment shall neither include the dismantling of the defective object, nor the installation, insofar as we were not originally obliged to the installation.
5. We do not assume any warranty for damages, which are due to unsuitable or improper use or storage, incorrect assembly by the buyer or third parties as well as wear and tear.
The same shall apply if the condition of the goods only deviates insignificantly from the agreed condition, in case of only insignificant impairment to the usability, with natural wear and tear as well as with damages, which are suffered after the passing of risk as a result of incorrect or negligent treatment, excessive use, unsuitable operating resources, defective construction work or owing to special external influences.

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6. Claims of the buyer owing to the expenses that are necessary for the purpose of subsequent fulfilment, in particular transport, route, labour and material costs are excluded, insofar as the expenses are increased, because the goods delivered by us have subsequently been taken to another location than the place of shipment, unless the transport corresponds with their use as intended.

7. References to standards and similar regulations as well as details regarding the quality, dimensions, weights and usability of the goods, details in drawings and diagrams as well as statements in advertising media are not assurances or guarantees, insofar as they have not explicitly been described by us as such in a written or text form. Suitability and usage risks are the responsibility of the buyer. Special productions will not be taken back.

§ 7 Liability and statute-of-limitations

1. We shall be liable to an unlimited extent according to the statutory provisions if and insofar as the buyer asserts claims for damages, which are due to wilful intent or gross negligence, a culpable injury to life, the body or the health or mandatory regulations of the German Product Liability Act.

2. The following shall apply to other claims: If the claims for damages are merely due to slight negligence, then we shall only be liable in case of a breach of an essential contractual obligation (cardinal obligation). These are those obligations, the fulfilment of which makes the proper execution of the contract possible at all and on the compliance with which the buyer may trust upon and rely as a rule. The liability for a slightly negligent breach of an essential contractual obligation is limited to the typical, foreseeable damages for the contract. The liability for indirect damages and remote consequential damages from defects is excluded in these cases.

3. Claims for damages and warranty claims of the buyer shall become statute-barred after 12 months. The statute-of-limitations of claims for damages with an injury to life, the body and the health, with claims according to the German Product Liability Act as well as with a grossly negligent or wilful breach of obligations shall be oriented to the statutory regulations.

§ 8 Offsetting /right of retention

The buyer can only offset against counterclaims that have been determined final and binding or undisputed counterclaims and only support a right of retention on such claims.

§ 9 Place of performance, place of jurisdiction and applicable law

1. The place of performance for our deliveries is Hamburg.

2. The exclusive place of jurisdiction is Hamburg.

3. German law shall apply exclusively. The UN Convention on Contracts for the International Sale of Goods shall not apply.