



## **GENERAL TERMS OF SALE FLEISCHMANN GMBH & CO. KG AS AT DECEMBER 2021**

The following General Terms of Sale shall apply to all offers, deliveries, and services, including counselling and information provided by Messrs. Fleischmann GmbH & Co. KG (= user). Contradicting General Terms of Sale of the contracting party shall only be valid in so far as approved of by the user explicitly and in writing. To be valid, collateral agreements and alterations need to be approved of in writing by the user. This shall also apply to modifications to this very clause.

### **1. Placing of orders:**

**1.1** The scope of the mutual contractual obligations shall be ruled exclusively by the content of the order accepted by us and these General Terms of Sale.

**1.2** Letters of confirmation by the contracting party do not place an obligation on the user, even if left uncontradicted.

**1.3** For sample orders the delivered articles could deviate from shape, color and quantity compared to bulk order.

### **2. Prices:**

**2.1** Offers are subject to confirmation; invoiced prices are non-binding for repeat orders.

**2.2** For order quantities under 1.000pcs per article, size, color, a surcharge of EUR 30 net will be charged.

### **3. Delivery:**

**3.1** Goods will be delivered ex works; in any case, even if delivered post-free or carriage-paid, they travel at the buyer's risk, also if the price agreed upon is free domicile or free on board.

**3.2** Stated delivery deadlines will be met as far as possible.

**3.3** User's liability for damage is limited to the provisions of section 6 of these terms.

**3.4** Bulk production fulfils the quality standards agreed before between the user and the customer. The quality standards are fixed in the technical letters, which must be requested at the user in advance.

**3.4** For non refining articles (bulk goods) like rings, hooks, sliders, pendants and simple ornaments under delivery and over delivery up to three percentages of the total ordered quantity must be accepted.

For bulk production an error rate of two percentages of defected articles of the total ordered quantity must be accepted.



## 4. Claims based on defects:

4.1 For enterprises the period of limitation for claims based on defects shall be 12 months from the date of delivery.

4.2 Businessmen's obligations as per § 377 HGB (German Commercial Code) shall remain unaffected.

4.3 If a complaint is filed within the agreed time limit, the user will remedy a defect, at his discretion, either by correction of faults or delivery of a new, faultless product. The user also assumes liability as prescribed by law, unless otherwise stipulated in these general terms and conditions.

4.4 If rectification of defects fails, the contracting party may choose to either withdraw from the contract or claim reduction of the purchase price.

4.5 User's liability for damage is limited to the provisions of section 6 of these terms.

4.6 The user will pass on any manufacturers' warranties without assuming liability himself.

4.7 If the contracting party uses the products with fabrics, leather or plastics, the user gives no guarantee with regard to possible changes to these materials, especially not if used with reactive-dyed fabrics.

4.8 For items made of plastics we do not accept responsibility for their suitability in terms of their resistance to washing and cleaning agents, breaking strength and colour fastness, unless otherwise guaranteed in writing upon request.

## 5. Payment:

5.1 Unless agreed otherwise, the invoice total for the goods becomes due at the latest when the contracting party receives the goods.

5.2 Unless explicitly agreed otherwise, we do not give cash discounts.

5.3 Interest on arrears will be charged at the statutory rate. Assertion of additional damage caused by delayed performance shall remain unaffected.

5.4 Cheques will only be accepted on account of performance.

5.5 In case of foreign bank transfer please note that bank costs incurred will be shared (SHA).

## 6. Warranty:

6.1 The user assumes liability in accordance with the statutory regulations

- in case of culpably caused injuries to life, body, or health;
- in case of product liability;
- for all claims caused by malicious silence with regard to a defect;
- for damage caused by intentional or grossly negligent violation of duties by the user, his executives, employees, workers, representatives and/or other subcontractors.



**6.2** The user also assumes liability for damage caused by slight negligence, if such negligence violates duties, whose fulfilment is actually a basic prerequisite for the proper performance of the contract and therefore the contracting party can legitimately rely on their fulfilment; but in such cases the liability for damages shall be limited to the damage that is typically foreseeable for the contract.

**6.3** If the user guarantees a certain quality and/or durability for the goods or parts thereof, the user shall also be liable within this warranty. For damage that is caused by the absence of the guaranteed quality or durability, but does not occur in the goods themselves, the user shall only be liable if the guarantee for the quality or durability obviously covers the risk of this type of damage.

**6.4** Liability for damage exceeding the provisions of sections 6.1 to 6.3 shall be excluded - regardless of the legal nature of the asserted claim. This shall apply in particular to claims for damages from culpa in contrahendo, from other failure to comply with duties, or for claims in tort for compensation for material damage. This limitation shall also apply if the contracting party in her claim for compensation for the damage demands reimbursement of useless expenditures instead of performance.

**6.5** As far as the user's liability for damages is excluded or limited, this shall also apply to the individual liability of his executives, employees, workers, representatives and/or other subcontractors.

## **7. Retention of title:**

**7.1** Until all receivable and future accounts owed to the user are settled, the goods remain the user's property.

**7.2** In carrying on regular business the contracting party is entitled to process and sell the goods, but only if no payment, which the contracting party owes the user is delayed, and subject to the following provisions.

**7.3** Transfer of property by way of security or pledging of the conditionally sold goods or assigned claims, respectively, is not permissible.

**7.4** Processing of the conditionally sold goods does not transfer ownership of the new item to the contracting party as stipulated in § 950 BGB (German Civil Code). The contracting party processes the goods for the user.

If the conditionally sold goods are processed with other items, which do not belong to the user, the user acquires co-ownership of the new item in proportion of the value of the conditionally sold goods to the value of the other items being processed.

**7.5** The contracting party hereby assigns the claim from reselling the conditionally sold goods to the user, also in so far as the goods have been processed.

**7.6** As long as the contracting party meets her payments, the user will not collect such assigned claims. But, upon request, the contracting party is obliged to abandon the third-party debtors to the user and to inform the third party of the assignment. She shall be entitled to collect the receivables herself until instructed otherwise by the user.

**7.7** Retention of title also remains valid, if individual claims of the user are included in a current account and the balance is stricken and confirmed.

**7.8** If the security created by retention of title exceeds the claim to be secured by 25%, the user will release fully paid deliveries at his choice.

**7.9** In case of a pledge the contracting party is obliged to immediately inform the user and to name the lien creditor.



**7.10** As soon as the contracting party suspends payment, and immediately upon announcing suspension of payment, she is obliged to provide the user with a list of the remaining conditionally sold goods, even if already processed, and a list of claims on third-party debtors including copies of the invoices.

**7.11** Payments received from assigned claims shall be invested separately until transferred.

## **8. User's right to rescind the contract:**

The user shall be entitled to rescind individual or current contracts, and shall also be entitled to instantaneously revoke a granted respite, or to call for advance payment, if

- it turns out that the contracting party made false statements concerning her credit standing.
- the user receives negative information on the contracting party from a credit inquiry agency, which shows that the contracting party does not meet her obligations or that her economic existence is acutely endangered.
- the contracting party acted in breach of the terms of the contract towards the user.
- acts of God, strike or natural disaster make it impossible for the user to deliver the goods, or if it becomes foreseeable that, due to the above mentioned circumstances, the user will not be able to deliver the goods within the guaranteed time of delivery.

## **9. Confidential treatment of user's documents and information**

The contracting party has to treat documents and information provided by the user or by a third party on behalf of the user confidentially, unless they are available to the public or common knowledge. These documents and information may not be copied, published or made accessible to a third party in any other form without permission of the user.

## **10. Place of jurisdiction, applicable law:**

**10.1** All present or future claims arising from business relations with businessmen, legal persons under public law, or with public-law special funds, including bills or cheques receivable, shall be settled exclusively before a competent court of law in Kaufbeuren, Germany. Disputes shall also be settled at this place of jurisdiction if the contracting party does not have her regular legal domicile in Germany, or if she, after entering into the contract, changes her residence or habitual abode to a place outside Germany, or if her residence or habitual abode is unknown when the complaint is filed.

**10.2** These terms of business and the complete legal relationship between user and contracting party shall be governed by the laws of the Federal Republic of Germany.

German international private law and the uniform law on sales of goods based on international agreements on laws for the sale of goods, in particular the uniform laws relating to the international purchase of moveable objects and the conclusion of such contracts of purchase (Haager convention on the sales of goods) as well as the UN convention on international sales of goods shall not apply.



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## **11. Invalidity of individual provisions:**

Should any of the above individual provisions be or become invalid, the validity of any part of the remaining contract shall not be affected. The invalid provision shall be replaced by such a valid provision, which comes closest to the economic meaning and purpose of the invalid provision. The same shall apply to gaps in the contract.

Kaufbeuren, December 2021  
Fleischmann GmbH & Co. KG