

GTC

# GENERAL TERMS AND CONDITIONS

**These Terms and Conditions (05.2022)** are an integral part of the contract for all delivery transactions of the contractor (companies of the Prodinger Group as "Seller") with clients ("Buyers"). They also apply to future and verbally concluded contracts. Deviating provisions, in particular the Buyer's terms and conditions of purchase, shall only become an integral part of the contract if this has been expressly agreed in writing. The Seller points out that declarations, agreements, delivery of goods only to entrepreneurs in the exercise of their commercial activity.

The current status of our terms and conditions can be viewed on the Internet at [www.prodinger.de](http://www.prodinger.de). We are also happy to send the terms and conditions. The German version is always authoritative.

## 1. Binding to order

All offers of the Seller are subject to change and non-binding, unless they are expressly marked as binding. The Seller does not assume any procurement risk. He is entitled to withdraw from the contract insofar as he does not receive the delivery item through no fault of his own.

## 2. Samples

Samples are hand-made, the Seller is not liable for customary and insignificant deviations (e.g. material, condition, dimensions, design, color, thickness, weight, etc.) compared to machine-made deliveries.

## 3. Purchase price

The purchase price shall be the price quoted by Seller or, where this has not been done in detail, the list price in effect on the date of delivery. Bull and bear clause: Seller reserves the right, after timely notice to Buyer and prior to delivery of the goods, to adjust the price of the goods as necessary due to general price trends beyond Seller's control (such as significant increases in material or manufacturing costs) or changes in suppliers. Fixed prices must be expressly marked in writing as "fixed price" for a certain period / certain quantity on the offer / confirmation. Prices are in EURO plus statutory VAT, and unless otherwise agreed ex works, plus packaging and, in the case of export deliveries, plus customs duties, fees and other public charges.

## 4. Disposal and recycling

According to the German Packaging Act (VerpackG), packaging is subject to system participation depending on its intended use. Our product prices do not include system fees according to VerpackG. Further info: [www.verpackungsregister.org](http://www.verpackungsregister.org) The Buyer is obliged to ensure the recycling of the equipment according to the German Electrical and Electronic Equipment Act (ElektroG).

## 5. Terms of payment

Payments shall be made within 14 days net from the date of delivery, unless other payment terms have been agreed. Arbitrary cash discounts will not be accepted. Invoices under 50 Euro are payable immediately net. New customers only against prepayment. For non-stock goods (extra orders) a partial payment is due with the order. Regarding reductions of charges, we refer to the payment and condition agreements.

## 6. Delivery time

Deadlines and dates for deliveries and services promised by the Seller shall always be approximate only, unless a fixed deadline or date has been expressly promised or agreed. If a binding delivery period has been agreed, this period shall be extended appropriately in the event of force majeure or other events unforeseeable at the time of conclusion of the

contract (e.g. operational disruptions of all kinds, difficulties in the procurement of materials or energy, transport delays, strikes, etc.) for which the Seller is not responsible. If a non-binding delivery deadline is exceeded by more than 4 weeks, the Buyer is entitled to withdraw from the contract after a reasonable grace period of at least 10 days. If the Seller is in default with a delivery or service or if a delivery or service becomes impossible for him, for whatever reason, the Seller's liability for damages shall be limited in accordance with No. 10. of these General Terms and Conditions of Sale. Contracts / call-offs without fixed dates shall be delivered and invoiced no later than three months after the order.

## **7. Transfer of risk**

Delivery shall be EXW in accordance with Incoterms 2020. The risk shall pass to the Buyer at the latest upon handover of the delivery item (whereby the start of the loading process shall be decisive) to the forwarding agent, carrier or other third party designated to carry out the shipment. If the shipment or the handover is delayed due to a circumstance the cause of which lies with the Buyer, the risk shall pass to the Buyer from the day on which the Seller is ready for shipment and has notified the Buyer thereof. In the case of cash sales, the order day is the same as the delivery and collection day.

## **8. Refusal of acceptance**

If the Buyer refuses to accept the goods, the Seller may set a reasonable grace period for acceptance. If the Buyer has not accepted the goods within the period set, the Seller shall be entitled to withdraw from the contract and to claim damages instead of performance.

## **9. Intended use and agreed condition**

Advice or recommendations from our employees are non-binding. The user must always sufficiently check the suitability of the goods supplied by us for his purposes and decide on their use on his own responsibility. Only if we have been informed in advance in writing of the exact intended use and this has also been confirmed by us in this way, can the suitability of our goods for the use presupposed in the contract or the agreed quality be established (this applies in particular to direct contact with foodstuffs. A subsequent declaration of conformity is not possible). Information provided by the Seller on the subject of the delivery or service (e.g. weights, dimensions, utility values, load-bearing capacity, tolerances and technical data) as well as our representations of the same (e.g. drawings and illustrations) are only approximate. They are not guaranteed characteristics, but descriptions or identifications of the delivery or service. Devices and machines may only be used for their intended purpose with consumables that have been approved by us for this purpose. The operator is responsible for clarifying and monitoring all safety regulations.

## **10. Warranty**

Warranty claims for defective goods are possible, among other things, if the tolerances customary in the industry and trade are exceeded at the time of transfer of risk (see also No. 11 - 14). Incorrect or excessively long storage (if necessary, also observe the best-before date!) may result in significant changes to the properties, shape, color, etc. of the products - this shall not give rise to any warranty claims. The delivered items are to be carefully inspected immediately after delivery to the Buyer or to the third party designated by him. They shall be deemed to have been approved unless the Seller is notified in writing of a defect with regard to obvious defects or other defects that were identifiable during an immediate, careful inspection within seven working days of delivery of the delivery item, or otherwise within seven working days of the discovery of the defect or the point in time at which the defect was identifiable for the Buyer during normal use of the delivery item without closer inspection. All expenses which the Buyer may incur in connection with the determination/notification of the defect shall be agreed with the Seller in advance. A refund is only possible for proven proportionate expenses, after written approval by the seller. Lump-sum reimbursements are excluded. The warranty period is 12 months after delivery of goods. The Seller's liability for damages, irrespective of the legal grounds, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contract negotiations and tort, shall be limited as follows, insofar as fault is involved in each case: The Seller shall not be liable

a) in the case of simple negligence on the part of its organs, legal representatives, employees or other vicarious agents;

b) in the event of gross negligence on the part of its non-executive employees or other vicarious agents, insofar as this does not involve a breach of material contractual obligations.

Essential contractual obligations are the obligation to deliver on time and free of defects as well as obligations of protection and care which are intended to enable the Buyer to use the delivery item in accordance with the contract or which are intended to protect the life and limb of the Buyer's personnel or third parties or the Buyer's property from significant damage. Compensation for the violation of essential contractual obligations shall be limited to the foreseeable, contract-typical, direct damage and shall only be given if our products are used for their usual purpose. The limitations of this No. 10. shall not apply to the Seller's liability for intentional conduct, for guaranteed characteristics, for injury to life, body or health or under the German Product Liability Act (ProdHaftG).

### **11. Tolerances**

Minor deviations in dimensions, weight, color or quality are unavoidable for technical, product, raw material or production reasons and are customary in the trade. The uniform and customary deviations of the respective relevant branch of industry shall apply, such as, for example, according to regulations of the "Verband der Wellpappen-Industrie e.V. (VdW)" (Association of the Corrugated Board Industry) or the "Fachverband Verpackung und Verpackungsfolien im GKV" in their respective valid versions. Excess or short deliveries of 20% must be tolerated. In addition, defective goods to be sorted out by the Buyer shall be repaired, replaced or reimbursed at the Seller's discretion. The Seller shall not be liable for minor counting errors or selection defects, nor for weight loss or other changes in the condition of the goods from the time of loading. All these cases do not entitle the Buyer to refuse acceptance of the total quantity. The Buyer will be invoiced for the actual quantity delivered.

### **12. Printed matter, tools, clichés, auxiliary materials**

Unless otherwise agreed, the Seller reserves the right, after consultation with the Buyer, to destroy without replacement all pre-printed materials and documents, printing plates, tools, auxiliary materials, etc. after three years if no corresponding follow-up order has been placed in the meantime. In the event that printed goods are taken back - for whatever reason - the Seller shall be entitled to the unrestricted right of exploitation, unless copyrights or other industrial property rights of the Buyer are opposed to this.

### **13. Protection and copyright**

Insofar as the customer specifies the print content of printed products, the customer alone shall be liable for the print content and all legal consequences thereof, this applies in particular to industrial property rights and copyrights. All print documents provided must be free of third-party rights. If a print image causes additional costs or obligations (e.g. disposal symbols), the client shall be solely liable for this.

### **14. Payment and default**

If the payment deadline is exceeded, the Buyer shall pay the Seller default interest at the statutory rate and reminder fees. The right to claim further damage caused by delay is reserved. Offsetting against counterclaims of the Buyer or the retention of payments due to such claims shall only be permissible if the counterclaims are undisputed or have been legally established. The 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 the Seller which are likely to substantially reduce the creditworthiness of the Buyer and which jeopardize the payment of the Seller's outstanding claims by the Buyer under contracts of the current business relationship which have a natural and economic connection. A circumstance that is likely to significantly reduce the creditworthiness of the Buyer is, for example, if the Buyer is already in default with due payments. As soon as such a circumstance exists, the Seller may exercise its contractual right of rescission. The goods already delivered by the Seller may not be used further and shall be returned immediately upon request. In the event of a default for which the Buyer is responsible, all invoices, including those issued at a later date, shall become due for payment immediately, strictly net.

## 15. Retention of title

The following agreed retention of title serves to secure all respectively existing current and future claims of the Seller against the Buyer arising from the delivery relationship existing between the contracting parties. The Seller shall retain title to the object of purchase delivered to the Buyer until the purchase price has been paid in full. The contracting parties agree that ownership shall automatically pass to the Buyer upon payment of the last purchase price installment (or the full purchase price). The goods covered by the reservation of title are hereinafter referred to as reserved goods. The Buyer shall store the reserved goods free of charge for the Seller. In the event of a breach of contract by the Buyer, e.g. default of payment, the Seller shall be entitled to withdraw from the contract, to reclaim the reserved goods and to claim damages after having set a reasonable deadline. The Buyer shall be entitled to process and sell the reserved goods in the ordinary course of business until the aforementioned realization event occurs. Pledges and transfers of ownership by way of security are not permitted. In the event of resale of the reserved goods, the Buyer hereby assigns to the Seller by way of security the resulting claim against the Buyer in the event of co-ownership of the 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 in respect of the reserved goods, such as insurance claims or claims in tort in the event of loss or destruction. The Seller revocably authorizes the Buyer to collect the claims assigned to the Seller in its own name for the Seller's account. The Seller may revoke this collection authorization only in the event of realization. If the goods subject to retention of title are processed by the Buyer, it is agreed that the processing shall be carried out in the name and for the account of the Seller as manufacturer and that the Seller shall acquire direct 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 goods subject to retention of title, co-ownership (fractional ownership) of the newly created item in the ratio of the value of the goods subject to retention of title to the value of the newly created item. In the event that no such acquisition of ownership should occur on the part of the Seller, the Buyer shall already now transfer its future ownership or, in the above-mentioned ratio, co-ownership of the newly created item to the 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, the Seller shall, insofar as the main item belongs to it, transfer to the Buyer pro rata co-ownership of the uniform item in the ratio of the value of the reserved goods to the value of the newly created item. If third parties seize the goods subject to retention of title, in particular by way of attachment, the Buyer shall immediately notify them of the Seller's ownership and inform the Seller thereof in order to enable the Seller to enforce its ownership rights. If the third party is not in a position to reimburse the Seller for the judicial or extrajudicial costs incurred in this connection, the Buyer shall be liable to the Seller for such costs. We undertake, at the Buyer's request, to release the securities to which we are entitled in accordance with the above provisions, at our discretion, insofar as the value realizable here exceeds the claim against the Buyer to be secured by more than 20%.

## 16. Data privacy

In accordance with the German Federal Data Protection Act (BDSG), it is pointed out that Prodinger stores customer data and uses it in the context of cooperation.

## 17. Place of performance and jurisdiction

The place of performance for all deliveries and services shall be the respective place of the Seller's business from which the delivery was made or arranged. Coburg is agreed as the place of jurisdiction for all disputes. However, the Seller shall also be entitled to sue the Buyer at any other court which may have jurisdiction under national or international law.

## 18. Agreed right

The relations between the Seller and the Buyer shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

## 19. Written form clause

Verbal promises made by the Seller prior to the conclusion of this contract are not legally binding and verbal agreements made by 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. Additions and amendments to the agreements made, including these terms and conditions, must be in writing to be effective. With the exception of managing directors or authorized signatories, the Seller's employees are not entitled to make verbal agreements deviating from this.

#### **20. Offer copyright**

Seller retains title or copyright to all quotations and estimates submitted by Seller.

#### **21. Invalidity of individual clauses**

If individual provisions of these terms and conditions are or become invalid or amended in writing by contractual agreement, this shall not affect the validity of the remaining provisions.

**PRODINGER GRUPPE**

[www.prodinger.de](http://www.prodinger.de)