

General Terms and Conditions of Sale and Delivery of E. W. Menn GmbH & Co. KG

I. General Stipulations, Conclusion of the Agreement

- These Terms and Conditions of Sale and Delivery (GTC) apply to all our business relationships with our customers. The GTC only apply if the buyer is an entrepreneur, a legal entity under public law or a special fund under public law. The GTC of E. W. Menn apply exclusively. Deviating, conflicting or supplementary business conditions of the buyer do not become part of the delivery and business relationship and therefore not part of a contract with E. W. Menn.
- Individual agreements made with the customer in individual cases (including side agreements, additions and amendments) always take precedence over these GTC. A written contract or a written confirmation by E. W. Menn for the content of such agreements shall be required.
- The offers of E. W. Menn are subject to change and are non-binding. The documents belonging to the offer of E. W. Menn, such as illustrations, drawings, weight and dimensions, are only approximate unless they are expressly designated as binding in the order confirmation. We reserve ownership rights and copyrights to illustrations, drawings, calculations and other documents; they may not be made accessible to third parties. This applies in particular to such written documents that are designated as "confidential".
- The order of the goods by the customer is considered a binding contract offer. A contract is only deemed to be agreed upon after we have confirmed the order in writing or upon delivery of the goods to the customer (acceptance).

II. Prices, Terms and Conditions of Payment

- Unless otherwise agreed, the current prices at the time the contract is concluded apply, net, ex works plus statutory sales tax and excluding packaging. If the current prices of E. W. Menn change up to the time of delivery, E. W. Menn is entitled to request the current prices. If E. W. Menn exercises this right to increase the price, the customer is entitled to withdraw from the contract within a period of 10 working days after the price increase has been declared.
- Deviations in size, weight and quality that are permissible according to the relevant standards or the applicable and usual industry procedures have no influence on the delivery price.
- Subject to a deviating agreement, the price for deliveries is due and payable within 14 calendar days from delivery and invoice date. The receipt of payment is decisive for a timely payment.
- The customer is in default when the payment period expires. Interest is paid on the purchase price during the delay at the applicable statutory default interest rate. E. W. Menn reserves the right to claim further damage caused by delay. If E. W. Menn has concluded a contract with merchants, the entitlement to the commercial interest on the due date remains unaffected.
- If there is a delay in delivery for which the customer is responsible and E. W. Menn stores the goods, these goods are deemed to have been delivered 5 working days after the start of storage within the meaning of sec. II para. 3 of these GTC and can be fully invoiced.
- The customer is only entitled to set-off or to retention rights insofar as a claim has been legally established by a court or is undisputed. In the event of defects in the delivery, these counter-rights of the customer, as further specified in this GTC, remain unaffected.
- If it becomes apparent, after the conclusion of the contract, that the claim to the purchase price is jeopardized by the customer's inefficiency (for example, by requesting the opening of insolvency proceedings), E. W. Menn has the right, in accordance with the statutory provisions, to refuse performance and, if necessary, after setting a deadline, to withdraw from the contract.

III. Reservation of Title

- E. W. Menn reserves title in the delivered products until receipt of all current and future payments resulting from the underlying contract and the ongoing business relationship with the customer. The goods subject to retention of title may not be pledged to third parties or transferred as security before the secured claims have been paid in full. The customer must notify E. W. Menn immediately in writing if and insofar as third parties access goods belonging to E. W. Menn. The customer will store the goods subject to the retention of title by E. W. Menn at his own expense and insure them against loss and damage. If maintenance and / or inspection work is to be carried out, the customer must carry this out on time at his own expense.
- In the event of behavior contrary to the contract, in particular in the event of late payment, E. W. Menn is entitled to withdraw from the contract and / or to take back the delivery in accordance with the statutory provisions. Taking back the delivery by E. W. Menn does not constitute a withdrawal from the contract, unless E. W. Menn has expressly stated this in writing. After taking back the delivery, E. W. Menn is authorized to sell it to third parties. The proceeds from this third party sale are to be offset against the buyer's liabilities minus reasonable sales costs.
- The purchaser is not entitled to resell a machine or part delivered by E. W. Menn that is still E. W. Menn's property without our consent, unless the purchaser ensures that the purchase price flows directly to E. W. Menn to replace the retention of title. In any case, however, the purchaser already assigns to E. W. Menn all claims in the amount of the final invoice amount (including VAT) that arise from the resale against his customers or third parties, regardless of whether the delivery item has been resold without or after processing. The customer remains authorized to collect this claim even after the assignment. E. W. Menn's power to collect the claim remain unaffected. However, E. W. Menn undertakes not to collect the claim as long as the customer meets his payment obligations from the received prices, is not in arrears with payment and, in particular, there is no application to open insolvency proceedings or payment is suspended. If this is the case, however, E. W. Menn can request that the customer notifies E. W. Menn of the assigned claims and their debtors, provide all the information necessary for collection, hand over the associated documents and notify the debtors (third parties) of the assignment.
- E. W. Menn undertakes to release the securities to which it is entitled at the request of the customer insofar as the value of the securities exceeds the claims to be secured by more than 10%. E. W. Menn is responsible for selecting the securities to be released.

IV. Delivery Times, Delivery Dates

- All delivery times are agreed individually or specified by E. W. Menn when the order is accepted. The specified delivery time is an approximate delivery period, subject to the fulfillment of all cooperation obligations of the customer and the timely and qualitatively flawless delivery of raw materials. Delivery times refer to the time of dispatch from the factory. With the notification of readiness for dispatch, they are deemed to have been met if the goods cannot be dispatched in time without E. W. Menn's fault. The delivery periods are extended by the period by which the customer is in arrears with us from his obligations arising from these or other contracts.
- If E. W. Menn is in default with the delivery, the statutory provisions apply. Delay always requires an explicit reminder. Claims for damages due to delayed delivery are, beyond intent or gross negligence, limited to 0.5% of the invoice value per week, max. 5% of the total invoice value of the delivery of which E. W. Menn is in arrears. The rights of the customer pursuant to sec. VI. and VII remain unaffected.
- If the customer is in default of acceptance or if he violates other duties to cooperate, E. W. Menn is entitled to claim the damage that it incurs, including any storage costs and other additional expenses. In this case, the risk of accidental loss or accidental deterioration of the delivery item is transferred to the customer at the point in time when the customer is in default of acceptance.
- Force majeure events entitle E. W. Menn to postpone delivery for the duration of the impediment and a reasonable start-up time. Force majeure is equivalent to all circumstances that make delivery significantly more difficult or impossible, such as currency and trade policy or other sovereign measures, epidemics, pandemics, strikes, lockouts, operational disruptions (e.g. fire, machine breakdown, raw material or lack of energy) as well as obstruction of the traffic routes, regardless of whether these circumstances occur with E. W. Menn, with the supplier or with a subcontractor. The same applies to difficulties in delivery that arise in the country of the recipient of the goods for reasons for which E. W. Menn is not responsible.

V. Transfer of risk, Shipping

- Unless otherwise agreed, delivery is agreed "ex works". At the request and expense of the customer, the goods will be shipped to another destination.
- The risk of accidental loss and accidental deterioration passes to the customer when the goods are made available. When the goods are dispatched, the risk of accidental loss and accidental deterioration of the goods is transferred when the goods are handed over to the freight forwarder, the carrier or the person otherwise responsible for carrying out the dispatch. This also applies to freight-free delivery to the customer.

- If the loading or transportation of the goods are delayed for a reason for which E. W. Menn is not responsible, E. W. Menn or its agents are entitled, but not obliged, at the cost and risk of the customer, excluding E. W. Menn's liability, to store the goods - if necessary outdoors -, to take all measures deemed suitable for the preservation of the goods and to invoice the goods as delivered.
- Without special instructions from the customer, shipping is at E. W. Menn's discretion without guarantee of the cheapest shipping method. E. W. Menn takes care of packaging, protective or transport aids at the expense of the customer and to the exclusion of its liability. Packaging, protection and means of transport will not be taken back.

VI. Warranty and Liability

- The statutory provisions apply to the rights of the buyer in the case of material and legal defects (including incorrect and short delivery as well as improper assembly or defective assembly instructions), unless otherwise specified below. Claims from supplier recourse are excluded if the defective goods were processed by the buyer or another entrepreneur, e.g. by incorporation in another product. The warranty is void if the customer changes the delivery item or has it changed by third parties without E. W. Menn's written consent and this makes it impossible or unreasonably difficult to remedy the defect. In any case, the purchaser has to bear the additional costs of remedying the defect arising from the change. No guarantee is given for the correctness of product descriptions from suppliers / primary material suppliers.
- The basis of E. W. Menn's liability for defects is above all the agreement made on the quality of the goods. All product descriptions and manufacturer information that are the subject of the individual contract or that were made public by E. W. Menn at the time the contract was concluded are deemed to be an agreement on the quality of the goods. If such condition has not been agreed, it is to be judged according to the legal regulations applicable whether there is a defect or not.
- The purchaser's claims for defects presuppose that he has complied with his statutory inspection and notification obligations. If there is a defect at delivery, at time of inspection or at any later point in time, E. W. Menn must be notified immediately in writing. In any case, obvious defects must be reported in writing within 5 working days of delivery and defects that are not recognizable during the inspection within the same period of time from discovery.
- If the delivered item is defective, E. W. Menn can first choose whether it provides supplementary performance by eliminating the defect (rectification) or by delivering a defect-free item (replacement delivery). E. W. Menn's right to refuse supplementary performance under the legal requirements remains unaffected. E. W. Menn is entitled to make the subsequent performance owed dependent on the buyer paying the purchase price due. If no agreement on supplementary performance is made, the buyer is entitled to withhold an appropriate part of the purchase price in relation to the defect.
- The buyer has to give E. W. Menn the time and opportunity necessary for the subsequent performance owed, in particular to hand over the rejected goods for inspection purposes. In the case of a replacement delivery, the buyer must return the defective item to E. W. Menn in accordance with the statutory provisions. The supplementary performance does not include the removal of the defective item or the reinstallation if E. W. Menn was not originally obliged to install it. In-house work or replacement is only permitted if E. W. Menn has been given at least twice sufficient opportunity to remedy the defect.
- E. W. Menn will bear or reimburse the expenses required for the purpose of testing and supplementary performance, in particular transport, travel, labor and material costs as well as any expansion and installation costs, in accordance with the legal regulations, if there is actually a defect. Otherwise, E. W. Menn can demand compensation from the buyer for the costs arising from the unjustified request to remedy the defect (in particular inspection and transport costs), unless the defect was not recognizable to the buyer.
- The purchaser's claims for damages or reimbursement of expenses, even in the case of defects, only exist in accordance with sec. VII. and are otherwise excluded.

VII. Other Liability

- Unless otherwise stated in these GTC including the following provisions, E. W. Menn is liable in the event of a violation of contractual and non-contractual obligations in accordance with the statutory provisions.
- E. W. Menn is liable for damage - regardless of the legal reason - within the scope of liability in the event of intent and gross negligence. In the event of simple negligence, E. W. Menn is liable, subject to statutory liability restrictions (e.g. due care in own affairs; negligible breach of duty), only a) for damage to life, limb or health, b) for damage resulting from a breach of an essential contractual obligation (an obligation, the fulfillment of which enables the proper execution of the contract in the first place and on the observance of which the contractual partner regularly trusts and can trust); In this case, E. W. Menn's liability is limited to the replacement of the foreseeable, typically occurring damage, which is to be set at a maximum of the contract value of the service concerned.
Further claims for damages - regardless of the legal reason - are excluded. This also applies to the personal liability for damages of employees of the seller. In general, E. W. Menn is not liable for damage that has not arisen on the delivered goods themselves, especially not for loss of profit, damage from business interruptions or other financial loss of the contractual partner.
- The limitation of liability resulting from paragraph 2 above also apply in the event of breaches of duty by or in favor of persons whose fault E. W. Menn is responsible for according to legal regulations. They do not apply insofar as E. W. Menn has maliciously concealed a defect and for claims by the buyer under the Product Liability Act.
- In deviation from sec. 438 para. 1 no. 3 BGB, the general limitation period for claims arising from material and legal defects is one year from delivery. Other statutory special regulations on the statute of limitations remain unaffected (in particular sec. 438 para. no. 1, para. 3, sec. 444, 445b BGB). Claims for compensation by the buyer according to sec. VII. para. 2, clause 1 and 2 (a) as well as under the Product Liability Act are subject to the statute of limitations only after the statutory limitation periods.

VIII. Place of performance, Choice of law, Place of jurisdiction

- The place of performance for deliveries and any subsequent performance by E. W. Menn is Hilchenbach. The place of performance for payments by the customer to E. W. Menn is the registered office (administrative seat) of E. W. Menn.
- The law of the Federal Republic of Germany applies to this GTC and the contractual relationship between E. W. Menn and the buyer, excluding international uniform law, in particular the United Nations Convention on Contracts for the International Sale of Goods.
- The exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Siegen, North Rhine-Westphalia, Germany. In all cases, however, E. W. Menn is also entitled to file suit at the place of fulfillment of the delivery obligation in accordance with these conditions or an overriding individual agreement or at the general place of jurisdiction of the buyer. Priority statutory regulations, in particular regarding exclusive responsibilities, remain unaffected.

IX. Export control / Deliveries outside Germany

If, despite demonstrable delivery, for reasons for which the buyer is responsible, proof of export or shipment to areas outside of Germany cannot be provided in accordance with applicable EU law or German law, the customer is entitled to payment of valid German VAT.