

GENERAL TERMS AND CONDITIONS

1. Area of validity

These General Terms and Conditions shall apply exclusively. They shall only apply in business with businessmen and with legal persons under public law. They shall apply for all orders and our other services relating to ongoing and future business connections, even if in the course of a business connection there is no special confirmation of an order. Agreements and business conditions departing from this shall only be binding, if they are also confirmed by us in writing. The two parties agree that German law shall apply. The provisions of the UN Convention on Contracts for the International Sale of Goods shall not apply.

2. Conditions of sale

Delivery shall be on the basis of our general terms of delivery. All orders require written confirmation by Piure. In those cases when goods are bought or collected from the factory or warehouse, the delivery note shall serve as confirmation of order. Supplementary verbal agreements shall also require written confirmation. We are to be informed of objections to the confirmation of order or confirmation of supplementary agreements without delay, at the latest within three business days. Conflicting conditions of purchase of the customer shall not be recognized even if reference was made to the latter in an order.

3. Prices

1. Insofar as nothing to the contrary was arranged, all prices are ex works, excluding packaging. Discounts for cash payment and the like require a separate agreement. Those prices valid at the time of delivery shall apply.
2. Should for reasons for which the buyer is responsible, delivery not take place until after the given deadline, we shall be entitled to charge those prices valid on the day of delivery. Should the prices be more than 10 % higher than the agreed price the buyer shall be notified prior to dispatch. In this case the buyer is entitled within a period of five days to declare his withdrawal from the contract. Further claims by the buyer are precluded.
3. The value added tax currently applicable shall be charged to all prices.

4. Delivery

1. For the duration of their impact force majeure, order of higher authority and circumstances not caused by our fault, in particular industrial action, natural disasters, fire damage, etc. discharge us from the obligation to deliver. We are entitled to withdraw from the contract if we cannot reasonably be expected to discharge the same for one of the abovementioned reasons. We are under no obligation to pay damages or compensation to the buyer.
2. Meeting our delivery obligation presupposes the customer's timely and orderly fulfillment of his obligation. We reserve the right to claim compensation for the non-performance of the contract.
3. Should the customer default in accepting the delivery of goods or should he culpably violate any other obligations, we shall be entitled to demand that claim for the damages we have incurred including any additional expenses. We reserve the right to raise further claims.
4. Insofar as the conditions listed under para. (3) exist, the risk of a chance destruction or a chance deterioration of the reserved goods passes to the customer at the point in time that the latter defaults on delivery or payment.
5. We shall be liable pursuant to legal provisions, insofar as the underlying purchase contract is a fixed-date purchase in the meaning of Section 286 par. 2 Nr. 4 German Civil Code or Section 376 German Commercial Code. We shall also be liable pursuant to the legal provisions insofar as in consequence of default of delivery for which we are answerable the customer is entitled to assert that his interest in the continued performance of the contract no longer applies.
6. Furthermore, we shall be liable pursuant to the legal provisions insofar as the default of delivery rests on a violation of contract for which we are responsible, or gross breach of contract; gross negligence on the part of our legal representatives or vicarious assistants should also be attributed to us. Insofar as default of delivery does not result from deliberate breach of contract for which we are responsible our liability for damages shall be limited to those foreseeable damages that typically occur in such cases.
7. We shall be liable pursuant to the legal provisions insofar as the default of delivery for which we are answerable rests on the culpable violation of a fundamental contractual obligation; however, in this case liability for damages shall be limited to the damages that typically occur in such cases.
8. Should no other provisions to the contrary have been made in writing, dispatch and packaging shall be charged to the buyer. Piure selects the transport route and type of transport; the goods shall be delivered to the address of the buyer. Other unloading areas must be agreed in writing.
9. If the goods are delivered by a vehicle or haulage company contracted by Piure, the risk passes to the buyer on the goods being handed over. If the goods are collected by vehicle or a haulage company contracted by the buyer the risk passes to the buyer on delivery of the goods to the buyer's premises or warehouse. The goods remain uninsured, it is the responsibility of the buyer to take out transport insurance should it be deemed necessary.
10. In the case of the unjustified refusal of the buyer to accept delivery of the goods the costs and damages incurred are charged to the buyer.
11. Goods that have been delivered and are returned without the prior consent of the seller will not be accepted.

5. Cash on delivery, on call

1. Should the buyer not stipulate a delivery day within a week of being requested to do so we are entitled to deliver the entire amount ordered without setting a further deadline or giving notification, or to store the goods at the cost of the buyer or a third party. Once the week has expired, the risk of chance destruction or deterioration passes to the buyer. If purchase on call has been agreed and the buyer has not called off the ordered amount within three months of the day of the order being confirmed, the same shall apply.
2. In the aforementioned cases the purchase price is immediately payable after expiry of the week's notice. We reserve the right to charge for storage fees.

6. Payment

1. Unless other conditions of payment are agreed, invoices are to be settled net in cash within 30 days of the invoice date. Delivery of the bill excludes a discount even in those cases where the buyer bears the discount charges.
2. Invoices are dated on the loading day.
3. Bills of exchange will only be accepted after written approval and shall only be accepted as payment subject to possible discounting: All costs including the discount shall be borne by the buyer.
4. The offsetting by the buyer is only permissible for uncontested claims or claims recognized by the declaratory judgment of a court.
5. Even without a demand for payment from the date of their being due we are entitled to charge interest amounting to 8 % above the ECB base rate. The buyer is at liberty to prove that either no damage caused by delayed performance was incurred or was not incurred to this amount. Section 353 German Commercial Code and Section 286 German Civil Code are not affected. Assertion of claims of higher damage caused by delayed performance is precluded.
6. Should the buyer not cash a cheque or bill, should he be in default of payment, have suspended payment or should circumstances exist that can be deemed to equal suspension of payment, all unmet amounts shall become due immediately.
7. With regard to outstanding deliveries we are entitled in the previously described cases to withhold these deliveries and demand advance payment or a security deposit, irrespective of our other legal rights. The same shall apply in the event of occurrences in connection with the buyer which cast doubt on his creditworthiness, or should such circumstances existing prior to conclusion of the contract become known to us retrospectively. Should the advance payment or surety not be delivered before the expiry of a grace period we are entitled to withdraw from the contract or to demand damages for non performance of the contract.
8. Customer complaints do not absolve them from the obligation to pay on time.
9. Our bank account details are to be found on the invoice.

7. Damages for non performance

In all cases in which the buyer is obliged to pay damages for non performance of contract, we are entitled to demand 20 % of the purchase price as damages on condition of proof of damage. The buyer is at liberty to prove that no damage was incurred or that a much lower damage was incurred.

PIURE GMBH
FROHSCHAMMERSTR. 6
80807 MÜNCHEN

FON: +49 89 309066 0
FAX: +49 89 309066 20

GESCHÄFTSFÜHRER:
LUDGER SCHRODI

HRB 159661 MÜNCHEN
UST-IDNR: DE245334987

GENERAL TERMS AND CONDITIONS (CONTINUED)

8. Reservation of title

1. We reserve the right to retain title to the goods until the payment dues to us under our business relationship has been effected in full (purchase price, transport payment, interest on defaulted payment, other damage caused by delayed performance, etc.). Should the customer act in violation of the contract, should he in particular default on payment we are entitled to take back the goods. This does not constitute withdrawal from the contract unless we had specifically declared our intention to do so. The attachment by us of the reserved goods always constitutes withdrawal from the contract. Following the taking back of the goods we are authorized to appraise them, the amount realized is to be credited against the liabilities of the customer minus appropriate realization costs. We are entitled to place ourselves in possession of the goods, to which the customer expressly agrees, such that it does not represent unlawful interference with possession.
2. The customer is obliged to handle the reserved goods with due care; in particular, he is obliged to take out adequate reinstatement insurance for the goods covering against damage by fire, water and theft.
3. In the event of seizure or other actions by third parties, the customer must notify us immediately in writing so that we can bring a suit pursuant with Section 771 of the German Code of Civil Procedure. Insofar as the third party is not in a position to reimburse the court and out-of-court costs incurred by a suit pursuant with Section 771 of the German Code of Civil Procedure, the customer is liable for the financial loss we incur.
4. The purchaser may resell the reserved goods to another party in the ordinary course of business; however, he must hereby transfer to us all claims amounting to the final invoice amount (incl. VAT), which accrue to him from the resale or processing vis-à-vis his buyers or third parties, irrespective of whether the reserved goods have been re-sold without or after processing. This amounts to the seller taking on the assignment. Even after assignment the customer is still entitled to collect this debt. Our authorization to collect the debt ourselves remains unaffected by this. However, we do undertake not to collect the debt as long as the customer meets his obligation to pay from the proceeds received, is not in default of payment and, in particular, no application has been made to open insolvency proceedings or to reach an amicable settlement with the creditors on debt settlement (Section 305 I no. 1 of the German Insolvency Procedure), and there is no protesting of a cheque or bill. However, should this be the case we can demand that the customer notify us of the debts assigned to the debtor, provides all the information needed for the collection, hands over the corresponding documents and informs the debtor (third party) of the assignment. Authorization to collect relates to the total amount of outstanding debt.
5. The treatment or processing of the reserved goods for the customer is always done on our behalf. Should the goods be processed using other items that do not belong to us we shall acquire co-ownership of the new goods in the relationship of the value of the reserved goods (final invoice amount, including VAT) to the value of the other objects at the time of processing. The same shall also apply for goods created through processing as for goods delivered subject to proviso.
6. Should items that do not belong to us be used to alter the goods irrevocably, we shall be granted co-ownership of the new object in the same ratio which the value of the reserved goods (final invoice amount, including VAT) has to the other combined items at the time of their combination. Should this occur in such a manner that the buyer's object is to be seen as the main one it is deemed as mutually agreed that the buyer transfer to us pro rata co-ownership. The buyer subsequently preserves for us the ensuing sole ownership or co-ownership.
7. The buyer shall also transfer to us the claims against a third party for securing our claims against him, which arise from the combination of the goods with a plot of land.
8. Upon the demand of the purchaser we shall be obliged to release the reserved goods at our option up to the specific value limit should the value of the security provided for us exceed our claims for payment by more than 45 % (20 % value deduction, 4 % Section 171 I of the German Insolvency Procedure, 5 % Section 171 II of the German Insolvency Procedure and the currently applicable value added tax (19 %). Insofar as the seller is unable to prove a lower value of the conditional commodity the realizable value is to be deemed to be the buyer's procurement prices minus a permissible downward value adjustment of a maximum of 45 % of the debt to be secured (20 % value deduction, 4 % Section 171 I of the German Insolvency Procedure, 5 % Section 171 II of the German Insolvency Procedure and the currently applicable value added tax at the respective legal amount – 19 %) owing to possible minimum proceeds. It is incumbent on us to select the security for release.

9. Warranty

1. Written notification is to be made of defects detectable following proper examination within five days of receipt of the goods, other defects within five days of their discovery. Complaints about mirrors, glass, marble, and ceramics are to be entered on the delivery note on acceptance of the goods. Until a complaint has been processed, the goods in question can be neither sold nor altered without our consent; otherwise the buyer forfeits his warranty rights.
2. If a complaint is justified we can either opt to rectify the defect, take the goods back or provide replacements. Should an attempt to rectify a defect fail, the buyer is entitled to withdraw from the contract. Further warranty claims, in particular claims for damage owing to non performance are excluded. If defects are to be rectified they buyer must respond to our request to send the goods in a particular manner. Should additional costs be incurred in connection with these improvements because after delivery the goods needed to be sent to a place other than the buyer's commercial premises the buyer must bear the costs incurred.

10. Right of retention / Off-setting

Asserting claims to right of retention is precluded inasmuch as the purchaser is not entitled to recognized or legally permissible warranty claims in respect of the purchase price pertaining to the same contract. Likewise, the off-setting of counter-claims is precluded unless these counter claims are uncontested or legally permissible.

11. Damages

The following are precluded: claims to damages owing to an unlawful act, violation of duties at contract negotiations, positive breach of contract, delayed performance, and other damage claims against us, our legal representatives and vicarious agents. This shall not apply in the event of our legal representatives and vicarious agents committing willful default or gross negligence.

12. Data protection

We are entitled to store and use the data generated in connection with our business relations in the meaning of the Federal Data Protection Act. We are released from the duty to notify.

13. Miscellaneous

Sample books, catalogs, photos, diagrams, sketches etc. remain our property and can be demanded back at any time. Our products, which enjoy patent protection, copyright protection and design patent protection, may not be copied, even in those instances where there is no design patent protection. Documents which are intended solely for the buyer must not be made available to third parties. Samples and specimens are intended to provide an approximate indication of quality, dimensions and color. These properties are not guaranteed, this applies in particular to DIN information.

14. Place of jurisdiction

Notwithstanding the amount in litigation the place of jurisdiction is Munich Local Court (Amtsgericht München). This agreement on place of jurisdiction only applies in business dealings with fully qualified businessmen and legal persons under public law.

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80807 MÜNCHEN

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