

Terms and Conditions



Part A: General Terms and Conditions for Consumers

1. SCOPE

The following terms and conditions apply to all orders placed by consumers through our online store. A consumer is any natural person who concludes a legal transaction for purposes that are predominantly neither commercial nor self-employed professional activity. An entrepreneur is a natural or legal person or a legally responsible partnership that acts in the exercise of its commercial or independent professional activity when concluding a legal transaction.

2. CONTRACTUAL PARTNER, CONCLUSION OF CONTRACT, CORRECTION POSSIBILITIES

The purchase contract is concluded with Dönges GmbH & Co. KG. The presentation of the products in the online store does not constitute a legally binding offer, but an unbinding online catalog. You can initially place our products in the shopping cart without obligation and correct your entries at any time before submitting your binding order by using the correction aids provided and explained in the order process. By clicking the order button, you place a binding offer for the goods contained in the shopping cart. The confirmation of receipt of your order is made by email immediately after sending the order.

- We accept your offer within two days by:
- Sending a declaration of acceptance in a separate email, or
- Having the goods delivered, or
- If applicable, the payment transaction is carried out by our service provider or the selected payment-service provider. The timing of the payment transaction depends on the payment method chosen (see under „Payment“). The relevant alternative for you depends on which of the listed events occurs first.

3. CONTRACT LANGUAGE, CONTRACT TEXT STORAGE

The language(s) available for concluding the contract: German. We save the contract text and send you the order data and our terms and conditions in text form. You can view the contract text in our customer login.

4. DELIVERY CONDITIONS

In addition to the stated product prices, shipping costs may apply. Further details on any shipping costs that may apply can be found in the offers. You generally have the option of picking up at Dönges GmbH & Co. KG, Dönges Street 1, 42929 Wermelskirchen, Germany during the following business hours: 09:00-15:00 (by appointment).

5. PAYMENT

In our shop, the following payment methods are generally available to you:

- Advance payment When choosing the payment method in advance, we will give you our bank details in a separate email and deliver the goods after receiving the payment.
- Credit card by placing the order, you provide your credit card details. Your card will be charged immediately after placing the order.
- PayPal to pay the invoice amount via the payment service provider PayPal (Europe) S.à r.l. et Cie, S.C.A. 22-24 Boulevard Royal, L-2449 Luxembourg („PayPal“), you must be registered with PayPal, legitimize yourself with your access data and confirm the payment instruction. The payment transaction is carried out immediately by PayPal after placing the order. Further information will be provided during the ordering process.

6. CREDIT CHECK

Our company regularly checks your creditworthiness when concluding contracts and, in certain cases where there is a justified interest, also with existing customers. For this purpose, we cooperate with Creditreform Boniversum GmbH, Hammfelddamm 13, 41460 Neuss, from whom we receive the necessary data. For this purpose, we transmit your name and contact details to Creditreform Boniversum GmbH. Information according to Art. 14 of the EU General Data Protection Regulation on data processing taking place at Creditreform Boniversum GmbH can be found here: <https://www.boniversum.de/eu-dsgvo/informationen-nach-eu-dsgvo-fuer-verbraucher/>

7. RETENTION OF TITLE

The goods remain our property until full payment.

8. DAMAGES DURING TRANSPORT

If goods are delivered with obvious transport damage, please report such errors as soon as possible to the deliverer and please contact us immediately. The failure to make a complaint or contact has no consequences for your statutory claims and their enforcement, especially your warranty rights. However, they help us assert our own claims against the carrier or transport insurance.

9. WARRANTY AND GUARANTEES

The statutory liability for defects applies. Information on any additional warranties that may apply and their exact conditions can be found with the product and on special information pages in the online store.

10. LIABILITY

We are always liable without limitation for claims due to damages caused by us, our legal representatives or agents

- in case of injury to life, body or health,
- in case of intentional or grossly negligent breach of duty,
- with guarantee promises, as far as agreed, or
- as far as the scope of the Product Liability

Act is opened. In the event of a breach of essential contractual obligations, the fulfillment of which makes the proper execution of the contract possible in the first place and on the compliance of which the contractual partner may regularly rely (cardinal obligations) due to slight negligence by us, our legal representatives or agents, the liability is limited in amount to the damage foreseeable at the time of the conclusion of the contract, which must typically be expected to occur. In addition, claims for damages are excluded.

11. DISPUTE RESOLUTION

The European Commission provides a platform for online dispute resolution (OS), which you can find here [<https://ec.europa.eu/consumers/odr/>]. We are not obliged or unwilling to participate in a dispute resolution procedure before a consumer arbitration board. AGB created with the Trusted Shops [<https://legal.trustedshops.com/>] legal texter in cooperation with FÖHLISCH Lawyers [<https://foehlisch.com/>].

Part B: Delivery and Order Conditions for Companies

I. Governing Conditions

1. The legal relations for all deliveries and services by Dönges GmbH & Co. KG (supplier) to companies (customers) are governed by these conditions and any other agreements.

2. Changes and additions require written form. Other general terms and conditions shall not apply, even if they are not expressly contradicted in individual cases. These delivery and order conditions also apply to all future deliveries and services by the supplier to the customer, even if they are not explicitly agreed again. They apply only to entrepreneurs within the meaning of § 14 BGB (German Civil Code).

II. Order

1. The supplier's offers are subject to change and non-binding. Agreements on quality, quantity and durability guarantees require written form.

2. Unless otherwise specified, delivery shall be uninsured at the cost and risk of the customer to the customer's stated or to be stated place of receipt or use. The risk passes to the customer upon handing over to the person designated for the execution of the transport. This also applies in the case of a delivery obligation of the supplier.

3. In the case of delivery and shipping debt, the supplier is entitled to determine the means of transport and the transport route. Deviating agreements require written form.

III. Prices and Payment

1. All prices mentioned by the supplier are exclusive of statutory VAT (unless it is already explicitly stated).

Costs for packaging, shipping, and insurance are not included in the prices and are to be paid separately by the customer, unless the supplier expressly confirms their assumption in writing.

2. Payment is to be made within 10 calendar days from receipt of invoice net, unless expressly agreed otherwise. This also applies in the case of acceptance of early deliveries. The supplier is entitled at any time to demand delivery against payment without giving reasons.

3. Unless otherwise agreed, payment is made by transfer or check. Checks are only accepted on account of performance.

4. In the case of defective delivery, the customer is entitled to withhold payment proportionally until proper fulfillment.

5. Without the customer's prior written consent, the supplier is entitled to assign its claims against the customer or have them collected by third parties.

6. The customer is only entitled to offset against such counterclaims that have been legally established, concern a decision-ready counterclaim, are undisputed by the supplier, or regarding which the supplier has expressly agreed to offset in writing. The customer also has a right of retention only in the cases mentioned in sentence 1.

7. Retention rights and offsetting powers of the supplier are subject to no restrictions. The statutory provisions apply in this respect.

IV. Credit Check

Our company regularly checks your creditworthiness when concluding contracts and, in certain cases where there is a justified interest, also with existing customers. For this purpose, we work with Creditreform Solingen Kirschner GmbH & Co. KG, Kuller Str. 58, 42651 Solingen, from whom we receive the necessary data. For this purpose, we transmit your name and contact details to Creditreform. Further information on data processing at Creditreform can be found in the detailed leaflet „Creditreform information according to Art. 14 EU-DSGVO (see Annex 1) or at <https://www.creditreform.de/solingen/datenschutz>

V. Confidentiality

1. The contracting parties undertake to treat as a business secret all non-obvious commercial and technical details that become known to them through the business relationship: Drawings, models, templates, samples, and similar items must not be made available to unauthorized third parties or otherwise made accessible. The duplication of such items is only permitted within the scope of operational requirements and copyright provisions. These obligations continue beyond the end of the supply relationship. Suppliers are obligated accordingly by the supplier.

2. The contracting parties may only advertise with their business relationship with the prior written consent.

VI. Delivery Dates and Deadlines, Delivery Modalities

1. Agreed dates and deadlines are only binding if they have been confirmed in writing and expressly as binding by the supplier.

2. A confirmed delivery date is subject to the correct, complete, and timely self-supply. In the case of final non-supply by the supplier's contractual partner, both parties have the right to withdraw from the contract to that extent. The supplier's liability (Section XI) is waived in the cases of sentences 1 and 2 only if the deficient, late, or completely omitted self-supply is not a result of a breach of duty attributable to the supplier.

3. The timely provision of the goods for dispatch in the case of shipping debt, for delivery in the case of delivery debt, and for collection in the case of collection debt and the corresponding notification to the customer are decisive for compliance with the delivery date or period unless otherwise agreed in writing.

4. Prematurely delivered goods must be accepted by the customer. A reservation of return at the supplier's expense is not agreed and requires an explicit written agreement between the parties. If the customer stores the goods until the agreed delivery date, he bears the costs incurred. The storage is at his risk.

5. Partial deliveries are permissible, provided that they do not result in unreasonable disadvantages for the customer.

VII. Delivery Delay, Damage Lump Sum

1. In the case of a delivery delay, the customer's claim in the case of simple negligence is limited to compensation for the typically foreseeable damage. Otherwise, the liability for delay damages is governed by Section XI.

2. If the customer is in default of acceptance and the supplier has set the customer a reasonable deadline for acceptance of the goods, which has expired without result, or if the customer has seriously and definitively refused acceptance, the supplier is entitled to withdraw from the concluded contract and demand compensation. The damage claim of the supplier amounts to a lump sum of 10% of the net price for the goods not accepted unless the customer was not responsible for his breach of duty. The customer is entitled to prove to the supplier that damage of a lesser extent than agreed with the lump sum or no damage at all has occurred. In this case, the claim for damages is reduced accordingly or falls altogether. The supplier's right to calculate the damage concretely and to assert a claim for damages exceeding the lump sum based on concrete calculation remains unaffected.

VIII. Force Majeure

Force majeure, labor disputes, unrest, governmental measures, and other unforeseeable, unavoidable, and serious events release the contracting parties from their performance obligations for the duration of the disturbance and to the extent of their effect. This also applies if these events occur at a time when the affected contracting party is in default. The contracting parties are obliged to provide the necessary information immediately within the bounds of reasonableness and to adjust their obligations to the changed circumstances in good faith.

IX. Quality and Documentation

Changes to the delivery item do not require the prior written consent of the customer, provided they are desired by the customer or are appropriate according to the state of the art.

X. Defects, Defect Notification and Notification Deadlines

1. Between the parties, § 377 HGB (German Commercial Code) applies unrestrictedly with the resulting obligations for the customer's incoming inspection. The supplier's outgoing goods inspection does not assume the customer's incoming goods inspection. Nor does it assume other obligations incumbent on the customer according to § 377 HGB.

2. Transport-related defects and discrepancies in the accompanying documents, as well as all other defects, will be complained by the customer, insofar as they are apparent, within three working days after delivery. The complaint period for defects that become apparent during a proper examination is six working days after delivery, for hidden defects it is six working days after discovery.

3. The goods delivered by the supplier are free from material defects if their characteristics are within the generally accepted and production-related tolerances.

XI. Rights in Case of Defects

1. Should the goods prove to be defective, the customer can demand, if the respective legal requirements are met and unless otherwise agreed, the following (Section IX remains unaffected):

a) The choice between rectification and replacement is made by the supplier at its reasonable discretion. Rectification and replacement are always on a goodwill basis and without acknowledgment of a legal obligation.

b) As far as the customer exercises the right of choice, his claim for subsequent performance is limited to the chosen variant of subsequent performance until this variant proves to be unfeasible or the supplier refuses to carry out the subsequent performance according to the chosen variant. The buyer's right to claim reduction, withdrawal, or damages due to the failure of subsequent performance under the legal requirements remains unaffected.

c) In case of a culpable breach of duty beyond the delivery of defective goods (e.g., in case of an information, advice, or investigation duty), the customer can demand compensation for the resulting

consequential damage as well as the consequential damage reimbursed to his customer according to law, according to Section XI. Consequential damage is the damage suffered by the customer due to the delivery of defective goods to other legal goods than the goods themselves.

d) As far as the customer asserts claims for damages due to a defect, the provisions of this Section in addition to Section XI apply.

2. The regulations on the recourse of the entrepreneur according to § 478 BGB remain unaffected by the regulation according to number 1.

3. The supplier must be made available immediately and at his expense by the customer for the parts to be replaced at his request.

4. Defect claims do not arise if the defect is due to a violation of operating, maintenance, and installation instructions, unsuitable or improper use, faulty or negligent treatment, natural wear and tear, or improper interventions in the delivery item by the customer or third parties.

5. The defect rights of the customer expire

- in four years if the purchase item is in a building or in an item that has been used according to its usual use for a building and has caused its defectiveness,
- otherwise after 12 months.

1. Item 5 does not affect the expiration of recourse claims according to § 479 BGB. Otherwise, the statutory provisions apply to the statute of limitations, in particular, to the beginning of the limitation period. The regulation in Section X item 1a sentence 2 remains unaffected.

2. In the case of defective deliveries, the customer's claims from the Product Liability Act, tort, and agency without order remain unaffected by this Section X. Quality and durability guarantees must be expressly designated as such in writing in detail.

XII. Liability

1. A liability of the supplier for damages generally presupposes fault on the part of the supplier or fault attributable to him regarding the damage caused by him. The limitation rule of § 438 BGB also applies to the replacement of damages, which arise due to the defect on another legal asset (e.g., property, body, etc.) of the customer or a third party, provided that § 438 BGB is generally applicable to the contract. Section X.5 and X.6 sentence 1 and 2 apply accordingly. The following items of this section must be observed for liability in terms of reason and extent.

2. The supplier is liable for culpably caused personal injuries without limitation. Otherwise, he is liable for damages only in case of intentional or grossly negligent breaches of duty by himself, his legal representatives, or the persons he uses to fulfill his obligations. In case of slight negligence of the aforementioned persons, the supplier is liable for damages only if the breach of duty is an expression of a violation of essential contractual obligations. An essential contractual obligation in the aforementioned sense is one whose fulfillment makes the proper execution of the contract possible in the first place and on the compliance of which the contractual partner regularly relies and may rely. In the case of slight negligence, the liability is limited in amount to the contract-typical damage.

3. If the customer is claimed against due to fault-independent liability towards third parties according to non-disposable law, the supplier only steps in against the customer to the extent that he has to stand against the customer according to the legal regulations, taking into account these sales conditions. For the damage compensation between the customer and supplier, the principles of § 254 BGB apply accordingly. This also applies in the case of a direct claim against the supplier.

4. The obligation to pay compensation is excluded to the extent that the customer has effectively limited the liability towards his customer. The customer will strive to agree on liability limitations to the extent legally permissible also in favor of the supplier.

5. Claims of the customer are excluded to the extent that the damage is attributable to the customer's violation of operating, maintenance, and installation instructions, unsuitable or improper use, faulty or negligent treatment, natural wear and tear, or incorrect repair.

6. The customer will inform and consult the supplier immediately and comprehensively if he wants to claim the supplier according to the preceding regulations. He must give the supplier the opportunity to examine the case of damage. The contracting parties will coordinate measures, especially in the case of settlement negotiations.

7. The liability limitations and exclusions according to items 1 to 6 of this section apply to the same extent in favor of the legal representatives, executive and non-executive employees, and other agents as well as subcontractors of the supplier.

XIII. Property Rights

1. The supplier is liable for claims arising from the contractual use of the delivery items from the violation of property rights and property right applications (property rights) only within the framework of the legal provisions, taking into account the liability regulations in these sales conditions (Section XI).

2. He particularly does not indemnify the customer and his customers from all claims arising from the use of such property rights, to the extent that he is not liable according to item 1.

3. The supplier is particularly not liable if he has manufactured the delivery items according to drawings,

models, or equivalent other descriptions or information provided by the customer and does not know or must not know in connection with the products he has developed that property rights are thereby violated.

4. The contracting parties undertake to inform each other immediately of any known infringement risks and alleged infringement cases and to give each other the opportunity to counter corresponding claims amicably.

5. The customer will inform the supplier of the use of published and unpublished own and licensed property rights and property right applications on the delivery item upon request from the supplier.

6. As far as the supplier is liable according to items 1 to 5 and unless expressly agreed otherwise in writing, the supplier is liable only for the violation of property rights protected in Germany.

XIV. Contractual Penalties, Lump Sum Damages

Irrespective of the type of damage (defect claims, damages instead of or in addition to performance, product liability, etc.), the customer must calculate the damage incurred concretely. Lump sum compensation is excluded, contractual penalties are not agreed between the parties. The agreement of damage lump sums and contractual penalties can only take place individually contractually and require the written form.

XV. Retention of Title

1. The supplier delivers to the customer only on the basis of the retention of title described in more detail below. This also applies to all future deliveries, even if the supplier does not always expressly refer to it.

2. Until the complete payment of all claims from the business relationship, including incurred incidental costs (discount expenses, refinancing or reverse bill of exchange interest, etc.), the delivery items remain the property of the supplier, even if they have been ordered for resale or the customer has been granted a payment term (reserved goods). The reserved goods may only be passed on in the proper course of business.

3. By processing these goods, the customer does not acquire ownership of the whole or partly manufactured items; the processing is done gratuitously exclusively for the supplier. Should the retention of title nevertheless expire due to any circumstances, the supplier and customer agree that the ownership of the items passes to the supplier with the processing, who accepts the transfer. The customer remains their gratuitous custodian. In case of processing with items still in third-party ownership, the supplier acquires co-ownership of the new items. The extent of this co-ownership results from the ratio of the invoice value of the goods delivered by us to the invoice value of the other goods.

4. The customer hereby assigns the claim from a contract for the transfer of the reserved goods (usually but not exclusively the purchase price claim) including VAT to the supplier, even insofar as the goods are processed. The supplier hereby accepts the assignment. If the customer receives such a claim paid into his bank account, he hereby assigns his claim against the bank to the supplier, who hereby accepts the assignment. If the processing product contains, besides the supplier's reserved goods, only items that either belong to the customer or have been delivered only under the so-called simple retention of title, the customer assigns the entire purchase price claim to the supplier. In the other case, i.e., when advance assignments to several suppliers coincide, the supplier is entitled to a fraction of the claim corresponding to the ratio of the invoice value of his reserved goods to the invoice value of the other processed items.

5. The supplier undertakes to release the securities to which it is entitled according to the preceding conditions at the request of the customer, as far as the realizable value of the securities exceeds the claims to be secured by more than 10%.

6. The customer undertakes to treat the ordered goods with care as long as the ownership has not yet passed to him. In particular, he is obliged to insure them sufficiently at his own expense against theft, fire, breakage, and water damage at the new value. The supplier is entitled to take out this insurance at the customer's expense. Maintenance and inspection work must be carried out by the customer at his own expense in due time. As long as the ownership has not yet passed, the customer must immediately notify the supplier in writing if the delivered item is seized or exposed to other interventions by third parties.

7. During the duration of the retention of title, the customer is not entitled to pledge the delivery item or to assign it for security.

XVI. General Provisions

1. If a contracting party stops its payments or if insolvency proceedings over its assets or an extrajudicial settlement procedure are applied for, the other is entitled to withdraw from the contract for the unfulfilled part.

2. Should a provision of these conditions and any further agreements made become invalid or be invalid, this shall not affect the validity of the contract as a whole. The contracting parties are obliged to replace the ineffective provision with a regulation that comes as close as possible to the economic success.

3. The law of the Federal Republic of Germany applies exclusively, excluding the UN sales law (CISG).

4. The place of performance is determined according to the legal provisions. Deviating agreements can only be made individually contractually and require written form.

5. The place of jurisdiction for all legal proceedings is the business location of Dönges GmbH & Co. KG, provided the customer is a merchant, legal entity under public law, or special fund under public law. The supplier is entitled to sue the customer at his general place of jurisdiction or any other opened place of jurisdiction.



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