

# General terms and conditions of sale and delivery

As of: June 2022



## Section 1 Application of the terms and conditions of sale and delivery

The seller's general terms and conditions of sale and delivery apply to business relations between Pulte GmbH & Co. KG – hereafter known as the Seller – and its commercial partners – hereafter known as the Buyer. They also form part of future supply contracts, even if their inclusion is not specifically agreed again. The Seller does not acknowledge any of the Buyer's contradictory or supplementary general terms and conditions of business, unless it explicitly approves them in writing in a specific case. If the Seller refers without reserve to declarations by the Buyer, in which the latter refers to its general terms and conditions of business, this does not constitute agreement with their application; neither does the implementation of the contract without any objections in awareness of the Buyer's general terms and conditions of business constitute approval of them by the Seller.

## Section 2 Prices, transport, payment terms

- (1) Unless stated otherwise in the order confirmation, the Seller's prices are ex works/EXW (Incoterms 2020), plus VAT at the statutory rate; for exports plus customs duties, fees and other official charges. Transport costs are not included in the price.
- (2) Unless stated otherwise in the order confirmation, the invoice amount is payable within 14 days of the invoice date without any deductions.
- (3) If the event of default, the Seller is entitled to charge interest of nine percentage points above the base rate, as well as a fixed penalty of EUR 40.00. This does not preclude claims for additional damages.
- (4) The Buyer is only entitled to rights of set-off and retention if and to the extent that its counterclaims either off-set (Section 320 of the German Civil Code [BGB]) the claims asserted by the Seller or have been determined by a court without further legal recourse, have been acknowledged by the Seller or are uncontested. In addition, the Buyer may only exercise a right to retention to the extent that its counterclaim is based on the same contractual relationship.
- (5) In the event that the Seller is obliged to perform its obligations first, it can refuse to do so if after the contract is signed it becomes apparent that its claim to consideration is at risk because the Buyer is not able to perform its obligations. This right to refuse performance does not apply if the consideration has already been paid or collateral has been provided. The Seller may set a reasonable deadline within which the Buyer has the option of paying the consideration or providing collateral, in exchange for the simultaneous performance of the Seller's obligations. If this deadline expires without result the Seller may cancel the contract. Further details are defined in Section 321 BGB.

## Section 3 Delivery, risk transfer, delayed acceptance, cancellation

- (1) Adherence to the agreed delivery period/date is conditional on the Buyer's timely performance of its contractual obligations. This applies in particular to the obligation to make the agreed payment and, if applicable, to provide the agreed collateral.
- (2) In case of delivery delays, the Buyer is only entitled to claim damages if an appropriate grace period for delivery, set by the Buyer after the delivery was delayed, has expired without result and if the Seller can be made responsible for the delivery delay.
- (3) The Seller is entitled to make partial deliveries if and to the extent that it is reasonable to do so.
- (4) Unless otherwise agreed, deliveries are ex works/EXW (Incoterms 2020).
- (5) If the Seller, with the Buyer's consent, agrees to send the purchased item to somewhere other than the place of performance, then this takes place at the Buyer's risk – even if the Seller covers the transport costs – and using a means of transport chosen by the Seller at its discretion. Risk then passes to the Buyer when the item is handed over to the transport contractor.
- (6) If the Buyer delays accepting the purchased item, then the Seller may charge a fee for storing the item at the rates usually payable for the storage location.
- (7) If the Seller does not perform an obligation when it falls due, or does not perform it in full, the Buyer may only cancel the contract if the Seller is in default.

## Section 4 Delivery delays on the part of our suppliers, force majeure

- (1) Deliveries are subject to our own receipt of correct and timely deliveries.
- (2) Government actions, pandemics and epidemics, riots, strikes, lockouts, fire, machine failures, shortages in the supply of materials or energy, transport problems and other reasons beyond the Seller's control which delay normal production or shipment are deemed to be instances of "force majeure" and entitle the Seller to postpone the delivery date accordingly. The Seller is obliged to notify the Buyer of such circumstances without undue delay as soon as it becomes aware of them. In the event of temporary obstacles, the delivery dates are extended by the duration of the obstacle, plus a reasonable catch-up period afterwards. If a party cannot reasonably be expected to accept a performance delay which is due to the aforementioned events, that party is entitled to rescind the contract.

## Section 5 Suitability of the goods for their intended purpose, Seller's liability for defects

- (1) The Buyer must satisfy itself by performing an inspection that the goods are suitable for their intended use.
- (2) The warranty period is one year from the date of delivery. This does not affect the statutory periods of limitation in cases of recourse pursuant to Sections 445a, 445b, 478 of the German Civil Code (BGB). This does not affect claims for compensation and for reimbursement of expenses on the basis of the defects. Claims for damages based on personal injury or on the German Product Liability Act (Produkthaftungsgesetz) are also not affected. The statutory warranty period also applies to claims for damages that arise because the Seller is in default with respect to work to rectify a defect which is demanded by the Buyer and owed by the Seller.
- (3) The Buyer must examine the goods without undue delay upon receipt and must report any defects discovered without undue delay. Without undue delay is deemed to be within five days, unless another period seems reasonable in an individual case due to particular circumstances. Breaches of this obligation constitute approval of the goods according to Sec. 377 German Commercial Code (HGB). If there is a suspicion of a defect that is not merely insignificant with respect to products delivered, the Buyer must inform the Seller promptly about the existing facts giving rise to that suspicion, even if further inspections must be performed to confirm the defect. A breach of this duty will subject the Buyer to liability for damages unless the Buyer is not responsible for such breach of duty.
- (4) If an item is defective and notice of the defects is given in good time and due form, the Buyer has a right to rectification or to delivery of a replacement, at the Seller's discretion. Where the statutory requirements are met, the Buyer is entitled to reduce the purchase price by an appropriate amount or to rescind the contract. The shipping costs incurred in the context of subsequent performance shall be borne by the Seller. If the shipping costs increase as a result of the Buyer or its customer taking the goods to a place other than the place of performance, then the amount by which such costs increase is to be borne by the Buyer. This applies mutatis mutandis to any other costs to be borne by the Seller in the context of subsequent performance.
- (5) The Buyer's rights in the event of defects do not apply to the sale of used items. This does not affect the Seller's liability for damages in accordance with Section 6.

## Section 6 General liability

- (1) Claims for damages of any kind against the Seller or its legal representatives or persons employed by the Seller in the performance of its obligations are ruled out, unless they result from intent or gross negligence or the breach of a material contractual duty.
- (2) A "material contractual duty" is any duty whose fulfilment makes proper performance of the contract possible in the first place and on whose observance the Buyer should normally be able to rely.
- (3) However, in the event of simple or gross negligence, liability is limited to compensation for damages typically foreseeable for this type of contract.
- (4) The aforementioned disclaimers do not apply to liability under the German Product Liability Act or to cases of personal injury.
- (5) Claims by the Buyer to reimbursement of expenses pursuant to Section 284 BGB are abrogated in so far as claims for damages in lieu of performance are excluded according to the provisions above.

## Section 7 Retention of title

- (1) The Seller retains title to the item sold until it has been paid in full.
- (2) The Buyer is entitled to sell and process the goods subject to retention of title in the course of its ordinary business. Any processing or treatment of the goods subject to retention of title by the Buyer will always be performed on behalf of the Seller, without creating any obligations for it. Title to the new items in their particular state of transformation or processing vests in the Seller. Processing, treating, blending, mixing, or combining the Seller's goods subject to retention of title with other products that do not belong to the Seller gives the Seller co-ownership of the resulting new product corresponding to the ratio between the invoice price of the retained goods and the invoice price of the other products.
- (3) The Buyer may sell the goods subject to retention of title in which the Seller holds a sole or co ownership interest in the ordinary course of the Buyer's business; the Buyer must not pledge or assign the goods as collateral. The Buyer hereby assigns to the Seller in advance all of the claims to which it is entitled from the sale of the goods subject to retention of title or the products resulting from the processing, treatment, blending, mixing or combination. This applies also if the products are sold for one total price with other products that do not belong to the Seller. If, pursuant to a legal regulation, a third party has acquired ownership or co-ownership interests in the products as a consequence of the processing, treatment, mixing or combination, the Buyer hereby assigns to the Seller in advance any claims the Buyer may have against that third party. Assignments within the meaning of this paragraph may only be made up to the amount of the invoice price of the products subject to retention of title. The Seller hereby accepts the Buyer's assignments provided in this clause.
- (4) The Seller authorises the Buyer on a revocable basis to collect the receivables assigned to the Seller in its own name. The Seller is entitled to revoke this authorisation to collect receivables if the Buyer is in breach of contract, in particular if it is in default of payment. The authorisation to collect receivables expires without being revoked if an application is made to open insolvency proceedings for the Buyer's assets. If the Seller revokes the authorisation to collect receivables or it expires for other reasons, the Buyer is obliged to provide the Seller with the information and documentation required to recover the assigned receivables.
- (5) If the realisable value of the goods subject to retention of title and the goods and receivables that substitute for them exceeds the secured claims by more than 10%, the Buyer may require the Seller to release collateral. The Seller may select the collateral to be released at its discretion.
- (6) If the Buyer is in default of payment, the Seller may prohibit it from disposing of the goods subject to retention of title completely or, at the Seller's discretion, in part, e.g. only with regard to selling or further processing, etc.
- (7) If the goods subject to retention of title are pledged or otherwise seized by third parties, the Buyer must notify the third parties of the Seller's title without undue delay and notify the Seller so that it can assert its title to the goods with regard to the third party. The Buyer is obliged to reimburse the Seller the costs of asserting its title to the goods in or out of court, to the extent that the Seller is unable to obtain compensation for these costs from the third party.
- (8) If the Buyer meets the objective conditions of the duty to file for insolvency, it shall refrain from disposing of the goods subject to retention of title in any way, without specifically being requested to do so. The Buyer is obliged to inform the Seller without undue delay of its inventory of goods subject to retention of title. In this case the Seller is further entitled to rescind the contract and to demand the return of the retained goods. If the retained goods have been transformed, processed, blended, mixed or combined with other products, the Seller is entitled to demand their surrender to a trustee; the Buyer is obliged to disclose all co-owners of the retained goods along with their names or company names, addresses, and co-ownership shares. The same applies mutatis mutandis to claims that have been assigned to the Seller in accordance with the preceding paragraphs; in addition, the Buyer must of its own accord provide the Seller with the names and addresses of all debtors along with copies of the documents substantiating the claims against them.

## Section 8 Place of performance and jurisdiction, arbitration tribunal, choice of law

- (1) Unless otherwise agreed, the place of performance for the delivery and for warranty claims is the Seller's place of business.
- (2) If the Buyer's place of business is in the EU or in the European Economic Area or Switzerland, the following applies: if the contracting party is a business, the sole place of jurisdiction for all disputes arising from the legal relations between Seller and Buyer is the Seller's place of business. The Seller is entitled also to sue the Buyer at its place of residence or business. This does not affect any mandatory legal provisions on exclusive places of jurisdiction. If, on the other hand, the Buyer is domiciled outside the EU, the European Economic Area, and Switzerland, then the arbitration tribunal of the Hamburg Chamber of Commerce has sole competence for all disputes arising from or in connection with contracts covered by these General Terms and Conditions of Business and will render final and absolute decisions without recourse to the ordinary courts of law. The defendant is entitled to bring a counterclaim before the arbitration tribunal. The place of arbitration is Hamburg; the language of the proceedings is German. The proceedings, in particular the taking of evidence, will be conducted pursuant to the Rules of the Court of Arbitration of the Hamburg Chamber of Commerce and the rules of Book 10 of the German Code of Civil Procedure (Zivilprozessordnung). When taking evidence, the arbitration tribunal is to be guided by standard procedure at ordinary courts of law in Germany. Procedural principles of common law, including, without limitation, those relating to the production of documents, do not apply (either directly or by analogy). If one party must pay the other party's legal expenses in connection with the arbitration proceedings, such expenses shall be limited to the costs that may be charged according to the German Lawyers' Compensation Act (Rechtsanwaltsvergütungsgesetz, RVG).
- (3) This document is governed by the law of the Federal Republic of Germany, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

Pulte GmbH & Co. KG