

# General Terms and Conditions of Delivery



Last updated: March 2020

## 1. Scope

1.1 All of our business relationships with our customers shall be governed by these General Terms and Conditions of Delivery. They shall apply only if the customer is an entrepreneur (Section 14 BGB [German Civil Code]), a legal entity under public law or a special fund under public law.

1.2 All deliveries and services effected by us shall be governed by these General Terms and Conditions of Delivery exclusively. We do not acknowledge any terms to the contrary or any deviating terms used by the customer, unless such have been expressly approved by us. Even if we refer to written communication containing or making reference to deviating terms of the customer or a third party such shall not constitute any agreement to the validity of these terms and conditions.

1.3 Our General Terms and Conditions shall also apply to future business, even if in individual cases we make no reference to the same.

1.4 Any individual agreements entered into with the customer in individual cases (including collateral agreements, supplements and changes) shall in any event have priority over these General Terms and Conditions. Subject to proof to the contrary, the contents of such agreements shall be governed by a written contract and/or our written acknowledgment.

1.5 Legally relevant declarations and notifications from the customer relating to the contract (e.g. setting of deadlines, notification of defects, withdrawal from the contract or price reductions) must be given in writing, i.e. in written or text form ["text form" as defined under § 126b BGB] (e.g. letter, email, fax). Any legal formal requirements and additional supporting evidence, in particular in cases of doubt relating to the lawful entitlement of the declaring party, shall remain unaffected hereby.

## 2. Conclusion of Contract

2.1. Our offers are without obligation and are not binding, unless they have been expressly stipulated to be binding. We shall be entitled to accept orders or commissions within 7 days of their receipt. Cost estimates are not binding.

2.2 Acceptance can be declared either in writing (e.g. by way of acknowledgment of order) or by delivering the goods to the customer.

2.3 Each order shall be governed by our written acknowledgment of order. An invoice sent together with the delivery may

also be deemed to be an acknowledgment of order. If the customer has any objections as to the contents of the acknowledgment of order, he must oppose such acknowledgment of order without delay. Otherwise the contract shall take effect in accordance with the acknowledgment of order.

2.4 We reserve the right to effect the following changes to the deliveries or services, if and to the extent that this can be expected of the customer:

- (a) product and/or process changes in accordance with general product and process development and improvement;
- b) minor and non-significant deviations in color, shape, design, surface structure, dimensions, weight and quantities;
- c) visual and other customary deviations.

Such shall not apply if specific characteristics have been expressly guaranteed.

2.5 If the content of our performance needs to be modified due to missing or incorrect information provided by the customer, we shall be entitled to effect such modifications; any costs or damage incurred thereby must be reimbursed to us by the customer.

2.6 Any information provided by us relating to the subject-matter of the delivery or service (e.g. weights, dimensions, values in use, capacity, tolerances and technical specifications) as well as the depictions thereof provided by us (e.g. drawings and images) shall only be deemed approximate unless the usability of such information for the contractually intended purpose requires precise conformity. These shall not constitute guaranteed characteristics but are descriptions or designations of the delivery or service. Deviations customary in the trade and deviations which are the result of legal provisions or which represent technical improvements as well as the replacement of components by equivalent parts shall be permissible insofar as they do not adversely affect the usability for the contractually intended purpose.

## 3. Prices and Payment

3.1 The prices stated in the acknowledgment of order shall be authoritative. Unless otherwise agreed, our prices shall be ex works and shall be exclusive of packaging, freight, insurance, customs duties and value-added-tax.

3.2 In the case of sale by dispatch (clause 5.1 below) the customer shall bear the transport costs ex warehouse as well as the costs of any transport insurance that the customer may require.

# General Terms and Conditions of Delivery

**MOTOMETER**

Last updated: March 2020

Any customs duties, fees, taxes and other public dues shall be borne by the customer.

3.3 We shall be entitled to unilaterally raise compensation accordingly in the event of an increase in the costs for material production and/or material procurement and/or product procurement, wage costs and ancillary wage costs, social security contributions as well as energy costs and costs incurred as a result of environmental requirements and/or currency regulations and/or customs changes and/or freight rates and/or public charges, if such have a direct or indirect effect on the manufacturing or procurement costs or the costs of our contractually agreed services and if there are more than four months between the conclusion of the contract and delivery. An increase in the sense of the aforesaid shall be excluded insofar as the increase in costs for individual or all of the above factors is offset by a reduction in costs for other of the above factors in relation to the overall financial burden for the delivery. If any of the above-mentioned cost factors are reduced without the cost reduction being offset by an increase in any other of the above cost factors, the cost reduction must be passed on to the customer as part of a price reduction.

If the new price is 20% or more above the original price due to our aforementioned right to price adjustment, the customer shall be entitled to withdraw from contracts that have not yet been fully fulfilled. However, the customer may only exercise this right immediately following notification of the price increase.

3.4 Unless otherwise agreed, our invoices shall be payable immediately net, without any deduction. However, even within the scope of an ongoing business relationship we shall be entitled at any time to effect delivery, in whole or in part, only with advance payment. The respective reservation will be made with the acknowledgment of order at the latest.

3.5 The customer may only offset counterclaims that are undisputed or recognized by non-appealable judgment. The customer may only enforce a right of retention if such right is based on the same contractual relationship.

3.6. If, after conclusion of the contract it becomes apparent that our claim to the purchase price is at risk due to the customer's inability to perform (e.g. filing of application for the initiation of insolvency proceedings), based on statutory provisions we shall be entitled to refuse performance and - after setting a deadline, if applicable - to withdraw from the contract (Section 321 BGB). In the case of contracts on the production of non-fungible goods (custom-made items) we shall have the

right to withdraw from the contract immediately; the statutory provisions on the waiver of deadlines shall remain unaffected.

## 4. Delivery Time, Delay in Delivery

4.1 The delivery time is agreed on an individual basis or is specified by us upon acceptance of the order.

4.2 The agreed delivery time shall commence with the conclusion of the contract, but not before all technical issues have been clarified and all and any documents, materials or tools to be provided by the customer have been provided in full and not before receipt of any down payment which may have been agreed. In the event of any subsequent requests for changes or additions by the customer the delivery time will be adequately extended.

4.3 Delivery times and delivery dates shall be deemed met if the delivery item has left our premises or if readiness for dispatch has been notified by the time such periods and dates expire.

4.4 If we are not able to meet binding delivery deadlines for reasons for which we are not responsible (unavailability of performance), we will inform the customer of this without delay and at the same time will inform the customer of the expected new delivery time. If performance is not available within the new delivery period either, we shall be entitled to withdraw from the contract, either in whole or in part; we will reimburse any consideration already provided by the customer without delay. "Unavailability of performance" within this meaning shall include but not be limited to cases in which we are not supplied by our own supplier in a timely manner if we have concluded a matching cover transaction, if neither we nor our supplier is at fault or if, in an individual case, we are not obliged to procure.

4.5 The onset of our being in default of delivery shall be determined on the basis of the statutory provisions. In any case, however, a reminder by the customer shall be required. If we are in default of delivery, the customer may demand, to the exclusion of further claims, a flat-rate compensation for the damage caused to him by the delay. The flat-rate compensation for damage shall amount to 0.5% of the net price (delivery value) for each completed calendar week of the delay but shall not exceed, however, 5% of the delivery value of the goods that are delivered late. We reserve the right to prove that the customer has not suffered any damage at all or that the amount of the damage was significantly below the above flat rate. Any further compensation paid by us for the damage caused by the delay shall be excluded. Such shall not apply if we have acted on intent, with gross negligence or maliciously, in the case of claims for injury to life, limb or health and if a fixed date of delivery within the

**MOTOMETER GmbH**

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

Fritz-Neuert-Straße 27 | 75181 Pforzheim/DE | Postfach 14 01 65 | 75138 Pforzheim | **Telefon** +49 7231 42909-300 | **Telefax** +49 7231 42909-305  
**E-Mail** [info@motometer.de](mailto:info@motometer.de) | Sparkasse Pforzheim Calw | **S.W.I.F.T. BIC** PZHSDE 66 | **IBAN** DE86 6665 0085 0000 6902 60  
**Geschf.** Roland Klein, Joachim Bulla | **USt-IdNr.** DE811188293 | **Sitz** Pforzheim | **HRB** 710772 | **Registergericht** Amtsgericht Mannheim

# General Terms and Conditions of Delivery

**MOTOMETER**

Last updated: March 2020

meaning of the law has been agreed and a performance guarantee has been given or a procurement risk has been assumed in accordance with Section 276 BGB and in the case of compulsory statutory liability.

## 5. Delivery, Place of Performance, Passing of Risk, Default in Acceptance

5.1 Delivery shall be effected ex warehouse, which shall also be the place of performance for delivery and subsequent performance, if applicable. Upon the request and at the expense of the customer, the goods will also be shipped to another point of destination (sale by dispatch). Unless otherwise agreed, we shall have the right to determine the respective type of shipment (in particular select the shipping company, dispatch route, packaging) ourselves.

5.2 We shall be entitled to effect partial deliveries if:

- the partial delivery can be used by the customer within the framework of the contractually intended purpose,
- delivery of the remaining goods ordered is ensured and if
- the customer does not incur any significant additional effort or expense on account of this (unless we agree to bear such costs).

5.3 The risk of accidental loss and accidental deterioration of the goods shall pass to the customer upon delivery, in the event of sale by dispatch it shall pass with the delivery of the goods to the carrier.

5.4 If we select the shipping method, the route or the carrier, we shall only be liable for gross negligence with regard to such selection.

5.5 If the customer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the customer is responsible, we shall be entitled to demand compensation for the damage incurred thereby, including additional expenditures (e.g. storage costs).

The right to provide proof of a higher damage as well as our claims laid down by law (including but not limited to the reimbursement of additional expenditures, reasonable compensation, termination) shall remain unaffected; however, the flat rate shall be set off against further monetary claims. The customer shall have the right to prove that we have suffered no

damage at all or that the damage was significantly below the above flat rate.

## 6. Supply by our own Suppliers, Force Majeure

6.1 If, for reasons for which we are not responsible, we are not supplied, not correctly supplied or not supplied on time with the deliveries or services of our sub-suppliers for the provision of our contractually owed deliveries or services despite proper and sufficient coverage of requirements before conclusion of the contract with the customer in accordance with the quantity and quality resulting from our supply or performance agreement with the customer (matching cover transaction) or if events of Force Majeure occur which continue for a not insignificant length of time (i.e. lasting more than 14 calendar days), we will inform our customer thereof in writing or in text form in good time. In such case, we shall be entitled to postpone the delivery for the duration of the impediment or to withdraw from the contract in whole or in part on account of the part of the contract that has not yet been fulfilled, insofar as we have fulfilled our aforesaid obligation to provide information and have not assumed the procurement risk or a delivery guarantee.

If performance is not available within the new delivery period either, we shall be entitled to withdraw from the contract, either in whole or in part; we will reimburse any consideration already provided by the customer without delay.

Force Majeure shall comprise epidemics, pandemics, diseases or quarantine, strike, lockouts, official interventions, energy and raw material shortages, transport bottlenecks or impediments through no fault of our own, operational impediments through no fault of our own – e.g. due to fire, water or machine damage – and all and any other impediments which, from an objective point of view, have not been culpably brought about by us.

6.2 If a delivery date or a delivery period has been bindingly agreed and the agreed delivery date or the agreed delivery period is exceeded due to events in accordance with clause 6. 1. above, the customer shall be entitled – after a reasonable grace period has expired without result – to withdraw from the contract on account of the part that has not yet been fulfilled. In such case, any further claims of the customer, in particular claims for damages, shall be excluded.

6.3 The above provision pursuant to clause 6. 2. shall apply accordingly if, for the reasons stated in clause 6. 1., even without contractual agreement of a fixed delivery date, further adherence to the contract cannot objectively be expected of the customer.

**MOTOMETER GmbH**

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

Fritz-Neuert-Straße 27 | 75181 Pforzheim/DE | Postfach 14 01 65 | 75138 Pforzheim | **Telefon** +49 7231 42909-300 | **Telefax** +49 7231 42909-305  
**E-Mail** [info@motometer.de](mailto:info@motometer.de) | Sparkasse Pforzheim Calw | **S.W.I.F.T. BIC** PZHSDE 66 | **IBAN** DE86 6665 0085 0000 6902 60  
**Geschf.** Roland Klein, Joachim Bulla | **USt-IdNr.** DE811188293 | **Sitz** Pforzheim | **HRB** 710772 | **Registergericht** Amtsgericht Mannheim

# General Terms and Conditions of Delivery

**MOTOMETER**

Last updated: March 2020

We shall be exempted from our obligation to effect delivery if such delivery is prevented by an event of Force Majeure. Events of Force Majeure shall include but not be limited to war, earthquake, flood and other disasters, strike, destruction of production facilities by fire or explosion – to the extent that we are not responsible for the impediment that hinders delivery, either at our site or at the site of our sub-supplier. If the impediment continues for a duration of more than four weeks we shall, in such cases, be entitled to withdraw from the contract

## 7. Retention of title

7.1 We retain title to all goods delivered by us until payment of all and any claims arising from previous contracts have been paid in full.

7.2 If the customer is in default of payment or if it becomes apparent that our claims for payment are at risk due to the customer's inability to honor his commitments, we shall be entitled to claim the surrender of the goods based on the retention of title. Such claim for surrender shall not require withdrawal from the contract.

7.3 In the event of attachments or other third-party interventions the customer undertakes to notify us immediately thereof. The customer shall bear all costs which need to be incurred in order to ensure that such intervention discontinues and to ensure the recovery of the delivery item, to the extent that such costs cannot be collected from such third party.

7.4 Subject to admissible revocation for good cause, the customer shall be entitled to dispose of the delivery item within the framework of the ordinary course of business. In particular it shall not be permitted to pledge the goods or use them as security. The customer may only pass on goods that are subject to retention of title to the purchaser if the customer is not in default with respect to his obligations to us. In the event of resale, as early as with the present the customer shall assign to us all and any claims from such resale, in particular claims for payment, but also other claims relating to the sale, up to the sum total of our invoice (including VAT). Subject to our admissible revocation for good cause, the customer shall be entitled to collect the assigned claims on a fiduciary basis. Resale of the claims within the framework of actual factoring shall be subject to our prior consent. For good cause we shall have the right to notify third-party debtors of the assignment of claims also on behalf of the customer. Notification of the assignment to a third-party debtor shall end the customer's right to collect the debt. If the right to collect the debt is revoked, we can require the customer to disclose to us the claims assigned as well as the debtors thereof, to provide us with all

information required for collection, to hand over all relevant documents and to notify the debtors of the assignment. Good cause within the meaning of the present stipulations shall include but not be limited to the customer being in default of payment, the customer having suspended his payments, in the event of insolvency proceedings having been initiated against him or in the event of evidence indicating an over-indebtedness or imminent insolvency of the customer.

7.5 Processing and transformation of the delivery item by the customer shall always be undertaken on behalf of us. We shall be deemed to be the manufacturers within the meaning of Section 950 BGB, without any further obligation. If the delivery item is processed together with other items which do not belong to us, we shall acquire co-ownership of the new product in proportion to the value of the invoice amount and the purchase price of the other processed goods. In all other respects, the provisions applicable to the delivery item shall also apply to the new product created by such processing.

7.6 If the delivery item is combined, mixed or blended with movable products of the customer in such a way that the product of the customer is to be considered as the principal thing, as early as with the present the customer hereby assigns to us co-ownership of the whole product in proportion to the value of the delivery item and the value of the other combined, mixed or blended products. The customer shall store such property for us free of charge. If the delivery item is combined, mixed or blended with movable products belonging to a third party in such a way that the product of the third party is to be considered as the principal thing, as early as with the present the customer shall assign to us his claim for remuneration against such third party, i.e. the amount equivalent to the sum total of the invoice of the delivery item. The new product created by combining, mixing or blending and/or the (co-) ownership rights to the new product to which we are entitled and/or which are to be assigned to us as well as the payment claims assigned to us as per this paragraph shall serve as security for our claims in the same way as the delivery item itself.

7.7 If or to the extent that a retention of title or an assignment of claims is ineffective or unenforceable due to mandatory provisions of foreign law, the security corresponding to retention of title or assignment of claims applicable in this area shall be deemed as agreed. If, according to this, the assistance of the customer is required, he must take all steps necessary in order to establish and maintain the security.

**MOTOMETER GmbH**

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

Fritz-Neuert-Straße 27 | 75181 Pforzheim/DE | Postfach 14 01 65 | 75138 Pforzheim | **Telefon** +49 7231 42909-300 | **Telefax** +49 7231 42909-305  
**E-Mail** [info@motometer.de](mailto:info@motometer.de) | Sparkasse Pforzheim Calw | **S.W.I.F.T. BIC** PZHSDE 66 | **IBAN** DE86 6665 0085 0000 6902 60  
**Geschf.** Roland Klein, Joachim Bulla | **USt-IdNr.** DE811188293 | **Sitz** Pforzheim | **HRB** 710772 | **Registergericht** Amtsgericht Mannheim

# General Terms and Conditions of Delivery



Last updated: March 2020

## 8. Claims for Defects

8.1 Unless otherwise provided for in the following, the provisions laid down by law shall apply to the rights of the customer in the event of material defects and defects of title (including incorrect delivery and short delivery as well as improper assembly or faulty assembly instructions). The special provisions laid down by law relating to end delivery of unprocessed goods to a consumer, even if the latter has processed the goods, shall always remain unaffected (recourse against the supplier as per Section 478 BGB). Claims from recourse against the supplier shall be excluded if the defective goods were further processed either by the customer or another entrepreneur, e.g. by incorporation into another product.

8.2 The claims for defects asserted by the customer require that he has observed his statutory obligations regarding inspection and reporting (Sections 377, 381 HGB [German Commercial Code]). In the case of building materials and other goods intended for installation or other further processing, an inspection must in any case be performed immediately before processing. If a defect is detected upon delivery, during inspection or at any later point in time we must be notified hereof in writing without delay. In any case, apparent defects must be reported in writing within 5 working days from delivery and any defects that were not apparent during inspection must be notified in writing within the same time period after detection. If the customer fails to duly inspect the goods and/or fails to notify the defect, our liability shall be excluded for the defect that was not notified or not notified in time or not notified in the proper form or manner in accordance with the legal provisions.

8.3 If the delivery item is defective, we shall first of all have the right to select whether we will provide supplementary performance either by remedying the defect (repair) or by delivering an item free from defect (replacement delivery). Our right to refuse supplementary performance if the respective conditions under statutory law are met shall be unaffected hereby.

8.4 As long as the customer does not provide us with the opportunity to verify the defect, in particular if, upon request, the customer does not provide us with the rejected goods or samples, the customer cannot assert that the goods are defective.

8.5 We shall have the right to make the supplementary performance owed by us conditional upon the customer paying the purchase price that is due.

8.6 The customer must grant us the necessary time and opportunity for the supplementary performance owed by us and must, in particular, provide us with the rejected goods for inspection or verification purposes. In the case of replacement delivery, the customer must return the defective goods to us in accordance with the provisions laid down by law. If we were not originally under the obligation to incorporate the goods, supplementary performance shall include neither the disassembly of the defective item nor its re-incorporation.

8.7 The expenditure required for inspection and supplementary performance, including but not limited to transport, travel, labor and material costs as well as costs of assembly and disassembly, if applicable, shall be borne or refunded by us in accordance with the statutory provisions, if a defect actually exists. If these costs are increased by taking the delivery item to a place other than the place of delivery such costs shall be borne by the customer. If a defect does not actually exist, we may demand compensation from the customer for the costs incurred by us as a result of the unjustified request for rectification of defects (in particular inspection and transport costs), unless the lack of defectiveness was not discernible for the customer.

8.8 If supplementary performance has failed or if a reasonable time period to be set by the customer has expired without result or can be waived in accordance with the statutory provisions, the customer shall be entitled to withdraw from the contract or to reduce the purchase price. However, in the event of a minor defect the right of withdrawal shall not apply.

8.9 Also in case of defects, any claims of the customer for damages and/or compensation for expenses incurred to no avail shall only apply as stipulated under clause 9 below and shall be excluded in all other respects.

## 9. Damages

9.1 Unless otherwise provided for in these General Terms and Conditions of Delivery, including the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the provisions laid down by law.

9.2 We shall be liable for damages, irrespective of the legal grounds on which such claims are based, in the event of intent and gross negligence.

In the event of slight negligence we shall be liable only

(a) for damage resulting from injury to life, limb or health;

# General Terms and Conditions of Delivery



Last updated: March 2020

(b) for damage resulting from the breach of an essential contractual obligation (fundamental obligation going to the root of the contract the fulfilment of which is essential for the proper execution of the contract in the first place and the observance of which the customer regularly relies on and may rely on); in this case, however, our liability shall be limited to the compensation of foreseeable damage that typically occurs.

9.3 The limitations of liability resulting from the above clause 9.1. shall also apply in the event of breaches of duty by or to the benefit of persons whose fault we are responsible for in accordance with statutory provisions. The limitations of liability shall not apply if we have fraudulently concealed a defect or have furnished a guarantee for the quality of the goods and for liability under the Product Liability Act.

9.4 The customer may only withdraw from the contract or give notice of termination based on a breach of duty that does not consist of a defect if we are responsible for the breach of duty. Unrestricted right of termination of the customer (in particular pursuant to Sections 650, 648 BGB) shall be excluded.

9.5 The statutory provisions on the burden of proof shall remain unaffected by the above stipulations.

## 10. Statute of Limitation

10.1 In derogation of Section 438 [1], number 3, BGB, the general limitation period for claims for material defects and defects of title shall be one year from delivery. If acceptance has been agreed, the limitation period shall commence with acceptance.

10.2 However, if the goods are a building or an object that, in conformity with its customary manner of utilization, has been used for a building and has caused its defectiveness (building material), claims will become statute-barred in 5 years from delivery in accordance with the statutory provision (Section 438 [1], no. 2, BGB). Any additional special provisions on limitation periods laid down by law shall remain unaffected (in particular Section 438 [1], no. 1, Section 71 [3], Sections 444, 445b BGB).

10.3 The aforesaid limitation periods stipulated by sales law shall also apply to contractual and non-contractual claims for damages by the customer based on a defect of the goods – unless the standard statutory limitation periods (Sections 195, 199 BGB) would, in an individual case, result in shorter limitation periods. However, claims for damages of the customer in accordance with clause 9. 2., sentence 1 and sentence 2 (a) above as well as claims under the Product Liability Act shall

become statute-barred in accordance with the statutory limitation periods exclusively.

## 11. Place of Jurisdiction, Place of Performance and Applicable Law

11.1 Place of performance for delivery and payment shall for both parties be the principal place of business of our company.

11.2 If the customer is a registered trader with seat in the European Union, Switzerland, Norway or Iceland when the proceedings are initiated, place of jurisdiction for all and any legal disputes arising out of the contractual relationship, its creation and effectiveness shall for both parties be the court competent at our company's principal place of business. In derogation hereof, we may, at our discretion, also bring an action at the seat of the customer.

11.3 To the extent that clause 11.2 above is not applicable, all and any legal disputes arising out of the contractual relationship, its creation and effectiveness shall be settled by final and binding decision in accordance with the Rules of Arbitration of the German Arbitration Institute (Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS)), excluding the jurisdiction of the courts. Place of arbitration shall be Karlsruhe, Germany. The language of the arbitration proceedings shall be German.

11.4 The contractual relationship shall be governed by German law exclusively, excluding the provisions of international private law and the UN Convention on Contracts for the International Sale of Goods (CISG).