

datetime: October 2012



Terms and conditions

Delivery and payment terms

1. Scope

The delivery and payment terms apply to all current and future business relationships.

Unless otherwise agreed upon explicitly in writing, the delivery shall be carried out according to the conditions below.

The delivery and payment terms must be accepted when the goods are being received.

2. Offer and signing of the contract

Our offers are subject to change without notice and are without obligation. Ottinger GmbH reserves the right to price changes, technical alterations or prior sale.

Verbal agreements shall only be effective when confirmed in writing.

3. Delivery and packaging

Late deliveries do not entitle the recipient to pursue any claims. If Ottinger GmbH is in default with the delivery, the buyer must grant a grace period of at least four weeks. If the grace period is exceeded again, the buyer reserves the right to withdraw from the contract without further claim.

Ottinger GmbH reserve the right for partial deliveries in case of larger contracts. Each partial delivery shall be considered as fulfillment of a specific contract in terms of these conditions. Unfortunately, we cannot accept contracts "on call" without a limited period of acceptance.

Deliveries up to €250 net shall be free of charge. Deliveries abroad shall be sent as freight collect. For deliveries of smaller purchasing amounts, the buyer shall be responsible for transportation costs ex Singen, Germany. Partial or follow-up deliveries that cannot be assumed by the buyer will be delivered as "freight paid" without consideration of the invoice's value. However, this applies only to the first partial delivery if the total amount of the invoice is at least €250.

Additional expense based on the client's requests (special delivery, express delivery, etc.) shall be borne by the customer. For invoices exceeding €250, packaging material will not be invoiced.

4. Transfer of perils

The risk will be borne by the purchaser at the time when goods are delivered to the freight carrier. In the absence of other agreements, Ottinger GmbH reserves the right to conduct its own shipments. In case of visible external damages and shortfall quantities a description of the damages must be entered on the waybill/proof of delivery form and submitted immediately upon receipt of goods. Concealed damages and shortage of quantities must be reported in writing within four days of receipt of goods. After the expiration of this period, the delivery shall be considered fulfilled

according to specifications. Noncompliance with the period of notification shall make all claims null and void. If claims are received in due time and considered to be justifiable by Ottinger GmbH, we reserve the right to supplementary performance and delivery of the missing quantity at a later date or credit the customer's account. When returning damaged goods, the purchase price shall be refunded. Any further claims, in particular liability for compensation claims, are excluded.

5. Ottinger GmbH's right to rescission

Unless otherwise agreed upon, unpredictable events, such as force majeure, war, labour riots or lockouts, cessation of a business, company shutdown (in particular, during machinery damages), governmental measures, lack of raw materials at no one's fault, etc., shall release Ottinger GmbH from meeting the delivery deadline without compensation for losses suffered by the customer. Ottinger GmbH reserves the right to withdraw from any agreement assuming the contract has not been completed at that time.

Ottinger GmbH reserves the right to request cash on delivery if any known liquidity problems, unfavourable written information, or delinquent accounts come to our knowledge.

If the buyer refuses to accept the delivery without having set a prior deadline according to § 326 BGB (German Civil Code), Ottinger GmbH reserves the right to collect 30% as compensation for the refused goods as well as any incurred expenses.

If the buyer does not accept the goods in due time, Ottinger GmbH reserves the right to submit an arrears invoice after extending the grace period by a maximum of 10 days or withdraw from the contract or demand compensation equal to 30% of the value of the goods. In case of late payments, Ottinger GmbH reserves the right to demand the return of the delivered goods and claim the money held in trust within five business days. The name of the debtor shall be entered into the register of outstanding debts, which clearly identifies the name and the amounts for the customer and the purchaser.

Unless otherwise agreed upon, any returned goods (in perfectly reusable condition) shall be credited equivalent to 70% of the invoice value minus substantiated transportation costs.

Ottinger GmbH cannot accept any returned goods without prior written request for return. When requesting a return, the preferred way of shipping and the proper address must be included. Custom-made products are excluded from the return process.

6. Prices and Terms of Payment

All prices shown in the price list or invoices shall be understood as Euros. All deliveries within EU countries are subject to the current applicable taxes of the Federal Republic of Germany. For deliveries outside of EU countries, the value of the purchase shall be reduced by the amount equivalent to these taxes. The costs for any import/purchase taxes of that country must be borne by the buyer.

For payments within 10 business days of the date of the invoice, Ottinger GmbH guarantees a 10% discount. All other invoices are due net within 30 days, of the date of the invoice.

If, in this case, cheques or bank transfers are accepted instead of cash, Ottinger GmbH reserves the right to add an additional fee of 1% to the note total. If the invoice is subject to a discount, Ottinger GmbH's account must be credited with the outstanding amount on the 10th day of the issuance of the invoice.

Agents and traveling sales personnel are not permitted to collect outstanding debts or accept goods for return unless a special written permission has been granted. Furthermore, bank drafts exceeding a period of more than three months cannot be accepted. Any bank, discount and collection fees will be invoiced.

Exceeding the credit period, default interest in the amount of 12%, or as agreed upon, shall be applied. In case of legal claims, Ottinger GmbH reserves the right to invoice for incurred administrative costs (5%) or a minimum of €5.

Only uncontested and legally binding claims shall entitle the purchaser to offset a claim by Ottinger GmbH or invoke his right to withhold any payments.

7. Right of ownership

The delivered goods shall remain the property of Ottinger GmbH until the final payment has been received. Within the context of a proper business operation, the purchaser may sell the product according to his own wishes.

The purchaser shall cede his right for claims against Ottinger GmbH from the sale of the product, regardless if the product was sold to one or several consumers. The assignment of claim shall serve as protection but shall not exceed the value of the sold goods. Ottinger GmbH, which accepts the assignment of claim, authorises the purchaser to collect accounts receivables for the resale of the products. The authorisation to collect accounts receivables by the buyer shall leave Ottinger GmbH's right to the collection of debts untouched. Ottinger GmbH shall not collect such outstanding moneys, so long as the purchaser complies with his payment obligations. Upon request the purchaser must inform Ottinger GmbH about ceded accounts of all debtors and the purchaser must provide this assignment information to the debtor. This retention of title according to the above-mentioned conditions shall remain in effect even if individual accounts receivable by Ottinger GmbH have been accepted into the current invoice, and the balance has been credited and recognized. The monies collected from the sale of a product shall be placed into trust and kept in separate accounts at all times and must not be combined with other funds. With the full payment of all outstanding receivables from this business transaction, the ownership of a product shall be transferred to the purchaser. The ceded accounts receivables are now with the purchaser. Information about any infringements of property and seizure, which must be rejected by the purchaser immediately, must be provided to Ottinger GmbH in the form of a registered letter without delay. Upon request, the purchaser agrees to inform Ottinger GmbH about available inventory, as well as accounts receivables from resales or to render accounts.

Pledging of products as collateral or the transfer by way of security in favour of a third party shall not be permitted without Ottinger GmbH's express permission. Balancing an account does not touch the retention of title.

8. Liability, compensation

The purchaser shall not hold Ottinger GmbH liable for compensation, regardless of the legal grounds; with the exception for the violation of substantial contractual agreements and limited to deliberate intentions or gross negligence. For lesser cases of negligence, Ottinger GmbH shall not be held liable. Claims for compensation by the purchaser shall not exceed the statute of limitation of two years (this does not apply in case of illegal activities and malicious deception) after detection of the damage and the circumstances from which the claim arose. Without this knowledge, the statute of limitation may be extended to three years from the time the damage occurred.

Invoicing for claim processing fees of any kind by the purchaser is not permitted.

9. Nullity of other delivery and payment conditions

Delivery and payment conditions of the purchaser that are in contradiction with the conditions above are non-binding, even if they are based on the purchase and Ottinger GmbH did not expressly object to the content.

The aforementioned delivery and payment terms are a component of the entire contract and shall apply for all deliveries and services, including future businesses transactions between Ottinger GmbH and the purchaser. The purchaser agrees to accept the contract in its entirety at the time of the business transaction. Any conditions deviating from the aforementioned rules, in particular, business terms of the purchaser, are denied.

10. Place of fulfillment and the jurisdiction

The place of fulfillment shall be Singen, Germany for both partners. Without exception, the place of jurisdiction shall be the District Court of Singen, Germany. This applies to all disputes as a result, directly or indirectly, from this contractual relationship regardless of the amount involved in any particular case.

Contracts between Ottinger GmbH and foreign purchasers are exclusively subject to the German law and its terms. The CISG (United Nations Convention on Contracts for the International Sale of Goods) does not apply.

11. Final clause

If individual delivery and payment terms, in part or as a whole, are or become ineffective, the effectiveness of all other conditions shall remain untouched. In this case, the contract partners agree to lay out the conditions and structure them in a way that the intended contractual objectives can be reached in a reliable way and as accurately as possible.

Information received from credit inquiry agencies or a bank are also considered proof of unfavourable information. This submittal may not be provided to the purchaser.