

General Terms and Conditions of Sale and Delivery of Suding & Soeken GmbH & Co. KG

1. General

These General Terms and Conditions of Sale and Delivery are legally binding for all business relations, sales and other legal transactions between us and our customers. Any deviating agreements or additions, agreements by telephone or verbal agreements or consultations will only be binding after they have been confirmed by us in writing. The customer waives his own Terms and Conditions of Purchase unless he expressly objects and requests a special agreement in writing.

These General Terms and Conditions apply to all legal transactions with sole proprietorships, general partnerships, limited partnerships and private companies, especially the sections regarding place of jurisdiction, also concerning owners, i.e. personally liable partners. In accordance with the applicable German Privacy Policy Act, we have the right to process data received about our customers received in relation to or in connection with our business relations regardless of whether it originates from the customers themselves or third parties. The buyer consents to us storing personal data and transmitting it to a credit rating agency.

2. Offers (including prices, measurements, weights, etc.)

Our offers are subject to confirmation. All information such as measurements, weights, images, descriptions, drawings in sample literature, price lists and other printed matter is carefully researched and approximate, but subject to confirmation. The same applies to information about producers. For orders to customers' specifications a surcharge will be charged. Consultation about technical applications is given to the best of our knowledge and based on our skills and experience. All information concerning the suitability and application of our goods is, however, non-binding and does not absolve the customer from executing his own tests and trials. The customer is responsible for complying with all legal and official regulations when using our goods.

3. Order confirmation

Orders, agreements, assurances, etc., including those made by our representatives, consultants or other company members require our written confirmation to become legally binding. Complaints concerning confirmation must be lodged within one week at the latest. Confirmed prices are only applicable for the confirmed quantities. Sales prices can only be regarded as fixed prices once they have been confirmed by us in writing.

4. Delivery

a) General

For our deliveries the place of loading is the place of fulfilment. For deliveries the customers will bear the risks. Delivery will be made to the agreed site. In case of changes, the customer will bear the costs. Delivery free construction site or free warehouse means: Delivery without unloading on a road suitable for trucks. If the truck leaves a suitable road on the instructions of the customer, the customer will be liable for possible damages. Unloading has to be executed immediately and properly by the customer. Waiting periods will be charged to the customer.

b) Delivery dates and delivery times

Unless non-binding delivery periods have been confirmed in writing, delivery periods are subject to correct and timely self-supply. Industrial disputes or unforeseeable, extraordinary events such as governmental acts, traffic interruptions, etc. shall release us from the obligation to deliver for the duration of their effects or totally in the event of impossibility. In cases of delays or unforeseeable events, damage claims by the customer will be ruled out, unless the delay has been caused intentionally or by gross negligence by one of our legal representatives or vicarious agents.

c) Packaging

The goods are packed according to industry standards. The packaging expressly marked on the invoice as returnable must be returned to us. The packaging account will be credited upon receipt of the packaging material free of charge in closed, clean and undamaged condition within 90 days of the invoice date.

d) Transport and breakage insurance

Insurance against transport damages, loss during transport or breakage will only be provided upon express request of the customer at their cost and for their account. Damage claims have to be reported immediately upon receipt of the goods and in writing concerning the type and extent of the damage. Transport damage or missing quantities must be ascertained immediately upon receipt of the goods using official railway inspection standards or similar methods and recorded on the accompanying documents (consignment note, etc.). Claims arising from the damage are to be assigned to us upon request.

e) Partial deliveries

If partial deliveries have been agreed on within a fixed period, then the partial deliveries will be roughly similar in quantity. If request for delivery or call off does not occur within one year, our obligation to deliver will cease. The customer will however remain obliged to accept the goods. Our right to compensation remains unaffected.

f) Freight terms

If freight paid has been agreed the value of the goods must exceed €100.00 net and delivery will only be made to the customer's railway station. For deliveries below the value of €100.00 delivery will be ex works. In all cases only break bulk or wagon load freight delivery will be covered. Additional costs for express deliveries are to be paid by the consignee.

5. Complaints and liability for defects

Customers who are businessmen must report all recognizable defects, customers who are not businessmen all apparent defects in writing within 8 working days of delivery, but in any case before processing or mixing the goods. Goods, which are sold as inferior quality, will not be subject to complaints procedures. In the event of a justified and timely complaint relating to defective goods in accordance with Section 459 paragraph 1 of the German Civil Code the customer has the right of rescission, ruling out a reduction in price or claim for compensation, or if the goods have been discontinued, the right to an exchange. In accordance with Section 459 paragraph 2 of the German Civil Code we will only be liable concerning the properties of the goods if we have expressly warranted these properties. Reference to DIN standards are only a more specific description of the goods and do not constitute an additional warranty by the seller, unless a special agreement has been expressly made. Claims for damages by the customer arising from positive breach of contract, contact negotiations or unlawful act will be excluded unless caused intentionally or by gross negligence by one of our representatives or vicarious agents.

Complaints are at any rate excluded if thinners, hardeners or additional varnishes or other components have been added which have not been procured from us or which should not have been added according to expert opinion.

We do not accept liability for coats of paint made with goods delivered by us as we have no influence on the proper application of the material.

6. Return deliveries

We will only accept goods returned in excellent condition after agreeing to accept these goods free of delivery charges. Returned goods will be credited, minus 10% for costs. Goods obtained to customers' specific wishes cannot be returned.

7. Payment

a) Terms of Payment

Our invoices are payable 30 days from invoice date without deductions. An early payment discount of 2% will be granted for payment within 10 days of invoice date. An early payment discount is conditional upon all previous invoices having been settled. The early payment discount is based on the net amount after discounts and freight have been deducted. For cash sales the price is due immediately upon receipt of the goods without deduction. We are not obliged to accept cheques or bills of exchange. Bills of exchange are only taken subject to the option of discounting. Cheques and bills of exchange are only credited after encashment and claims assignments only after receipt of payment. The due amount and due date are not affected until then. We do not accept liability for due encashment and possible protests. Discount, encashment and protest charges will be borne by the customer. Only employees with the explicit collection rights, which must be checked in each case, are entitled to receive payment. The collection right is in place if one of our representatives presents a properly issued invoice by us. If a customer has more than one outstanding amount, then we will assign the incoming payments. Our customer will not have the right of retention, unless it concerns the same agreement. Offsetting against counter claims is only acceptable if the claim has been accepted by us and the payment is due.

b) Delay in payment and credit rating

We have the right to charge interest to customers who are businessmen from the due date and customers, who are not businessmen from the date of the delay at the rate of our cost of borrowing or at least 4% above the base rate of the German Federal Bank, plus value added tax in each case. We reserve the right to assert additional claims for damages. All our payment claims become due immediately if the terms of payment are not complied with or if we become aware of circumstances, which according to our duty-bound business discretion, reduce the creditworthiness of our customer. We are then entitled, notwithstanding additional legal rights, to only perform delivery after advance payment or to demand collateral or, after setting an additional appropriate deadline, withdraw from the contract or to claim damages from non-performance.

8. Retention of title to ownership

a) We will retain title to all delivered goods until all payment obligations by the buyer have been fulfilled, regardless of the legal basis, or until encashment of cheques or bills of exchange rendered for this purpose. This includes cheque and bill of exchange procedures. In the case of accounts the conditional goods will be deemed to be collateral for the balance. Conditional goods are to be stored separately to other goods and upon our demand labelled and insured against fire and theft. The buyer may relocate and mix or sell the goods in proper business procedures. Selling as part of selling the business or renting the business out are not considered to be proper business procedures and require our consent. The buyer may not use the goods as collateral or pledge them. The right to resale can be withdrawn by us at any time.

b) Processing of the conditional goods may be performed by the customer for us without any responsibilities arising on our part. According to Section 950 of the German Civil Code, we are the producer. If the conditional goods are processed or mixed with goods that do not belong to us we become part owner of the new goods in equivalence to the invoice value of delivered goods, in accordance with Sections 947, 948 of the German Civil Code. If the buyer is the sole owner of the new goods, he agrees that we are partial owner to the extent of invoice amount of the conditional goods. The customer will keep the goods for us free of charge.

In case the goods are in the ownership of third parties, the buyer hereby assigns his rights to us. We have the right to record stock levels or have stock levels recorded and to repossess the goods or have the goods repossessed, and to enter the premises of the buyer or the owner for these purposes.

c) The buyer hereby assigns to us all claims from the resale of the conditional goods. We accept this assignment. The same applies to claims from contracts for services for which the retention of title expires when they are rendered.

d) If goods we have partial ownership of following processing or mixing are sold, the assignment comprises the invoice value for the goods which have been processed or mixed into the new goods, similarly if our conditional goods are sold with other goods as a unit. For contracts concerning services for which the retention of ownership title becomes invalid, the assignment comprises the invoice amount of the conditional goods. The assignment is a silent agreement and the buyers will not be informed about the assignment. The buyer is authorized to collect payments until further notice. But he does not have the right to settle payment by other means, such as assigning the goods. We have the right to withdraw the right to collect payments and to collect the claims ourselves. We will, however, refrain from doing so as long as the customer properly meets his payment obligations. Upon our request the buyer must inform the purchaser about the assignment. In addition, the buyer is obliged to state the name of the purchaser along with the assigned amounts and any information that is important to assert the assigned outstanding amounts. In case of enforcement measures by third parties which include the conditional goods or assignment, the buyer must inform us immediately. In the case of pledges the buyer must send us a copy of the pledging report and an affidavit that the retention of title still exists and that the pledged goods are still owned by the holder of title. If claims are pledged which result from the resale of conditional goods, this must be confirmed by affidavit. The buyer is obliged to inform us about the whereabouts of the conditional goods at any time upon our request and about the claims resulting from the resale.

e) If the buyer does not meet his obligations to us, in particular payment is not made in accordance with the contract, or if the buyer is faced with insolvency procedures, we can demand, without harm to our rights, the return of the goods. The repossession of the goods is not considered to be a withdrawal from the contract unless we have stated in writing that we are withdrawing. If, regardless of the payment obligations of the customer, we repossess the conditional goods, we have the right, but not the obligation, to sell the goods on the open market for the buyer's account or to take the goods for the value they may have for us. In the case of a sale we are only liable for intent or gross negligence. If the buyer delivers the goods to third parties on credit, he is obliged to retain the ownership title of the goods in a clause similar to the retention of ownership clause in these General Terms and Conditions. The costs incurred if we assert our retention of title are to be borne by the customer.

f) The seller undertakes upon demand of the buyer to release the collateral due to him under the above conditions at his choice if the value of the collateral exceeds the claims, which have to be secured, by 20%.

9. Place of fulfilment, place of jurisdiction, miscellaneous

Place of fulfilment for a delivery is the place of dispatch of the goods.

Place of fulfilment for all obligations of the customer is the registered office of our company. If our customer is a businessman or a legal person under public law or a special fund under public law, the place of jurisdiction is the registered office of our company. This also applies to all litigation concerning cheques and bills of exchange.

The potential ineffectiveness of individual clauses of our Terms and Conditions of Sale and Delivery will not affect the validity of the remaining clauses.

Bremen, 1 January 2010