



Pump technologies and solutions

General terms and conditions of sale, delivery and payment of SPECK Pumpen Verkaufsgesellschaft GmbH
Corporate clients . Stand November 2022

I. Scope

1. These terms and conditions (T&Cs) apply to all business relations between us, SPECK Pumpen Verkaufsgesellschaft GmbH, and our customers (hereafter referred to as the "buyer").
2. Any divergent, supplementary or conflicting terms and conditions of the buyer will not be recognised unless we have expressly agreed that they shall apply. This requirement for an agreement shall apply in any case, and especially where we execute a delivery to the buyer without reservation despite having knowledge of the buyer's T&Cs.

II. Conclusion of contract

1. The ordering of the goods by the buyer shall be deemed to be a binding offer of contract. Unless otherwise stated in the order, we are entitled to accept the contractual offer within two weeks of its receipt by us. Acceptance can either be declared in writing - e.g. by order confirmation - or by delivery of the goods to the buyer.
2. Our offers are subject to confirmation and are non-binding. This shall also apply if we have provided the buyer with illustrations and drawings as well as weight and dimension specifications or other documents to which we reserve ownership rights and copyrights.

III. Delivery and delivery times

1. Delivery dates and deadlines that have not been expressly agreed as binding are exclusively non-binding statements. The delivery time stated by us shall only commence when all technical questions have been clarified. Compliance with the delivery time further requires that the buyer fulfils all obligations incumbent upon him properly and in good time.
2. We shall be liable in accordance with the statutory provisions if, as a result of a delay in delivery for which we are responsible, the buyer is entitled to claim the cessation of its interest in the further fulfilment of the contract. In this case, our liability is limited to the foreseeable, typically occurring damage if the delay in delivery is not due to an intentional or grossly negligent breach of contract for which we are responsible, with culpability on the part of our representatives or agents also being attributable to us.
3. We shall also be liable to the buyer in the event of a delay in delivery in accordance with the statutory provisions if this is based on an intentional or grossly negligent breach of contract for which we are responsible, whereby corresponding fault on the part of our representatives or agents shall be attributed to us. Our liability is limited to foreseeable, typically occurring damage if the delay in delivery is not due to an intentional or grossly negligent breach of contract for which we are responsible.
4. Otherwise, in the event of a delay in delivery for which we are responsible, the buyer may claim lump sum compensation amounting to 3 % of the value of the delivery for each full week of delay, up to a maximum of 15 % of the value of the delivery. In any case, a reminder from the buyer is also required. However, we reserve the right to prove that the buyer has not suffered any damage at all or that the damage is significantly less than the above lump sum. This limitation of liability does not apply if a fixed commercial transaction has been agreed.
5. If we are unable to meet a bindingly agreed delivery deadline for reasons for which we are not responsible, we shall inform the buyer of this immediately and at the same time inform him of an expected new delivery deadline. If the service is not available within the new delivery period, we are entitled to withdraw from the contract in whole or in part. We shall immediately reimburse any payment already made by the buyer. A case of non-availability of the service in this sense shall be deemed to be in particular

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the failure of our own supplier to deliver on time. The statutory rights of withdrawal and termination to which we and the buyer are entitled as well as the statutory provisions on the performance of the contract in the event of an exclusion of the obligation to perform (e.g. in the event of impossibility or unreasonableness of performance and/or subsequent performance) shall remain unaffected.

6. If the buyer is in default of acceptance, neglects to cooperate or if our delivery is delayed for other reasons for which the buyer is responsible, we shall be entitled to demand compensation for the damage incurred and any additional expenses. The same applies if the buyer culpably breaches duties to cooperate. In this case, the risk of accidental loss or accidental deterioration of the object of sale shall also pass to the buyer at the time at which the buyer is in default of acceptance.

7. We are entitled to make partial deliveries at any time insofar as these are reasonable for the customer.

IV. Payment terms; Price adjustments

1. Our prices apply "ex works" without packaging, unless otherwise specified in the order confirmation. The prices do not include the statutory value added tax (VAT). We will show this separately in the invoice at the statutory rate on the day of invoicing. All transport packaging in accordance with the German Packaging Regulation will not be taken back.

2. A cash discount deduction is only permissible with a special written agreement between us and the buyer. The purchase price is due for payment net without deduction within 30 days from the date of the invoice, insofar as no other term of payment results from the order confirmation. A payment shall only be deemed to have been made where the amount is at the payee's disposal.

3. We are entitled to increase the contractually agreed prices if the agreed delivery period is more than four months. The prerequisite for a price increase is an increase in our cost price (such as material costs, wages, transport costs, energy costs, import duties or taxes). The increase shall be made at our reasonable discretion but may not exceed 3 % for delivery periods of up to six months and 6 % for longer delivery periods. We shall notify the buyer of the change in writing or in text form no later than four weeks before it is scheduled to come into effect. If the price increase is more than 5 %, the buyer has the right to withdraw from the contract by written declaration within a period of three weeks from receipt of the notification of the price increase. Otherwise, the provision of § 315 BGB (German Civil Code) remains unaffected.

4. If the buyer is in arrears, interest shall be charged on the purchase price during the period of arrears at the applicable rate of interest on arrears. We reserve the right to assert further claims for damage caused by the delay. The claim to the commercial due date interest (§ 353 HGB German Commercial Code) remains unaffected.

5. The buyer shall only be entitled to set-off rights if his counterclaims have been legally established, are undisputed or have been recognised by us. Furthermore, he is only entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.

V. Transfer of risk and transport

1. The risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass to the buyer upon delivery of the goods to a forwarding agent, carrier or other person designated to carry out the shipment. Loading and dispatch shall take place uninsured at the buyer's risk. The handover shall be deemed to have taken place if the buyer is in default of acceptance.

2. Unless otherwise agreed we shall be entitled to determine the shipment type ourselves, in particular the transportation company, shipment route and packaging.

3. At the request and expense of the buyer, we will insure the delivery with transport insurance.

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VI. Retention of title

1. We retain ownership of the purchased item until receipt of all payments arising from the delivery contract. In the event of conduct by the buyer in breach of the contract, in particular in the event of delay in payment, we shall be entitled to take back the object of sale. Our taking back of the object of sale does not constitute a withdrawal from the contract unless we have expressly declared this in writing. The seizure of the object of sale by us shall always constitute a withdrawal from the contract. After we have taken the purchased item back, we shall be entitled to realise its value and the amount realised from the sale of the goods shall be applied to the buyer's obligation – minus any reasonable realisation costs.

2. The buyer is obliged to treat the object of purchase with care - in particular, he is obliged to insure it adequately at his own expense against fire, water and theft damage at replacement value. If maintenance and inspection work is required, the buyer must carry this out in good time at his own expense.

3. In the event of seizures or other interventions by third parties, the buyer must notify us immediately in writing so that we can take legal action in accordance with § 771 ZPO (German Code of Civil Procedure). Insofar as the third party is not in a position to reimburse us for the court and out-of-court costs of an action pursuant to § 771 ZPO, the buyer shall be liable for the loss incurred by us.

4. The buyer is entitled to resell the object of sale in the ordinary course of business; however, he already assigns to us all claims in the amount of the final invoice amount agreed by us (including VAT) which accrue to him from the resale against his customers or third parties, irrespective of whether the object of sale has been resold without or after further processing. The buyer shall remain authorised to recover this claim even after the assignment. Our authority to recover the claim ourselves remains unaffected by this. However, we undertake not to recover the claim as long as the buyer meets his payment obligations from the proceeds collected, is not in arrears with payment and, in particular, no application for the opening of insolvency proceedings has been filed or there is no cessation of payments. If this is the case, however, we may demand that the buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtor (third party) of the assignment.

5. The processing or transformation of the object of sale by the buyer shall always be carried out for us. The buyer's expectant right to the object of sale shall continue to apply to the transformed object. If the object of sale is processed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the objective value of our object of sale to the other processed objects at the time of processing. In all other respects, the same shall apply to the object created by processing as to the object of sale delivered under reservation.

6. If the object of sale is inseparably amalgamated with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the objective value of our object of sale to the other items amalgamated at the time of the amalgamation. If the amalgamation occurs in such a way that the buyer's item is to be regarded as the main item, it is agreed that the buyer shall assign proportional co-ownership to us. The buyer shall keep the sole or co-ownership thus created for us.

7. The buyer also assigns to us the claims to secure our claims against him which arise against a third party through the connection of the object of sale with a plot of land.

8. We undertake to release the securities to which we are entitled at the buyer's request insofar as the realisable value of our securities exceeds the claims to be secured by more than 10 % or the nominal amount by more than 50 %; the choice of the securities to be released is ours.

VII. Warranty

1. The buyer's warranty rights presuppose that the buyer has properly fulfilled its obligations to inspect and give notice of defects in accordance with § 377 HGB (German Commercial Code).

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2. In the case of delivery of used goods, warranty rights are excluded, subject to the liability under VIII.
3. Insofar as there is a fault in the purchased item for which we are responsible, we are entitled, at our discretion, to subsequent performance in the form of rectification of the fault or a replacement delivery. In the event of rectification of the fault, we shall be obliged to bear all expenses necessary for the purpose of rectifying the fault, in particular transport, travel, labour and material costs.
4. If the supplementary performance fails, the buyer is entitled, at his discretion, to declare the withdrawal from the contract or to demand a corresponding reduction of the purchase price.
5. If the cause of the damage is based on intent or gross negligence, we shall be liable in accordance with the statutory provisions, notwithstanding the provision under VIII. This shall also apply if the buyer claims damages instead of performance due to the absence of a guaranteed quality of the item.
6. The warranty period is 12 months, calculated from the transfer of risk.
7. If the use of the delivery item leads to the infringement of industrial property rights or copyrights in Germany, we shall generally procure the right to further use for the buyer at our expense or modify the delivery item in a manner that is reasonable for the buyer so that the infringement of property rights no longer exists. If this is not possible under economically reasonable conditions or within a reasonable period of time, the buyer shall be entitled to withdraw from the contract. Under the stated conditions, we shall also be entitled to withdraw from the contract. In addition, we shall release the buyer from undisputed or legally established claims of the relevant property right holders.
8. The obligations stated under clause 7 are conclusive in the event of an infringement of industrial property rights or copyrights subject to section VIII. They shall exist only if:
 - > the buyer informs us immediately of any asserted infringements of industrial property rights or copyrights,
 - > the buyer supports us to a reasonable extent in the defence against the asserted claims or enables us to carry out the modification measures in accordance with clause 7,
 - > all defensive measures including out-of-court settlements, even in the event of a claim by the buyer, remain reserved for us,
 - > the legal defect is not based on an instruction of the buyer and
 - > the infringement of rights has not been caused by the fact that the buyer has modified the delivery item without authorisation or has used it in a manner not in accordance with the contract.
9. No guarantee will be provided by us.

VIII. Liability

1. Irrespective of the subsequent limitations of liability we shall be liable under the statutory regulations for damage to life, limb and health which is based on a culpable breach of obligation by us, our legal representatives or our agents, as well as for damage that is covered by the liability under the German Product Liability Act. The same applies to damage caused by culpable breach of a material contractual obligation, the fulfilment of which is a prerequisite for the proper performance of the contract and on the observance of which the buyer may regularly rely (cardinal obligation). In the event of a slightly negligent breach of a cardinal obligation, however, liability for damages shall be limited to the foreseeable, typically occurring damage. In all other cases our liability is limited to intent and gross negligence.

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2. Any further liability is excluded regardless of the legal nature of the asserted claim. This applies in particular to tort claims, claims for compensation for futile expenses or for loss of profit and other financial damage suffered by the buyer; we shall not be liable in the event that the buyer does not comply with the operating instructions supplied, the specifications of which must be strictly observed, or for natural wear and tear, for damage to wearing parts such as seals, bearings and the like, in the event of incorrect or negligent handling of the goods, improper maintenance, unsuitable operating materials or chemical, electrochemical and electrical influences, unless we are responsible for these. Liability is also excluded if the buyer or a third party carries out improper repairs or makes changes to the goods without our prior written consent.

IX. Data protection

All personal data provided by the buyer (title, name, address, e-mail address, telephone number, fax number, bank details, credit card number) will be collected, processed and stored by us exclusively in accordance with the provisions of the German data protection law (in particular in accordance with the DSGVO/GDPR and the BDSG/German Federal Data Protection Act). The buyer's personal data, insofar as this is required for the establishment, content or amendment of the contractual relationship, is used by us exclusively for the processing of the concluded purchase contracts, for example for the delivery of goods to the address specified by the buyer. Any further use of the personal data for the purpose of advertising, market research or the design of offers does not take place.

X. Construction services

If we undertake construction work for the buyer, the VOB/B (Construction Tendering and Contract Regulations - Part B) in its current version shall apply in addition to the individual contractual agreements.

XI. Place of performance, place of jurisdiction and applicable law

The place of performance for all obligations arising from the contractual relationship with the buyer is our registered office in Neunkirchen. The place of jurisdiction for all legal disputes arising from the contractual relationship between us and the buyer as well as its origin and effectiveness is determined by our registered office. However, we are also entitled to take legal action against the buyer at another competent place of jurisdiction. The law of the Federal Republic of Germany shall apply to these T&Cs and all legal relationships between us and the buyer, to the exclusion of all international and supranational (contractual) legal systems, in particular the UN Convention on Contracts for the International Sale of Goods.

XII. Severability clause

Insofar as provisions of these T&Cs are or become invalid, this shall not affect the validity of the remainder of the contract. The invalid provision shall be replaced by the statutory provision.