

Terms and conditions of sale, delivery and payment of Top Light e.K.

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I. General provisions

1. Legal relations between Top Light e.K. and an orderer that concern deliveries and/or services of Top Light e.K. (hereinafter referred to as deliveries) shall be governed exclusively by these terms and conditions of sale, delivery and payment. General terms and conditions of the orderer shall only apply insofar as Top Light e.K. has expressly consented to them in writing. The mutual and harmonised written declarations shall be authoritative as far as the scope of deliveries is concerned.
2. Top Light e.K. fully reserves its rights of exploitation as regards title and copyright in respect of quotations and other documents (hereinafter referred to as documents). The documents may only be made accessible to third parties once Top Light e.K. has given its prior consent and must be returned on request without delay if the order is not placed to Top Light e.K. Sentences 1 and 2 above shall apply mutatis mutandis to the orderer's documents; however, these documents may be made accessible to those third parties that have been duly assigned responsibility for deliveries by Top Light e.K.
3. Partial deliveries are permissible provided these are reasonable for the orderer.
4. The term "claims for damages", as used in these terms and conditions of sale, delivery and payment, shall also include compensation claims for wasted expenditure.

II. Prices, terms and conditions of payment and set-off

1. Prices are deemed to be ex works excluding packaging and do not include the applicable statutory VAT.
2. In the case of orders with a merchandise value in excess of € 350,- net, Top Light e.K. shall deliver on a carriage and packaging paid basis to a receiving station or dispatch address within the Federal Republic of Germany.
3. Invoices shall be issued on the day of delivery at the earliest. If payment is made within 10 days of the invoice date, a discount of 2% shall be granted. The standard payment period is 30 days. If a debit instruction is issued, we shall grant a 3% discount. Within this context, invoices shall be called for the previous month on the 10th of the following month.
4. Cash on delivery shall apply as a matter of principle the first time deliveries are made to new customers. Deliveries outside of the Federal Republic of Germany shall, as a matter of principle, be made following net payment in advance.
5. In the case of custom-made products and orders in excess of € 5,000,- half the invoice amount shall be due when the order is placed. Custom-made products are non-returnable.
6. Payments must be made to Top Light e.K. free supplier's paying office.
7. The orderer shall only be entitled to set off those claims that are undisputed or have been established as final and absolute.

III. Reservation of title

1. The items making up the deliveries (goods subject to reservation of title) shall remain the property of Top Light e.K. until all the claims arising from the business relationship that it is entitled to assert against the orderer have been satisfied. Where the value of all the security rights to which Top Light e.K. is entitled exceeds the amount of all secured claims by more than 10%, Top Light e.K. shall, at the orderer's request, release a corresponding share of the security rights; Top Light e.K. shall be entitled to choose which of various security rights are to be released.
2. During the time that the reservation of title applies, the orderer shall be prohibited from pledging the goods or transferring ownership by way of security and shall only be permitted to resell the goods to resellers in the normal course of business and on condition that the reseller obtain payment from his customer or with the proviso that title shall only be transferred to the customer once the customer has fulfilled his payment obligations.
3. In the event that the orderer should resell the goods that are subject to reservation of title, he hereby assigns all his future claims against his customers, along with all subsidiary rights (including any claims relating to payment of the balance), that arise from the resale to Top Light e.K. by way of security without the need for any further special declarations. If the goods that are subject to reservation of title should be resold together with other items without an individual price having been agreed for the goods that are subject to reservation of title, the orderer shall assign to Top Light e.K. the share of the overall price claim that corresponds to the price of the goods subject to reservation of title as invoiced by Top Light e.K.
4. The orderer is authorised to collect assigned claims arising from the resale until such authorisation is revoked. If there is good cause, and in particular in the event of a default in payment, a stoppage of payments, insolvency proceedings being opened, a protest being made in respect of a bill of exchange or well-founded evidence of over-indebtedness or an imminent inability to pay on the part of the orderer, then Top Light e.K. shall be entitled to revoke the orderer's collection powers. Moreover, provided it gives advance warning and observes an appropriate deadline, Top Light e.K. shall be entitled to disclose details of the assignment by way of security, realise the assigned claims and demand that details of the assignment by way of security by the orderer in relation to the customer be disclosed.
5. In the event of seizure of the goods under distress, distraint or other forms of disposition or interference by third parties, the orderer must inform Top Light e.K. without delay. When a legitimate interest is substantiated, the orderer must provide Top Light e.K. with the information that is necessary for asserting its rights against the customer and hand over the necessary documents.
6. If the orderer should neglect his duties, in particular by defaulting in payment, once an appropriate deadline set for the orderer by Top Light e.K. has expired without bearing fruit, in addition to its right of reclaim Top Light e.K. shall also be entitled to withdraw from the contract; the statutory provisions relating to the dispensability of a deadline shall remain unaffected. The orderer shall surrender possession. If the reservation of title is withdrawn or enforced or if the goods that are subject to reservation of title are seized under distress by Top Light e.K., this shall not constitute withdrawal from the contract unless this is expressly declared by Top Light e.K.

IV. Delivery deadlines; default

1. Compliance with delivery deadlines is conditional upon all the documents that are to be provided by the orderer being received in good time and on the orderer complying with the agreed terms and conditions of payment and his other obligations. If these preconditions are not met in good time, the deadlines shall be extended accordingly; this shall not apply if Top Light e.K. is responsible for the delay.
2. If the failure to comply with the deadlines is attributable to an instance of force majeure, such as mobilisation, war, insurrection, or to similar events, such as strikes and lock-outs, the deadlines shall be extended accordingly. The same shall apply in cases where deliveries to Top Light e.K. are not made in good time or in the proper manner.
3. If Top Light e.K. should default, the orderer shall (provided he can furnish prima facie evidence to demonstrate that he has thereby incurred loss or damage) be entitled to demand compensation for each complete week of the delay equal to 0.5 % of the price of that share of the deliveries that could not be put into operation for its intended purpose because of the delay, up to a total maximum of 5%.
4. Both claims for damages by the orderer due to a delay in delivery and claims for damages in lieu of performance that go beyond the limits specified under no. 3 shall be excluded in all cases of delayed delivery, including when a deadline for delivery has been set for Top Light e.K. and has expired. This shall not apply where there is compulsory liability in cases of wrongful intent or gross negligence or due to injury to life, limb or health. The orderer shall only be entitled to withdraw from the contract in accordance with the statutory provisions if Top Light e.K. is responsible for the delay in delivery. The above arrangements do not in any way entail a change in the burden of proof to the detriment of the orderer.
5. The orderer shall, at the request of Top Light e.K., make a declaration by an appropriate deadline, stating whether he is to withdraw from the contract because of the delay or whether he is to insist on delivery.
6. If, at the orderer's request, dispatch or delivery should be delayed by more than one month following the announcement that the goods are ready for dispatch, then the orderer may be charged a storage fee for every successive new month equal to 0.5% of the price of the delivery items, up to a total maximum of 5%. The contractual parties shall be free to demonstrate higher or lower storage costs.

V. Passing of risk

1. Risk shall pass to the orderer as soon as the goods have been brought to the dispatch location or collected, including in the case of carriage paid deliveries. At the orderer's request and expense, deliveries from Top Light e.K. shall be insured against standard transport risks.
2. If dispatch, or delivery, is delayed for reasons attributable to the orderer or if the orderer defaults in acceptance for other reasons, the risk shall pass to the orderer.

VI. Receipt

The orderer cannot refuse to take receipt of deliveries due to insignificant defects.

VII. Defects of quality

Top Light e.K. assumes the following liability for defects of quality:

1. The properties of the products are determined exclusively and definitively by the relevant product description. In the case of dimensions where no tolerance is specified, the "medium" degree of accuracy as defined by DIN 7168 shall apply as a matter of principle.
2. All those parts or services exhibiting a defect of quality must, as Top Light e.K. sees fit, be repaired, redelivered or provided again free of charge provided that the cause of this defect was already present at the time of the passing of the risk.
3. Claims for supplementary performance shall become time-barred within 12 months of the statutory start of the period of limitations; the same shall apply in respect of withdrawal from the contract and demands for reductions. This deadline shall not apply if the law as laid down by Section 438 Para. 1 No. 2 (buildings and things used for buildings), Section 479 Para. 1 (recourse claims) and Section 634a Para. 1 No. 2 (defects in the building) of the German Civil Code prescribes longer deadlines in the case of wrongful intent, non-disclosure of the defect with intent to deceive and the failure to honour warranted properties. The statutory provisions concerning suspension of the period of limitations, suspension and restarting of the deadlines shall remain unaffected.
4. The orderer must provide notice of defects in writing without delay.
5. In the event of notice of defects, payments by the orderer may be withheld to an extent that is commensurate with the defects of quality that have been exhibited. The orderer may only withhold payments if the legitimacy of the notice of defects is not in any doubt. The orderer shall not be entitled to withhold payments if his warranty claims have become timebarred. If the notice of defects was unjustified, Top Light e.K. shall be entitled to demand that the orderer reimburse the expenses he has incurred.
6. Top Light e.K. must be given the opportunity to effect supplementary performance by an appropriate deadline.
7. If the supplementary performance should fail, the orderer shall (without prejudice to any claims for damages pursuant to no. 10) be entitled to withdraw from the contract or reduce the level of remuneration.
8. Warranty claims shall not be accepted where there are only minor deviations from the agreed properties, where usability is only impaired in a minor way, in the case of normal wear and tear or where damage has occurred following passing of the risk due to incorrect or negligent handling, excessive stress, unsuitable operating resources or due to particular external factors not provided for by the contract. Where the orderer or third parties make inappropriate changes or carry out inappropriate repair work, no warranty claims can be accepted in respect of these and their associated consequences.

9. Claims by the orderer due to the expenses required for supplementary performance, including in particular transport, travel, labour and material costs, shall be excluded if there is an increase in the expenses because the delivery item is subsequently moved to some location other than the orderer's place of business, unless this move is in accordance with the item's intended use.
10. Recourse claims by the orderer against Top Light e.K. pursuant to Section 478 of the German Civil Code (Recourse of the entrepreneur) shall only be accepted if the orderer has not made any agreements with his consumer that go beyond the scope of the statutory warranty claims. No. 9 shall also apply mutatis mutandis to the scope of the orderer's recourse claim against Top Light e.K. pursuant to Section 478 Para. 2 of the German Civil Code.
11. Claims for damages by the orderer due to a defect of quality shall be excluded. This shall not apply in the case of non-disclosure of the defect with intent to deceive; the failure to honour warranted properties; injury to life, limb, health or violation of freedom; and in the case of an intentional or grossly negligent breach of duties on the part of Top Light e.K. The above arrangements do not in any way entail a change in the burden of proof to the detriment of the orderer. More extensive claims or claims other than those regulated by Art. VII that are submitted by the orderer due to a defect of quality shall be excluded.

VIII. Industrial property rights and copyright; defects of title

1. Unless otherwise agreed, Top Light e.K. is obligated to carry out the delivery free of intellectual property rights and copyrights of third parties (hereinafter referred to as proprietary rights) only in the country of the place of delivery. If a third party should lodge legitimate claims against the orderer due to proprietary rights having been infringed as a result of the deliveries provided by Top Light e.K. being used in accordance with the contract, Top Light e.K. shall be liable to the orderer in accordance with the deadlines laid down by Art. VII No. 3.
 - a) Top Light e.K. shall at its own expense and as it sees fit, obtain a right of use in respect of the deliveries concerned, modify them so that there is no infringement of the proprietary right or replace them. If this cannot be achieved by Top Light e.K. under reasonable conditions, the orderer shall be entitled to assert his statutory rights to withdraw from the contract or demand a reduction.
 - b) Top Light e.K.'s obligation to pay damages shall be based on Art. X.
 - c) The aforementioned obligations of Top Light e.K. shall only apply, if the orderer notifies Top Light e.K. of the claims being asserted by the third party in writing and without delay, does not acknowledge an infringement and if the right to all defensive measures and settlement negotiations is reserved for Top Light e.K. If the orderer suspends use of the delivery in order to mitigate damages or for other good reasons, he shall advise the third party that the suspension of use must in no way be construed as an acknowledgement of a proprietary right having been infringed.
2. Claims by the orderer shall be excluded in cases where he is responsible for the infringement of proprietary rights.
3. Claims by the orderer shall also be excluded in cases where the infringement of proprietary rights is caused by special specifications on the part of the orderer, by a type of application not envisaged by Top Light e.K. or by the fact that the delivery has been modified by the orderer or used together with products that have not been supplied by Top Light e.K..
4. In the event of proprietary rights being infringed, the provisions of Art. VII No. 5, 6 and 10 shall apply mutatis mutandis to those claims by the orderer that are regulated by No. 1 a).
5. Should other defects of title exist, the provisions of Art. VII shall apply mutatis mutandis.
6. More extensive claims or claims other than those regulated by Art. VIII that are submitted by the orderer against Top Light e.K. and its vicarious agents due to a defect of title shall be excluded.

IX. Impossibility; adaptation of contract

1. If delivery is impossible, the orderer shall be entitled to demand damages unless Top Light e.K. is not responsible for it being impossible. However, the orderer's claim for damages shall be limited to 10% of the value of that share of the delivery that cannot be put into operation for its intended purpose because of delivery being impossible. This restriction shall not apply where there is compulsory liability in cases of wrongful intent, gross negligence or due to injury to life, limb or health; this does not in any way entail a change in the burden of proof to the detriment of the orderer. The orderer's right to withdraw from the contract shall remain unaffected.
2. Where unforeseeable events within the meaning of Art. IV No. 2 change the commercial significance or the content of the delivery considerably or have a considerable impact on the operations of Top Light e.K., then the contract shall be appropriately adapted according to the requirements of good faith. If this is not commercially viable, Top Light e.K. shall be entitled to withdraw from the contract. Should Top Light e.K. wish to avail itself of this right of withdrawal, it must inform the orderer without delay as soon as the impact of the event has been identified, including in cases where an extension of the delivery period has already been agreed with the orderer in the first instance.

X. Warranty for Top-Light Mirrors

We guarantee to our customers that the coating of our mirrors, without extraneous cause, will not become stained or dull for the period of one year, starting from the day of delivery. In case of legitimate complaint, only a replacement can be demanded. Entitlement prescribes after the expiration of one year at the latest. For the rest, our terms of sale and delivery are valid.

A warranty claim only exists under the following conditions:

- Indoor usage according to regulations, but not in indoor riding locations, swimming pools, spas, saunas and adjacent rooms with a permanent high humidity.
- Air circulation between mirror and mounting area must be given through adequate wall spacing.
- The mounting parts are not supposed to consist of aggressive materials. Plastered or painted mounting areas have to be hard-dried before mounting the mirror.

- Our test- and trademarks are not supposed to be removed or to be made irretrievable in order to allow a faultless proof of origin.

A warranty claim does not apply if:

- The coating damage is caused by processing or converting, unless it is carried out by us.
- The coating damage is caused by the effect of contact with agents, especially liquids, that contain acids or other similarly effective substances, no matter if they encounter in direct fashion or in fashion of fumes. This is valid for most of the commercially available detergents and cosmetics.
- The coating damage is caused partly or entirely by mechanical effects.
- In the case of non-compliance to our regulations concerning storage and maintenance of mirrors. Proof can be requested.

The customer is obliged to verify that the preceding conditions are fulfilled or that a cause for warranty exclusion does not exist.

XI. Miscellaneous claims for damages; limitation of actions

1. Claims for damages by the orderer, whatever their legal foundation, in particular those that are due to a breach of duties arising from the contractual obligation and from impermissible conduct, shall be excluded.
2. This shall not apply where there is compulsory liability, e.g. pursuant to the German Product Liability Act, in cases of wrongful intent or gross negligence or due to injury to life, limb or health or due to a breach of fundamental contractual duties. Claims for damages due to the breach of fundamental contractual duties shall, however, be restricted to the foreseeable damage or loss that would be typical of the type of contract concerned save for cases of wrongful intent or gross negligence or if there is liability due to injury to life, limb or health. The above arrangements do not in any way entail a change in the burden of proof to the detriment of the orderer.
3. Where the orderer is entitled to assert claims for damages, these shall become time-barred on expiry of the period of limitation that applies pursuant to Art. VII No. 3. The same shall apply to claims by the orderer that are associated with measures designed to prevent damage (e.g. recall actions). In the case of claims for damages pursuant to the German Product Liability Act, the statutory regulations pertaining to the limitation of actions shall apply.

XII. Take-back obligation pursuant to Section 10 Para. 2 of the German Act on Electrical and Electronic Equipment (ElektroG)

1. The orderer undertakes to dispose of the delivered goods properly at his own expense and in accordance with the statutory regulations once they are taken out of use and shall release Top Light e.K. from the obligations pursuant to Section 10 Para. 2 of the German Act on Electrical and Electronic Equipment (manufacturer's take-back obligation) and indemnify it against any associated claims by third parties.
2. If the orderer passes the goods on to commercial or industrial third parties without imposing a contractual obligation on them to assume responsibility for disposal and passing on the obligation, the orderer shall be responsible for taking back the delivered goods at its own expense and disposing of them in accordance with the statutory regulations in the proper manner once they are taken out of use. Top Light e.K.'s claim for responsibility to be assumed by the orderer/for the orderer to release it from its obligations shall not become time-barred until a full two years after the equipment has definitively been taken out of use. The two-year period for suspension of the period of limitations shall begin no earlier than when a written notification from the orderer is received by Top Light e.K. stating that the goods have been taken out of use.

XIII. Place of jurisdiction and applicable law

1. If the orderer has merchant status, the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the location where Top Light e.K. is based. Top Light e.K. shall, however, also be entitled to bring an action at the location where the orderer is based.
2. The legal relations associated with this contract shall be subject to German substantive law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

XIV. Binding character of the contract

Even if individual provisions are legally invalid, the contract shall remain binding in terms of its remaining sections. This shall not apply in cases where adherence to the contract would create unreasonable hardship for one of the parties.

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