

General Terms and Conditions of Delivery and Payment (GTC) of POLLRICH GmbH

For use against:

1. A person who is acting in the exercise of their commercial or self-employed activity when concluding the contract (entrepreneur);
2. A legal entity under public law or a special fund under public law.

I. General

1. All deliveries and services are subject to these terms and conditions and any separate contractual agreements. Deviating terms and conditions of purchase of the customer shall not become part of the contract even if the order is accepted.
In the absence of a special agreement, a contract is concluded with the supplier's written order confirmation.
2. The supplier retains the right to use and copy samples, cost estimates, drawings and the like. The Supplier reserves the property rights and copyrights to samples, cost estimates, drawings and similar information of a physical and non-physical nature - also in electronic form; they may not be made accessible to third parties.
3. The Supplier undertakes to make information and documents designated as confidential by the Purchaser accessible to third parties only with the Purchaser's consent.

II. Price and payment

1. Unless otherwise agreed, prices are ex works including loading at the factory, but excluding packaging and unloading. Value added tax at the respective statutory rate shall be added to the prices. Disposable packaging shall be charged at cost price and shall not be taken back. Other packaging materials (containers, Euro pallets, box pallets, etc.) shall remain our property and must be returned to us immediately carriage paid.
2. In the absence of a special agreement, payment shall be made without any deduction à conto of the supplier, namely

1/3 down payment after receipt of the order confirmation,
1/3 as soon as the customer has been informed that the main parts are ready for shipment,
the remaining amount within one month after transfer of risk.

3. if the goods are delivered to another member state of the European Economic Union (EU), the customer is obliged to inform us of his VAT identification number, through which the delivery will be processed, and his line of business before dispatch.
4. The purchaser shall only be entitled to withhold payments or offset them against counterclaims to the extent that his counterclaims are undisputed or have been legally established.

III. Delivery time, delay in delivery

1. The delivery time shall result from the agreements of the contracting parties. Delivery periods are only binding if expressly agreed in writing. The supplier's adherence to delivery deadlines presupposes that all commercial and technical questions between the contracting parties have been clarified and that the customer has fulfilled all obligations incumbent upon him, such as the provision of the necessary official certificates or approvals or the payment of a deposit. If this is not the case, the delivery time shall be extended accordingly. This shall not apply if the supplier is responsible for the delay.
2. Compliance with the delivery time is subject to correct and timely delivery to us. The supplier shall inform the customer as soon as possible of any impending delays.
3. The delivery time shall be deemed to have been met if the delivery item has left the supplier's works by the time it expires or readiness for dispatch has been notified. If acceptance is to take place, the acceptance date shall be decisive - except in the case of justified refusal of acceptance - or alternatively the notification of readiness for acceptance.
4. If dispatch or acceptance of the delivery item is delayed for reasons for which the customer is responsible, the customer shall be charged for the costs incurred as a result of the delay, starting one month after notification of readiness for dispatch or acceptance.
5. If non-compliance with the delivery time is due to force majeure, labor disputes or other events beyond the supplier's control, the delivery time shall be extended accordingly. The Supplier shall inform the Purchaser of the beginning and end of such circumstances as soon as possible.
6. The customer may withdraw from the contract without setting a deadline if the entire performance becomes finally impossible for the supplier before the transfer of risk. In addition, the Purchaser may withdraw from the contract if, in the case of an order, the performance of part of the delivery becomes impossible and the Purchaser has a justified interest in rejecting the partial delivery. If this is not the case, the customer must pay the contract price for the partial delivery. The same applies if the supplier is unable to deliver. Otherwise, Section VII. 2 shall apply.
If the impossibility or inability occurs during the delay in acceptance or if the purchaser is solely or predominantly responsible for these circumstances, he shall remain obliged to provide consideration.
7. If the supplier is in default, the purchaser is obliged to grant a reasonable grace period. If the Purchaser sets the Supplier a reasonable deadline for performance after the due date - taking into account the statutory exceptions -

and if the deadline is not met, the Purchaser shall be entitled to withdraw from the contract within the framework of the statutory provisions. At the Supplier's request, the Purchaser undertakes to declare within a reasonable period of time whether it will exercise its right of withdrawal.

Further claims arising from delay in delivery shall be determined exclusively in accordance with Section VII. 2 of these terms and conditions.

8. At the request of the supplier, the customer is obliged to declare within a reasonable period of time whether he will withdraw from the contract due to the delay in delivery and/or demand compensation instead of performance or insist on delivery.
9. If dispatch or delivery is delayed at the request of the customer by more than one month after notification of readiness for dispatch, the customer may be charged a storage fee of 0.4% of the price of the items of the deliveries for each month or part thereof, up to a maximum total of 4%. The right to prove higher or lower storage and handling costs remains unaffected.

IV. Transfer of risk, acceptance

1. the risk shall pass to the customer when the delivery item leaves the factory premises, even if partial deliveries are made or the supplier has assumed other services, e.g. shipping costs or delivery and installation. If acceptance is required, this shall be decisive for the transfer of risk. It must be carried out immediately on the acceptance date, alternatively after the supplier's notification of readiness for acceptance. The customer may not refuse acceptance in the event of a minor defect.
2. If dispatch or acceptance is delayed or does not take place as a result of circumstances for which the supplier is not responsible, the risk shall pass to the customer from the day of notification of readiness for dispatch or acceptance. The Supplier undertakes to take out any insurance requested by the Purchaser at the latter's expense.
3. Partial deliveries are permissible insofar as reasonable for the customer.

V. Retention of title

1. The supplier retains title to the delivery item until receipt of all payments - in particular also the respective balance claims and any additional ancillary services owed - from the business relationship with the customer.
2. The supplier is entitled to insure the delivery item against theft, breakage, fire, water and other damage at the customer's expense, unless the customer has demonstrably taken out the insurance himself.
3. Handling and processing of the goods subject to retention of title shall be carried out for the supplier as manufacturer within the meaning of § 950 BGB, without the supplier incurring any obligations as a result. The treated and processed goods shall be deemed to be reserved goods within the meaning of clause V.1. In the event that additional monthly payments are to be made, ownership of the goods subject to retention of title shall only be transferred to the customer after receipt of the part of the payment corresponding to the installation work.
4. From the transfer of risk until the transfer of ownership, the customer must insure the reserved goods against theft, breakage, fire, water and other damage. The Purchaser hereby assigns to the Supplier all rights arising from the insurance contracts and its claims against their insurers. The Supplier accepts this assignment.
5. If the goods subject to retention of title are processed, combined and mixed with other goods by the customer, the supplier shall be entitled to co-ownership of the new item in the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other goods used. If the goods subject to retention of title are combined with other items to form a single item and if the other item is to be regarded as the main item, the customer shall be obliged to transfer co-ownership to the supplier on a pro rata basis insofar as the main item belongs to him.
6. The customer shall only be entitled to resell or otherwise use the goods subject to retention of title in the ordinary course of business. The customer is not permitted to dispose of the reserved goods in any other way, in particular by pledging them or assigning them as security.
7. The customer's claims arising from the resale of the reserved goods are hereby assigned to the supplier. The assigned claims shall serve as security to the same extent as the reserved goods. If the reserved goods are resold by the Purchaser together with other goods not supplied by the Supplier, the assignment of the claim from the resale shall only apply to the amount of the invoice amount of the reserved goods shown by the Supplier. In the case of co-ownership, the assignment shall only cover the share of the claim corresponding to the Supplier's proportionate co-ownership in accordance with Clause V 3.5.
8. The purchaser is only authorized to collect the assigned claims in the ordinary course of business and only revocably. The Supplier shall only make use of the right of revocation if the Purchaser fails to meet its payment obligations to the Supplier or if other circumstances arise which jeopardize the Supplier's claims due to a deterioration in the Purchaser's creditworthiness. In this case, the Purchaser is obliged, at the Supplier's request, to inform its customers immediately of the assignment to the Supplier, unless the Supplier arranges this itself. Furthermore, the Purchaser shall provide the Supplier with the information and documents required for collection.
9. In the event of non-compliance with the terms of payment, unauthorized disposal of the reserved goods, in the event of a significant deterioration in the financial situation of the customer, in the event of bill and cheque protests and if insolvency proceedings are applied for against the customer himself or by

third parties, the supplier shall be entitled to prohibit the handling and processing as well as the sale of the reserved goods. In such cases, the Supplier shall also be entitled to take possession of the reserved goods and to enter the Purchaser's premises for this purpose, to demand relevant information and to inspect the Purchaser's books as necessary. The reclaiming, but not the mere taking back of the reserved goods shall be deemed a withdrawal from the contract.

10. The customer must inform the supplier immediately of any imminent or completed seizures, as well as the assertion of invoices by third parties on the reserved goods or on the assigned claims.
11. If the value of all security interests to which the supplier is entitled exceeds the supplier's claims by more than 10 % in total, the supplier shall release a corresponding part of the security interests at the request of the customer at the supplier's discretion.

VI. Claims for defects

The Supplier shall be liable for material defects and defects of title in the delivery to the exclusion of further claims - subject to Section VII - as follows:

Material defects

1. All those parts which prove to be defective as a result of a circumstance occurring prior to the transfer of risk shall be repaired or replaced free of charge at the discretion of the supplier. The discovery of such defects must be reported to the supplier immediately in writing. Replaced parts shall become the property of the supplier.
2. The customer shall, after consultation with the supplier, give the supplier the necessary time and opportunity to carry out all repairs and replacement deliveries which the supplier deems necessary; otherwise the supplier shall be released from liability for the resulting consequences. Only in urgent cases of danger to operational safety or to prevent disproportionately large damage, in which case the Supplier must be notified immediately, shall the Purchaser have the right to remedy the defect itself or have it remedied by third parties and to demand reimbursement of the necessary expenses from the Supplier.
3. Of the direct costs arising from the repair or replacement delivery, the supplier shall bear the costs of the replacement part, including shipping, insofar as the complaint proves to be justified.
4. Within the framework of the statutory provisions, the purchaser has the right to withdraw from the contract if the supplier - taking into account the statutory exceptions - allows a reasonable deadline set for the repair or replacement delivery due to a material defect to expire fruitlessly. If there is only an insignificant defect, the customer shall only be entitled to a reduction of the contract price. The right to reduce the contract price shall otherwise be excluded. Further claims shall be determined exclusively in accordance with Section VII. 2 of these Terms and Conditions.
5. No liability is accepted in the following cases in particular: Unsuitable or improper use, faulty assembly or commissioning by the Purchaser or third parties, natural wear and tear, faulty or negligent handling, improper maintenance, unsuitable operating materials, defective construction work, unsuitable building ground, chemical, electrochemical or electrical influences - unless the Supplier is responsible for them.
6. If the customer or a third party carries out improper repairs, the supplier shall not be liable for the resulting consequences. The same applies to changes made to the delivery item without the prior consent of the supplier.

Defects of title

7. If the use of the delivery item leads to an infringement of industrial property rights or copyrights in Germany, the supplier shall, at its own expense, procure the right for the purchaser to continue using the delivery item or modify the delivery item in a manner reasonable for the purchaser in such a way 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 customer shall be entitled to withdraw from the contract. Under the aforementioned conditions, the Supplier shall also be entitled to withdraw from the contract. In addition, the Supplier shall indemnify the Purchaser against any undisputed or legally established claims of the owners of the industrial property rights concerned.

8. Subject to section VII. 2, the obligations of the supplier stated in section VI. 7 are conclusive in the event of an infringement of property rights or copyrights. They shall only apply if
 - The customer shall inform the supplier immediately of any asserted infringements of industrial property rights or copyrights,
 - The Purchaser supports the Supplier to a reasonable extent in the defense against the asserted claims or enables the Supplier to carry out the modification measures in accordance with Section VI. 7,
 - The supplier reserves the right to take all defensive measures, including out-of-court settlements,
 - The defect of title is not based on an instruction of the customer and
 - The infringement was not caused by the fact that the customer modified the delivery item without authorization or used it in a manner not in accordance with the contract.

VII. Liability of the supplier, exclusion of liability

1. If the delivery item cannot be used by the customer in accordance with the contract due to the fault of the supplier as a result of omitted or faulty execution of suggestions and advice given before or after conclusion of the contract or due to the breach of other contractual ancillary obligations - in particular instructions for operation and maintenance of the delivery item - the provisions of sections VI and VII shall apply to the exclusion of further claims by the customer. 2.
2. For damages that have not occurred to the delivery item itself, the supplier is liable - for whatever legal reasons - only
 - a. In the case of intent,
 - b. In the event of gross negligence on the part of the owner/the executive bodies or senior employees,
 - c. In the event of culpable injury to life, limb or health,
 - d. In the case of defects which he has fraudulently concealed,
 - e. In the event of defects in the delivery item, insofar as liability exists under the Product Liability Act for personal injury or property damage to privately used items.

In the event of culpable breach of material contractual obligations, the Supplier shall also be liable for gross negligence on the part of non-executive employees and for slight negligence, in the latter case limited to reasonably foreseeable damage typical of the contract.

Further claims are excluded, in particular for loss of production, loss of profit, loss of image, financing costs, loss of interest, unless caused intentionally or by gross negligence.

VIII. Statute of limitations

All claims of the customer - on whatever legal grounds - shall become time-barred after 12 months. The statutory periods shall apply to claims for damages in accordance with Section VII. 2 a - d and f. They shall also apply to defects in a building or to delivery items that have been used for a building in accordance with their normal use and have caused its defectiveness.

IX. Use of software

If software is included in the scope of delivery, the customer shall be granted a non-exclusive right to use the software supplied, including its documentation. It is provided for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited.

The Purchaser may only reproduce, revise, translate or convert the software from the object code into the source code to the extent permitted by law (§§ 69 a ff. UrhG). The Purchaser undertakes not to remove manufacturer's details - in particular copyright notices - or to change them without the prior express consent of the Supplier.

All other rights to the software and the documentation, including copies, shall remain with the supplier or the software supplier. The granting of sublicenses is not permitted.

X. Applicable law, place of jurisdiction

1. The place of jurisdiction is the court responsible for the supplier's registered office. However, the supplier is entitled to alternatively bring an action at the customer's head office.