

Terms and Conditions for Delivery and Payment

valid from 1. December 2021

The following terms and conditions for delivery and payment shall govern all deliveries and services of Auer Lighting GmbH. These terms and conditions also apply to all deliveries and services placed with our online shop. We offer our products to entrepreneurs only (sec. 14 of the German Civil Code, BGB). Any sale to consumers is excluded. Any conflicting purchasing terms and conditions of the customer are hereby expressly rejected. Any such purchasing terms and conditions shall apply only if we expressly confirm them in writing. Acceptance of the delivered goods shall be deemed acknowledgement of our terms and conditions.

1. Prices/Terms and Conditions of Payment

1.1 We calculate the applicable prices on the date of delivery, such prices being in EURO (EUR) unless otherwise stipulated, plus an additional amount for VAT as applicable from time to time. Unless special terms are agreed, our prices are ex works, with no deduction or discount being granted for immediate payment.

1.2 If payment deadlines are not met, this will automatically give rise to all of the statutory consequences of default, without any special reminder being required. In particular, we reserve the right to charge interest at the applicable rate charged by our bank if such interest exceeds the interest rate prescribed by statute (8% above the reference interest rate). Furthermore, the entire balance shall become due and payable immediately, irrespective of any payment targets.

1.3 In the case of custom-made products, we reserve the right to increase the price by a reasonable amount and to deviate to a reasonable extent from the agreed quantity. The customer must accept delivery of surplus quantities. In respect of custom-made products, a variation of +/-10% in relation to the ordered quantity shall be deemed agreed.

2. Delivery Dates, Deliveries

We will endeavor to adhere to stipulated delivery deadlines. However, due to the hazards and peculiar features of glass processing, delivery deadlines will not be binding unless expressly agreed otherwise. Our contractual obligations are subject to our supplier delivering the correct products to us on time. Deliveries are made in accordance with Incoterms® 2020.

3. Place of Performance and Passing of Risk

3.1 The place of performance for the delivery is the principal place of business of our respective supplying factory. The place of performance for payment is our principal place of business.

3.2 When goods are transported, the risk (of accidental loss, destruction or deterioration) (the "Risk") shall pass to the customer as soon as we have delivered the goods to the carrier chosen by us.

4. Packaging

Unless otherwise agreed, we will accept the return of packaging only to the extent that we are obliged to do so under the German Packaging Act (VerpackG).

5. Warranties in Respect of Material Defects and Notification of Defects

5.1 Should our products give rise to complaints, then, in accordance with sec. 377 of the German Commercial Code (HGB), obvious defects must be notified without delay, in any case no later than 14 days after receipt of the goods, and hidden defects must be notified without delay after their discovery, otherwise the goods shall be deemed accepted.

5.2 Claims on the basis of defects as to quality ("material defects") shall become statute-barred 12 months after delivery of our goods to our customer. The foregoing provisions shall not apply to the extent that longer limitation periods are prescribed by mandatory law pursuant to sec. 438 para. 1 no. 2 BGB (Physical Structures and Physical Objects used for Physical Structures), sec. 479 para. 1 BGB (Recourse Claim), and sec. 634a para. 1 BGB (Construction Defects). Our consent must be obtained before any goods are returned.

5.3 If, despite all care being taken at our premises, the delivered goods contain a defect that already existed at the time that the Risk passed, then we will, at our election and subject to receiving notification of the defect within the required time, repair the goods or deliver substitute goods. We must always be given the opportunity to render subsequent performance within a reasonable time.

5.4 If subsequent performance cannot be rendered, the customer may – notwithstanding any claims for compensatory damages – rescind the agreement or reduce the contractual fee. The customer may not demand compensation for expenses incurred in vain.

5.5 The following shall not give rise to any claims based on defects: merely immaterial deviations from the agreed condition of the goods, merely immaterial impairments to their utility, natural wear and tear, or loss or damage that arises after the Risk has passed as a result of incorrect or careless treatment, overuse, unsuitable operating resources, defective building work, unsuitable building foundations or special external influences that are not requirements under the contract. In addition, if the customer or a third party improperly (in a non-workmanlike manner) carries out maintenance work or modifications, then no claims based on defects may be made in respect of such work or modifications or the resulting consequences.

5.6 Claims on the part of the customer for expenses necessary to enable subsequent performance, particularly transport, infrastructure (e.g. tolls) and labor costs and the cost of materials, are excluded to the extent that such expenses are higher because the goods delivered by us were subsequently taken to a location other than the customer's business premises, unless such transportation is consistent with the authorized use of the goods.

5.7 Any recourse claims on the part of the customer against us shall exist only to the extent that the customer has not entered into any agreements with its customers going beyond the mandatory statutory claims based on defects. Section 5.6 shall apply mutatis mutandis to the scope of the customer's recourse claim against the supplier.

5.8 Claims other than those of the customer against us or our vicarious agents as stipulated in this section 5 are excluded.

5.9 The provisions of section 7 shall otherwise apply to any other claims on the part of the customer for compensatory damages or the reimbursement of costs.

5.10 If a defect is fraudulently concealed or a warranty in the sense of sec. 443 BGB is given (seller's representation that the subject matter of the sale has a particular characteristic at the time the Risk passes and that the seller wishes to be held responsible for all consequences resulting from the fact that the characteristic is absent, regardless of fault) with respect to the condition of the goods as at the time the Risk passes, the customer's rights shall be exclusively governed by the statutory provisions.

6. Industrial Property Rights and Copyright; Title Defects

6.1 Unless otherwise agreed, we have an obligation (although such obligation exists only in the country in which the place of delivery is located) to deliver the goods free from the industrial property rights and copyrights of third parties (hereinafter referred to as "Proprietary Rights"). In the event that a third party makes legitimate claims against the customer for infringement of Proprietary Rights based on the goods delivered by the supplier and used in accordance with the contract, we shall be liable to the customer within the period specified in Item 5.1 above as follows:

6.2 Claims on the part of the customer are excluded if the customer is responsible for the infringement of Proprietary Rights.

6.3 Claims on the part of the customer shall be further excluded if the infringement of Proprietary Rights is a result of special instructions issued by the customer, an application or use of the goods that was not foreseeable by us, or as a result of the customer modifying the goods or using them together with goods not delivered by us.

6.4 In the event of an infringement of Proprietary Rights, the provisions set forth under Items 5.3 and 5.7 shall otherwise apply mutatis mutandis to the customer's claims governed by Item 6.1a).

6.5 If other title defects exist, then the provisions of Item 5 shall apply mutatis mutandis.

6.6 Claims based on title defects on the part of the customer against us or our vicarious agents that go beyond or are not included in the claims governed by Item 6 are excluded.

6.7 If, a defect is fraudulently concealed or a warranty in the sense of sec. 443 BGB is given (seller's representation that the subject matter of the sale has a particular characteristic at the time the Risk passes and that the seller wishes to be held responsible for all consequences flowing from the fact that the characteristic is absent, regardless of fault) with respect to the condition of the goods as at the time the Risk passes, the customer's rights shall be exclusively governed by the statutory provisions.

7. Other Claims for Compensatory Damages

7.1 In the event of a breach of a pre-contractual, contractual and/or non-contractual obligation, including unsatisfactory delivery, tortious conduct and manufacturer's liability, we shall be liable for compensatory damages and the reimbursement of costs – subject to further contractual or statutory liability requirements – only in the case of wilful conduct, gross negligence or breach of a material contractual duty ("condition") (contractual duty, which needs to be observed for the purpose of an adequate and orderly implementation of the contract respectively the infringement of which jeopardizes the ultimate purpose of the contract) where such breach was due to ordinary negligence. However, except in the case of wilful conduct, our liability shall be limited to typical contractual loss or damage that was foreseeable at the time the contract was entered into. The customer is not permitted to make a claim for expenses incurred in vain.

7.2 For loss or damage caused by delay due to ordinary negligence, we shall be liable for up to only 5% of the purchase price agreed with us.

7.3 Except in the case of breach of a condition, liability for ordinary negligence is excluded. This shall not affect Item 7.2.

7.4 The exclusions and limitations of liability set forth under Items 7.1 to 7.3 shall not apply in the event that a warranty is given with respect to the condition of the goods in the sense of sec. 443 BGB, a defect is fraudulently concealed, or in the event of injury to life, physical injury or injury to health, or strict liability under the German Product Liability Act (Produkthaftungsgesetz).

8. Non-binding Nature of Drawings, Diagrams, Measurements and Weights

Drawings, diagrams, measurements and weights are approximate only, unless they are expressly stipulated to be binding. The customer must guarantee that working drawings (construction diagrams) supplied by it do not infringe the Proprietary Rights of third parties. The customer must hold us harmless in the event that rights of recourse are asserted.

9. Documents

Documents supplied by us may not be copied or made available to third parties or used for any purpose other than the agreed purpose.

10. Reservation of Title

10.1 We shall retain title to the goods until all of our claims, including claims arising in the future, are fully paid. The customer may process and sell the goods in accordance with the following conditions: If the goods are further processed or remodeled by the customer, then we shall be deemed the manufacturer within the meaning of sec. 950 BGB and shall acquire title to the intermediate or final products. The processor shall be merely the custodian. If the goods subject to the reservation of title ("reserved goods") are mixed or processed with other property not belonging to us, then we shall acquire a co-ownership interest in the new item proportionate to the value of the reserved goods to the other property.

10.2 The goods may be sold only in the normal and ordinary course of business and only if claims deriving from their resale are not assigned to third parties beforehand. The customer has to inform us timely enough of the intended resale so that we may request him to assign the resulting payment claims to us. Should the customer fail to inform us of his resale intention the customer's claims deriving from resale of the goods shall, upon execution of the purchase agreement between us and the customer, be deemed assigned to us, even if and to the extent that our goods are mixed or inter-processed with other property. In such a case, the assigned claims shall serve as our security only up to the value of the reserved goods sold in each case. We will not collect on the assigned claims for as long as the customer complies with its payment obligations. However, the customer has an obligation to disclose to us the identity of the third party debtor at our request and to notify such debtor of the assignment. The customer may collect on the claims itself unless and until it receives instructions (to the contrary) from us. The customer must immediately transfer the amounts collected by it to the extent that our claims are due.

10.3 Pledges or the granting of security interests in the reserved goods or the assigned claims are not permitted. The customer must inform us immediately of any action by third parties affecting the goods delivered subject to a reservation of title or the assigned claims. We agree to release the assigned claims at our election if they exceed the value of our claims to be secured by more than 20% and are derived from fully paid goods.

10.4 In the event of breach of duty by the customer, particularly in the case of default on payment, we are entitled to rescind the agreement and recover the goods. The customer has an obligation to deliver up the goods. It is not necessary for us to rescind the agreement in order to recover the goods or enforce a reservation of title. Such actions or any pledge of the reserved goods by us shall not constitute rescission of the agreement unless expressly declared by us.

10.5 If, in the case of non-domestic sales, the reservation of title agreed under Item 10 is not permitted with the same effect as under German law, then we shall retain title to the goods until payment of all of our claims arising out of the contractual relationship formed through the sale of the goods. If the foregoing reservation of title is not permitted with the same effect as under German law either, but it is permissible to reserve other rights in respect of the goods, then we are authorized to exercise all of these rights. The customer shall cooperate in all actions we may wish to take in order to protect our ownership interest or alternative right in the goods.

10.6 Tools for special designs remain our property even though manufacturing costs or part thereof will be taken by purchaser.

11. Relevant Information regarding Electronic Commerce

In case we use electronic means for the conclusion of a contract with regard to the supply of goods or rendering of services ("e-commerce") in the sense of sec. 312g BGB the customer waives its rights a) regarding availability and explanation of a system to recognize and correct input errors before submitting an order and b), according to art. 246 sec. 3 of the Introductory Act of the German Civil Code (EGBGB), regarding the supply of information on (i) the necessary steps to conclude a contract, (ii) codes of conduct that we submit ourselves to and the possibility to electronically access these codes, and (iii) possible languages available for contract conclusion.

12. Online Shop

12.1 The customer makes a binding offer to purchase the products offered in our online-shop by submitting his order via the entry mask provided in our online-shop. Submitting his order, the customer accepts these terms and conditions for delivery and services as binding and exclusively decisive. Following his submittal, the customer receives without undue delay an electronic confirmation, stating that we have received his order. Our acceptance of the offer is the delivery of the ordered goods or an explicit declaration towards the customer.

12.2 Payment

The payment will be effected via Paypal and our debt collection provider alto.de New Media GmbH.

13. Applicable Law and Judicial Forum, prevailing language version

13.1 With the exception of choice of law rules under German private international law and the provisions of the UN Convention on Contracts for the International Sale of Goods ("UN-CISG"), the substantive law of the Federal Republic of Germany shall apply to all legal relationships and transactions established by the purchase agreement between the customer and us.

13.2 The judicial forum for both parties, including for bill of exchange matters, is our principal place of business (registered office). If we become the plaintiff in litigation, then we are also entitled to bring an action in the jurisdiction of the customer's principal place of business (registered office).

13.3 In case of any deviations between the English and the German language version of these terms and conditions for delivery and payment the German language version ("Liefer- und Zahlungsbedingungen") shall prevail.