

General terms of sale of Battermann & Tillery

1. General provisions

- These general terms of sale (GTS) regulate the contractual relationship between the customer and the seller (section 3 of the GTS) and the contractual relationship between the customer and Battermann & Tillery GmbH (section 2 of the GTS)
- Only the latest version of these GTS is valid and remains valid for all follow-up business. This does not have to be mentioned or agreed anew for any follow-up business.
- We hereby oppose/object/contradict counter confirmations, counterbids or other references of the customer to his terms and conditions. A customer`s deviating terms and conditions are only considered valid if the other party has confirmed this in writing.
- Contracts based on these GTS are only entered into with entities as per § 14 of the German Civil Code. In case of doubt, the buyer must prove his status as a business entity upon request. For the purpose of these GTS, those interested parties are also considered buyers who merely submit a bid, without said bid being accepted in their favour.

2. Contract with Battermann & Tillery GmbH

- Battermann & Tillery GmbH acts as the seller`s representative for the entire settlement period of the sales contract. The seller, as the principal of Battermann & Tillery GmbH, is the buyer`s contracting party and is identified as such.
- Once submitted, the buyer`s bid is a binding and irrevocable offer to buy the tendered goods. Said offer expires if another bidder submits a higher bid. Bids must be submitted within the time frame of the respective auction. Only the system clock of Battermann & Tillery GmbH authoritatively determines the closing time which ends the respective run times. Battermann & Tillery GmbH reserves the right to reduce or extend the run time of online auctions at their own discretion or to cancel activities without closing a contract.
- Bids must be submitted to Battermann & Tillery GmbH in due time and in writing (by e-mail, fax or in a sealed envelope). Battermann & Tillery GmbH shall not be liable for errors which occur in the transmission of e-mail exchanges. No bids will be accepted by phone. After the required evaluation of the auction, the sale shall be awarded to the corresponding party normally within 24 hours (one business day), but not later than 5 business days, after the closing date and time/end of the auction, as set and published by Battermann & Tillery GmbH.
- Sales are awarded per lot to the highest bidder. However, Battermann & Tillery GmbH expressly reserves the right not to award a

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sale if the highest bid does not meet price expectations. In the case of several bids in the same amount, the sale is awarded to one of these parties on the basis of free choice. Prior to awarding a sale, Battermann & Tillery GmbH may withdraw the lot or parts thereof from sale at any time and for any reason.

- The statute of limitation period for all claims against Battermann & Tillery GmbH on the basis of the contract is one year. The statute of limitation period starts when the matter is handed over.

3. Contract with the seller

- The goods are sold on behalf and for account of the seller.
- The statute of limitation period for all claims against the seller which may arise from the sales contract is shortened to one year. The statute of limitation period starts when the matter is handed over. In the case of recourse pursuant to § 478 pp. of the German Civil Code, the legal statutory period applies. However, invoking § 479 of the German Civil Code is excluded if, after receipt, the goods were stored at the buyer`s for more than six months prior to resale.

4. Prices and payment

- Value added tax is due on all quoted prices, at the rate which is valid at the time of delivery. We only accept bills of exchange or cheques in case of special agreements and is generally only considered paid once actual payment is received (credit subject to payment). Discount and note charges are at the expense of the buyer and are payable immediately.
- All taxes, customs duties and import permits of any kind are at the expense of the buyer.
- The buyer must pay for the goods within three days of being awarded the sale. In the case of perishable goods, the purchase price is payable immediately upon award of the sale. If the buyer does not pay within the aforementioned periods, he defaults on payment. All charges for money transfers or the like are at the expense of the buyer. On principle, the goods are released only once the funds have been received into the Battermann & Tillery GmbH account specified on the invoice. If there is no receipt of payment of the purchase price to the bank account of Battermann & Tillery GmbH within a period of 7 calendar days after acceptance of the bid, Battermann & Tillery GmbH shall be entitled to cancel the contract and sell the goods to another buyer.
- Once the sale is awarded, price risk and title are transferred to the buyer. All costs which arise after this point must be borne by the buyer. These costs include storage/warehouse and handling

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- charges.
- If the buyer does not pay for the goods as per section 4.3 or if the purchase price is only paid in part, the seller – represented by Battermann & Tillery GmbH – may claim damages for non-performance. This course of action may be taken if the buyer has not paid the purchase price upon receipt of a subsequent reminder with a corresponding deadline. If the goods consist of perishables, the deadline may be dispensed with.
 - The buyer is only entitled to off-set, withhold or reduce the purchase price if the alleged counterclaims have been established as final and absolute or expressly acknowledged by us.
 - If the buyer no longer operates a proper business, particularly if property is being seized, protest of a cheque or note protest is issued, if there are delays in payment or even cases of default on payment, or if the buyer has filed for reorganisation in or out of court or has filed for bankruptcy, Battermann & Tillery GmbH shall be entitled to make all receivables from the business relationship payable immediately, even if bills of exchange or cheques were accepted. The same applies if the buyer defaults on his payments to Battermann & Tillery GmbH or if other circumstances emerge which cast doubt on his creditworthiness. In such a case, Battermann & Tillery GmbH is furthermore entitled to demand payment, provision of a security or to withdraw from the contract.
 - If additional or increased charges – particularly customs duties, levies and currency adjustments – accrue due to legal norms which changed between conclusion of the contract and delivery, Battermann & Tillery GmbH is entitled to increase the purchase price accordingly.

5. Securities

Until all receivables (including all balance claims from the open account) which the seller is entitled to receive from the buyer on legal grounds – now or in the future – have been paid, the seller is granted the following securities:

- Until payment, the seller retains ownership of all delivered goods until payment of all existing and future receivables from the business relationship (goods subject to retention of title) have been received. If the buyer is in breach of contract – particularly in case of default on payment – the seller is entitled to take back the sales item after withdrawal; the buyer is obligated to surrender said sales item. After the goods have been returned, the seller is authorised to sell them. Sales proceeds are to be offset with the buyer`s liability – less appropriate handling/administrative charges.

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- The buyer is obligated to stow the goods and products which belong to the seller and to co-ownership of which he is entitled in a safe manner and to insure said goods and products against fire and theft at his own expense and to provide proof of insurance coverage to the seller upon request.
- The buyer is entitled to sell the goods which are subject to retention of title in ordinary business transactions and is authorised to collect the assigned claim. This authorisation ends once the buyer is no longer willing or able to properly fulfil his obligations to the seller – in particular, if he suspends payment or initiates insolvency proceedings/files for reorganisation of his assets. If the buyer sells the goods which are subject to retention of title, he has thus assigned his claims from resale, including all ancillary rights for protecting the seller`s title, to the seller. In case the buyer resells the goods which are subject to retention of title together with other goods which do not belong to the seller, the assignment of the purchase money claim from resale is only assigned in the amount of the pro-rata invoice value due on goods which have been resold and which are subject to retention of title. The buyer is authorised, until cancelled, to collect receivables from resale. However, the seller may demand that the buyer discloses to him the debtors for the assigned claim and that the buyer advise the debtors that the claim has been assigned.
- For the seller as the manufacturer, the goods to which the title is retained are processed/reprocessed pursuant to § 950 of the German Civil Code, without binding him. The processed/reprocessed goods are considered goods which are subject to retention of title. If the buyer processes, combines, or mixes the goods subject to retention of title with other goods, the seller is entitled to joint ownership of the new item, at the pro-rata invoice value of the goods subject to retention of title as compared to the other goods used. If the buyer surrenders his title due to processing, combining, or mixing, the buyer has now transferred his due property rights and/or remainder with regard to the new assets or the matter to Battermann & Tillery GmbH, in the extent of the invoice value of the goods which are subject to retention of title – in the case of processing at the pro-rata invoice value of the goods subject to retention of title as compared to the invoice value of the other goods used – and the buyer stores the goods for the seller free of charge. Like the goods which were reprocessed/processed, the entire new product is considered subject to retention of title and is thus co-owned.
- Upon the buyer`s demand, the seller is obligated to release the securities to which he is entitled as per the aforementioned provisions to the extent to which their value exceeds the claim to be secured by 20%.

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- The seller must immediately be informed if the seller`s rights are curtailed by third parties. The buyer must immediately provide the seller with all information and documents necessary for an intervention so that suit may be filed pursuant to § 771 of the German Code of Civil Procedure. Should the third party not be in a position to reimburse the seller`s judicial and extrajudicial costs of legal action pursuant to § 771 of the German Code of Civil Procedure, the buyer is liable for the expenses incurred by the seller.

6. Inspection and default/breach of contract

- The goods offered for sale may be inspected and checked. Said goods were involved in incidents of loss. Accordingly, they are not to be equated with new products. The goods are sold in the condition in which they are at the time at which sale is awarded. Battermann & Tillery GmbH accept neither responsibility nor assume liability for obvious or hidden defects/deficiencies or for descriptions. The descriptions of the goods do not constitute a warranty in terms of § 443 of the German Civil Code. This particularly applies to dimensions, weights, completeness, origin and condition.
- Entitlement to damages apply to damage not affecting life, body and health only if there was gross negligence or intent on the part of the seller.
- The goods are purchased „as is.“ All claims or rights of the buyer against the seller due to a defect of quality are excluded. In particular, the buyer is not entitled to supplementary performance, as the goods sold are to be considered unique, thus impossible to replace.
- Under prevailing legal conditions, the right of rescission exists only if the seller is in breach of duty.
- From the time the sale is awarded, the buyer is also liable for complying with health regulations, food law regulations and other laws, regulations, requirements, etc. The buyer must compensate the seller, as well as Battermann & Tillery GmbH, for all damage incurred if the buyer violates the aforementioned regulations. In addition, the buyer must hold the seller and Battermann & Tillery harmless of any claims raised as a result of these kinds of violations.
- The buyer collects the goods at his own expense and at his own risk. If it is required to ascertain the weight for legal or other reasons, the costs thus incurred are borne by the buyer. The goods must be weighed within five working days at the latest and by an inspector who is specifically recognised by Battermann & Tillery GmbH. Weighing of trucks/trailers and rail cars is only accepted with prior approval by Battermann & Tillery GmbH.
- In case the buyer resells the goods to third parties, the seller is not directly contractually liable to said third parties for claims due

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to defects on the object of sale. The seller is only liable for recourse of a third party against the buyer if the buyer proves that he properly complied with the duty of inspection and notification of defects pursuant to § 377 of the German Commercial Code, i.e. that possible defects could not be found. The seller is not liable if the buyer was aware of possible defects on the goods sold or if said defects remained unknown as a result of gross negligence, unless the seller fraudulently concealed the defects or granted warranty for the condition of the item. The buyer may only demand compensation for expenses which he had to bear in connection with the third party, pursuant to § 439, section 2 of the German Civil Code, if the defect claimed by the third party already existed when the risk was transferred to the buyer. This must be proven by the buyer. The buyer may not claim futile expenditures from the seller. Claims for damages are excluded unless there is harm to life, body or health or unless the seller committed an act of gross negligence.

- In case the products are marketed – this includes marketing after possible processing – the buyer indemnifies the seller against possible product liability claims for which the seller is legally liable to third parties, but which are due to breach of duty on the part of the buyer or his legal successor. For instance, this includes – but is not limited to – selling products which are faulty/defective as per § 3 of the Product Liability Act, although their defects were known to the seller at the time of sale.

7. Privacy

- Battermann & Tillery GmbH is authorised – within legal limits, in particular as per § 28 of the Federal Data Protection Act – to collect, store and process personal data for their own purposes. Personal data such as quantity/hand data such as name and address, as well as usage data, such as user name, password, and IP address. The buyer gives his consent for his name, address and e-mail address to be forwarded/disclosed to the seller by Battermann & Tillery GmbH after the sale has been awarded.
- If necessary, Battermann & Tillery GmbH are authorised to disclose the buyer`s personal data to law enforcement agencies and regulatory authorities for reasons of national security and public safety, as well as for criminal prosecution purposes, and to disclose the buyer`s name and address to a third party if this is required in order to protect a legitimate interest of said third party.
- If the buyer revokes his consent, he is entitled to demand the deletion of his stored data after any existing legal relationships have been performed and completed. Pursuant to statutory requirements, the data will be stored for three additional months until they are finally

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8. Closing provisions

- If an individual provision of these terms and conditions becomes invalid, the validity of all other provisions or agreements shall remain unaffected.
- Battermann & Tillery GmbH reserve the right to change these GTS at any time. Battermann & Tillery GmbH shall immediately advise any changes to the GTS by e-mail. Unless the buyer raises an objection to the change in the general terms of use within two weeks after receipt of the notification of change, the changed general terms of use shall be considered accepted by the respective buyer. In the notification of change, Battermann & Tillery GmbH shall specially advise the buyer of the consequence of their action in connection with a change in the GTS. For auctions which have already been set up or bids which have already been submitted at the time of this change, the previous version of the GTS shall be considered valid.
- The buyer`s data shall be stored in accordance with data protection requirements.
- The buyer may transfer claims from legal transactions concluded with the seller or with Battermann & Tillery GmbH only with the explicit consent from Battermann & Tillery GmbH.
- The place of performance for obligations from these GTS is Bremen, if this is not determined by the storage location of the goods.
- Bremen is the jurisdiction for all disputes which result directly or indirectly from the contractual relationship, including legal action due to a bill of exchange or cheque, as well as legal action on the part of or against Battermann & Tillery GmbH.
- The applicable law is that of the Federal Republic of Germany. International sales law is excluded. The same also specifically holds for the United Nations Convention on Contracts for the International Sale of Goods (CISG).

As from 28.12.2012
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