

Terms and Conditions of Sale, Delivery and Payment
(Last update: June 2010)



1. Scope

These Terms and Conditions are applicable exclusively to all of our present and future transactions with the purchaser. We will not recognize any terms and conditions of the purchaser, even if we do not expressly object to them. Any Terms and Conditions that deviate from our Terms and Conditions require our written confirmation in order to be valid.

2. Conclusion of a Contract

Offers from Planex are non-binding. A contract will only come into force through our written confirmation of order or through execution of an order.

3. Shipping, Packaging, Transfer of Risk

3.1.

Shipping is always carried out at the expense of the purchaser ex works. In the absence of any special advice, the choice of the shipping method and the shipping route are at the equitable discretion of the supplier without a guarantee of the most economical conveyance. The purchaser has to assure that the delivery is accepted at the specified address of shipment, even if it has defects that are not of a substantial nature or degree.

3.2.

Packing material is not taken back, unless agreed upon otherwise in a written special agreement.

3.3.

Upon departure of the goods from the factory, the risk passes to the purchaser. If the goods are shipped at the request of the purchaser, the risk passes to the purchaser upon the delivery of the goods to a forwarder or carrier, but no later than upon the departure from the factory.

This does not apply if the purchaser is a consumer.

3.4.

If shipment is delayed for reasons for which the purchaser is responsible, the risk will pass to the purchaser as soon as notification of readiness for shipment is given.

3.5.

If the purchaser sends the goods to us because of an unjustified complaint, the goods are shipped at the expense and risk of the purchaser.

4. Prices and Conditions of Payment

4.1.

The prices confirmed by us or, alternatively, the prices offered by us shall apply. In the absence of confirmed or offered prices, the applicable list prices shall apply. Our prices are understood ex works excluding packaging and shipping costs, plus the applicable value-added tax.

4.2.

Partial deliveries may be charged separately on delivery.

4.3.

If no special agreement has been made, invoices are due strictly net cash within thirty days after the date of issue of the invoice. Remittances or payments by cheque have to be carried out in sufficient time so that the validation through our bank can be made on a date not later than the maturity date.

4.4.

On incoming payment any agreements made are only granted, if, on the day of payment, the purchaser is not behind with other payments arising from the business relationship with Planex.

4.5.

Invoices from after-sales services or repairs are due net cash immediately upon receipt without deductions.

4.6.

If payment is made by cheque, the payment gets effective not until final encashment. The same applies to bills of exchange; however, the acceptance of bills of exchange requires a previous written agreement. In any case, drafts are discounted for a time of three months at longest without guarantee for timely protest. Discount charges and note charges go at the expense of the purchaser; no cash discount is granted. Bills of exchange are accepted on account of payment only.

4.7.

The purchaser may only offset such claims against our own as are undisputed or legally recognized. In addition, the purchaser is only authorised to exercise a right of retention if his counterclaim is based on the same contractual relationship.

4.8.

If entrepreneurs fall behind with a payment, we are entitled to charge interest at a rate of at least 5 percentage points p.a. as minimum charge. Statutory provisions apply to delayed payments.

4.9.

Our after-sales services staff and our sales representatives are not authorized to collect payments, unless they can produce an appropriate written authority.

4.10.

If a purchaser falls behind with a payment originating from a business transaction with us, or if doubts about the purchaser's solvency arise for other reasons, especially a stoppage of payments or a file for insolvency, any existing payment obligations of the purchaser towards Planex become due immediately; Planex is further entitled to demand the surrender of already delivered goods, to effect outstanding deliveries only against prepayment or the provision of securities and to withdraw from the contract if the prepayment or the provision of securities does not take place within the period stipulated by us.

4.11.

If the purchaser discontinues payments, or if the initiation of insolvency proceedings against the purchaser's estate is applied for, discounts or bonuses of any kind that have already been granted bindingly will be charged against our unsecured receivables first. A right to such bonuses or refunds only arises for paid invoices.

5. Scope of Delivery, Period of Delivery

5.1.

The scope of delivery is definitely fixed in our confirmation of order. Amendments or modifications requested by the purchaser require our written confirmation.

5.2.

The period of delivery commences upon the confirmation of order by us. The period of delivery ends on the date of delivery scheduled in the confirmation of order. However, the period of delivery does not commence until all details of the execution have been clarified between the parties and until both parties have agreed upon all conditions of the contract.

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5.3. The observation of the period of delivery shall require the fulfilment of the contractual obligations of the purchaser in due time, especially the fulfilment of the conditions of payment. In the event that the purchaser has not fulfilled its obligations the period shall be adequately extended. The defence of non-performance remains reserved.

5.4. The period of delivery shall also be adequately extended, if the failure to comply with the period is demonstrably based on mobilisation, war, riot, strike, lockout or the occurrence of unforeseen obstacles which are outside of our control, even if the impediments referred to above occur during default.

5.5. The period of delivery shall also be adequately extended, if a shortage of raw materials occurs which was not foreseeable when the contract was concluded, or if an unforeseeable delivery failure of our suppliers for energy, water and other resources occurs. If we still are not able to perform delivery, even after the period of delivery has been adequately extended, both parties are equally entitled to withdraw from the contract; in this case claims for damages of the purchaser are excluded. The period of delivery shall also be adequately extended, if permits from the relevant authorities or other approvals necessary for the execution of the order (for example import or export licences) or information from the purchaser necessary for the execution of the order do not arrive in time. The same applies if the purchaser changes the order subsequently.

5.6. Only dates of delivery that have been explicitly confirmed by us in writing as binding are binding.

5.7. We are entitled to partial deliveries.

5.8. If we are in default of delivery to entrepreneurs by actual fault and the purchaser can prove that he/she incurs a damage from the delay, the purchaser is entitled to compensation for damages resulting from the delay in the amount of no more than 0.5 percent for every complete week of delay, but overall no more than 5 percent of the net value of the delayed shipment. Any further claims for damages by the purchaser (who is an entrepreneur) because of delayed delivery or delayed accomplishments are excluded, even after expiration of a period of grace possibly set by us, unless our default arises due to intent or culpable negligence. The right of the purchaser to withdraw from the contract remains unaffected. However, the purchaser is only entitled to withdraw from the contract after an unsuccessful expiration of a period of grace of at least 18 days set by us.

6. Assembly, Installation, Statics, Examinations

Assembly work, installation work and issue of test certificates and statics analyses that may become necessary because of the intended use, the period of use or the place of installation are not included in the delivery scope, unless something else has been explicitly agreed upon. The services referred to above will have to be paid for separately, unless otherwise agreed.

7. Defects Liability

7.1. The statutory defects liability regulations and defects liability periods apply for consumers. Apart from that the following provisions apply: The purchaser must give notices of defects or missing parts in written form without delay, however not later than one week after receipt of goods. If there are hidden defects, they have to be reported in writing immediately after their discovery.

7.2. We shall, at our option, warrant the defective parts or services by reworking free of charge, redelivering or reprocessing (reperformance).

7.3. If we refuse supplementary performance unjustifiably, or if we are not able for supplementary performance, or if supplementary performance fails because of other reasons, the purchaser may, at its option, cancel the contract or reduce the compensation. The rescission of the contract is excluded, if a building work is object of the defects liability.

7.4. An opportunity to check the defective parts has to be provided to us.

7.5. If defects on goods or other things delivered or handled by us were visible before assembly through the purchaser or through a third party which has been authorized by the purchaser, we will not bear the costs of disassembly and assembly or any consequential costs resulting from disassembly or assembly.

7.6. Unless otherwise agreed, DIN tolerances (with no increased requirements) apply to dealings with enterprises.

7.7. The defects liability does not extend to natural wear and tear. In addition, the defects liability does not extend to damages that occur, after the transfer of risk, by means of incorrect or negligent use, wilful damage, faulty building works of third parties, improper assembly or storage through third parties, or by means of other comparable reasons that occur without our default.

7.8. The defects liability period to enterprises is one year.

The statutory defects liability periods apply to buildings and things that have been used for a building (buildings materials and components) in accordance with Section 438 subsection 1 paragraph 2 of the German Civil Code (BGB) and to work performances in accordance with Section 634a subsection 1 paragraph 2 BGB (planning or monitoring services concerning building projects).

7.9. Claims of the purchaser exceeding the previously described claims for defects are excluded, especially entitlements to damages that originate from defects which did not occur on the delivery item itself. The previously described limitation of liability does not apply in cases of intent and gross negligence. If we violate essential contractual obligations our liability shall be limited to reimbursement of foreseeable damage. The liability for culpable injuries to life, body, or health remains unaffected, just as the liability according to the Product Liability Law.

7.10. The exclusion of liability described in section 7.9 also applies if the purchaser demands reimbursement of useless expenditure instead of a claim to compensation for damages in place of the performance.

8. Liability

8.1. Liability for damages extending further than prescribed in sections 5.8 and 7.9 is excluded - without consideration of the legal nature of the applicably made claim. This applies in particular for damage claims from indebtedness upon conclusion of contract because of special breaches of duty or because of tort claims to compensation for property damage in accordance with Section 823 BGB. The provisions according to the Product Liability Law remain unaffected

8.2. The exclusion of liability described in sections 7.9 and 8.1 of these General Terms and Conditions apply accordingly to such claims that have arisen from consultation, advice, or information in publications – in particular in the context of catalogue presentations – before or after conclusion of contract, or from infringement of contractual accessory obligations

8.3. Insofar as our liability is excluded or limited, this also applies in regard to the personal liability of our employees, appointees, co-workers, representatives or vicarious agents. If we get commissioned or summoned to the correction of such or other defects, which do not originate from a defect of our delivery, a new supplementary contract comes about herewith, to which these General Terms and Conditions apply correspondingly. This supplementary contract shall be charged on the basis of the actual expenditure of time and material costs.

9. Intellectual Property

We are entitled to take photos of executed deliveries for our advertising purposes. We are further entitled to use these photos in the context of our advertising.

Catalogues, drafts and drawings ceded by us to the purchaser remain our property and may neither be duplicated nor partly be copied nor handed over to third parties for commercial use.

With his payment the purchaser does not acquire any rights to inventions, appliances or tools resulting from the performance of the respective contract. All conceptual designs remain our intellectual property.

10. Retention of Title

10.1. We retain title in delivered items until complete performance of all receivables that have accrued and that will accrue in connection with the business relationship, including incidental receivables and until all bills of exchange and cheques have been honoured unconditionally.

10.2. In the case of striking of a balance, the retention of title secures our claim to the balance of account (current account reservation).

10.3. The purchaser may resell the goods subject to retention of title only in their ordinary course of business; the purchaser may neither pledge the goods nor transfer their ownership for collateral. The purchaser is not allowed to dispose of the goods subject to retention of title if between the purchaser and his customers an interdiction of assignments concerning the receivables arising from the delivery has been agreed upon.

10.4. The purchaser assigns to us immediately all receivables accruing from the resale of the goods subject to retention of title in the amount of his invoice value for the goods delivered by us under the retention of title including related commercial profits and value added tax with all incidental receivables, in particular any claims for return resulting from his own retention of title. Furthermore, the purchaser assigns to us immediately any claims for compensation against third parties arising from loss or damage of goods.

10.5. In the event that the purchaser has reworked, processed or assembled the goods delivered by us, the purchaser's claims receivable from the third party shall be deemed assigned in the amount that equals the value of the goods delivered by us.

10.6. The customer is obligated to adequately insure the goods subject to retention of title at his cost and to our benefit against any loss or damage. The purchaser assigns to us immediately any insurance claims concerning the goods subject to retention of title arising from this.

10.7. We shall accept the assignments described in sections 10.1 to 10.6.

10.8. The purchaser is entitled to collect for us the claims assigned to us according to these Terms and Conditions as long as he meets his payment obligations to us in due course.

10.9. With conduct of the purchaser that is contrary to the contract, particularly with default of payment or inability to pay, with institution of insolvency proceedings or with liquidation of the purchaser we are entitled to revoke the authorisation to collect the assigned claims as well as to take back the goods subject to retention of title at the cost of the purchaser. Upon retraction of the purchase item, there is a withdrawal from the contract on our part. We are entitled to charge without proof partial payments of up to 20 percent of the invoice value of the repossessed goods as compensation in case the purchaser does not prove that no reduction in value has occurred or that a reduction in value considerably lower than 20 percent has occurred. The assertion of any higher damage claims on our part is not excluded by the aforementioned.

10.10. The purchaser is obligated to immediately inform us if the goods subject to retention of title are distrained for third parties or if any other rights to the goods subject to retention of title are asserted. The purchaser is obligated to provide us with the information needed to exercise our rights and to supply us with all the required documentation. All intervention costs shall be borne by the purchaser. This includes the costs for determination and exploitation in accordance with sections 170 and 171 of German Insolvency Law (InsO).

10.11. We will at our option release the securities owing to us at the purchaser's request if their value exceeds the value of the receivables to be secured arising from the business relationship with the purchaser by more than 20 percent.

11. Creditworthiness

If, after a contract has been made or goods supplied, it is found that the purchaser is not creditworthy (for example because of bill protest or protest of the cheque), we are entitled to rescind the contract and to require immediate payment of the goods supplied as well as to require advance payment of goods to be supplied including cash cover of any bills of exchange with immediate due date.

12. Transfer of Purchaser's Rights

For the assignment of rights arising from this contract the purchaser requires our explicit written consent.

13. Place of Jurisdiction, Applicable Law

13.1.

If the purchaser is an entrepreneur who concluded the contract in the context of his commercial or self-employed operations, or if the purchaser is a public corporation or a special trust under public law, the place of jurisdiction is the court responsible for our domicile. The same applies if the purchaser has no place of jurisdiction in Germany or if his place of residence or his normal whereabouts are unknown at the time the suit is filed. However, we shall also be entitled to take legal action at the purchaser's general court of jurisdiction.

13.2.

The contractual relationship shall exclusively be governed by the Law of the Federal Republic of Germany to the exclusion of the UN Sales Convention (CISG).

Planex Technik in Textil GmbH