

Wilhelm Stolle GmbH

General Terms and Conditions

Status: Juli 2019

1. Scope

The following General Terms and Conditions (GTC) apply to all business transactions and customer relationships that Stolle enters into or concludes with entrepreneurs, businesspersons (*Kaufleute*), legal entities under public law or special funds under public law.

2. Writing requirement

The writing requirement in the meaning of these General Terms and Conditions shall also be deemed to be satisfied by using fax and email.

3. Exclusion of conflicting arrangements and provisions/declaration of completeness

3.1 Sole application

Solely these General Terms and Conditions apply; Stolle shall not recognise any terms and conditions of the Customer which are contrary to or deviate from these General Terms and Conditions unless Stolle expressly confirms any such deviating provisions in writing. The General Terms and Conditions shall also apply if Stolle effects delivery to the Customer without reservation while being aware that the Customer's terms and conditions are contrary to or deviate from these General Terms and Conditions.

3.2 Completeness rule

Any and all covenants and agreements concluded between Stolle and the Customer for the purpose of executing the order are laid down in writing in this Agreement.

4. Customer offer and binding force of offer

4.1 Offer period

Offers are subject to change without notice. Orders are binding for us if we confirm such within 14 days after receipt by us or comply with such orders by sending you the goods; verbal ancillary agreements shall only be deemed to be valid if we confirm such in writing.

4.2 Liability for information and disclosures

The illustrations, drawings, weights and measurements printed or reproduced in Stolle's catalogues and on the Internet (www.stolle.net) are merely approximations. Documents which are part of an offer, such as illustrations, drawings, weights and measurements, shall only be deemed to be binding if the information contained in the offer or the offer are expressly designated as binding in writing.

5. Proprietary rights and copyright, non-disclosure

5.1 Proprietary rights

Stolle retains title to/ownership of cost estimates, drafts, plans, drawings and other commercially relevant information in connection with the business relationship - including in electronic form.

5.2 Copyright and industrial property rights

Stolle also retains copyright and other industrial property rights to the documents and information cited in section 5.1.

5.3 Non-disclosure provision

The documents and information cited in section 5.1 shall be treated confidentially. Such may not be made available to third parties, regardless of whether an order is placed or not. Third parties may only be granted access subject to the prior written consent of Stolle.

5.4 Return obligation

If no order is placed, the documents stated in section 5.1 must be returned to Stolle if Stolle so requests.

6. Price quotations

6.1 Binding force

Information contained on price lists shall only be deemed to be binding if prices are expressly designated as binding.

6.2 Value-added tax

Statutory value added tax is not included in the prices stated. It is listed separately in the respective statutory amount on the invoicing date.

6.3 Basis for calculation of price quotations/gross weights

If no individual price agreement has been concluded for an individual order, prices are based on respective production costs at the time the order is accepted. The weights of the surface and marking plates contained in the price lists are approximate weights.

6.4 Prices "ex works"

All prices are deemed to be "ex works" excluding packaging.

7. Price changes/price adjustments

7.1 Price adjustments in accordance with § 315 of the German Civil Code

Stolle shall only undertake price adjustments within the scope of § 315 BGB (German Civil Code).

7.2 Reasons for price adjustments

We reserve the right to undertake price adjustments in accordance with section 7.1 in the event of changes in manufacturing processes and changes in manufacturing costs in relation to the period of order, in particular if calculations change as a result of increases in costs for raw materials, wages or freight in the period between receipt of order and delivery.

8. Packaging and packaging material

8.1 Costs of packaging material

Prices do not include the costs of packaging, packaging material and loading. Any packaging

requested by the Customer or deemed necessary by Stolle shall therefore be invoiced separately at cost price.

8.2 Return of packaging material

Packaging and packaging materials shall be taken back by Stolle at the place of performance in Bonn. Transport costs shall be borne by the Customer.

9. Payment modalities/arrears/set-off and retention rights

9.1 Due date

In the absence of any special agreement, payments shall be effected without any deductions free to our payment office, namely:

- One-third down payment after receipt of confirmation of order
- One-third after notification of readiness for shipping by Stolle
- The remaining amount at 2% discount within 14 days after receipt of invoice or without deduction within 30 days of receipt of invoice.

9.2 Arrears

The Customer shall be deemed to be in arrears on payment 30 days after receipt of invoice without any need for a reminder. A flat processing fee of € 10.00 (net) shall be charged for each reminder sent to a Customer in arrears on payment.

9.3 Reminder costs, interest on arrears and damage caused by delay

If the Customer defaults on payment, we shall be entitled to demand dunning costs of € 10.00 per reminder as well as interest on arrears at the statutory rate or, if we can demonstrate such, in the actual amount. This shall not exclude any claims for additional damage, which Stolle expressly reserves. The Customer shall be entitled to prove to us that the damage caused by arrears is lower than the amount claimed.

9.4 Immediate due date in the event of arrears

In the event of arrears on payment and justified doubts as to the solvency or creditworthiness of the Customer, Stolle shall be entitled to demand immediate payment of all claims emanating from the business relationship.

9.5 Collateral and advance payments due immediately

In the event of arrears on payment and justified doubts as to the solvency or creditworthiness of the Customer, the Customer shall be obligated - notwithstanding any other rights of Stolle - to provide appropriate collateral if so requested in writing within six working days or to effect advance payments for outstanding deliveries and outstanding payments within six working days of such request.

9.6 Right of retention and set-off rights of the Customer

The Customer shall only have the right to withhold payments and/or set such off against counterclaims, including in the case of notices of defect or warranty claims, if the Customer's counterclaims are undisputed or have been established by a court of law or government authority.

10. Delivery periods

10.1 Non-binding nature of delivery times communicated

Delivery periods shall generally be deemed to be "non-binding". Delivery periods shall only be deemed to be binding if they are stated as such in the written confirmation of order.

10.2 Cooperation by the Customer

Compliance with delivery times shall be subject to fulfilment of contractual obligations on the part of the Customer.

10.3 Adherence to delivery period

The delivery period shall be deemed to have been met if the consignment has left Stolle's plant or notification of readiness for shipping has been issued by the end of the delivery period. If acceptance is to be performed, the acceptance date or, alternatively, notification of readiness for acceptance, shall apply except in the case of justified refusal of acceptance.

10.4 Extension of delivery period in the event of force majeure and unforeseen events

The delivery period shall be extended for the duration and scope of hindrance in the event of measures taken within the framework of industrial disputes, in particular strikes and lock-outs, as well as in the event of unforeseen hindrances beyond the control of Stolle insofar as such hindrances demonstrably have a considerable influence on the completion or delivery of the consignment. This arrangement shall also apply if such circumstances come about at upstream suppliers. Notification of the beginning and end of such hindrances shall be provided immediately.

If delivery becomes impossible due to the aforementioned circumstances, we shall be released from our obligation to deliver. In such case, the Customer may not assert any claims for damages. The same shall apply if the aforementioned circumstances occur at our suppliers. The same shall apply without prejudice to our other rights in connection with arrears on payment insofar as the Customer fails to meet its obligations towards us in due time.

11. Default of acceptance by the Customer

11.1 Obligation of the Customer to issue acceptance

The Customer is obligated to accept the delivery item even in the case of insignificant defects without prejudice to its rights under section 14.

11.2 Compensation for storage costs

If shipping is delayed at the Customer's request, Stolle shall be entitled to invoice costs it incurs through storage at its own plant at current cost rates as confirmed by the logistics centre beginning with the originally confirmed delivery date,

11.3 Other disposal of the delivery item

After setting a reasonable deadline for acceptance and such deadline expires without compliance, Stolle shall be entitled to dispose of the delivery item otherwise and to apply a commensurately extended delivery period to its supply of the Customer.

12. Assumption of risk and insurance

12.1 Assumption of risk

The risk of accidental loss and accidental deterioration of the goods shall be transferred to the Customer when the goods are handed over or, in the case of sale by delivery to destination, when the goods are handed over to the forwarding agent, the carrier or any other person or entity responsible for shipment. This shall also apply to partial deliveries, in the event of the rendering of additional services such as the assumption of shipping costs, delivery or installation of the goods by us, returns of goods or empties (e.g. returnable transport packaging) as well as if the goods are delivered directly to the Customer by a third party (drop shipment).

Handover shall be deemed to have been effected if the Customer is in default of acceptance, if the Customer itself has assumed the task of transporting the goods or if the delivery is delayed at the Customer's request or if a delay in delivery is due to circumstances for which the Customer is responsible. The point in time at which we provide notification of readiness for shipping shall then apply.

If no special mode of shipping has been agreed upon, we shall effect such as we see fit.

Transport costs may be recalculated.

If the Customer so requests, Stolle shall insure the consignment against theft, breakage, transport, fire and water damage and other insurable risks at the Customer's expense.

13. Retention of title

13.1 Extended retention of title

Stolle reserves title to the consignment until the purchase price has been paid in full.

13.2 Extended retention of title

If the goods have been resold or processed by Stolle prior to payment by the Customer, claims of the Customer arising from resale or processing shall take the place of title insofar as this title is extinguished, but shall be limited to the amount of Stolle's claim against the Customer.

13.3 Customer obligations The Customer is obligated to handle the consignment delivered with care. In particular, the Customer is obligated to sufficiently insure it at its own expense against fire, water, breakage and theft at its replacement value. If maintenance and inspection work is necessary, the Customer must perform such at its own expense in due time and in a proper manner. If the Customer fails to meet its insurance obligation, Stolle shall be entitled to insure the consignment against theft, breakage, fire, water and other damage at the Customer's expense.

13.4 Prohibitions against disposal by the Customer

The Customer may neither pledge the delivery item nor assign it as collateral. In the event of attachment, confiscation or any other dispositions by third parties, the Customer must inform Stolle of such without undue delay so that Stolle may take legal action in accordance with § 771 of the German Civil Procedure Code (ZPO) if necessary. Insofar as the third party is not in a position to reimburse Stolle for the court-related and out-of-court costs of legal action pursuant to § 771 of the German Civil Procedure Code, the Customer shall reimburse Stolle for reasonable costs incurred by Stolle in this connection.

13.5 Prerequisites for the right of withdrawal

If the Customer is in delay with the fulfilment of a claim secured in whole or in part by retention of title or if its financial situation deteriorates to such an extent that the purpose of the contract is jeopardised, Stolle shall be entitled, after issuing a reminder, to withdraw from the contract and to demand surrender of the goods on the basis of the retention of title. This shall also apply to any other conduct of the Customer contrary to the terms of the contract. After taking back the consignment, Stolle shall be entitled to dispose of it. The proceeds from the sale shall be set off against the Customer's obligations - less reasonable costs of sale.

13.6 Assignment of claims

The Customer is entitled to resell the object of purchase in the ordinary course of business; however, it assigns to Stolle already here and now all claims in the amount of the final invoice amount (including VAT) which accrue to it from resale that it has against its customers or third parties irrespective of whether the object of purchase has been resold without or following processing. The Customer remains entitled to collect this claim even after the assignment. This shall not affect Stolle's power and authority to collect the claim itself. However, Stolle shall refrain from collecting the claim as long as the Customer meets its payment obligations from the proceeds received, does not fall into arrears on payment and in particular no petition for the opening of composition or insolvency proceedings has been filed or payments have been suspended. If this is the case, however, Stolle may demand that the Customer disclose the assigned claims and their debtors, provide all information required for collection and take action, hand over the relevant documents and inform the debtors (third parties) of the assignment.

13.7 Acquisition of title

Processing or transformation of the object of purchase by the Customer shall always be deemed to be carried out on behalf of Stolle. If the object of purchase is processed together with other items not belonging to Stolle, Stolle shall acquire co-title to the new item in the ratio of the value of the object of purchase (final invoice amount including VAT) to the other items processed at the time of processing. In all other respects, the same shall apply to the object created by processing as to the object of sale supplied subject to reservation of title.

13.8 Combination

If the object of purchase is inseparably mixed with other items not belonging to Stolle, Stolle shall acquire co-title to the new item in the proportion of the value of the purchased item (final invoice amount including VAT) to the other combined items at the time of combination. If the combination is carried out in such a way that the Customer's item must be deemed to be the main item, it shall be deemed to be agreed that the Customer transfers co-title to Stolle on a pro rata basis. The Customer shall hold the sole title or co-title created in such manner in safekeeping for Stolle.

13.9 Linkage and connection

The Customer also assigns to Stolle any claim to secure claims against it which arise against a third party as a result of linkage and connection of the object of purchase with a piece of land, but limited to the amount of Stolle's claim against the Customer.

14. Warranty and disclaimers of warranty

14.1 Complaint obligation

Warranty claims on the part of the Customer shall be subject to the Customer having properly fulfilled its obligations to inspect the goods and issue notice of defect in accordance with § 377 of the German Commercial Code (HGB).

14.2 Customer option

If there is a defect in the object of purchase, Wilhelm Stolle GmbH may as it sees fit first demand subsequent performance in the form of rectification of the defect (subsequent improvement) or supply of a new item free of defect (supply of a replacement).

The Customer must provide us ample time and opportunity to carry out the subsequent performance owed, in particular to hand over the rejected goods for inspection. In the event a replacement is supplied, the Customer shall return the defective item to us in accordance with statutory provisions.

In the event that the defect is rectified, Stolle shall be obligated to bear all expenses necessary for the purpose of rectifying the defect, in particular transport, travel, labour and material costs (not dismantling and installation costs) to the extent that a defect actually exists and costs do not increase as a result of the object of sale having been sent to a location other than the place of performance.

14.3 Failure of subsequent performance

If subsequent performance fails or if we reject such permanently and finally with firm intent, the Customer may generally demand reduction of the remuneration (reduction) or cancellation of the contract (withdrawal) as it sees fit. In the event of merely minor breach of contract, in particular merely minor defects or an insignificant restriction of usability, the Customer shall not, however, be entitled to withdraw from the contract.

14.4 General limitation of liability

Stolle shall be liable in accordance with statutory provisions insofar as the Customer asserts claims for damages based on wilful intent or gross negligence, including wilful intent or gross negligence on the part of our representatives or vicarious agents. If Stolle is not accused of intentional breach of contract, liability for damages shall be limited to damage which is foreseeable and occurs typically.

14.5 Limitation of liability in the event of breach of material contractual obligations

Stolle shall be liable in accordance with statutory provisions if Stolle culpably violates a material contractual obligation; in such case, however, liability for damages shall be limited to damage which is foreseeable and occurs typically.

14.6 Full liability

This shall not affect liability for culpable injury to life and limb or damage to health; this shall also apply to mandatory liability under the German Product Liability Act (*Produkthaftungsgesetz*).

14.7 Disclaimer of warranty

If nothing to the contrary is set out in the foregoing, liability is excluded.

14.8 Statute of limitations

The general statute bar for claims arising from material defect and defect of title shall be one year beginning with the handover.

14.9 Delivery recourse

This shall not affect the statute bar in the case of delivery recourse in accordance with §§ 478,

479 of the German Civil Code; the statute-barred period shall end two months after the time at which the Customer has fulfilled the warranty claims of its customer, but at the latest five years after delivery to the Customer.

14.10 Adequate time for execution of rectification

Stolle must be provided a reasonable period of time to carry out the rectification work or to supply new parts within the framework of our warranty.

14.11 Non-existence of material defect

There shall be deemed to be no material defect and Stolle shall therefore not accept any liability for damage if such is caused by unsuitable or improper use, faulty mounting or commissioning by the Customer or third parties, natural wear and tear, faulty or negligent handling, unsuitable operating materials, replacement materials, deficient construction work, unsuitable subsoil, chemical, electrochemical or electrical influences. Stolle's liability shall be lifted by any modifications or repair work carried out improperly by the Customer or third parties or without Stolle's prior consent. The same shall apply if the goods delivered by Stolle are used for purposes other than their intended use or in a manner other than the intended mode of operation.

14.12 Reference to suppliers in the event of essential third-party products

Stolle's warranty for essential third-party products shall be limited to cases in which the Customer has first unsuccessfully asserted its claims against the supplier in court.

15. Joint and several liability

15.1 Exclusion of claims for damages

Claims for damage on the part of the Customer, in particular claims for compensation for damage that is not to the goods delivered by Stolle itself, are excluded - irrespective of the legal basis for such. Any further liability for damages other than that provided for in section 14 is excluded - also irrespective of the legal nature of the asserted claim. This applies in particular to claims for damages arising from *culpa in contrahendo*, other breaches of duty or tortious claims for compensation for material damage in accordance with § 823 of the German Civil Code.

15.2 Exclusion of claims for reimbursement of expenses

The limitation according to section 15.1 shall also apply if the Customer demands reimbursement of expenses incurred in vain instead of a claim for compensation.

15.3 Exclusion of personal liability for compensation

If and to the extent that Stolle's liability for compensation is excluded or limited, this shall also apply with regard to personal liability for compensation of Stolle's employees, representatives and vicarious agents.

16. Place of fulfilment and performance

The place of fulfilment and performance for the delivery of the contractual objects as well as all other obligations arising from and in connection with the respective customer and contractual relationship shall be deemed to be the registered office of Stolle (Bonn).

17. Choice of law

17.1 Governing law

These General Terms and Conditions and all legal relationships in connection with the initiation, conclusion, execution, termination and handling of (respective) customer relationships shall be governed exclusively by the law of the Federal Republic of Germany, in particular in application of the German Civil Code (BGB) and the German Commercial Code (HGB), but excluding international private law.

17.2 Exclusion of the CISG

Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG)/"Vienna Sales Convention" of 11 April 1980 is excluded.

18. International place of jurisdiction, EU place of jurisdiction, national place of jurisdiction, covenant agreeing to refrain from legal action abroad

18.1 Legal venue

The exclusive place of jurisdiction and legal venue for all disputes emanating from and in connection with the legal relations between Stolle and the Customer, including within the framework of a bill of exchange and cheque procedure as well as within the scope of the Regulation of the European Parliament and the Council on Jurisdiction and the Recognition of Judgments in Civil and Commercial Matters is our registered office in Bonn.

18.2 Waiver of rights

The Customer waives the right to take legal action against Stolle outside the Federal Republic of Germany.

19. Language of contract

German is agreed as the legally binding language of contract between the parties. If an agreement is issued in German and English versions, the German version shall have priority in case of doubt.