

General terms and conditions of delivery for products and services of HABA GmbH for use in transactions with entrepreneurs

1. General provisions

a) Deliveries, services and offers of the supplier arise exclusively under the following general terms of delivery and payment which are acknowledged and become binding through placing of the order. This also applies if any deviating terms and conditions by the buyer are not objected to. We hereby explicitly object to any of the buyer's acknowledgements which make reference to the latter's terms and conditions of business or delivery. Agreements that deviate from our GTCs and the buyer's general terms and conditions require our written confirmation in order to be valid. Verbal agreements are not valid and it is not possible to deviate verbally from this contractual provision.

b) The supplier reserves their unrestricted rights of use under ownership and copyright law to cost estimates, drawings and other documents (below called: documentation). Documentation may only be made accessible to third parties following the supplier's approval and, if the order is not placed with the supplier, these must be returned immediately upon request. Sentences 1 and 2 apply accordingly to the buyer's documentation; however, these may be made accessible to third parties with whom the supplier has placed permissible deliveries. c) Partial deliveries are permissible except where this results in disadvantages for use which would be unreasonable for the buyer. d) The place of performance is the supplier's headquarters.

2. Order and acceptance

The supplier's offers are subject to change. Orders require the supplier's written confirmation in order to be legally valid.

3. Prices and payment terms

a) Our prices are ex works excluding packaging and any postage charges plus applicable statutory VAT. The stated prices for any contract work are merely approximate values and may be adjusted by the supplier at any time according to the actual expenditure. The purchase price and remuneration for contract work and other ancillary services are due for payment when the delivery item is transferred.

b) Payments must be made to the supplier without any deductions.

c) The buyer may only set off claims which have been recognised or confirmed legally. It is not permissible to withdraw payment due to any counterclaims by the buyer which the supplier has not recognised.

d) All payments must be made directly to the supplier (any representatives do not have power of attorney for collection) without expenses for the supplier and are deemed to have been made on the working day when the credit is confirmed on one of the supplier's accounts.

e) Unless agreed otherwise, invoices fall due within 30 days of the invoice date. However, the supplier reserves the right to deliver exclusively in exchange for advance payments without stating reasons.

f) Payments that are received are posted in the following order: extrajudicial collection costs, interest, capital, with the supplier expressly reserving the right to assign them otherwise. If several invoices are outstanding, the oldest invoice shall be covered first. If any other payment terms have been agreed, then, independently of this, the VAT stated on the invoice falls due within 30 days of the invoice date; if this obligation is not met, the payment agreement is null and void and the total falls due immediately without deductions. g) If sufficient evidence of creditworthiness cannot be provided, and objective circumstances indicate that performance of the payment obligation is at risk, or it becomes known that the buyer's financial circumstances are deteriorating significantly, the supplier is entitled to only deliver in exchange for payment in advance, payment in cash or cash on delivery, even in the event of a payment agreement, as well as to charge any existing receivable immediately, refuse to accept any bills or exchange and demand immediate payment even if bills of exchange with a later date have been provided. In addition, the supplier has the right to make any further work on current orders dependent on proportionate payment. Moreover, the supplier has the right to retain any goods that have not yet been delivered and, if the partial payments are not made, to cease further work on ongoing orders. The supplier also has these rights if the customer fails to make a payment in spite of a reminder confirming default.

h) Cheques and bills of exchange only count as payment after they have been redeemed and are only credited with this proviso.

i) If the payment target goal is exceeded, the buyer warrants that it shall pay interest at a minimum of 2% above the interest rate which the supplier must pay to its own bank as a maximum rate, however, at least 12% p.a. This does not exclude the right to assert additional default claims. A payment default on the part of the buyer withdraws the buyer from the right to demand performance of ongoing orders.

j) In the event of payment default, all judicial and extrajudicial costs of collection and collection interest must be paid back, as must the costs of third-party proceedings, cessation due to

third-party property, claim registrations and other costs not set by the court. Extrajudicial costs are agreed as € 15.00 plus statutory VAT for each reminder. In addition, the buyer must replace any other damage in the event of a payment default, especially damage that arises due to the supplier incurring higher interest on potential credit accounts as a result of the non-payment, independently of fault in relation to the payment default. In the event of a payment default, as well as settlement or insolvency proceedings, being initiated, all invoices are due regardless of their granted payment target and any discounts and reductions on the invoices are invalid; in such cases, the gross list prices are charged.

4. Retention of title

a) The delivery items (reserved goods) shall remain the supplier's property until all claims against the buyer from the business relationship have been met. To the extent that the value of all security rights to which the supplier is entitled exceeds the amount of all secured claims by more than 20%, the supplier will release a corresponding proportion of the security rights at the buyer's request.

b) The buyer is entitled to sell the delivery items in the regular course of business; however, the buyer already now transfers to the supplier all claims up to the amount of the purchase price agreed between the buyer and the buyer's customer (including VAT) that accrue to the purchaser from the sale of our products, irrespective of whether the delivery items were sold with or without processing. The buyer is entitled to collect these receivables following the transfer. This shall not affect the supplier's right to collect the receivables themselves; however, the supplier is obligated not to collect the receivables for as long as the buyer properly meets its payment obligations and is not in payment default. However, if this is the case, the supplier may demand that the buyer announces the transferred receivables and their debtors, provides all information required for collection, hands over the corresponding documents and notifies the debtors (third parties) of the transfer.

c) The processing and transformation of the goods by the buyer are always performed for the supplier. If the delivery items are inseparably mixed with other items that are not the supplier's property, the supplier shall acquire co-ownership of the new item in proportion of the value of the delivery item to the other processed items at the time of the processing.

d) If the delivery items are inseparably mixed with other items that are not the supplier's property, the supplier shall acquire co-ownership of the new item in proportion of the value of the delivery items to the other mixed items. The buyer shall safeguard the supplier's jointly-owned property.

e) If the buyer violates the obligations, especially regarding payment default, the supplier is entitled to withdraw or take back the items following the unsuccessful end of a grace period set for the buyer for performance; this shall not affect the statutory provisions regarding the expendability of a grace period. The buyer is obligated to hand these over.

f) In the event of seizures, confiscations or other third-party disposals or interventions, the buyer shall notify the supplier immediately.

5. Delivery deadlines; default

a) Compliance with delivery times presupposes the timely receipt of all documents, permits, approvals to be provided by the buyer as well as compliance with the agreed payment terms and other obligations of the buyer. If these conditions are not met in time, the deadlines are extended accordingly; this does not apply if the supplier is responsible for the delay. The delivery deadline is deemed to have been met if the readiness to dispatch is announced or the delivery item has left the works before the deadline.

b) The delivery deadline is extended in case of measures relating to industrial action, especially strikes and lock-outs and if unforeseeable obstacles occur which are outside the supplier's sphere of influence, e.g. disruptions to operations, delays in the delivery of essential materials, to the extent that such obstacles can be shown to have a significant influence on the delivery of the delivery item. This also applies if these circumstances occur at a subcontractor's. The delivery deadline is extended by the duration of such measures or obstacles.

c) Agreed delivery times are generally approximate dates, unless they are explicitly confirmed in writing as fixed dates. In the event of a fixed date being agreed, the buyer's assistance obligations and corresponding deadlines must be set when the order is placed. If the buyer fails to meet its assistance obligations or if it fails to do so by the agreed deadlines, the supplier is not liable for meeting the delivery deadline. This also applies in the event that the buyer subsequently changes the order. In addition, the supplier is entitled to compensation for any resulting costs.

d) In the event that the supplier is in default and the buyer suffers damage due to this delay, the liability for damage on the part of the supplier is limited for each completed week of the delay in delivery to 0.5% – in total, however, a maximum of 5% – of the price for the part of the delivery that could not be used according to contract as a consequence of the delay. The parties reserve the right of proof of a lower or higher damage due to the default. Compensation claims due to default can only be asserted if a) default has occurred and b) the customer set an appropriate grace period in writing and this has passed. e) Both compensation claims on the part of the buyer due to delayed deliveries and claims for compensation instead of services which exceed the thresholds in lit. d) above, are excluded in all cases of delayed delivery, including after a period for delivery set by the supplier has passed. This does not apply to the extent that liability is mandatory as in cases of intent, gross negligence or due to damage to life, limb or health. In the context of the legal provisions, the buyer can only withdraw from the contract to the extent that the supplier is responsible for the delayed delivery. The above provisions do not involve a change to the burden of proof to the detriment of the buyer. f) Cases of acts of God - these are circumstances and incidents which could not be prevented with the diligence of ordinary business management - suspend the parties' contractual obligations for the duration of the disruption and the extent of their effect. If delays resulting from this exceed a period of six weeks, both parties are entitled to withdraw from the corresponding contract scope of performance. No other claims apply. g) If acceptance, dispatch or delivery is delayed at the request of the buyer by more than one month following the notification announcing readiness for delivery or provision, the buyer may charge a storage fee of 0.5% of the price of the delivery items for each commenced month, however no more than a total of 5%. The parties shall be entitled to provide evidence of higher or lower storage costs.

6. Transfer of risk

a) The risk of incidental damage, incidental loss or incidental deterioration of the purchase item is transferred to the buyer, even in the case of free delivery, as soon as the delivery was given to dispatch or was picked up.
b) If the dispatch or pick-up is delayed for reasons for which the buyer is responsible, or the buyer defaults on acceptance for other reasons, the risk is transferred to the buyer when the reason for the default or the acceptance default occurs.

7. Price changes

Price changes are permissible if more than six weeks have passed between the conclusion of the contract and the agreed delivery deadline. If wages, material costs or market prices increase following this date until completion of the delivery, the supplier is authorised to raise the prices in line with the corresponding cost increases. The buyer is only entitled to withdraw from the contract if the price increase significantly exceeds the increase in the general living costs between the order and the delivery.

8. Acceptance

The buyer is not permitted to refuse acceptance of the deliveries due to insignificant defects.

9. Complaints/warranty

a) The buyer must check that the delivered goods are in line with the contract in all cases.
b) Defect claims relating to the quality or the quantity of the goods and complaints due to deliveries of goods other than those ordered, must be submitted in writing (by registered letter) and are only permissible within 3 working days of the transfer or receipt of the goods at the destination based on the delivery note. After the end of this period, the goods are deemed to have been accepted without complaints.
c) If defects are reported in time and are justified, the supplier shall, at its discretion, either correct the defect, replace the item or provide a credit in return for the delivery of the defective goods. Other claims or claim consequences, especially liability for consequential damage, are excluded in all cases, except where the supplier or its assistants are guilty of intent or gross negligence. d) Partial deliveries are governed by the principles for the delivered part as set out in this clause. Defects of a part of the delivery goods do not justify complaints about the whole of the delivery. e) The supplier does not accept liability for damage resulting from inappropriate storage of the products by the buyer.
f) The conjecture rule in § 924 ABGB is hereby explicitly excluded. The buyer must provide evidence that a defect existed at the time of the transfer.

10. Annulment costs

If the buyer withdraws from a granted order without justification, the supplier may, without detriment to their legal rights and the option of asserting a higher actual damage, demand 10% of the sales price for the costs incurred through processing of the order and for lost profits. It is up to the buyer to provide evidence of lower damage.

11. Impossibility; contract adjustment

a) If delivery is impossible, the buyer is not authorised to demand compensation, except where the supplier is responsible for the impossibility. In this case, the buyer's compensation claim shall be limited to 10% of the value of that part of the delivery which cannot be used as intended due to the impossibility. This restriction does not apply to the extent that liability is mandatory as in cases of intent, gross negligence or due to damage to life, limb or health; this does not involve a change to the burden of proof to the detriment of the buyer. This shall not affect the buyer's right to withdraw from the contract.
b) To the extent that unforeseeable events within the meaning of Section 5 lit. b) significantly change the meaning or content of the delivery or significantly impact on the supplier's business, the contract shall be appropriately adjusted based on good faith. To the extent that this is economically reasonable, the supplier shall have the right to withdraw from the contract. If the supplier wants to make use of this right of withdrawal, they must notify the buyer of this immediately after identifying the scope of the event, including if a longer delivery time was initially agreed with the buyer.

12. Limits to liability

a) Compensation claims are excluded to the extent that the damage was not caused by intentional or grossly negligent action. Liability for simple negligence, compensation of consequential damage and financial damage, lost profits and damage from third-party claims against the buyer are explicitly excluded.
b) The amount of any compensation claims shall be limited to 10% of the order value, to the extent that the damage was not caused by intentional or grossly negligent action. c) Compensation claims must be asserted before a court within 6 months of learning of the damage or within 3 years of the delivery or performance of the service, or shall expire otherwise. Following 1 year of the delivery or performance of the service by the supplier, the burden of proof shall lie with the buyer.
d) If the supplier's liability may apply, the supplier shall be indemnified from the liability to the extent that the supplier transfers existing and enforceable claims against the supplier companies or processing companies to the customer.
e) The obligation to pay compensation for material damage resulting from the Product Liability Act as well as for product liability claims that could be deduced from other provisions, is excluded. The limits to liability must be fully transferred to any receiving parties, together with the obligation to further transfer. The delivery item only offers the security that can be expected taking into account the material-specific properties.

13. Jurisdiction and applicable law

a) The sole jurisdiction for all disputes resulting from the contractual relationship either directly or indirectly shall be the supplier's place of business. However, the supplier is also entitled to assert claims at the buyer's place of business.
b) The legal relationships in the context of this contract are subject exclusively to Austrian material law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (UN CISG).
c) All disputes, including disputes relating to the applicability or non-applicability of these delivery terms, that may arise from this contractual relationship, are exclusively subject to the court with material and local competence for the supplier's place of business or, at the supplier's option, also the materially competent court responsible for the supplier in whose jurisdiction the buyer has its registered place of business, residence, branch or assets.

14. Miscellaneous

a) Transfers of the buyer's rights and obligations from the purchase agreement with the supplier require the supplier's written approval to be effective.
b) The remaining parts of contract shall also remain binding if individual provisions are invalid. This does not apply if the continuation of the contract would become unreasonable for one of the parties.