



General Terms and Conditions

General Terms and Conditions of Payment and Delivery of SP Sportpolster GmbH

1. Validity of the conditions:

a. These General Terms and Conditions apply exclusively to our business relationships with companies, legal entities under public law and special funds under public law. They do not apply to business transactions with consumers. Consumers are natural persons who conclude the legal transaction for a purpose that cannot be attributed to their commercial or independent professional activity. They also apply to all future business relationships, even if they are not expressly agreed again.

b. When placing an order or accepting an offer, the buyer recognizes our general terms and conditions as solely binding, waiving any later revocation.

c. These terms and conditions shall be deemed accepted at the latest upon acceptance of our deliveries and services.

d. We hereby object to any reference by the buyer to its terms and conditions of business. They shall not be binding on us even if we no longer object to them in individual cases.

e. Deviating terms and conditions of the buyer shall only apply if they have been expressly confirmed by us in writing. This also applies to deviating agreements.

f. With the inclusion of these Terms and Conditions of Payment and Delivery, all previous General Terms and Conditions shall lose their validity. We may make changes to these Terms and Conditions of Payment and Delivery - with the exception of fees and service content - at any time, insofar as this becomes necessary due to changed circumstances (e.g. changes in legislation or case law) and is not unreasonable for the Buyer. We shall notify the Buyer of any changes in writing or electronically, provided this does not involve unreasonable expense. The Buyer shall be entitled to object to the changes within 14 days, otherwise the changes shall be deemed accepted.





2. Offers, orders, order changes, self-deliveries, deviations

a. Our offers are always subject to change and non-binding, unless we have submitted a binding offer in writing in individual cases.

b. The purchase contract is effectively concluded if we confirm acceptance of the order or the buyer's offer in text form within a period of three weeks after receipt or carry out the delivery in whole or in part. Dispatch of the declaration of acceptance within the aforementioned period shall suffice to meet the deadline.

c. If the buyer requests changes after the order confirmation has been sent or wishes to postpone the confirmed delivery date to a later date, the resulting costs shall be borne by the buyer.

d. We conclude our contracts with the buyer exclusively subject to correct and timely delivery by our suppliers. This shall only apply if and insofar as we are not responsible for the non-delivery, in particular if a congruent hedging transaction has been concluded with our suppliers. The buyer shall be informed immediately of the non-availability of the service. Any consideration already provided by the buyer will be refunded by us.

e. For the goods to be delivered, the customary deviations in quality and color are permissible and do not constitute a material defect, unless the deviations contradict a warranty or guarantee.

3. Prices

a. Ordered products are charged at the prices stated in the order confirmation plus VAT and are ex warehouse excluding packaging and shipping costs.





b. Offer or list prices are subject to change until written order confirmation and do not include VAT.

4. Terms of payment, default, right of retention

a. Unless otherwise agreed in writing, our standard terms of payment are advance payment after receipt of the order confirmation or pro forma invoice by bank transfer. Any other form of payment must be made in writing and approved by the seller.

b. Our invoices are due for payment immediately, but at the latest upon delivery, without deduction. The deduction of discounts is not permitted.

If the buyer does not pay on time, we shall be entitled to charge interest on arrears at the rate charged by the commercial bank for our overdraft facilities, but at least 9 percent p.a. above the respective base interest rate.

c. We are entitled to offset payments against older debts first. If costs and interest have already been incurred, we shall be entitled to offset these payments first against the costs, then against the interest and finally against the principal performance. If the customer stipulates otherwise when making the payment, we may, at our discretion, also invoice according to this stipulation.

d. Payment shall only be deemed to have been made when we can dispose of the amount without restriction. Any acceptance of bills of exchange shall only be on account of performance and subject to their discountability. The costs and expenses of discounting shall be borne by the buyer.

e. If the buyer does not meet his payment obligations, if the account does not have sufficient funds in the case of agreed direct debit procedures, if he suspends his payments or if we become aware of other circumstances which call the creditworthiness of the buyer into question, we are entitled to declare the entire remaining debt due.





f. The withholding of payments due to or offsetting against counterclaims by the customer is only permitted if the counterclaims are undisputed or have been legally established. Furthermore, rights of retention may only be exercised if they are based on the same contractual relationship.

5. Delivery and performance time, force majeure

a. Delivery times are only approximate. Binding delivery dates and deadlines must be agreed in writing. The delivery date shall be the date of dispatch ex works or ex warehouse.

b. In all cases of force majeure such as storms and natural disasters, as well as in cases of mobilization, war, civil unrest, strikes, lockouts, operational disruptions, restrictions and shortages of raw materials and supplies and similar events beyond our control, the delivery time shall be extended by the duration of the hindrance and a reasonable start-up time after the end of the hindrance. If the execution of the contract becomes unreasonable for one of the parties due to these events, it may withdraw from the contract to this extent. Claims for damages by our customer are excluded.

c. Partial deliveries within the delivery period are permissible unless the customer cannot reasonably be expected to accept delivery in parts and at intervals.

d. If it becomes apparent after conclusion of the contract that our claim for payment is jeopardized by the Buyer's inability to pay, we may refuse performance and set the Buyer a reasonable deadline within which he must pay concurrently with delivery or provide security. If the buyer refuses or if the deadline expires without success, we are entitled to withdraw from the contract and/or demand compensation.

e. Call-off and scheduling of individual partial deliveries shall be carried out in such a way that we are able to manufacture and deliver in accordance with the contract.

6. Shipping and transportation, transfer of risk, default of acceptance, compensation for damages





- a. Unless otherwise agreed, the Buyer shall bear the costs of shipment (packaging and transportation).
- b. The choice of shipping method is left to us, unless the buyer has expressly specified a particular shipping method. Shipment and transportation shall be at the risk of the buyer.
- c. The risk shall pass to the buyer as soon as the goods have been handed over to the person carrying out the transportation or have left our warehouse upon dispatch. If the shipment is delayed for reasons for which we are not responsible, the risk shall pass to the Buyer upon receipt of the notification of readiness for shipment by the Buyer. Unless expressly agreed otherwise in writing, the clause "ex works"/"EXW" (Incoterms 2000) shall apply. The delivery warehouse is Gelsenkirchen.
- d. If the purchased item is taken back for reasons for which we are not responsible, the buyer shall bear the risk until it arrives at our works.
- e. For the duration of the Buyer's default of acceptance, we shall be entitled to store the delivery items at the Buyer's risk and expense; we may also use a forwarding agent or a warehouse keeper for this purpose. However, we shall not be obliged to take out insurance for the delivery items.
- f. If the buyer does not pay the purchase price due after expiry of a grace period set for him or refuses to accept the goods or declares that he does not wish to accept the goods, we may refuse to fulfill the contract and demand compensation. We are entitled to claim either a lump sum of 25 percent of the agreed purchase price or compensation for the damage actually incurred from the buyer. The buyer shall be at liberty to prove that the actual damage was lower.

7. Notice of defects and warranty

- a. The buyer is obliged to inspect the delivered goods immediately for obvious defects, in particular also for obvious shortages or damage, and to notify us of these in writing immediately upon receipt of the goods. Timely dispatch of the notice of defects shall suffice to meet the deadline. In the case of hidden defects, the Buyer shall be obliged to notify us of these in writing as soon as they are discovered, but at the latest within the limitation period pursuant to clause 7. lit. i). The buyer





shall bear the burden of proof for all preconditions, in particular for the existence of the defect, for the time of discovery of the defect and for the timeliness of the notice of defect. If the Buyer fails to give notice of defects as specified above, our liability for defects shall be excluded. The notice of defects must document the defect complained of in a suitable manner.

b. Claims of the buyer due to defects in the object of purchase are excluded if the defect was caused by non-compliance with regulations on the handling, maintenance and care of the object of purchase or the planned maintenance intervals or the installation of parts or accessories whose use was not approved by us or the object of purchase was otherwise handled improperly.

c. Claims of the buyer due to defects in the purchased item are also excluded for used products and for goods that are not included in our product catalog but are manufactured as custom-made products at the request of the buyer.

d. If we are not the manufacturer of the purchased item, we shall assign our warranty claims against our upstream suppliers to the buyer to the exclusion of our warranty obligation towards the buyer, provided that this does not unreasonably disadvantage the buyer. We shall be subordinately liable in particular if and to the extent that the upstream supplier does not fulfill the buyer's claims even after legal enforcement. We shall reimburse the Buyer for the costs that cannot be recovered from the upstream supplier.

e. If the goods are defective, we reserve the right to first remedy the defect at our discretion by subsequent delivery or subsequent improvement (subsequent performance). In the event of subsequent performance, we are obliged to bear all expenses necessary for this purpose, in particular transport, travel, labor and material costs, insofar as these are not increased by the fact that the purchased item has been taken to a place other than the place of performance.

f. In accordance with the statutory provisions, we are obliged to take back the new goods or to reduce the purchase price, even without the otherwise required deadline, if the buyer's customer, as the consumer of the new movable item sold (purchase of consumer goods), could demand the return of the goods or the reduction of the purchase price from the buyer due to the defect of these goods or if the buyer is entitled to such a resulting claim for withdrawal (supplier recourse). In addition, we are obliged to reimburse the necessary expenses of the buyer, in particular transport, travel, labor and material costs, which they incur in relation to the end consumer in the context of subsequent performance due to a defect in the goods delivered.





The buyer shall bear the costs incurred by us as a result of the defect in the goods at the time of the transfer of risk. These expenses shall be reimbursed in the form of credit notes for the goods. The claim is excluded if the buyer has not properly fulfilled the inspection and complaint obligations owed in accordance with § 377 HGB.

g. The obligation pursuant to item 7. lit. f) is excluded if the defect is due to advertising statements or other contractual agreements that do not originate from us or if the buyer has given a special guarantee to the end consumer. The obligation is also excluded if the buyer himself was not obliged to exercise the warranty rights vis-à-vis the end consumer on the basis of statutory regulations or did not make this complaint vis-à-vis a claim made against him. This shall also apply if the buyer has assumed warranties vis-à-vis the end consumer that go beyond the statutory scope.

h. If the subsequent performance fails, is impossible, is seriously and finally refused by us or is unreasonable for the Buyer or a deadline to be set by the Buyer for the subsequent performance has expired without success or is dispensable according to the statutory provisions, the Buyer shall be entitled, at his discretion, to reduce the purchase price (reduction) or to demand rescission of the contract (withdrawal). Upon declaration of withdrawal or demand for a reduction in price, the buyer's claim to delivery of a defect-free item shall lapse. Claims of the buyer for damages or compensation for futile expenses shall only be granted within the scope of the following clause 8, otherwise they are excluded. As long as we fulfill our obligations to rectify the defects, the buyer shall not be entitled to demand a reduction in payment or rescission of the contract, unless the rectification has failed.

i. In the case of products for which no defect could be identified, we are entitled to invoice the inspection costs.

j. The warranty period is one year. Excluded from guarantee or warranty claims are wear and tear and damage caused by improper or inappropriate use.

8. Liability, exclusion of subsequent performance and withdrawal, performance period





a. With the exception of the circumstances regulated in lit. b) below, any liability for damages or reimbursement of futile expenses in the event of breaches of duty beyond the liability for defects in accordance with clause 7 above shall be excluded, irrespective of the legal nature of the claim asserted. This shall also apply if and to the extent that our legal representatives or vicarious agents are in breach of duty.

b. The exclusion of liability contained in the above paragraph shall not apply to claims of the purchaser based on the Product Liability Act, not in the event of injury to life, body or health attributable to us, not in the event of grossly negligent or intentional breaches of duty, not in the event of a breach of a material contractual obligation and not insofar as a guarantee has been granted or fraudulent action has been taken. In such cases, we shall be liable in accordance with the statutory provisions. However, in the event of a breach of a material contractual obligation due to simple negligence, our liability shall be limited to compensation for typical, foreseeable damage.

c. The buyer may only withdraw from the contract due to a breach of duty which is not based on a defect in the goods if the circumstance entitling the buyer to withdraw is based on a fault for which we are responsible and the breach of duty is so significant that the buyer cannot reasonably be expected to adhere to the contract.

d. If a deadline set by the buyer for performance has expired without result and if he does not comply with our subsequent request within a further reasonable deadline set by us for clarification as to whether he maintains his claim for performance or demands compensation instead of performance, the claim for performance shall be excluded after expiry of the reasonable deadline associated with this request.

9. Statute of limitations

a. All claims and rights of the purchaser, irrespective of the legal grounds, shall lapse within one year, unless our liability is based on intentional acts.

b. Notwithstanding the above principle, the statutory limitation period shall apply in the following cases:





For claims for defects, insofar as we have fraudulently concealed the defect or have assumed a guarantee for the quality,

For recourse claims of the buyer in the context of a supply chain in accordance with § 478 BGB,

For claims for damages or claims for reimbursement of futile expenses arising from injury to life, limb or health,

For claims under the Product Liability Act.

10. Retention of title

a. The delivered goods shall remain our property until full payment of all claims arising from the business relationship between us and the purchaser. The inclusion of individual claims in a current invoice as well as the balancing of accounts and their recognition shall not affect the retention of title. If the buyer defaults on payment, we are authorized to take back the goods and dispose of them at the buyer's expense after setting a grace period to no avail.

b. The buyer is entitled to resell the goods subject to retention of title in the ordinary course of business. He is not permitted to pledge or assign the reserved goods as security. If the goods subject to retention of title are resold on credit, the buyer is obliged to agree a retention of title.

c. The buyer is obliged to treat the reserved goods with care, in particular the buyer is obliged to ensure proper storage and labeling of the goods.

d. The purchaser hereby assigns to us the claim of the purchaser from the resale of the goods subject to retention of title; we accept this assignment. If the reserved goods purchaser includes the claim in an existing current account relationship with his customers, he hereby assigns to us both the recognized balance and the causal balance up to the amount of the original current account claim. Notwithstanding the assignment and our right of collection, the buyer shall be entitled to collect as long as he duly fulfills his obligations towards us and is not at risk of financial collapse.

e. If the goods subject to retention of title are resold together with other goods, whether without or after processing or combination, the advance assignment agreed above shall only apply in the amount of





of the invoice value of the goods subject to retention of title which are resold together with the other goods. If the buyer defaults on his payment obligations, he must, upon request, provide the information required to collect the assigned claims and notify the debtors of the assignment.

f. Insofar as the purchaser refinances on a factoring basis, he hereby assigns to us the claims he is entitled to against the factor in the amount of his outstanding balance from the business relationship with us.

g. The buyer must inform us immediately of any enforcement measures by third parties against the reserved goods or the claims assigned in advance, handing over the documents necessary for an intervention. Any costs of justified interventions shall be borne by the buyer, insofar as they cannot be obtained from third parties.

h. We undertake to release the securities to which we are entitled in accordance with the above provisions at our discretion at the request of the purchaser to the extent that their realizable value exceeds the claims to be secured by 10.0% or more. The purchaser subject to retention of title shall be entitled to release if the estimated value of the goods assigned as security amounts to 150% of the claims to be secured.

11. Final provisions

a. The place of performance for all claims arising from the contractual relationship is Gelsenkirchen.

b. The place of jurisdiction for all legal disputes arising from the contractual relationship and its creation and validity shall be Gelsenkirchen or, at our discretion, the general place of jurisdiction of the buyer. Statutory provisions on exclusive jurisdiction shall remain unaffected. All disputes arising out of or in connection with this contract shall be finally and bindingly settled by the German state courts.

c. The contractual relationship shall be governed exclusively by the law of the Federal Republic of Germany to the exclusion of all international and supranational legal systems, in particular the UN Convention on Contracts for the International Sale of Goods (CISG).





d. No collateral agreements to this agreement have been made. Amendments or additions, just like the amendment of this provision, must be made in writing in order to be legally valid.

e. The images shown are for reference only, the actual product may differ.

12. Data protection notice

We would like to point out that personal data of our contractual partners is processed and passed on exclusively for the purpose of implementing the contractual relationship with the aid of electronic data processing in accordance with the provisions of the Federal Data Protection Act (BDSG), Regulation (EU) 2016/679 of the European Parliament and of the Council (General Data Protection Regulation) and the Telemedia Act (TMG). The privacy policy can be found on our website under Privacy Policy.

In this context, certain data (name, address, invoice data and late payments by the buyer) may be transmitted to credit agencies.

SP Sportpolster GmbH (Status: 02/2023)

