

DERICHS Terms of Trade

Derichs uses terms of trade and delivery applicable to every contract between Derichs and his customers. To make it easier for the customer to get to know the content of the terms of trade they are translated into English below. But only the German edition is part of the contract and binding in case of discrepancies between the English and the German version.

1. Range of application

1.1. The following terms of trade and delivery are applicable to every present or future contract or agreement between Derichs GmbH (hereinafter referred to as Derichs) and the buyer. Terms of trade and purchase of the buyer which are in discrepancy with the following terms are rejected.
1.2. If one of the following terms of trade proves to be void this shall not affect the validity of the other terms and the rest of the contract.

2. Conclusion and writing

2.1. Offers of Derichs shall not create any obligation until a specific order has been placed by the buyer which has been accepted by Derichs.
2.2. Orders of the buyer are binding. Derichs will confirm the buyer's order in writing. If the buyer will not receive such a confirmation, the invoice shall be regarded as confirmation.
2.3. The content of orders and agreements shall be determined by the written confirmation of Derichs esp. if the buyer has placed his order orally or by telephone. If the confirmation is inconsistent with the buyer's order or wishes, the buyer shall immediately reject the confirmation within seven days at the latest.
2.4. All amendments or changes of contracts must be in writing esp. the abandonment of the necessity of writing.
2.5. All notifications esp. termination, rescission of contract, the demand for deduction of the price or damages must be in writing.
2.6 The Contract may not be cancelled by the Buyer once confirmation in Writing has been provided by the Seller except with the agreement in Writing of the Seller and on the terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), cost (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of the cancellation.

3. Delivery and delivery time

3.1. Delivery times shall not be regarded as binding and require full, correct and punctual delivery by Derichs suppliers. If the buyer fails to give Derichs all necessary information to fulfil the order or fails to make the necessary preliminary work, delivery times are extended proportionate to the length of the buyer's default.
Delivery times are deemed to be met when Derichs has notified the buyer that the purchased products are ready for dispatch.
3.2. Derichs is entitled to partial deliveries if reasonable.
3.3. The buyer has to check the delivery note and acknowledge receipt of the products. Objections must be raised immediately in writing. Otherwise the content of the delivery note is deemed to be correct.
3.4. In case of any delay in delivery caused by breakdown, measures or restrictions by authorities or force majeure the delivery time is postponed reasonably. Labour disputes such as strikes, blockades and lockouts affecting Derichs' facilities or that of Derichs' suppliers shall be regarded as force majeure impediments.
3.5. If delivery is delayed due to Derichs the buyer is entitled to liquidated damages at the rate of 0.5 % of the price of the delayed products per each week of delay up to a maximum of 5 %. Other rights are excluded unless the delay is caused by wilful or grossly negligent acts of Derichs. In case of delay of delivery the buyer shall claim for delivery within a reasonable respite with the explicit announcement that at expiration of the set term he may reject the delayed delivery and terminate the contract, deduct the price or claim damages if not otherwise agreed in no. 9.

4. Transportation and transfer of risk

4.1. Place of fulfilment is Derichs in Krefeld or the place of delivery mentioned in the confirmation of the order. At the buyer's request Derichs will transfer the product to any other address given by the buyer. In this case, the buyer has to meet all the additional costs of the transfer though Derichs is not obliged to use the cheapest means of transportation. The risk of loss, that is the seller's obligation to deliver a second time despite loss of the bought product or the buyer's obligation to renounce, shall nevertheless pass to the buyer at Derichs in Krefeld even if Derichs pays the costs of transportation according to a special agreement with the buyer or in case Derichs installs or puts the machines into service.
4.2. To avoid damage in transit or exclusion of insurance coverage the products are delivered in packaging prescribed or recommended by the producer. The buyer may return the packaging free of charge at the nearest place of disposal of Derichs.
4.3. Derichs will take out a transportation insurance on the explicit buyer's demand and costs. Derichs may name herself as beneficiary. Derichs will choose the insurance company with reasonable care.
4.4. Products which have been announced to be ready for dispatch must be called for by the buyer immediately on the agreed delivery time. If not Derichs will store the goods for account and at the risk of the buyer even if the transfer was agreed to be free of charge or Derichs is obliged to install the delivered machine or put it into service.
4.5. If the delivery is delayed due to circumstances caused by the buyer the risk of loss passes to the buyer with Derichs notification. § 294 German Civil Law (BGB) will not be applied. Derichs may deliver or store the products for account and at the risk of the buyer. The same rules apply in case the buyer does not call for the products within the agreed time of delivery.
4.6. Damage or loss of products must immediately be recorded on the delivery note. In addition, the buyer must give written notice of damage or loss to the carrier. The buyer must take any necessary step to protect Derichs rights. If damage or loss was caused by Derichs the buyer must give written notice within a week at the latest.

4.7. Despite damage or loss of products the buyer is not entitled to withhold payment. The buyer assigns all his claims resulting out of loss or damage against third parties to Derichs. Derichs accepts the assignment but not in lieu of performance.

5. Prices and changes in price

5.1. Valid are all prices confirmed with the last order confirmation. The prices are gross amounts but exclusive of any at the billing date valid tax (VAT). Derichs reserves to increase the price adequate, if by external influence, which has to be proved by Derichs, additional charges have been occurred. Prices are valid on companies registered seat Krefeld.
5.2. If the buyer asks for change request after order confirmation, Derichs will adapt the price accordingly and will confirm with new order confirmation.

6. Terms of payment, compensation, right of detention

6.1. Invoices must be paid free of charge and within 14 days after the delivery if not otherwise agreed between the parties. Payment has to be made as bank transfer to the on the invoice indicated bank account. Other payment arrangements are to be agreed with Derichs in writing.
6.2. Decisive for punctual payment is the credit into Derichs' bank account; esp. concerning the question of fulfilment, the payment being in time and the right to take off discounts. In case of payment with cheque or bill of exchange the buyer will be liable for the payment as long as these papers are not finally presented for acceptance and honoured.
6.3. If the buyer pays with bill of exchange or promissory note no discounts are granted. In this case the bill or promissory note must be given to Derichs at least 30 days after the date of the invoice and the currency must not be longer than 90 days after the same date. Charges and discounts must be paid by the buyer. Derichs is not obliged to accept bills of exchange or promissory notes. The buyer is not allowed to pay with bills of exchange or promissory notes without Derichs express consent.
6.4. Even if Derichs and the buyer agreed on a future date of payment Derichs may claim for immediate payment of all the buyer's debt or advance payment if the buyer's financial situation gets worse or such deterioration must be expected.
6.5. In case of deferment of payment or payment by instalment all the buyer's debts will fall due if the buyer refuses to pay or is in delay with one instalment for at least 14 days.
6.6. The buyer may exercise a right of detention or compensation only if it is uncontested or if it is a judgement debt. The same applies to faults of the products. If the buyer has a right of detention, he must not withhold more than 110 % of his own debt.

7. Quality and warranty, limitation

7.1. Oral descriptions and descriptions in Derichs' documents, samples, patterns, measures, standards (e.g. DIN-Standards) specifications and other descriptions of the product are no guarantee of quality. If Derichs gives a description of used materials Derichs does only guarantee the use of the material described but not that it is fit for the purpose of the contract. Derichs must only inform the buyer if the material is obviously unsuited for the buyer's purpose.
7.2. Any advice or recommendation given by the Seller or its employees, servants or agents to the Buyer or its employees, servants or agents as to the storage, application or use of the Goods and/or Services is followed or acted upon entirely at the Buyer's own risk, accordingly the Seller shall not be liable for any such advice or recommendation and gives no warranty whatsoever in relation thereto.
7.3. Reasonable changes in construction and the control mechanism are permissible and do not entitle the buyer to damages or any other claim.
7.4. After the delivery the buyer must immediately examine the products at his own costs and within a preclusive period of 7 days inform Derichs in writing about faults, delivery of false products or short delivery. Faults that are hidden and not visible on examination must be notified immediately after detection.
7.5. Defects of a part consignment do not give the buyer the right to reject the rest of the purchased products unless the buyer proves that he has no use of the part consignment.
7.6. Defects caused by outward influence, improper installation, treatment or operation, fair wear and tear, missing routine maintenance according to the producers description, corrosion or usage in several shifts per day are not included by Derichs' warranty. If the buyer fails to exercise his rights against third parties (e.g. forwarding agents) or if he delivers the goods to third parties without giving Derichs the possibility of previous examination all rights of warranty connected are ruled out.
7.7. Second hand machines are delivered in condition and with the equipment existing at the time of the conclusion of the contract. Any warranty for faults of second hand machines bought by a firm or a full trader is excluded, no matter if the faults are obvious or hidden or if the buyer has examined the machine prior to the conclusion of the contract unless Derichs concealed faults intentionally or grossly negligently.
7.8. Claims for warranty concerning new products become invalid by prescription within two years after the transfer of risk. So-called terms of guarantee (Garantiefristen) are terms of warranty. In case of working over or mending in order to eliminate faults, claims of warranty concerning this work or mending become invalid by prescription after 3 months but not before the end of the prescription period of the original fault

8. Reservation of title

8.1. The delivered products (hereinafter referred to as "reserved products") remain Derichs' property until the buyer has paid all his present and future debts connected with the reserved products.
8.2. If the buyer treats the reserved products or converts them the treatment or processing in the meaning of § 950 BGB happens without charge on behalf of Derichs. If the reserved products are combined with other products Derichs acquires co ownership in the rate of the value of Derichs products to the value of all combined products. The same rules apply to mingling in the meaning of § 947, 948 BGB and the treatment in the meaning of § 946 BGB. All compounds of reserved products and real estate are considered as temporary. The buyer grants Derichs a right of use. If Derichs loses ownership of the reserved product despite the stipulations above the buyer will transfer his (co)ownership. Derichs accepts the transfer.





8.3. A pledge or protective conveyance of the reserved products is not allowed. Derichs must be immediately notified about pledges, arrestment, distraint or other rights which might affect Derichs' securities. Costs arising out of judicial proceedings against third parties to protect Derichs' securities are charged to the buyer.

8.4. In case of non-payment or deterioration in the buyer's financial situation the buyer must immediately return the reserved products. The demand for return shall not be treated as rescission.

8.5. If the buyer is a reseller and the reserved products shall be resold with or without previous processing the buyer may sell the reserved products despite reservation of title. In other cases, the buyer may only sell the reserved products with Derichs' prior consent. A resale is forbidden if it leads to rights of third parties e.g. parties with global securities. The buyer will assign all rights resulting from resale and securities connected to Derichs with their coming into existence. Derichs accepts this assignment. If reserved products are resold with other products or Derichs is only co owner of the sold goods according to 8 the buyer will only assign that part of his rights to Derichs proportionate to the value of Derichs' product to the value of all products or proportionate to the rate of co ownership. All assignments must be first-rate. The same rules apply if the debt of the third party resulting from resale is part of a current account. The names, addresses and amount of debt of the third party are determined by the buyer's account books. Any other assignment of claims, pledge or other form of charge is forbidden. The buyer may collect the outstanding debt of his customers as long as he meets his own obligations towards Derichs. The assignment of the debts is forbidden unless the buyer assigns his outstanding debts to a factor and the factor has instructions to pay to Derichs as long as Derichs has accounts receivable against the buyer.

8.6. In case of default of payment of at least one month, stoppage of payment, protest of a bill of exchange or cheque given to Derichs, distraint of reserved products, an application for insolvency, settlement or settlement out of court the buyer may no longer process, treat, transform or resell the reserved product. Derichs must be immediately informed about the events mentioned above. The buyer will send a list of all reserved products. The products must be stored separately and returned to Derichs on demand. Derichs may at the same time collect the buyer's outstanding claims against his customers. The buyer will immediately inform Derichs about his accounts receivable e.g. the name and address of the debtor, date of the invoice and composition and any other part of information necessary for the collection. The third-party debtor must also be informed about the assignment. On Derichs demand the buyer has to issue a deed of assignment. Payment made to the buyer after the notification must be transferred to Derichs immediately or paid in the bank on a separate account with the indication "trust property of Derichs GmbH". Derichs and the buyer agree that the collected money belongs to Derichs. The buyer assigns all rights connected with the separate account to Derichs. Derichs accepts the assignment.

8.7. In case of rescission of contract or expiration of a respite in the sense of § 323 BGB Derichs may sell returned products privately. The proceeds, deducting costs for clearance, overhaul and sale are entered into the buyer's credit. The salaries of Derichs employees engaged with the resale are fixed with 25 % of the proceeds. The amount credited to the buyer is limited to the purchase price usually paid by firms belonging to the same market stage as Derichs and considering the state and place of the product. If the product concerned was produced by Derichs the amount credited is limited to the cost price while disregarding administrative and distribution expenses. The amounts credited are set off against Derichs claims as long as the latter are satisfied.

8.8. The buyer will insure on the basis of replacement value the products against fire, windstorm, theft at his costs and prove insurance coverage to Derichs on demand. The buyer assigns all rights resulting from the insurance contract to Derichs up to the value of the delivered products. The stipulations above are applicable analogously.

8.9. If the value of all securities (e.g. retention of title, assignment etc.) go beyond 110 % of Derichs' claims permanently, Derichs will release securities beyond this limit. The value of the securities is fixed by the proceeds obtainable in case of resale but not higher than the value described in 8.7. Claims must be assessed according to the principle of true and fair view. On Derichs demand the buyer has to give Derichs all necessary information for the evaluation.

9. Liability

9.1. Derichs is not liable for damage resulting from violation of contractual or pre-contractual obligations or tort concurring with contractual claims. These exclusions of liability are not applicable - in case of wilful or grossly negligent acts of managers, executives or agents of Derichs - in case of violation of essential contractual obligations - in case of initial inability, guarantee or obligation of procurement - damage to lives or health of persons.

9.2. Derichs liability is limited to the amount covered by liability insurance usual in the trade concerned. This exclusion of liability is not applicable - in case of wilful or grossly negligent acts of employees or representatives of Derichs - in case of guarantee or obligation of procurement or damage to health, life or the body of persons.

9.3. Damage because of violation of essential contractual obligations is limited to the typical and foreseeable damage. Therefore, Derichs cannot be held liable for damage caused by violation of the buyer's duties. These exclusions of liability are not applicable in case of wilful or grossly negligent acts of the managing board and employees of Derichs.

9.4. Damages (except in case of intent of Derichs or his executives) are excluded if the buyer fails to take legal proceedings against Derichs or his insurance company within six months despite Derichs written request to do so. All claims for damages come under limitation by prescription one year after the buyer's knowledge of his claim unless these conditions or law stipulates shorter terms. These stipulations are not applicable to cases of tort and the exclusions mentioned in 9.1.

9.5. The exclusions mentioned above are not applicable to claims under the non-alterable regulations of the product liability laws and Derichs can conclude a product liability insurance.

10. Place of performance, place of jurisdiction, applicable law

10.1. Place of fulfilment is Krefeld.

10.2. Place of jurisdiction is Krefeld if the buyer is a trader, legal entity formed to the rules of public law.

10.3. All contracts between the parties shall be governed by German laws without regard to its conflict law principles and without uniform laws e.g. CISG.

11. Privacy of personal data

11.1. Derichs may treat and store information concerning the buyer and the business relation or let a third party treat or store it even if it is conveyed by a third party.

DERICHS GmbH
An der Hufschmiede 17
47807 Krefeld
Germany

Commercial Registry: HRB 4647
Management: Maria Barthels, Stephanie Holzmann
VAT (value added tax): DE 811428450

