

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.

Terms and conditions of sale and delivery of Derichs GmbH (Status June 2022)

1. Validity of these conditions

- 1.1. These terms and conditions of sale and delivery shall apply exclusively to the entire business relationship including future contracts and framework agreements concluded between Derichs GmbH and the Buyer. Terms and conditions of purchase or other terms and conditions of the Buyer are hereby rejected.
- 1.2. Should one of the provisions of these Terms and conditions of sale and delivery be or become invalid, this shall not affect the validity of the remainder of the contract.

2. Conclusion of contract, written form

- 2.1. Offers of Derichs GmbH are subject to confirmation and non-binding until the conclusion of the contract.
- 2.2. Orders of the Buyer are binding for the Buyer. Unless otherwise confirmed by Derichs GmbH, the invoice shall be deemed to be the order confirmation.
- 2.3. The written confirmation of Derichs GmbH is exclusively decisive for the content of orders and agreements unless the Buyer immediately objects in writing. This applies, in particular, to orders and agreements made orally or by telephone. In any case, a notification to Derichs GmbH is no longer immediate if it is not received by Derichs GmbH within seven days.
- 2.4. Any amendments or additions to the contract must be confirmed in writing by Derichs GmbH to be effective. This also applies to any deviation from contractual written form requirements.
- 2.5. Cancellations, declarations of withdrawal, demands for purchase price reduction or compensation can only be made in writing.
- 2.6. A purchase contract may be cancelled by the Buyer after the order has been confirmed by Derichs GmbH only with the Buyer's consent in writing, and only on condition that the Buyer fully indemnifies Derichs GmbH for all costs (production and material costs), losses (including loss of profit), damages, fees and expenses incurred by Derichs GmbH up to the date of cancellation.

3. Delivery and delivery time

- 3.1. Delivery dates and deadlines are approximate dates and are subject to proper, complete, and timely delivery by our suppliers. If the Buyer fails to clarify all details of the order in due time and if the Buyer fails to make all advance payments in due time, the delivery dates shall be extended accordingly. Delivery dates shall be deemed to have been met upon notification of readiness for shipment.
- 3.2. Derichs GmbH is entitled to make partial deliveries if these do not fall short of the reasonable minimum.
- 3.3. The Buyer shall check and acknowledge the delivery note. Any objections must be notified to Derichs GmbH in writing without delay. Otherwise, the acknowledged shall be deemed accepted.
- 3.4. Delays in delivery due to operational disruptions, official measures or force majeure shall result in a reasonable extension of the delivery period. Force majeure shall also be deemed to exist in the event of industrial action including strikes and lawful lockouts in the business of Derichs GmbH or at the suppliers of Derichs GmbH.
- 3.5. If the Buyer suffers damage because of a delay in delivery for which Derichs GmbH is responsible, the Buyer may demand compensation for such damage to the exclusion of any further claims for compensation in the amount of 0.5% for each week of delay, but not exceeding 5% of the value of the affected part of the total delivery, unless Derichs GmbH is guilty of intent or gross negligence. In the event of a delay in delivery, the Buyer may only withdraw from the contract, reduce the purchase price, or claim damages after setting a reasonable deadline for rework with the express declaration that he will refuse acceptance of the performance after expiry of this deadline, if the performance is not effected within the deadline and further claims are not excluded in accordance with the regulations of Clause 9 (Liability).

4. Transportation and transfer of risk

- 4.1. The place of performance for each delivery shall be the registered office in Viersen. At the Buyer's request, Derichs GmbH shall ship the goods to another place designated by the Buyer on behalf of the Buyer and at the Buyer's expense and risk and without any obligation to select the cheapest mode of shipment. This does not imply a change of the place of performance. This also applies if Derichs GmbH bears the costs of the transport and/or insures it or sets up or erects the delivery item at the Buyer's premises based on individual agreements.
- 4.2. To avoid transport damages, insurance exclusions, etc., the subject matter of the contract will be delivered in the transport packaging prescribed or recommended by the manufacturer. The purchaser has the option to deliver the packaged goods to Derichs GmbH free of freight and charges to the nearest disposal site of Derichs GmbH after prior arrangement of a date for Derichs GmbH.
- 4.3. Derichs GmbH shall only take out transport insurance at the express request of the Buyer and at the Buyer's expense. Derichs GmbH is entitled to name itself as beneficiary. In selecting the transport insurer, it shall only be liable for its own customary care.
- 4.4. Delivery items reported ready for shipment must be called off immediately when the delivery date is reached. Derichs GmbH will otherwise store the goods at the risk and expense of the Buyer. The same obligation applies to the seller, even if freight paid delivery or installation and setup of the machine by Derichs GmbH has been agreed.
- 4.5. A delivery item that has been reported ready for shipment in accordance with the contract must be accepted by the Buyer without delay. If the shipment is delayed due to circumstances for which the Purchaser is responsible, the Purchaser shall be in default as of the day of the notification of readiness for shipment. § 294 BGB is waived. The risk is then transferred to the Buyer. Derichs GmbH is then entitled to either ship or store the delivery item at the expense and risk of the Buyer. The same applies if the delivery item is not called or not called completely within the agreed period. 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. Losses or damage during transport shall be noted by the Buyer on the freight receipt with a corresponding reservation. In addition, they must be reported immediately in writing to the carrier. All steps necessary to safeguard the rights of the purchaser must be taken immediately by the purchaser. Losses or damages caused by the transport of Derichs GmbH have to be reported within a preclusion period of one week.
- 4.7. Damage or loss due to transport does not release the buyer from full payment of the purchase price to Derichs GmbH. The Buyer assigns in advance to Derichs GmbH all claims against third parties arising from damage or loss during transport. Derichs GmbH accepts the assignment. This assignment and any payments of the transport insurance according to clause 4.2 are made exclusively on account of performance.

5. Prices and price changes

- 5.1. The prices confirmed with the last order confirmation of Derichs GmbH shall apply, plus the statutory value-added tax applicable at the time of invoicing. Derichs GmbH reserves the right to increase the price appropriately if additional costs arise due to external influences which Derichs GmbH must prove. The prices are valid ex company registered office in Viersen, Germany.

6. Terms of payment, set-off and right of retention

- 6.1. In principle, the following terms of payment apply to each order: 30% down payment upon order confirmation, 70% net within 30 days (after delivery). Unless otherwise agreed, payment shall be made net cash to Derichs GmbH free of charge, at the latest 14 days after request for payment on account or 14 days after delivery and invoicing. Payment must be made cashless by bank transfer to the bank account specified in the invoice.
- 6.2. Derichs will provide bank guarantees only from an order value of € 100,000.00. Bank guarantees will be provided by Derichs exclusively for payments on account/down payments. They are to be returned after proof of purchase of the order-related material, but no later than 8 weeks after production release.
- 6.3. Other terms of payment are to be agreed in writing with Derichs GmbH.
- 6.4. Receipt in the bank account of Derichs GmbH is decisive for fulfillment, timeliness of payment and accrual of any agreed discounts.
- 6.5. Even if a term of payment has been agreed upon, Derichs GmbH may demand immediate payment of all claims and/or make deliveries dependent on advance payments if a significant deterioration of the Buyer's income or financial situation has occurred or such a deterioration is expected for the future based on objective circumstances.
- 6.6. In the event of a deferral or instalment agreement, all claims against the Buyer shall become due immediately if the Buyer finally refuses to make a payment or is more than 14 days in arrears with a due payment.
- 6.7. A set-off of the Buyer with counterclaims as well as a right of retention shall be excluded unless the Buyer's claims are undisputed or even legally established. This shall also apply to the assertion of claims for defects. Insofar as the purchaser is entitled to a right of retention, this may only be exercised insofar as the retained amount does not exceed the value of the performance owed by more than 10%.

7. Quality and Warranty, Statute of Limitations

- 7.1. Verbal information as well as information in the documents of Derichs GmbH, samples, specimens, dimensions, DIN regulations, performance descriptions and other information about the quality of the delivery item serve the purpose of specification and are not binding quality information. Insofar as the materials to be used by Derichs GmbH are specified in the contract, Derichs GmbH only guarantees compliance with the specification and not the suitability of the materials for the contractual purpose. Derichs GmbH is only obliged to give instructions in case of their obvious unsuitability.
- 7.2. **The Buyer's compliance with or implementation of advice or recommendations of Derichs GmbH is at his own risk and responsibility. Derichs GmbH does not assume any responsibility, guarantee or liability for any advice or recommendation or for any circumstances arising therefrom.**
- 7.3. Design changes and/or control modifications on the part of the manufacturer do not entitle the Buyer to rescind the contract or to assert other claims if these are reasonable for the Buyer.
- 7.4. The Buyer is obligated to inspect the delivered goods properly at his own expense immediately after receipt and to notify Derichs GmbH immediately in writing of any defects, wrong deliveries, or shortages. A preclusive period of seven days after receipt of the delivery applies to the notification. Hidden defects must be reported to Derichs GmbH in writing immediately after discovery.
- 7.5. Any quality defects of a partial delivery do not entitle the Buyer to reject the remainder of the delivered quantity, unless the Buyer can prove that the acceptance of only a part of the delivery is unreasonable for him considering the circumstances.
- 7.6. Defects caused by outward influence, improper installation, treatment or operation, fair wear, and tear, missing routine maintenance according to the producer's 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 (warranty periods) are terms of warranty. In case of working over or mending 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 goods (Reserved Goods) shall remain the property of Derichs GmbH until full payment of all current claims of Derichs GmbH arising from the business relationship with the Buyer, and beyond that until full payment of future claims, insofar as these are related to the Reserved Goods.
- 8.2. The processing or transformation within the meaning of § 950 BGB (hereinafter uniformly referred to as "processing") of the goods subject to retention of title shall be carried out free of charge for Derichs GmbH. In the event of processing of goods subject to retention of title and items of other owners by the Buyer or his subcontractors, Derichs GmbH shall acquire co-ownership of the individual items produced in the proportion of the pro rata invoice value for the respective processed goods subject to retention of title to the total value of all processed items. The same applies to the cases of combination and mixing or blending within the meaning of §§ 947 and 948 BGB. The above provision for the case of processing shall also apply in the case of § 946 BGB. All combinations of goods subject to retention of title with real property shall only be for a temporary purpose. To this extent, the Buyer hereby grants Derichs GmbH a corresponding right of use. If, nevertheless, Derichs GmbH's (co-)ownership of the goods subject to retention of title should expire due to any factual or legal circumstances, the Buyer hereby transfers the (co-)ownership of the resulting items to Derichs GmbH at the time of their creation. This shall also apply in each case in the event of several subsequent such processes. Derichs GmbH hereby accepts the transfer of ownership. The Buyer shall store the goods free of charge for Derichs GmbH. The items resulting from the processing as well as the items transferred in whole or in part to Derichs GmbH shall be deemed to be goods subject to retention of title within the meaning of the terms and conditions. The Buyer shall provide Derichs GmbH with all information necessary to determine its ownership share.
- 8.3. Pledging or transfer by way of security of the goods subject to retention of title to third parties and

- the assignment or pledging of expectancies therefor are excluded. In the event of pledging or seizure by third parties including the assertion of liens such as landlord's liens and in the event of other impairments of the security rights of Derichs GmbH, Derichs GmbH must be notified immediately. The costs of an intervention by Derichs GmbH shall be borne by the Buyer unless they can be obtained from the respective third parties.
- 8.4. In the event of loss of payment, Derichs GmbH is to surrender the goods subject to retention of title immediately upon request. The same applies in case of a significant deterioration of the financial situation of the Buyer. The demand for return and the repossession shall not be deemed a withdrawal from the contract.
- 8.5. If the Buyer acquires the Retained Goods for the purpose of direct resale, the Buyer shall be entitled to sell them in the ordinary course of business. If he acquires them for the purpose of combination or processing and subsequent resale, he shall be entitled to sell the processed product in the ordinary course of business. If the goods subject to retention of title are not intended for direct resale or for processing with subsequent resale, resale is not permitted without the prior consent of Derichs GmbH. The resale is also inadmissible if the resulting claim is covered by earlier dispositions of the Buyer in favour of third parties, for example by a global assignment.
- The claims arising from the sale of the goods subject to retention of title are already now assigned to Derichs GmbH with effect from the time of their accrual in the full amount with all ancillary and security rights. Derichs GmbH hereby accepts the assignment.
- If goods subject to retention of title are sold together with other goods, the assignment shall be made in the amount Derichs GmbH has invoiced the Buyer pro rata for the goods subject to retention of title concerned. If Derichs GmbH is only entitled to a co-ownership share in the reserved goods, the assignment shall be made in the amount corresponding to the value invoiced by Derichs GmbH to the Buyer for the reserved goods delivered by Derichs GmbH and contained therein. All assignments shall be priority for Derichs GmbH.
- If the Buyer includes the claims from a resale of goods subject to retention of title in a current account relationship existing with his buyers, the respective recognized balance claims and the final balance claims are assigned to Derichs GmbH to the extent that they contain individual (partial) claims which would have been assigned according to the above provisions if they had not been claims to be included in the current account.
- The books of the Buyer shall be decisive for the determination of the third-party debtors according to first and last name, address, and amount of claim. Any other assignment, pledge or other encumbrance of these claims or parts of claims shall be inadmissible.
- 8.6. If the Buyer meets his payment obligations towards Derichs GmbH, he may collect the claims for himself in the ordinary course of business. The assignment of the claims is excluded. This shall not apply in case of assignment for the purpose of collection of receivables by way of factoring, if at the same time the obligation of the factoring company is established to effect the counter-performance in the amount of Derichs GmbH's share of the receivables directly to Derichs GmbH as long as there are still receivables of Derichs GmbH against the Buyer.
- 8.7. In the event of the Buyer's default in payment by more than one month, the Buyer's cessation of payments, a protest of a check or bill of exchange with the Buyer (insofar as Derichs GmbH is in any way the beneficiary of the check or bill of exchange), a successful seizure of goods subject to retention of title or the filing of an application for the opening of insolvency proceedings or judicial or extrajudicial composition proceedings against the Buyer's assets, the Buyer's right to process or combine/mix the goods shall expire. combination/mixing as well as the right to resell the reserved goods and the right to collect the claims.
- Derichs GmbH is to be informed immediately about the above events. A list of existing goods subject to retention of title is to be sent to Derichs GmbH. The goods subject to retention of title shall be stored separately and shall be returned to Derichs GmbH immediately upon its request. Derichs GmbH is also entitled to collect the claims assigned to it immediately. The assigned claims are to be disclosed to Derichs GmbH immediately with their composition, amount, date of origin as well as with the first and last names and addresses of the third-party debtors. This also applies to all other information required for the determination and collection of the claims.
- The third-party debtors are to be informed immediately by the Buyer about the assignment. The Buyer shall provide Derichs GmbH with a deed of assignment upon request. The monies received after the expiration of the right to collect on claims assigned to Derichs GmbH shall be received in trust up to the amount of all secured claims and shall be immediately paid to Derichs GmbH or accumulated in a special account with the designation "Money held in trust for Derichs GmbH". The Buyer agrees with Derichs GmbH that the money received is the property of Derichs GmbH. The Buyer assigns the claims from the mentioned account to Derichs GmbH already now. Derichs GmbH accepts this assignment.
- 8.8. After withdrawal from the contract or after setting a grace period according to § 323 BGB (German Civil Code) and fruitless expiration of the grace period, Derichs GmbH is entitled to freely dispose of goods taken back.
- The proceeds of the sale will be credited to the Buyer. Reasonable retrieval, processing and sales costs are to be deducted from the realization proceeds. The salaries of the employees of Derichs GmbH employed for this purpose are to be reimbursed on a pro rata basis. 25% of the proceeds of the sale are to be used as selling costs. However, the maximum amount credited is the amount which a company of the trading level would normally pay Derichs GmbH as purchase price for the returned goods subject to retention of title, considering their condition at the time of return and their location. In the case of goods manufactured by Derichs GmbH, a maximum of the direct cost price will be credited, disregarding administrative and distribution costs. The credited amounts will be set off against claims of Derichs GmbH until the latter have expired. 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 must give Derichs all necessary information for the evaluation.
- 8.9. The Buyer is obliged to insure the reserved goods at his own expense to the usual extent, but in any case, against damage by fire, storm, water, and theft, sufficiently at replacement value and to prove the insurance cover to Derichs GmbH upon request. He herewith assigns to Derichs GmbH his claims against the insurance company and/or other third parties in connection with the goods subject to retention of title in the amount of the share attributable to the goods subject to retention of title of Derichs GmbH. The other provisions agreed within the scope of this reservation of title shall apply accordingly.
- 8.10. Insofar as the secured claims of Derichs GmbH are secured by goods subject to retention of title and/or assignments or other securities not only temporarily to more than 110%, Derichs GmbH shall, at the Buyer's request, release security interests at its own discretion up to the aforementioned limit. The valuation of the securities shall be based on the realizable proceeds in case of realization of the securities. Under no circumstances, however, is a higher value to be assumed than the value to be credited to the Buyer in accordance with the above provisions in the event of repossession or in the event of collection of receivables by Derichs GmbH. Receivables are to be valued according to the principles of proper accounting and, if necessary, discounted. Upon request, the Buyer shall immediately provide Derichs GmbH with the information necessary for the valuation.

9. Liability

- 9.1. Derichs GmbH shall not be liable, in particular for damages, for damages resulting from the breach of contractual and pre-contractual obligations and from tort, insofar as these compete with contractual claims. The above exclusions of liability shall not apply
- in case of intent or gross negligence of the organs or employees of Derichs GmbH or a vicarious agent,
 - in the case of damages resulting from the violation of essential contractual obligations,
 - if it is a case of initial incapacity or the assumption of a guarantee or a guarantee or a procurement risk,
 - if health or life is injured by the damaging action.
- 9.2. In any case, the liability of Derichs GmbH is limited in amount to those sums for which a business liability insurance policy appropriate for its business operations is taken out in a manner customary in the industry. This does not apply
- in the case of intent or gross negligence of the organs, executive employees or vicarious agents of Derichs GmbH,
 - in case of assumption of a guarantee or a procurement risk or in case of violation of body, health, or life.
- 9.3. Claims for damages due to the violation of essential contractual obligations are limited to the damage typical for the contract and foreseeable for Derichs GmbH at the time of conclusion of the contract. In this respect, the liability of Derichs GmbH is excluded, in particular, for damages that are exclusively attributable to the risk area of the Buyer. The above exclusions do not apply in case of intent or gross negligence of the organs and/or employees of Derichs GmbH.
- 9.4. Claims for damages (except in case of intent by Derichs GmbH or its executives) are excluded if they are not asserted in court within a period of three months after rejection of the claims with a corresponding notice by Derichs GmbH or its insurer. All possible claims for damages of the Buyer shall become statute-barred within one year from the Buyer's knowledge of his claim unless these Terms and Conditions elsewhere or the law provide for a shorter limitation period. This shall not apply to claims in tort and the exclusions of liability set out in clause 9.1.
- 9.5. The above exclusions and limitations of liability shall not apply
- to claims under the German Product Liability Act insofar as liability is mandatory thereby.
 - insofar as Derichs GmbH can insure itself with a business liability insurance that is customary in the industry and appropriate to its business operations.

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

- 10.1. Place of performance for payment is Viersen.
- 10.2. With purchasers who are merchants, legal entities under public law or special funds under public law, Viersen is agreed as additional place of jurisdiction. Legal actions against Derichs GmbH can only be brought in Viersen.
- 10.3. German substantive law shall apply exclusively to the exclusion of international private law, unified international law and to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

11. Data Protection

- 11.1. Derichs GmbH is entitled to process and store data about the Buyer received in connection with the business relationship, even if such data originates from third parties, in accordance with the German Federal Data Protection Act and to have such data processed and stored by third parties commissioned by Derichs GmbH.

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