



puteus GmbH Terms and conditions for contracting, delivery, and payment

Section 1 General

1. These general conditions of sale apply to all present and future business relations with companies, legal persons governed by public law, and separate estates under public law with respect to deliveries and other services including work orders and the delivery of non-fungible items.

2. The buyer's purchasing terms will not be recognized even if puteus GmbH does not explicitly object to them upon becoming aware of them or after receipt unless puteus GmbH explicitly approves of their validity in writing.

Section 2 Offerings

1. Offerings from puteus GmbH are non-binding and subject to availability.

2. The right to make reasonable technical changes in the form, color, and/or weight of offerings is reserved.

Section 3 Shipping

1. Shipping, including free delivery, is at the buyer's own risk. Selection of the routing is hereby ceded to puteus GmbH. The buyer will bear the shipping costs unless an agreement to the contrary has been made in writing.

2. Transportation insurance will only be obtained upon written request by the buyer and at the buyer's expense. Any damages incurred in transit are to be immediately reported to the carrier and to puteus GmbH.

3. If items should be delivered in returnable containers, then the containers are to be emptied of residues upon receipt and promptly returned carriage paid. Loss or damage of re-use packaging will be at the buyer's expense if the buyer is responsible.

4. Non-returnable packaging will not be accepted by puteus GmbH and must be disposed of by the customer and the customer's expense.

5. Returnable containers that are not explicitly included in the price or the invoice amount will only be made available on loan. They will remain the property of puteus GmbH.

Section 4 Passage of Risk

The risk of accidental loss or accidental impairment of products will pass to the buyer upon delivery or, in the event of sale by dispatch, with the handing over of the item to the shipper, carrier, or other person or institution designated to execute the act of shipping.

Section 5 Delivery/Acceptance

1. Delivery periods are approximate. They are subject to timely receipt of supplies. If puteus GmbH does not adhere to agreed delivery periods, then the buyer is to set an appropriate subsequent delivery period of at least three weeks for puteus GmbH in writing starting upon receipt of the new deadline by puteus GmbH. The buyer will be entitled to withdraw upon expiration of the subsequent deadline. puteus GmbH will be authorized to make subsequent delivery until a written declaration of withdrawal has been received.

2. In the event of force majeure, industrial action, or other faultless stoppages that last longer than one week, the delivery or acceptance period will be extended by the duration of the hindrance up to a maximum of five weeks in addition to a subsequent-delivery period. The extension will only come into effect if the reason for the hindrance is promptly reported to the other party as soon as it has been observed that the aforementioned period cannot be complied with.

3. Partial deliveries are permissible.

4. In the event that the buyer should default in taking delivery, puteus GmbH will be authorized, after setting a five-day grace period, to invoice the buyer as of the time that the product was provided or to withdraw from the agreement or to demand compensation for damages at its own discretion. Storage of products that are not accepted by the buyer will be at the buyer's own risk and will take storage costs into account.

Section 6 Sample Materials

1. Samples will be delivered at cost. In the absence of any agreement to the contrary, samples that have been loaned to the buyer by puteus GmbH will remain our property.

2. In consideration of technical or material-dependent deviations in production, samples are not considered samples in the meaning of Section 454 of the German Civil Code (BGB).

Section 7 Prices

1. puteus GmbH prices are net prices and do not include statutory value-added tax.

2. If there should be a period of more than four months between the conclusion of the agreement and delivery, then the puteus GmbH prices as of the day of delivery will apply. This will not apply if delivery has been delayed due to the fault of puteus GmbH.

Section 8 Payment

1. puteus GmbH invoices will be issued on the day of delivery or provision of the product. Payment will be due in full within 30 days of the invoice date. In the event of payment within eight days of the invoice date, puteus GmbH will grant a cash discount of 2% of the remaining invoice amount after any trade discounts have been deducted.

2. Upon payment after the due date, puteus GmbH will calculate an interest rate of an additional 8% above the base rate. Both puteus GmbH and the buyer will be at liberty to present evidence of greater or lesser damage.

3. The credit balance may only be adjusted based on claims that are uncontested or that have been determined without further legal recourse. The same applies to withholding due invoice amounts unless the counterclaim is based on the same statutory relationship.

4. puteus GmbH will not be obligated to make further deliveries on the basis of any current contracts until due invoice amounts have been paid in full, including interest. If after a contract has been concluded it should become apparent that puteus GmbH's pecuniary claim is in jeopardy due to the buyer's insolvency or if the buyer should be in default on a significant payment amount or if other circumstances should arise indicating that the buyer's solvency has significantly deteriorated, then the rights according to Section 321 of the German Civil Code (BGB) will accrue to puteus GmbH. puteus GmbH will then also be authorized to accelerate all claims that are not yet due based on the current business relationship with the buyer.

5. The supplier is entitled to assign his receivables against buyers to a third party.

6. The buyer is obliged to reimburse any fees, costs and expenses in connection with any successful legal prosecution against him outside Germany.

Section 9 Liability for Defects

1. Obvious defects or other objections with respect to the delivery item – including the absence of guaranteed or warranted qualities – are to be promptly reported to puteus GmbH in writing no later than 14 days after receipt of the delivery item.

2. puteus GmbH assumes no liability for deviations in quality, color, size, (specific) weight, or equipment that might arise in the course of normal business practice, are minimal, or are unavoidable. Application-specific verbal and written consultation from puteus GmbH – including from puteus GmbH's vendors – will not exempt the buyer from responsibility to examine delivered products for their intended purpose.

3. No objections to obvious defects will be accepted after the product has begun to be processed.

4. Upon receipt of valid notice of defect within the prescribed time limit, puteus GmbH may choose to eliminate the defect or deliver a non-defective product (supplementary performance) at its own discretion. In the event that puteus GmbH should fail or refuse to execute supplementary performance, the buyer may withdraw from the agreement or reduce the purchase price after an appropriate period has unsuccessfully elapsed. If the defect is insignificant or if the product has already been sold, processed, or altered, then the buyer will only be entitled to a reduction of payment.

Section 10 General Limitation of Liability, Statute of Limitations, and Right of Recourse

1. puteus GmbH, including its management and other auxiliary persons, will be liable for violations of contractual or non-contractual obligations, particularly due to impossibility, delay, fault in preparing the contract, or tort, only in the event of wrongful intent or gross negligence and only with respect to damages that are typical of the contract and that are foreseeable at the time that the contract is concluded. For the remainder, liability on the part of puteus GmbH is also excluded for damages caused by defects and consequential damages.

2. These restrictions will not apply to culpable violation of essential contractual obligations that jeopardize the purpose of the contract; in the event of culpably induced harm to life, body, or health; if and to the extent that puteus GmbH has guaranteed the state of the purchased item or has assumed a procurement risk; nor in cases of compulsory liability according to the German Product Liability Law. This will have no effect on regulations concerning the burden of proof.

3. In the absence of any agreement to the contrary, the statutory limit on contractual claims against puteus GmbH that accrue to the buyer by reason of and in connection with product delivery will be one year after delivery of the product. This term will not apply to products that are used for a construction in a manner that is in keeping with their conventional use. This will have no effect on puteus GmbH's liability arising from intentional or grossly negligent breaches of obligation or culpably induced harm to life, body, or health.

4. The buyer's right of recovery in accordance with Section 478 of the German Civil Code (BGB) against puteus GmbH is restricted to the statutory scope of warranty claims that are invoked against the buyer by a third party and assumes that the buyer has fulfilled its obligation to puteus GmbH to give notice of defects in accordance with Section 377 of the BGB.

Section 11 Reservation of Ownership

1. Delivered products will remain the property of puteus GmbH until all claims as of the moment that the contract was concluded have been paid in full regardless of the legal basis for the claims. This will apply even if payments for particularly specified claims have been made. Neither the suspension of individual claims in a current account nor the balancing of accounts and acknowledgment thereof will affect the reservation of ownership.

2. If the reserved product that was delivered to the buyer should be machined or processed by the buyer, the machining or processing by the buyer will be executed by the buyer for puteus GmbH without any obligations accruing to puteus GmbH. If the delivery item is connected to, mixed with, or combined with items that do not belong to puteus GmbH, then puteus GmbH will become the co-owner of the total item in accordance with statutory provisions. If the buyer should acquire sole ownership of the new item, then it hereby transfers co-ownership of the items connected to it to puteus GmbH in proportion to the value of the delivery item at the time that the connection was made.

3. If the buyer should sell the reserved product individually or in conjunction with a product that does not belong to puteus GmbH, then the buyer hereby assigns the claims resulting from the resale to puteus GmbH in the amount of the value of the reserved product with all ancillary rights and claims that accrue in lieu of the reserved product. If the resold product is co-owned by puteus GmbH, then the claim assignment will extend to the amount that corresponds to puteus GmbH's share of the co-ownership. puteus GmbH hereby accepts these assignments. Incorporation of the reserved product into built structures will also be considered a sale.

4. The buyer is hereby authorized to collect on claims arising from resale. This collection authorization will become void if it should be revoked by puteus GmbH no later than the moment of a default on payment, non-payment of a bill, or petitioning for the initiation of bankruptcy proceedings. puteus GmbH will only invoke its right to revocation if, after the conclusion of the agreement, it becomes apparent that puteus GmbH's pecuniary claim arising from this or from another agreement with the buyer is in jeopardy due to the buyer's insolvency. Upon request by puteus GmbH, the buyer will be obligated to immediately inform its own buyer of the assignment to puteus GmbH and to promptly transfer to puteus GmbH the documents necessary for collection, in particular the buyer must transfer to puteus GmbH a precise summary of its claims with the name and mailing address of its own buyer and must provide puteus GmbH with all the information necessary to assert the assigned claims. The buyer hereby authorizes puteus GmbH to inform the secondary buyer of the assignment and to collect on the claims immediately upon default on a payment or deterioration of its financial circumstances. puteus GmbH will have the right to demand that the legal validity of the assigned claims be examined by a representative based on the buyer's accounting. The buyer must provide puteus GmbH with a summary of the reserved products that are still on hand.

5. If the buyer should act in breach of contract, and particularly in the event of a default on payment, puteus GmbH will be authorized to withdraw the delivery item after giving formal notice and setting a time limit and the buyer will be obligated to return it. Neither assertion of the reservation of ownership nor seizure of the delivery item by puteus GmbH will be considered withdrawal from the agreement.

6. The buyer is hereby authorized and empowered to resell, use, or incorporate the reserved product only in the conventional and proper course of business and only on the understanding that claims that have been assigned in accordance with the provisions above will in fact proceed to puteus GmbH. The buyer is not authorized to otherwise transfer the reserved product. The buyer may not pledge the reserved product nor transfer ownership as collateral. The buyer's authorization in accordance with the first sentence of this paragraph will not apply in the event of impending or already established insolvency or in the event of other essential deterioration of its financial circumstances.

7. The buyer must both promptly inform puteus GmbH of enforcement measures undertaken by third parties with respect to the delivery item with reserved ownership or the claims assigned to us and deliver the documents necessary to challenge the enforcement.

8. If the value of the total collateral granted to puteus GmbH should exceed puteus GmbH's claims by more than 20%, then puteus GmbH will be obligated and prepared to return or release to the buyer the collateral granted to puteus GmbH to the extent that it exceeds the agreed coverage limit.

Section 12 Blanket Orders and Call Orders

1. If an on-call purchase is agreed with the buyer, then payment for outstanding deliveries will be due automatically upon expiry of the on-call term. The buyer will then be obligated to call for the outstanding deliveries and to pay the agreed purchase price as paid for the transfer of the property. With respect to any individual installment, in addition to fulfillment, puteus GmbH will have the right to demand compensation for pecuniary detriment or to proceed in accordance with Section 323 of the German Civil Code (BGB).

2. If the buyer should fail to call for the agreed deliveries within the agreed on-call term, then puteus GmbH will have the right to otherwise utilize the products without fixing a time limit. The same will apply if the buyer should file for bankruptcy within the on-call term and/or become insolvent.

Section 13 Price Clause

puteus GmbH hereby reserves the right to reasonably change its prices for all orders – including on-call orders and call-off contracts – that, either contractually or at the buyer's request, are delivered more than three months after the order was placed if costs should decline or increase after the contract was concluded, particularly due to wage increases or changes in the cost of materials. The orderer will be provided with evidence of such changes upon request.

Section 14 Proprietary Rights, Tools, Models, and Illustrations

1. If items are delivered based on illustrations or other details provided by the buyer, then it will be the buyer's responsibility to ensure their accuracy and that no third party proprietary rights are violated. The buyer must indemnify puteus GmbH against any claims by a holder of proprietary rights.

2. puteus GmbH may invoice for molds, models, tools, and equipment that are required for the ordered product. They will remain property of puteus GmbH even if puteus GmbH manufactured them on behalf of the buyer and/or has paid the buyer in whole or in part. This will apply even if they were manufactured according to special instructions from the buyer, which uses them exclusively for deliveries to the orderer, as long as it fulfills its commitment and payment obligations and the business relationship persists.

3. If no parts are reordered two years after the last production, then puteus GmbH, after giving appropriate notice to the buyer and after a period of six weeks from receipt of notice by the buyer, will have the right to scrap or otherwise utilize the molds, models, tools, and manufactured equipment.

4. If the buyer should file for bankruptcy, puteus GmbH will be authorized to scrap or otherwise utilize the molds, models, tools, or manufactured equipment before two years have expired and without notifying the buyer in advance.

Section 15 Return of Catalog Products

Catalog products may only be returned due to product redelivery according to prior agreement and are to be undertaken freely. 30% of the handling costs will be deducted from any credit entries for re-saleable products.

Section 16 Place of Fulfillment/Legal Venue

1. The place of fulfillment for all claims arising from the contractual relationship will be puteus GmbH's principle place of business.

2. For all present and future claims arising from the business relationship, including bills and checks receivable, the legal venue will be puteus GmbH's corporate headquarters. This will apply even if the buyer has no legal venue in Germany or if the buyer's domicile or usual residence is unknown at the time when proceedings are instituted. puteus GmbH will also be authorized to bring an action at the buyer's principle place of business.

3. The laws of the Federal Republic of Germany will apply. The terms of the United Nations Convention on Contracts for the International Sale of Goods will not apply.

4. If particular terms of the agreement with the client, including these General Terms and Conditions, should be or become legally inoperable in whole or in part, the validity of the remaining terms will be wholly or partially unaffected. The wholly or partially inoperable provision will be replaced by a provision whose commercial outcome approximates that of the inoperable term as closely as possible.