

# General Terms and Conditions of Business for the Online Shop

Valid from: 1st January 2021

## 1. Scope of Application

The following Terms and Conditions of Business as amended apply to business relationships based on orders through the online shop on the website [www.online-pen.de](http://www.online-pen.de) between ONLINE and customers. Any deviating terms or customers' general terms and conditions of business do not apply unless otherwise agreed in writing.

## 2. Conclusion of Contract

Written offers or product descriptions in the online shops are not legally-binding offers for conclusion of contract.

By clicking on "order with obligation to pay" the customer is placing a binding order for the goods in the shopping cart. An order confirmation is issued shortly after ordering.

The contract shall be deemed concluded only upon order confirmation or delivery of the goods. In case an order confirmation is not issued or the delivery of the goods not effected within 2 work days, the customer is no longer bound to his order.

Any possible side agreements as well as any subsequent additions and amendments of the order must be made in writing in order to be valid.

Contract language is German.

The wording of the contract is saved but this cannot be accessed directly by the customer. The customer receives the order data and the link to our General Terms and Conditions via email. If the customer is a registered customer and has placed an order via its customer account, all previous orders placed by the customer can be viewed in his/her customer account.

Information regarding the technical steps that lead to the conclusion of the contract:

- The goods intended for purchase are placed in the virtual shopping cart by clicking the „add to shopping cart“ button. When clicking the button „add to shopping cart“ a page layer automatically moves which shows the content of the shopping cart. The customer can also optionally redeem a voucher code here.
- As soon as the customer has completed the compilation of the shopping cart he can continue by clicking the button „ proceed to checkout“.
- Now the customer gets an overview of the goods, their quantity and their price which are in the shopping cart. In addition the customer is asked if he already has an

account, if he is a new customer or if he doesn't want to create a customer account. If he already has a customer account he has to click the link „You already have an account? Click here to login.“and enters his e-mail address and his password and clicks the button „login“. If he is a new customer and would like to create a customer account the customer indicates whether he is ordering privately or commercially, indicates his e-mail address and password, indicates his billing address and clicks the button „continue“. If the delivery address differs from the billing address he can indicate the requested delivery address by putting a tick on „Shipping and billing address do not match“. If he would like to continue without customer account he clicks „Do not create a customer account.“

- A new page then opens, on which the customer receives an overview of all ordered details. Now the customer can check all information, amend the content of the order by cancelling existing goods from the shopping cart and/or adding new goods to the shopping cart, amend the delivery address and the method of payments as well as cancel the purchase. He can amend the pre-selected payment method by clicking the button „CHANGE PAYMENT METHOD“, the pre-selected delivery address by clicking the button „CHANGE SHIPPING ADDRESS“. Depending on the payment method, the customer may be asked to provide further information about the payment (payment information). If all data are correct the order can be made by clicking the button „SUBMIT ORDER“. When sending the order by clicking the button „SUBMIT ORDER“ the customer declares the acceptance of the offer in a legally binding manner whereby the contract is concluded. However this button „SUBMIT ORDER“ only works if the general terms and conditions of the seller have been agreed beforehand by ticking the appropriate box next to the reference to these general terms and conditions.

### **3 a Customer's right to cancel within the meaning of § 13 of the German Civil Code - Purchase contract**

#### **Right of cancellation**

**You are entitled to cancel this agreement within thirty days without giving a reason. The cancellation period is thirty days from the day on which you, or a third person nominated by you, who is not the promoter, have/has taken possession of the goods, or in the case of separate deliveries for a single order, the day on which you, or a third person nominated by you, who is not the promoter, have/has taken possession of the last item. To exercise your right to cancel you must inform us (ONLINE Schreibgeräte GmbH, Moosweg 8, 92318 Neumarkt, Tel. 09181/2596-94, Telefax 09181/2596-99, E-Mail info@online-pen.de) by clearly explaining (e.g. a letter sent by post, fax or E-mail) your decision to cancel this contract. You may use the attached cancellation form template, although this is not compulsory. To ensure that the cancellation period is fulfilled please send your notice to exercise your right to cancel before the end of the cancellation period.**

#### **Consequences of cancellation**

**If you cancel this contract, we have to refund any payments, which we have received from you, including delivery costs (excluding additional costs that may have been incurred as a result of you selecting a different type of delivery other than the most**

reasonable standard delivery offered), immediately and no later than fourteen days from the day on which we receive notification of your cancellation of this order. For this refund we use the same method payment that you used in the original transaction, unless otherwise specifically agreed with you; under no circumstances will you be charged as a result of this refund. We may refuse to refund until we have received the goods back or until you have furnished proof that you have returned the goods, depending on which is the earliest.

You must return or deliver the goods immediately and in any case no later than fourteen days from the day, on which you notify us of your decision to cancel this order. The period is protected if you return the goods before the end of the fourteen day period. We bear the cost of returning the goods. You only have to pay for any loss of value of the goods if this loss of value can be attributed to unnecessary handling on your part for checking the condition, quality and functionality of the goods.

### **Exclusion from the right to cancel**

The right to cancel does not apply to orders for the delivery of goods which are not ready-made and for which production is governed by individual choice or specification by the customer or which are clearly customised to meet the customer's personal requirements. Therefore there is no right to cancel for products which are provided with individual, personally selected engraving and for greeting cards with individual, personally selected wording. You cannot withdraw your declaration of intent in this respect.

## **3 b Customer's right to cancel within the meaning of § 13 of the German Civil Code - Service**

### **Right of cancellation**

You are entitled to cancel this agreement within thirty days without giving a reason.

The cancellation period is thirty days from the day of the conclusion of the contract.

To exercise your right to cancel you must inform us (ONLINE Schreibgeräte GmbH, Moosweg 8, 92318 Neumarkt, Tel. 09181/2596-94, Telefax 09181/2596-99, E-Mail [info@online-pen.de](mailto:info@online-pen.de)) by clearly explaining (e.g. a letter sent by post, fax or E-mail) your decision to cancel this contract. You may use the attached cancellation form template, although this is not compulsory.

To ensure that the cancellation period is fulfilled please send your notice to exercise your right to cancel before the end of the cancellation period.

### **Consequences of cancellation**

If you cancel this contract, we have to refund any payments, which we have received from you, including delivery costs (excluding additional costs that may have been incurred as a

result of you selecting a different type of delivery other than the most reasonable standard delivery offered), immediately and no later than fourteen days from the day on which we receive notification of your cancellation of this order. For this refund we use the same method payment that you used in the original transaction, unless otherwise specifically agreed with you; under no circumstances will you be charged as a result of this refund.

Did you ask that the services should begin during the cancellation period, you have to pay us a reasonable amount which corresponds to the proportion up to the point you inform us about the exercising of the right of cancellation regarding this contract of the services already provided compared to the total scope of the services provided for in the contract.

#### **4. Terms of Delivery**

Partial deliveries are authorized if the customer is a merchant pursuant to Section 14 BGB (German Civil Code) and they count as independent deliveries with regard to payment and claims.

The delivery is at the risk of the customer. As soon as ONLINE has handed over the goods to the transportation company, the risk shall be transferred to the customer. This also applies to partial deliveries. If the customer is a consumer pursuant to Section 13 BGB, then the risk of accidental perishing and accidental deterioration of the sold item including contract of sale involving the carriage of goods shall be transferred to the customer only upon delivery of the item to the customer. At the same time the transfer is deemed done if the customer is in delay of receipt.

The delivery shall be made to the delivery address specified by the customer.

The prices indicated are prices to be paid in cash, including value added tax.

Packaging costs are charged separately, unless expressly agreed otherwise in writing. If the customer is a merchant pursuant to Section 14 BGB the transportation packaging shall not be taken back. If the customer is a consumer pursuant to Section 13 BGB the transportation packaging shall be taken back; the return mailing costs shall be borne by the ordering party. The opposing regulations of the statutory cancellation rights shall hereby remain unaffected.

In any case the timely and proper availability of the supply of goods/materials is reserved. This also applies if parts of our products or primary products were ordered from a third party and in particular for delays or non-delivery of goods which are ordered from abroad. ONLINE is entitled to withdraw from the contract if the supply of goods/materials is not available. If the customer is a consumer pursuant to Section 13 BGB, then the withdrawal right of ONLINE is only limited to cases when the supply of goods/materials is not available, if a specific contract was signed with a third party regarding the delivery of products which is in direct connection with the order of the customer. The customer shall be notified immediately in such a case. Any possible payments already rendered shall be returned immediately. In any event a cancellation right is only granted if the failure of the supply of goods/materials to ourselves does not lie within ONLINE's responsibility.

If the customer is a merchant pursuant to Section 14 BGB then the agreed terms of delivery shall be extended in the case of unexpected, unavoidable, extraordinary events such as industrial action, sovereign measures, major traffic disruptions etc., by the duration of these disturbances. If due to these events the delivery becomes impossible or if another exclusion

of the obligation to perform thereby arises pursuant to Section 275 Para (1) - (3) BGB, then the cancellation right is granted, with exclusion of any further obligations and the exclusion of claims for damages.

If the customer is a merchant in the sense of Section 14 BGB and the business transaction is also trade for the customer, then Section 377 German Commercial Code (HGB) applies for notice of defects. Any transportation damages must be reported immediately to the transportation company.

ONLINE shall also not then be held liable against any transportation delays for which ONLINE is not at fault, if a delivery was agreed free of charge. Receipt of delivered items cannot be denied by the customer, regardless of the liability for damages of the delivery (Section 6) if the defects are only minimal.

If the shipment is delayed upon request by the customer, then ONLINE is entitled to charge the ordering party storage fees upon notification of readiness of shipment, for storage at the plant of ONLINE at least 0.5 percent of the invoice amount per month. The customer is at liberty to document that the damage was in fact substantially less or did not occur at all.

## **5. Terms of Payment**

We principally offer the payment types Sofortüberweisung (pay immediately via online banking), credit card, Paypal, SEPA direct debit (via Paypal) and Amazon Pay in the online shop. With each order we moreover reserve the right not to offer certain payment types and to refer to other payment types.

We offer the payment type invoice through the provider Klarna. For this purpose we explicitly also refer to § 6 in our General Business Terms.

Payment by bill of exchange is only permitted with our prior written consent. In this case all costs of the discounting and the collection will be borne by the customer. Bills of exchange and cheques shall only be deemed as a payment after they have been finally encashed.

The customer can only offset or exercise a right of retention against our due payment claims with undisputed counter-claims or counter-claims which have been declared final and binding or which are ready for a decision in the lawsuit.

If a substantial deterioration in the asset circumstances of the customer occurs after conclusion of the contract, which gives rise to fear that the payment is in danger or if such circumstances, which existed before conclusion of the contract already, only become known subsequently then further deliveries will only be carried out against advance payment or provision of collateral. The same shall apply if the customer is in default with the payment of earlier deliveries. Further, in this case, we can request the immediate payment of all outstanding invoices from the business relationship, even if the invoice amounts had previously been deferred in full or in part or had been paid by a bill of exchange.

If the customer is an entrepreneur within the meaning of Section 14 BGB [German Civil Code] and a new customer ONLINE reserves the right to cash on delivery with 3% cash discount.

## 6. Warranties

If the customer is a merchant in the sense of Section 14 BGB, then used items are exempt from the warranty claims pursuant to Section 437 No. 1 and No. 2 BGB and the claims pursuant to Section 437 No. 3 BGB are limited in accordance with Section 7 of these Terms and Conditions.

If the customer is a merchant in the sense of Section 14 BGB, then, in the case of new items, he/she is entitled to the warranty rights pursuant to Section 437 1 and No. 2 BGB. The customer is only entitled to rights from Section 437 No. 3 BGB in accordance with Section 7 of these terms and conditions.

If the customer is a merchant in the sense of Section 14 BGB and if the transaction is also a trade purchase for him/her, then Section 377 HGB shall apply to notification of defects.

If the customer is a consumer in the sense of Section 13 BGB then he/she is entitled to the statutory warranty rights pursuant to Section 437 No. 1 and No. 2 BGB. The customer is entitled to the rights from Section 437 No. 3 BGB only in accordance with Section 7 of these terms and conditions.

If the customer still accepts the good or the order item despite knowledge of its defects, then he/she is entitled to the warranty claims if he/she has reserved their rights immediately upon receipt of the good.

If the customer is a consumer in the sense of Section 13 BGB, then the warranty period is two years. The period shall commence upon delivery of the item.

If the customer is a merchant in the sense of Section 14 BGB, then the warranty period is one year. The period shall commence upon delivery of the item.

## 7. Compensation Claims

In case of a negligent infringement of important contract obligations the liability of ONLINE is limited in its amount to the foreseeable damage, typical for a contract, foreseen at the conclusion of the contract.

The above liability limitation does not apply to injuries to life, body and health. The liability according to the Product Liability Act is hereby not affected. If the liability is excluded or limited, then this shall also apply to the personal liability of employees, representatives, and vicarious agents.

ONLINE is only liable for claims which are based on intentional and gross negligence or a main contract obligation is culpably infringed upon by ONLINE, a legal representative of ONLINE or a vicarious agent of ONLINE.

In cases of gross negligence of main contract obligations the amount of ONLINE's liability is limited to the foreseeable damage, typical for a contract, foreseen at the conclusion of the contract.

The above liability limitations do not apply to injuries to life, body, and health. The provisions of the Product Liability Code remain unaffected.

This also applies to the personal liability of employees, representatives, and vicarious agents if the liability is excluded or limited.

## **8. Out-of-court settlement procedure of consumer disputes**

ONLINE Schreibgeräte GmbH is not obligated to participate in out-of-court settlement procedures of consumer disputes at consumer dispute resolution bodies. We are also unwilling to participate in out-of-court settlement procedures of consumer disputes at consumer dispute resolution bodies. Platform of the EU Commission regarding online dispute resolution: <https://ec.europa.eu/consumers/odr>

## **9. Retention of Title**

If the customer is a merchant pursuant to Section 14 BGB then the delivered good shall remain the property of ONLINE until complete payment of all claims against the customer, including any ancillary claims. In case of contracts with consumers pursuant to Section 13 BGB then the delivered good shall remain the property of ONLINE until complete payment of the purchase price.

The customer is not entitled to sell the good to a third party until complete payment of the purchase price, or else to take any measures endangering the property of ONLINE. If, however, the customer is a merchant in the sense of Section 14 BGB, then he is entitled to resell it in the course of regular business. In this case, the client already now assigns to ONLINE all future claims towards the purchaser to the amount of the purchase price agreed between ONLINE and the customer plus interests and ancillary claims. ONLINE accepts this assignment.

The securities to which ONLINE is entitled are released provided that their value does not exceed the value of the claims to be secured by more than 25%.

## **10. Third party property rights**

The customer is required to comply with any rights of third parties, especially copyrights, trademark rights and the like when specifying wording to be used on greeting cards and engravings.

The customer will be liable for any culpable infringement of paragraph 1 of this provision should the execution of his order infringe the rights of third parties, especially copyrights, trademark rights and the like. The customer is therefore required to indemnify ONLINE for any claims on account of an infringement of rights pursued by third parties in such cases.

## **11. Place of Performance, Jurisdiction, and Applicable Law**

German law applies exclusively, excluding the UN convention on the international sale of goods Place of performance for all services arising from the business relationships with



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ONLINE is 92318 Neumarkt, Germany, provided that the customer is a merchant, legal entity under public law or special property under public law.

Exclusive place of jurisdiction is Neumarkt, i.d.OPf, provided that the customer is a merchant, legal entity under public law or special property under public law. ONLINE, however, is entitled to file a lawsuit at customer's place of jurisdiction.

## **12. Severability Clause**

In the case of individual provisions becoming invalid or being effectively changed the remaining provisions of our terms and conditions of business shall nonetheless remain valid.