

Terms and conditions

Delivery and payment conditions

of Westermann Logistik GmbH,

Georg-Westermann-Allee 66, 38104 Braunschweig, Germany

Section 1 Area of application

These delivery and payment conditions from Westermann Logistik GmbH (subsequently referred to as Westermann Logistik) apply to all deliveries from Westermann Logistik, who performs these on behalf of and on the instruction of publishers to third parties (subsequently referred to as Customer).

The terms and conditions of the publisher whose products Westermann Logistik is delivering to the Customer or the third party named by the Customer apply (AGB). The delivery and payment conditions of Westermann Logistik are placed on behalf of and on the instruction of the publisher if and insofar as they do not contradict the terms and conditions of the publisher.

Section 2 Delivery

All deliveries are carried out on behalf of and on the instruction of the publisher whose product Westermann Logistik delivers to the Customer.

Agreed delivery times are not fixed deadlines unless this has been expressly agreed.

Section 3 Price fixing

The Customer shall adhere to the retail price specified by the publisher when reselling the goods delivered by Westermann Logistik, even if they are not subject to the law on price fixing for publishing products. In each case that this provision is violated, the Customer pays a contractual penalty to the publisher whose price fixing it has violated. The contractual penalty corresponds to double the specified retail price of the goods that have been sold in violation of this price fixing clause.

Section 4 Transport risk

The goods are sent at the cost and risk of the Customer (Sections 447, 448 BGB).

Shipments that have got lost or have been damaged during transportation will not be replaced. The Customer or person receiving the goods must assert complaints to the transportation party without delay and in writing and must inform Westermann Logistik.

Section 5 Notice of defects

Westermann Logistik must be informed of obvious defects to the goods without delay and in writing, at the latest within 7 days of receiving the goods. Westermann Logistik must be given the opportunity to immediately inspect the goods. The same applies to errors that have been discovered within the statutory warranty period. The written notice of defects must include the shipment and invoice reference data as well as the type and scope of the damage.

If the defects are not indicated within the aforementioned deadline, the goods are considered as having been accepted by the Customer. For retail business, Article 377 HGB applies.

Section 6 Exclusion of liability

Damages and expenses reimbursement claims by the Customer, regardless of the legal reason, are excluded. If a contractual obligation is breached by negligence, the liability is limited to the foreseeable damage. Otherwise, claims for damages including loss of profits or because of other financial losses on the part of the Customer are excluded.

This exclusion of liability and this limitation of liability do not apply:

- for damage caused by intentional or gross negligence,
- for minor negligence of important contractual obligations, even by legal representatives or agents of Westermann Logistik, insofar as Westermann Logistik is only liable for foreseeable, contractually typical and direct average damage according to the type of product,
- in the case of culpable injury to life, body or health of the client,
- for defects maliciously kept secret and assumed guarantees for the quality of the goods,
- for claims under product liability law.

The Customer's rights to change or reduction remain unaffected.

Section 7 Retention of title

The delivered goods remain the property of the seller until all the Customer's liabilities from the business relationship have been paid. The retention of title also secures claims from previous or future deliveries, as well as for accounts receivable included in open invoices, the acknowledged balance (current account reservation), even if the purchase price for a particular goods delivery has already been paid.

If goods are taken back by the publisher or Westermann Logistik, this only counts as a withdrawal of the contract when the publisher or Westermann Logistik has expressly confirmed this in writing.

The Customer must inform Westermann Logistik without delay in writing in the event of levies of execution or other intervention by third parties.

The Customer is entitled to sell in the ordinary course of business. By way of security, the Customer hereby cedes all claims against third parties arising from this to the publisher in advance together with all ancillary rights until the full repayment of all the publisher's claims against the Customer, without an additional special arrangement being required in individual cases. The Customer is obligated at all times to provide details of such claims by providing copies of invoices.

By way of security, in the event that the Customer includes the claims arising from the resale of the goods in a current account relationship with a third party, the following is ceded:

- the next periodically acknowledged balance after the balancing has been carried out,
- if the latter is incorporated by the publisher into the current account: the debit balance arising with the termination of the current account relationship.

Section 8 Payment

Based on a factoring agreement that Westermann Logistik concluded with the publisher, Westermann Logistik has sole right to all claims of the publisher against the Customer from the deliveries by Westermann Logistik.

Westermann Logistik deliveries are invoiced in euros. Payments must only be paid to Westermann Logistik GmbH on a Westermann Logistik account.

- a) For publishers that do not give a discount, invoice amounts can be paid free of charge in cash without deduction up until the due date specified on the invoice.
- b) For publishers that do give a discount, invoice amounts can be paid free of charge in cash up until
 - the discount deadline specified on the invoice with the deduction of a 2 % discount or
 - the due date specified on the invoice without any deduction.

Bills of exchange will only be accepted on special arrangements and, in that case, only on account of payment; the expenses for this shall be borne by the Customer. Settlements will only be carried out via the Buchhändler-Abrechnungsgesellschaft (BAG – Booksellers' invoicing company) if the Customer has issued an order for this and no credit-based concerns arise.

Section 9 Payment default

In the event of a payment default – even only for partial claims – all receivables from the publisher's claims assigned to Westermann Logistik against the Customer are due immediately.

Section 10 Place of fulfilment, place of jurisdiction

The place of fulfilment of all mutual contractual obligations is Braunschweig.

If the Customer is a dealer, Braunschweig is agreed as the place of jurisdiction.

Westermann Logistik GmbH

Braunschweig district court, HRB 1814

Managing director: Martin Arnold

Last changed: March 2023