

GENERAL TERMS AND CONDITIONS (GTC)

1 Area of applicability

1.1

These terms and conditions of the „Foto Walser GmbH & Co. KG“ (hereinafter „seller“), apply for all sales, deliveries and services of the seller which the customer purchases via means of telecommunications according to § 312 b clause 2 BGB. The inclusion of the customer's own conditions is herewith objected to, unless other terms have been stipulated.

1.2

Customers in terms of section 1.1 are consumers as well as entrepreneurs, whereas a consumer is any natural person who concludes a legal transaction for a purpose which can neither be attributed to his/her commercial nor freelance occupational activity. On the other hand, an entrepreneur is any natural person, corporate body or partnership with legal capacity, who is exercising his/her/its independent occupational or commercial activity when concluding a legal transaction.

2 Contract conclusion

The accomplishment of the contract via the eBay platform complies with the sections 2.1 - 2.4. The accomplishment of the contract via the online shop of the seller on the other hand, complies with the section 2.5.

2.1

Should the seller place an offer for an item on the eBay web page in the format of an auction, with it he/she submits a binding offer for the conclusion of a contract for this item. In doing so the seller determines a starting bid and a time limit (duration of the offer) within which the offer can be accepted via a bid. The customer accepts the offer by submitting a bid by means of the bidding function. The bid expires if a third party submits a higher bid during the duration of the offer. At the end of the auction or in the case of premature ending of the offer through the seller, a contract for the purchase of the item is accomplished between the seller and the customer who has submitted the highest bid, unless the seller was legally entitled to withdraw the offer and to delete the existing bids. After a legitimate bid withdrawal, a contract is not accomplished between the seller and the customer, who at the end of the auction once again becomes highest bidder due to the bid withdrawal. Seller and customer can agree that a contract is accomplished

2.2

Every customer can submit a maximum bid for an auction. The maximum bid represents the highest amount which the customer is prepared to pay for the item. The maximum bid remains concealed from the seller and others. Should third parties bid on the item, the current bid is automatically, progressively increased, so that the customer remains the highest bidder until his/her maximum bid has been outbid by a third party.

2.3

The seller can, under certain conditions, determine a minimum price for an auction which differs from the starting bid. In this case a contract conclusion is not accomplished if the bid of the highest bidder does not reach the minimum price at the end of the auction.

2.4

Under certain conditions, offers can also be provided with the option Buy It Now (fixed price). In this case a contract for the purchase of the item is already accomplished, independent of the expiration of the offer time period and without execution of an auction at the Buy It Now price (fixed price) if the customer carries out this option. It is pointed out that the option can be carried out by anyone, as long as a bid has not yet been made for the item or the bids have not yet reached a minimum price determined by the seller.

2.5

The product presentations in the seller's online shop serve the purpose of submitting a bid whereas a sales contract is only concluded by the seller's order confirmation, at the latest however by the unconditional acceptance of the merchandise by the customer.

2.6

Purchase processing and contact takes place via email and automated purchase processing. The customer is to ensure that the email address he/she indicates for the purchase processing is correct, so that the emails sent by the seller can be received at this address. In particular, in the case of application of SPAM filters, the customer is to ensure that all mails sent by the seller or his/her purchase processing service providers for the purchasing process can be received.

3 Cancellation policy

3.1 I. Right of cancellation

3.1.1

If the customer is a consumer, he/she can cancel his/her contractual statement within one month without stating reasons in the written form (e. g. letter, fax, email) or by returning the merchandise.

3.1.2

At the earliest the deadline commences one day after the merchandise has been received by the customer and the customer has received a cancellation policy which he/she is still to be informed of by separate mail in the written form (e.g. letter, fax, email).

3.1.3

The punctual dispatch of the cancellation or the merchandise suffices to ensure the deadline.

3.1.4

Cancellation or rather the return shipment of the merchandise is to be sent to:

Foto Walser GmbH & Co. KG
represented by the managing director Niclas Walser,
Gewerbering 26
86666 Burgheim
Email: info@foto-walser.de
Fax: 08432 9489-123

3.1.5

On the other hand the right of cancellation does not apply:

- For contracts regarding the delivery of merchandise which is manufactured according to customer specifications.
- For merchandise which is clearly specific to the customer's personal requirements.
- For merchandise which due to its characteristics is not suitable for return shipment.
- For deliveries of audio or video recordings or for software, provided that the delivered media was unsealed by the customer.

3.2

II Cancellation consequences

In the case of an effective cancellation already rendered services are to be released and if applicable, profits which were made (e.g. interest) released. Should the customer not be able to release the rendered service either completely or partially or only in a declined condition, he/she is to render value replacement in this respect if applicable. This does not apply in the case of surrendered merchandise if

- the decline of the merchandise (or the destruction) can be solely attributed to its examination - as it would have been possible in a store or
- the decline of the merchandise has resulted from the intended use of it.

Package transportable merchandise is to be returned whereas the seller bears the shipping risk in this respect. The customer is to bear the costs for the return shipment if the delivered merchandise complies with the merchandise ordered and if the price of the merchandise which is to be returned does not exceed an amount of 40.00 EUR or if the customer, in the case of a higher price of the merchandise, has not yet rendered the return service or a contractually stipulated partial payment at the time of cancellation. Otherwise the return shipment is free of charge for the customer. In any case the customer bears the costs for the initial delivery of the merchandise to him/her. Non-package transportable merchandise will be picked up at the customer's location.

4 Prices and payment terms

4.1

The seller's indicated prices are to be understood as final prices, i.e. they contain all price components, including the statutory German value added tax which in turn is indicated separately. Included in the price components are also packaging and shipment costs which are indicated separately in the respective product description in the offer. Other price components arise in individual cases for cross-border deliveries, as for example additional taxes (for instance in the case of an intra-community purchase) and/or fees, for instance in the form of customs.

4.2

Seller's invoices are payable, according to agreements, per prepayment and C.O.D. as far as no other agreements have been stipulated. Deliveries abroad are only effected against prepayment.

4.3

For payments per C.O.D. an additional fee amounting to 2 EUR is due which the deliverer collects on location.

4.4

If prepayment is stipulated, payment is to be effected within 7 (seven) days after contract conclusion. The time of

4.4

If prepayment is stipulated, payment is to be effected within 7 (seven) days after contract conclusion. The time of payment receipt by the seller is decisive. Otherwise the sales price is due after the merchandise has been delivered and invoiced. The sales price is to be paid within 10 (ten) days as of receipt of the first request for payment without discount provided that no other agreements were stipulated.

4.5

The customer is only entitled to offset if the counterclaim is undisputed and regarded as legally effective or accepted by the seller.

4.6

The customer can only exercise a right of retention as far as it is a matter of claims resulting from the same contractual relationship.

5 Delivery and shipping conditions as well as passing of risk

5.1

The delivery of merchandise is effected regularly on the dispatch route and to the delivery address indicated by the customer. The delivery address indicated in the seller's purchasing process is decisive for the processing of the transaction as far as no other agreements were stipulated.

5.2

Is a delivery to the customer not possible, the assigned forwarding company will send the merchandise back to the seller after the second unsuccessful delivery attempt in which the customer must bear the costs for the unsuccessful delivery. This does not apply if the customer is not responsible for the unsuccessful delivery attempts.

5.3

In principle the risk of incidental destruction or incidental worsening of the sold merchandise is passed on to the customer or a person authorised to accept delivery, upon delivery. Is the customer an entrepreneur (he/she acts to exercise his/her commercial or freelance occupational activity; § 14 German Civil Code), the risk of incidental destruction and incidental worsening regarding mail order purchases is passed on to an appropriate transport person with the delivery of the merchandise to the business location of the seller.

5.4

Contract conclusions with entrepreneurs are effected under the reserve of the correct and punctual delivery by our own suppliers, this reserve only applies under the circumstance that the seller has concluded a congruent hedging transaction with the supplier and is not responsible for a possible wrong or non-delivery.

6 Retention of title

The seller's delivered merchandise remains the seller's property until complete payment of it has been effected.

7 Liability for defects

If the object of purchase is defective the statutory regulations apply. Contrary to this the following applies:

7.1

For entrepreneurs

- a minor defect basically does not constitute warranty claims.
- the seller has the choice of the type of supplementary performance.
- the statute of limitation for defects amounts to one year as of transfer of perils for new merchandise.
- rights and claims due to defects are fundamentally excluded for used merchandise.
- the limitation does not begin again if a replacement is effected in line with the liability for defects.

7.2

For consumers the statute of limitation for warranty claims is

- two years for new merchandise as of delivery of the merchandise to the customer.
- one year for used merchandise as of delivery of the merchandise to the customer.

7.3

For entrepreneurs the statutory statutes of limitation for contribution claims according to § 478 German Civil Code remain unaffected, the same applies for entrepreneurs and consumers for an intentional breach of duty and fraudulent concealment of a defect.

7.4

Furthermore the following applies for entrepreneurs and consumers: the preceding limitations of liability in section 7.1 and section 7.2 do not refer to damage claims which the buyer can assert because of defects according to the statutory regulations. Section 8. applies for these claims.

7.5

If the customer is a trader in terms of § 1 German Commercial Code, the commercial duty to examine and notify comes upon him/her according to § 377 German Commercial Code. Should the customer neglect the disclosure duties regulated there, the merchandise is regarded as approved.

7.6

The customer as a consumer is requested to complain about delivered merchandise with apparent transport damage to the deliverer and to inform the seller hereof. This has absolutely no effect on the customer's statutory or contractual warranty claims should he/she not comply with this.

7.7

As long as the seller fulfils his/her obligations to remedy a defect, the customer does not have the right to demand a reduction in payment or cancellation of the contract provided that a failure of the rectification of defects does not exist.

7.8

If the supplementary performance has been effected in the way of a compensation delivery, the customer is obligated to return the originally delivered merchandise to the seller within 30 days at his/her costs. The return shipment of the defective merchandise is to be effected according to the statutory regulations. If the seller delivers merchandise without defects for the purpose of supplementary performance, the seller can assert compensation for use from the customer according to § 346 clause 1 German Civil Code. Other statutory claims remain unaffected.

7.9

The assignment of the customer's warranty claims is excluded.

7.10

Each return shipment of defective merchandise requires the prior consent of the seller. If a return shipment of merchandise is agreed upon then it must be complete.

8 Liability

8.1

The seller is liable without restriction due to every legal ground for the injury of life, body or health, for intent or gross negligence, for fraudulent intent and warranty pledge and if the liability results from mandatory legal regulations such as the Product Liability Act for instance.

8.2

Furthermore the seller is liable as follows independent of the legal grounds are:

8.3

Provided that the seller has negligently breached a significant contractual obligation (so-called cardinal obligation), the duty of replacement for material damages is limited to the foreseeable, typical occurring average damages.

8.4

Provided that the seller has negligently breached an insignificant contractual obligation, the duty of replacement is limited to the order value.

9 Information about the Battery Directive

9.1

In connection with the sales of batteries and rechargeable batteries we, as a merchant, are obligated to inform our customers as follows according to the Battery Directive:

9.2

Please pay attention to dispose of your used batteries as required by law - at a local collection point or in the retail market (a disposal in domestic waste violates the Battery Directive). The disposal is free of charge. Of course you can return batteries which you have received from us to us after use, free of charge, at the following address or send them back to us by mail with sufficient postage:

Foto Walser GmbH & Co. KG
Gewerbering 26
86666 Burgheim

9.3

Batteries which contain harmful substances are marked with the symbol of a crossed out dustbin. Underneath the dustbin symbol is the chemical name of the harmful substance - in the example "Cd" for cadmium. "Pb" stands for lead, "Hg" for mercury.

9.4

You also have the possibility of referring to the shipping documents of the consignment or the manufacturer's instruction manual for this information.

9.5

You can find more information regarding the Battery Directive at the Federal Ministry for Environment, Nature Conservation and Nuclear Safety (www.bmu.de).

10 Data protection

The seller stores the customer's order data and sends it to the customer with the GTC via email. Due to safety reasons the customer's order data cannot be accessed via the Internet.

11 Applicable law

11.1

The laws of the Federal Republic of Germany apply for all legal relationships of the parties excluding the laws regarding the international sales of commodities.

11.2

If the customer is a merchant, public entity or a special fund under public law, the sole place of jurisdiction for all disputes resulting from this contract is the seller's business location. The same applies if the customer does not have a general jurisdiction in Germany or the EU or if the general residence is unknown at the time of commencement of an action. The authority to also invoke the court of another legal jurisdiction remains unaffected hereof.