

General Terms and Conditions of Pins & mehr GmbH & Co. KG

As of July 2024, all previous terms and conditions are hereby invalid.

Note:

The prices quoted by us are always net prices and are subject to statutory sales tax. We do not supply to private customers/consumers. The general terms and conditions (GTC) listed below apply exclusively to deliveries and services.

§ 1 Scope of the General Terms and Conditions

(1) These General Terms and Conditions of Pins & mehr GmbH & Co. KG apply to all legal transactions with its customers for the purchase of pins, badges, lapel pins, and other promotional items of all kinds, as well as any related advice.

(2) Even if Pins & mehr GmbH & Co. KG is aware of the customer's terms and conditions, these shall not become part of the contract. The terms and conditions of Pins & mehr GmbH & Co. KG shall apply exclusively. Any deviation from this shall only apply if Pins & mehr GmbH & Co. KG expressly agrees in writing to the validity of the customer's terms and conditions in whole or in part.

(3) Customers within the meaning of these General Terms and Conditions are both entrepreneurs and consumers:

(a) An entrepreneur within the meaning of these General Terms and Conditions is a natural or legal person or a partnership with legal capacity who, when concluding a legal transaction with Pins & mehr GmbH & Co. KG, is acting in the exercise of their commercial or independent professional activity.

(b) For the purposes of these General Terms and Conditions, a consumer is any natural person who enters into a legal transaction with Pins & mehr GmbH & Co. KG that cannot be attributed to their commercial or independent professional activity.

§ 2 Conclusion of contract

(1) The display of goods and services by Pins & mehr GmbH & Co. KG in catalogues, advertising brochures, on the Internet, etc. does not constitute a contractual offer, but merely an invitation to the customer to submit an offer. By ordering goods, the customer submits a binding offer.

(2) Pins & mehr GmbH & Co. KG is entitled to accept the customer's contract offer within 2 weeks of receipt (acceptance).

(3) In cases where, notwithstanding the above provisions (1) and (2), an offer by Pins & mehr GmbH & Co. KG is to be assumed, this contractual offer is subject to change, i.e. Pins & mehr GmbH & Co. KG is entitled to revoke it until the offer is accepted by the customer.

(4) If the customer, who is a consumer, places the order using a means of distance communication used by Pins & mehr GmbH & Co. KG for the purpose of concluding the contract, Pins & mehr GmbH & Co. KG shall immediately confirm receipt of the order by electronic means. Confirmation of receipt of the order alone does not constitute binding acceptance of the contractual offer contained in the order. However, confirmation of receipt may be combined with an express declaration of acceptance by Pins & mehr GmbH & Co. KG.

(5) The provisions governing the statutory right of withdrawal do not apply to customers who are entrepreneurs.

§ 3 Quality of goods, reservation of changes, excess and short deliveries

(1) The contractual quality of the goods shall be exclusively based on the manufacturer's product description. Any deviation from this shall only apply if Pins & mehr GmbH & Co. KG has expressly agreed in writing to a deviating or additional quality agreement.

(2) Public statements, promotions, or advertising by the manufacturer or its agents, or by Pins & mehr GmbH & Co. KG and its agents, regarding certain characteristics of the goods are irrelevant to the contractual conformity of the goods. Deviations of the goods from these characteristics do not constitute a material defect.

(3) Pins & mehr GmbH & Co. KG does not provide the customer with any guarantee of quality, durability, or any other guarantee in the legal sense. Manufacturer guarantees remain unaffected by this provision.

(4) Pins & mehr GmbH & Co. KG reserves the right to make technical changes/deviations as well as changes/deviations in shape, color, and/or weight, provided that these are customary deviations and/or do not significantly impair the functionality and usability of the goods. This does not apply if the changes/deviations are unreasonable for the customer for other reasons, taking into account the interests of Pins & mehr GmbH & Co. KG.

(5) Pins & mehr GmbH & Co. KG has the right to make excess or short deliveries of up to 10% of the originally ordered quantity, provided that these are due to production reasons and the customer is an entrepreneur.

The customer then owes the purchase price corresponding to the quantity actually delivered.

(6) All printing screens and tools are archived for a maximum of 2 years. If an unchanged reorder is placed within this period, these costs for printing screens and tools are waived.

§ 4 Reservation of self-supply

(1) If Pins & mehr GmbH & Co. KG has concluded a congruent covering transaction in accordance with commercial diligence and Pins & mehr GmbH & Co. KG does not receive the item from the supplier, Pins & mehr GmbH & Co. KG shall be entitled to withdraw from the contract with its customer (reservation of self-supply). However, Pins & mehr GmbH & Co. KG shall not be entitled to withdraw from the contract if it is responsible for the non-delivery.

(2) The above (1) applies accordingly in the event of incorrect or late delivery to Pins & mehr GmbH & Co. KG by its suppliers.

(3) Pins & mehr GmbH & Co. KG shall notify the customer immediately of the unavailability of the goods as defined in (1) and (2) above and of its withdrawal from the contract and shall immediately reimburse the customer for any payments already made. The customer shall have no claim for damages against Pins & mehr GmbH & Co. KG.

(4) The above provisions in § 4 apply only to customers who are entrepreneurs.

§ 5 Samples

Samples requested by the customer will be invoiced to the customer by Pins & mehr GmbH & Co. KG. Samples may not be returned to Pins & mehr GmbH & Co. KG.

§ 6 Shipping of goods, shipping costs

At the customer's request, Pins & mehr GmbH & Co. KG will ship the goods to third parties at the customer's expense.

§ 7 Delivery periods/dates

(1) Delivery periods or delivery dates shall be agreed separately between the customer and Pins & mehr GmbH & Co. KG in each individual case. Delivery periods shall commence upon conclusion of the contract, provided that all templates, documents, etc. required by the customer for the execution of the order are available to Pins & mehr GmbH & Co. KG at this point in time. If the templates, etc. are not available or are incomplete at the time of conclusion of the contract with Pins & mehr GmbH & Co. KG, the delivery periods shall only commence upon receipt of all or the last required templates, etc. by Pins & mehr GmbH & Co. KG.

(2) If Pins & mehr GmbH & Co. KG is required to provide the customer with a preliminary sample of the goods to be delivered prior to production, this must be confirmed by the customer for production. The customer must provide confirmation immediately, but no later than the date specified by Pins & mehr GmbH & Co. KG. Pins & mehr GmbH & Co. KG shall not be responsible for any exceeding of the delivery deadlines or an agreed delivery date due to a delay in confirmation of the advance sample by the customer. This shall not constitute a delay in its delivery obligation. The delivery period shall be extended by the time lost for which the customer is responsible. Weekends and public holidays shall not be taken into account when calculating the extension of the delivery period.

(3) Point 2 shall apply mutatis mutandis if the start of production and/or delivery of the goods is delayed due to the production of a further advance sample, provided that Pins & mehr GmbH & Co. KG is not responsible for this. In addition, point 2 shall apply to all other cases in which the customer fails to provide the cooperation required for the manufacture or delivery of the goods or provides it late (e.g., submission of necessary documents, templates, etc.; carrying out necessary coordination).

(4) In the event of force majeure or circumstances beyond our control, such as natural disasters, sovereign measures, shortages of raw materials, labour disputes, shortages of means of transport, operational disruptions, tool breakage, official measures, and the like, which make it difficult or impossible to meet the deadline agreed in point 1, the delivery time shall be extended accordingly, but at least by the entire period agreed in point 1, calculated from the day on which the circumstances referred to in this point 4 cease to exist.

(5) If Pins & mehr GmbH & Co. KG fails to meet the agreed delivery deadlines and delivery dates, the business customer shall set a reasonable grace period. Only after the grace period has expired may the business customer assert any claims and rights due to non-compliance with the delivery deadlines.

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§ 8 Retention of title, advance assignment, right of withdrawal

(1) If the customer is a consumer, Pins & mehr GmbH & Co. KG retains ownership of the goods until the purchase price, including shipping costs and other ancillary claims (e.g., interest), has been paid in full. The consumer customer and Pins & mehr GmbH & Co. KG agree that the transfer of ownership of the goods is subject to a condition precedent and that ownership is only transferred to the consumer upon full payment in accordance with sentence 1. In all other respects, the following provisions in point 2 to 3 inclusive apply to consumer customers.

(2) The consumer customer is obliged to inform Pins & mehr GmbH & Co. KG immediately of any access by third parties to the goods (e.g. seizure) as well as any damage to or destruction of the goods. There is also a duty to notify in the event of a change in ownership of the goods and a change of residence of the customer.

(3) The consumer customer is obligated to store the goods free of charge for Pins & mehr GmbH & Co. KG until full payment has been made and to treat them with care.

(4) In the case of contracts with entrepreneurs, Pins & mehr GmbH & Co. KG retains ownership of the goods until all claims arising from the entire current business relationship have been settled in full. Pins & mehr GmbH & Co. KG and the entrepreneur agree that the transfer of ownership of the goods is initially subject to a condition precedent and that ownership of the goods is only transferred to the entrepreneur once all claims arising from the business relationship have been settled in full.

(a) The entrepreneur is entitled to resell the goods in the ordinary course of business. He hereby assigns to Pins & mehr GmbH & Co. KG all existing and future claims arising from the resale of the goods to a third party (advance assignment). Pins & mehr GmbH & Co. KG hereby accepts the assignment. The entrepreneur is authorized to collect the claims as long as he duly meets his payment obligations arising from the entire current business relationship and does not fall into financial collapse. However, he is not permitted to pledge, transfer ownership by way of security, or assign the goods as security. The entrepreneur is obliged to secure the rights of Pins & mehr GmbH & Co. KG when reselling goods subject to retention of title on credit.

(b) The resale authorization granted in (a) above does not include resale to customers of the entrepreneur who have excluded or restricted the assignment of claims for payment against them. The same applies if the entrepreneur prevents the advance assignment of his customer claims to Pins & mehr GmbH & Co. KG by means of a contractual clause in his general terms and conditions.

(c) At the request of Pins & mehr GmbH & Co. KG, the entrepreneur shall provide it with the information necessary for collection with regard to the assigned claims and disclose the assignment to its debtors.

(5) In the event of breach of contract by the business customer, in particular in the event of default in payment or breach of one of the obligations set out in § 8, Pins & mehr GmbH & Co. KG shall be entitled to withdraw from the contract and demand the return of the goods. The costs incurred as a result shall be borne by the customer.

§ 9 Property Rights and Intellectual Property

(1) The obligation to check whether an order infringes any property rights (copyright, intellectual property rights, etc.) or other rights of third parties lies solely with the client. The client shall indemnify Pins & mehr GmbH & Co. KG against all claims by third parties arising from such an infringement and shall compensate Pins & mehr GmbH & Co. KG for all damages incurred as a result of such an infringement of third-party rights.

(2) Insofar as work results are eligible for copyright protection, Pins & mehr GmbH & Co. KG remains the copyright holder. In such cases, the customer shall receive the irrevocable, exclusive, and non-transferable right to use the work results without restriction in terms of time or location, unless otherwise agreed in the contract or in these General Terms and Conditions and provided that this is possible under German law or the actual circumstances (especially for photo rights). Use is only permitted for the contractually agreed purpose. The right of use does not include the open program data.

(3) The granting of rights under point 2 is subject to the condition precedent of full payment of the claims of Pins & mehr GmbH & Co. KG. Section 8 (1) applies accordingly to consumer customers. Section 8 (4) sentence 1 applies accordingly to business customers.

(4) If no further cooperation is agreed upon after the presentation of a sample, the rights of use for the presented work results shall remain with Pins & mehr GmbH & Co. KG, unless expressly agreed otherwise. The customer is obliged to maintain confidentiality regarding the contents of the presentation vis-à-vis third parties.

§ 10 Verbal agreement

If the customer is an entrepreneur, all agreements must be made in writing to be valid. This also applies to this written form clause.

§ 11 Right of withdrawal

The right of withdrawal does not apply to orders/deliveries of goods that have been manufactured according to specific customer specifications.

§ 12 Due date, interest, default

(1) Unless otherwise agreed between the customer and Pins & mehr GmbH & Co. KG, the purchase price, including any shipping costs, must be paid within 10 days of receipt of the invoice to the account of Pins & mehr GmbH & Co. KG specified on the invoice. Payment must be made by bank transfer and in EUR.

(2) The consequences of the delay are governed by the statutory provisions.

§ 13 Offsetting, right of retention

(1) If the customer is an entrepreneur, they may only offset claims if their claim against Pins & mehr GmbH & Co. KG has been legally established or is undisputed.

(2) If the customer is an entrepreneur, they may only exercise a right of retention if their claim is based on the same contractual relationship.

§ 14 Place of performance, transfer of risk

(1) If the customer is an entrepreneur, merchant, legal entity under public law, or a special fund under public law, the place of performance and fulfillment for all contractual obligations of Pins & mehr GmbH & Co. KG and the customer shall be the registered office of Pins & mehr GmbH & Co. KG.

(2) If the customer is an entrepreneur or one of the persons referred to in (1) above, the risk of accidental loss and accidental deterioration shall pass to the entrepreneur etc. upon delivery of the goods to the forwarding agent, the carrier, or any other person or institution designated to carry out the shipment.

(3) If the customer is a consumer, the risk of accidental loss and accidental deterioration of the goods shall pass to the customer upon delivery. The same applies when the goods are collected by the entrepreneur, etc.

(4) The handover shall be deemed to have taken place if the customer is in default of acceptance.

§ 15 Notification of defects, limitation periods for claims for defects, and rights in respect of defects

(1) If the customer is an entrepreneur, they must notify Pins & mehr GmbH & Co. KG in writing of any obvious defects within a period of 10 calendar days after receipt of the goods. Timely dispatch is sufficient to meet the deadline. After expiry of this period, the assertion of claims for defects and rights arising from defects is excluded (limitation period). This does not apply in the event of fraudulent concealment of the defect by Pins & mehr GmbH & Co. KG. With regard to non-obvious defects, the statutory provisions on inspection and notification obligations apply.

(2) If the customer is a consumer, they must notify Pins & mehr GmbH & Co. KG in writing of any obvious defects within a period of 4 weeks after they have been discovered. Timely dispatch is sufficient to meet the deadline. After expiry of the deadline, the assertion of claims for defects and rights in respect of defects is excluded (limitation period). This does not apply in the event of fraudulent concealment of the defect by Pins & mehr GmbH & Co. KG.

§ 16 Claims for defects and rights in respect of defects

(1) Claims for defects and rights arising from defects are excluded if the customer has not complied with the exclusion periods for reporting defects in accordance with § 15 of these General Terms and Conditions.

(2) In all other respects, the warranty provided by Pins & mehr GmbH & Co. KG for the goods shall be determined in accordance with the statutory provisions, subject to the following conditions:

(a) If the customer has claims for defects, these shall initially be limited to subsequent performance, i.e. rectification of the defect (repair) or delivery of defect-free goods. If the customer is an entrepreneur, Pins & mehr GmbH & Co. KG shall have the choice between the two types of subsequent performance. If the customer is a consumer, they shall have the right to choose. However, Pins & mehr GmbH & Co. KG may refuse the type of subsequent performance chosen by the consumer under the statutory conditions.

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(b) If the subsequent performance pursuant to (1) fails, the customer shall be entitled to either reduce the price of the goods (reduction) or rescind the contract (withdrawal). The right to claim damages in lieu of performance is excluded. This applies regardless of whether this claim is to be asserted alone or in addition to other claims or rights for defects (e.g., withdrawal). Any claims for damages due to consequential damage caused by defects remain unaffected by the above provisions.

(3) Excess or short deliveries of up to 10% of the ordered quantity due to production reasons do not constitute a defect. In such cases, § 3 (5) of these General Terms and Conditions shall apply.

(4) Minor color deviations are due to technical reasons and cannot always be avoided.

§ 17 Limitation period for claims for defects

(1) If the customer is an entrepreneur, their claims for defects in new goods shall become time-barred after one (1) year. If the customer is a consumer, their claims for defects in new goods shall become time-barred after two (2) years. Notwithstanding this, the limitation period specified in § 18 (4) of these General Terms and Conditions shall apply to claims for damages due to defects and consequential damage caused by defects.

(2) The above (1) shall not apply if Pins & mehr GmbH & Co. KG has fraudulently concealed a defect. In this case, the claims shall become time-barred within the statutory limitation period.

(3) The commencement of the limitation period is determined in each case by the statutory provisions.

§ 18 Claims for damages

(1) Pins & mehr GmbH & Co. KG shall only be liable for damages that do not result from injury to life, limb, or health if they are based on gross negligence or intentional breach of duty on its part, on the part of one of its legal representatives, or on the part of its vicarious agents. The same applies to grossly negligent or intentional selection and/or monitoring errors with regard to vicarious agents. Otherwise, there is no liability for vicarious agents. These claims are subject to the statutory limitation period.

(2) Notwithstanding the above (1), Pins & mehr GmbH & Co. KG shall not be liable for negligent or grossly negligent breaches of duty by its simple vicarious agents.

(3) If the customer is an entrepreneur, the claim for damages shall be limited to the amount of damage that typically and foreseeably arises depending on the type of goods and the specific underlying legal transaction.

(4) Claims for damages due to defects and consequential damage caused by defects shall become time-barred after one (1) year. This shall not apply if Pins & mehr GmbH & Co. KG has fraudulently concealed the defect, is responsible for gross negligence or intentional conduct within the meaning of the above (1), or if the damage results from injury to life, limb, or health.

(5) The exclusion of claims for damages pursuant to § 4, § 12, and § 13 remains unaffected by the above provisions.

(6) The above provisions (1) to (5) inclusive apply to both contractual and pre-contractual claims for damages.

(7) The above provisions (1) to (6) inclusive shall also apply mutatis mutandis to the relationship between the legal representatives or vicarious agents of Pins & mehr GmbH & Co. KG and the customer.

§ 19 Protection of property rights and copyrights

(1) Pins & mehr GmbH & Co. KG reserves the property rights and copyrights to all artistic works and the final designs used in illustrations, drawings, articles, and other documents. They may only be used by customers or other third parties with the express written consent of Pins & mehr GmbH & Co. KG.

(2) In the event of a breach of property rights and copyrights by the customer, Pins & mehr GmbH & Co. KG shall be entitled to claim damages. A lump sum of 10% of the price of the goods, but at least €500.00, shall be agreed as compensation, unless Pins & mehr GmbH & Co. KG can prove that the customer has incurred higher damages. The customer is entitled to prove that Pins & mehr GmbH & Co. KG has not incurred any damage or has incurred damage that is significantly lower than the above lump sum compensation.

(3) Pins & mehr GmbH & Co. KG is entitled to use and reproduce items created on behalf of customers for advertising purposes or as samples.

§ 20 Templates/storage

Unless otherwise agreed, templates (films/data carriers/samples/drawings, etc.) provided by the customer that are required for production shall become the property of Pins & mehr GmbH & Co. KG. Pins & mehr GmbH & Co. KG accepts no liability for these templates/items etc. These

templates/items etc. will be used exclusively for the fulfillment of the order and may be destroyed for storage reasons if necessary.

§ 21 Content of the website

Pins & mehr GmbH & Co. KG accepts no liability for the content of its website or for the accuracy, timeliness, or availability of the items displayed. All items shown are for demonstration purposes only. Pins & mehr GmbH & Co. KG reserves the right to change the content of its website in whole or in part at any time, or to discontinue it temporarily or permanently.

§ 22 Applicable law

The law of the Federal Republic of Germany applies, excluding the UN Convention on Contracts for the International Sale of Goods.

§ 23 Place of jurisdiction

(1) If the customer is a merchant, a legal entity under public law, or a special fund under public law, the place of jurisdiction for all disputes relating to the contract concluded between the customer and Pins & mehr GmbH & Co. KG and any legal disputes arising therefrom shall be the German registered office of Pins & mehr GmbH & Co. KG, unless otherwise specified in (2) below.

(2) The above provision (1) shall not apply if the legal dispute does not concern property claims that are assigned to the local courts regardless of the value of the matter in dispute, or if an exclusive place of jurisdiction has been established for the action or the dunning procedure.

(3) If the customer, who does not need to be an entrepreneur, merchant, or other person as defined in (1) above, does not have a general place of jurisdiction in Germany, (1) and (2) above shall apply accordingly. The same shall apply if the customer, who is to be sued, moves his place of residence or habitual abode outside Germany after conclusion of the contract or if his place of residence or habitual abode is unknown at the time the action is brought.

§ 24 Severability clause

Should individually provisions of the contract with the customer, including these General Terms and Conditions, be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. The wholly or partially invalid provision shall be replaced by a provision whose economic success comes as close as possible to that of the invalid provision.