

Terms & Conditions

General Sales Terms and Conditions of JULABO GmbH | Gerhard-Juchheim-Strasse 1 | 77960 Seelbach | Germany

I. General Provisions

1. These General Sales Terms and Conditions (GTC) shall be valid for all business relationships of Julabo GmbH (hereafter: "JULABO") with its customers (hereafter: "Orderer"). The GTC shall be valid only if the Orderer is an entrepreneur (§ 14 German Civil Code), a corporate body under public law or a special foundation under public law.
2. The GTC shall be valid particularly for agreements for the sale and/or the delivery of movable goods ("Goods") without taking into consideration whether JULABO has manufactured the Goods itself or purchased them from its own sub-suppliers. Unless agreed otherwise, the GTC shall be valid in the version which is valid at the time that the Orderer places his order and/or in any case in the version lastly provided to him in text form as a Framework Agreement – including for similar future agreements without JULABO having to once again make reference to them in the individual case.
3. The GTC shall be valid exclusively. Any General Business Terms and Conditions of the Orderer which are deviating, opposing or supplemental shall only then and insofar become a contractual component if JULABO has expressly approved their validity. This approval requirement shall be valid in any case, e.g. even then if JULABO unconditionally implements the delivery to him while being aware of the Orderer's General Business Terms and Conditions.
4. Any individual agreements concluded in the individual case with the Orderer (including any ancillary agreements, supplements and amendments) shall in each case be prevailing over these GTC. For the content of such agreements, subject to proof to the contrary, a written agreement and/or the written confirmation from JULABO shall be prevailing.
5. Any legally-relevant declarations and notifications from the Orderer with regards to the Agreement (e.g. setting a notice period, notification of defects, rescission of the Agreement or reduction of the purchase price) must be rendered in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Any legal form requirements and additional documentation – particularly in cases of doubt regarding the legitimation of the declaring party – shall remain unaffected.

II. Conclusion of the Agreement; Offer Documents

1. JULABO's offers shall be considered to be without obligation and non-binding. The illustrations, measurements, descriptions, technical details as well as packaging units indicated in the respective catalogues shall not be considered to be binding.
2. The ordering of the Goods by the Orderer shall be considered to be a binding contractual offer. Unless stated otherwise in the order, JULABO shall be entitled to accept this contractual offer within two (2) weeks after its receipt by JULABO. The acceptance shall be considered to have been made exclusively by means of the order confirmation by JULABO.
3. The right is reserved to make changes to the design, workmanship and mounting between the conclusion of the Agreement and delivery as long as and insofar as, in this case, the usage intended by the Orderer is not restricted and the value of the product provided by JULABO is not reduced and the change is not unreasonable for the Orderer for any other reasons.
4. JULABO reserves its ownership and copyright exploitation rights in unrestricted fashion to cost estimates, sketches and any other documents (hereafter: "Documents"). The Documents may be made available to third parties only subject to JULABO's prior consent and, if the order is not issued to JULABO, they must be promptly returned to JULABO upon its request to do so. Clauses 1 and 2 shall be valid accordingly for the Orderer's Documents; however, they may nonetheless be made available to such third parties to whom JULABO has permissibly assigned deliveries.

III. Prices and Payment Terms and Conditions

1. The prices shall be understood to be ex works excluding packaging plus the respectively valid statutory VAT. All prices shall be considered to be non-binding and refer to the designated price unit. The packaging shall be billed at the cost price. JULABO reserves the right to bill surcharges if packaging units are opened.
2. If JULABO has assumed responsibility for the erection or mounting work and unless something else has been agreed, then the Orderer shall, in addition to the agreed price, pay all required ancillary costs such as travel costs, costs for the transport of the tools and the personal luggage as well as releases.
3. Invoices from JULABO shall become payable within 30 days after invoicing without any deductions or within 14 days after invoicing with a 2% discount. Payments must be made ex paying agent of JULABO.
4. If the Orderer enters into payment default, then JULABO shall be entitled to demand payment default interest of 9 percentage points per year above the base lending rate beginning from the point in time when the Orderer initially enters into payment default.
5. The Orderer shall be entitled to offsetting or retention rights only insofar as his claim has been legally upheld or is undisputed. The Orderer shall also be entitled to offset against our claims if he asserts notifications of defects or counterclaims from the same purchasing agreement. The Orderer shall be entitled to exercise a right of retention only insofar as his counterclaim is based upon the same contractual relationship.

IV. Reservation of Ownership

1. The objects of the deliveries (hereafter: "goods subject to retention of title") shall remain JULABO's property until all of its claims against the Orderer that have been created from the business relationship have been fulfilled. Insofar as the value of all security rights, to which JULABO is entitled, exceed the amount of all secured claims by more than 10%, JULABO shall, upon the Orderer's request, release a corresponding portion of the security rights.
2. During the valid existence of the reservation of ownership, the Orderer shall be forbidden from making a pledging or an assignment by way of security and the resale is permitted only to resellers during customary business dealings and only subject to the proviso that the reseller receives payment from his customer or issues the proviso that the ownership shall only then be transferred to the customer when the customer has fulfilled his payment obligations.
3.
 - a. If the Orderer resells the goods subject to retention of title, then he shall already now assign his future payment claims from the resale against his customer with all ancillary rights – including any balance payment claims – for security purposes to JULABO without any subsequent additional special declarations being required in this regard. If the goods subject to retention of title are resold together with other objects without an individual price having been agreed for the goods subject to retention of title, then the Orderer shall, with prevailing priority over the remaining payment claim, assign that portion of the total price payment claim to JULABO which corresponds to the price for the goods subject to retention of title that has been billed by JULABO.
 - b. In the case that an entitled interest is substantiated, the Orderer must issue the information and the documents to JULABO which are required for the assertion of its rights against the customer.
 - c. Until the revocation thereof, the Orderer shall be authorised to collect the assigned payment claims from the resale. In the case of an important reason – particularly in the case of payment default, the discontinuation of payments, the opening of bankruptcy proceedings, a bill protest or justified indications of excessive debt or looming insolvency upon the Orderer's part, JULABO shall be entitled to revoke the Orderer's authorisation to collect the payment claims. Moreover, JULABO may, after having made a prior threat in this regard subject to the provision of appropriate advance notice, disclose the assignment of the security, exploit the assigned payment claims as well as demand the disclosure of the assignment of the security by the Orderer to the customer.
4.
 - a. The Orderer shall be permitted to process the goods subject to retention of title or to mix or combine them with other objects. The processing, mixing or combining (hereafter: "Processing") shall be done for JULABO. The Orderer shall safeguard the new Goods for JULABO with the due care of a prudent businessman. The new Goods shall be considered to be goods subject to retention of title.

- b. In the case of Processing with other objects not belonging to JULABO, JULABO shall be entitled to co-ownership to the new Goods in the proportional amount which is derived from the ratio of the value of the processed, mixed or combined (hereafter: "Processed") goods subject to retention of title to the value of the rest of the Processed Goods at the time of the Processing. Insofar as the Orderer has acquired sole ownership to the new Goods, JULABO and the Orderer are in agreement that the Orderer shall grant JULABO co-ownership to the new Goods created through the Processing based upon the ratio of the value of the Processed goods subject to retention of title to the rest of the Processed Goods at the time of the Processing.
 - c. If the new Goods are resold, the Orderer shall hereby assign his claim from the resale against the customer with all ancillary rights for security purposes to JULABO without any additional special declarations being required in this regard. However, the assignment shall be valid only in the amount which corresponds to the value of the Processed Goods subject to retention of title that has been invoiced by JULABO. The proportional payment claim amount assigned to JULABO must be satisfied with prevailing priority. With regards to the authorisation to collect payment claims as well as the requirements for the revocation thereof, Art. IV Para. 3.c. shall be valid accordingly.
 - d. If the Orderer combines the Goods subject to retention of title with real estate plots or movable objects, then he shall, without any additional special declarations being required in this regard, also assign his claim, to which he is entitled as a fee for the combining, with all ancillary rights for security purposes in the proportional amount of the ratio of the value of the combined Goods subject to retention of title to the remaining combined Goods at the time of their combining to JULABO.
5. In the case of seizures, attachments or other interventions or claims upon the part of third parties, the Orderer must make prompt notification in this regard to JULABO.
 6. In the case of contractual violations by the Orderer – particularly in the case of payment default, JULABO shall be entitled, after the fruitless lapsing of the extension period that has been appropriately set for the Orderer for rendering contractual performance, to rescind the Agreement and to take back the Goods; the statutory provisions regarding the dispensability of the setting of an extension period shall remain unaffected. The Orderer shall be obliged to surrender the Goods.

V. Deadlines for Deliveries; Delivery Default; Partial Deliveries; Purchase upon a Trial Basis

1. The fulfilment of delivery deadlines shall require the prompt receipt of all Documents to be provided by the Orderer as well as any required permits and approvals – particularly of plans as well as the fulfilment of the agreed payment terms and conditions and any other obligations by the Orderer. If these requirements are not promptly fulfilled, then the deadlines shall be appropriately extended; this shall not be valid if JULABO is responsible for the delay.
2. If JULABO enters into delivery default, then the Orderer shall be entitled, after the fruitless lapsing of an appropriate extension period of at least two weeks that he has set, to rescind the Agreement. For damage compensation claims upon the Orderer's part in the case of delivery default, the provisions of Art. XII shall be valid accordingly.
3. Insofar as JULABO cannot fulfil binding delivery deadlines (non-availability of contractual performance) for which JULABO is not responsible, JULABO shall promptly notify the Orderer in this regard and, at the same time, state the anticipated new delivery deadline. If the contractual performance is also not available within the new delivery timeframe, JULABO shall be entitled, in whole or in part, to rescind the Agreement; any counter-performance that has already been rendered by the Orderer shall be promptly reimbursed. In the case of the non-availability of the contractual performance in this sense, particularly the untimely delivery upon the part of JULABO's sub-suppliers shall be valid if a congruent covering transaction has been concluded.
4. If JULABO enters into delivery default, then the Orderer shall be entitled, after the fruitless lapsing of an appropriate extension period of at least two weeks that he has set, to rescind the Agreement. For damage compensation claims upon the Orderer's part in the case of delivery default, the provisions of Art. XII shall be valid accordingly.
5. The Orderer shall be obliged, upon JULABO's request, to declare within an appropriate timeframe whether he intends to rescind the Agreement or still insist that the delivery be made in view of the delayed delivery.
6. If shipment or handover is delayed by more than one month upon the Orderer's request after the notification of readiness for shipment has been made, the Orderer may be billed the warehousing costs incurred in the amount of the warehousing costs that are customary for the location.

7. Partial deliveries shall be permissible insofar as they are reasonable for the Orderer.
8. Devices, which have been delivered upon a trial basis, may be returned only within the agreed timeframe – including all manuals, cables and other accessories. The purchasing agreement shall be concluded subject to the suspensive condition of the Orderer's approval. If the return of the Goods is not made by the agreed deadline, this shall constitute the Orderer's approval of the device provided upon a trial basis. In this case, the purchase price shall become immediately payable without any discounts. If no return deadline has been agreed, then this return deadline shall amount to 4 weeks after the date of the delivery note. In the case of a return, the Orderer shall assume the transport, administrative and inspection costs. If the device is discovered to have damage for which the Orderer is responsible, then the device shall be excluded from being returned and the purchase price shall become immediately payable without any discounts. Devices with a special design, consumables and software licenses shall be excluded from purchase upon a trial basis.

VI. Transfer of Risk

1. The risk for freight-paid delivery shall also be transferred to the Orderer as follows:
 - a. In the case of deliveries without erection or mounting work, when they have been shipped or picked up. Upon the Orderer's request, the deliveries from JULABO shall be insured at the Orderer's expense against the customary transport risks;
 - b. In the case of deliveries with erection or mounting work, at the day of their integration into the Orderer's own operations or, insofar as this has been agreed, after flawless trial operations have been conducted.
2. If the shipping, handover, the beginning of the erection or mounting work, the implementation of the erection or mounting work, the integration thereof into the Orderer's own operations or trial operations is delayed owing to reasons for which the Orderer is responsible or the Orderer enters into delivery acceptance default for any other reasons, then the risk shall be transferred to the Orderer.

VII. Erection and Mounting Work

1. Unless something else has been agreed in writing, for the erection and mounting work, the following provisions shall be valid:

The Orderer must undertake and/or provide the following at his own expense and promptly:

- a. All excavation, construction and any other non-industry ancillary work including the required specialised and auxiliary personnel, construction materials and tools,
 - b. The objects and materials that are required for the mounting and commissioning work such as scaffolds, hoisting devices and other equipment, fuels and lubricants,
 - c. Energy and water at the usage site including the power connections, heating and lighting,
 - d. At the mounting site for the storage of the machine parts, apparatuses, materials, tools, etc., satisfactorily large, suitable, dry and lockable rooms as well as work areas and break rooms that are appropriate for the mounting personnel including sanitary facilities that are appropriate for the respective circumstances; moreover, the Orderer must, in order to protect the possessions of JULABO and the mounting personnel at the construction site, undertake the measures which he would undertake to protect his own possessions,
 - e. Protective clothing and protective devices which are required owing to the special circumstances of the mounting site.
2. Before beginning the mounting work, the Orderer must, without this having to be requested, provide the required data regarding the electrical, gas, water lines or similar systems that are located in concealed fashion across the site as well as the required static data in this regard.

3. Before beginning the erection or mounting work, the supplies and objects that are required for the implementation of the work must be available at the erection or mounting site and all preliminary work must have progressed so far before the beginning of the set-up work that the erection or mounting work can be begun contractually and implemented without any interruptions. Any access routes and the erection or mounting site must be levelled and cleared.
4. If the erection, mounting or commissioning work is delayed owing to circumstances for which JULABO is not responsible, then the Orderer must, in an appropriate scope, assume the costs for waiting time and any additionally required travel by JULABO or the mounting personnel.
5. The Orderer must promptly confirm to JULABO upon a daily basis the length of the working time of the mounting personnel as well as the completion of the erection, mounting or commissioning work.
6. JULABO shall promptly notify the Orderer of the required minimum standards for the mounting work (e.g. from a static perspective) insofar as these data are not already stated in the product specifications.
7. If, upon completion of such work, JULABO demands the acceptance of the delivery, then the Orderer must promptly make acceptance. If this does not occur, then acceptance shall be considered to have been made. Acceptance shall likewise be considered to have been made if the delivery has been used.

VIII. Acceptance

The Orderer may not refuse to make acceptance of deliveries owing to minor defects.

IX. Material Defects

For material defects, JULABO shall be liable as follows:

1. Claims for material defects shall become statute-barred in 12 months. This shall not be valid insofar as the law in accordance with Sections 438 Para. 1 No. 2 (Building Structures and Materials for Building Structures), 479 Para. 1 (Claim for Recourse) and 634a Para. 1 No. 2 (Construction Defects) German Civil Code prescribes longer timeframes as well as in cases of the loss of life, physical injury or damage to health, in the case of intentional wrongdoing or gross negligence upon JULABO's part and in the case of a malicious concealment of a defect. The statutory provisions regarding the suspension of the lapsing of timeframes, the suspension and beginning anew of timeframes shall remain unaffected.
2. All those parts or services must, as JULABO so chooses and upon a free-of-charge basis, be either rectified, a replacement delivery must be made or replacement services must be rendered for those parts or services which have been discovered to have a material defect within the statute of limitations period – without taking into consideration the operational life – insofar as its cause already existed when risk was transferred.
3. JULABO shall offer its customers an extended warranty for 24 months which is limited to a maximum of 10,000 operational hours. In order to be able to utilise the extended warranty timeframe option, a registration on our homepage at <http://www.julabo.com> is required. The registration must be made by no later than 4 weeks after the device is commissioned. If registration is made, the extended warranty timeframe shall be valid for all models from the current JULABO product programme. JULABO's invoicing date shall be prevailing for the beginning of the extended warranty timeframe.
4. The Orderer must make prompt written notification of any material defects to JULABO; the provisions of § 377 German Commercial Code (HGB) apply.
5. In the case that a notification of defects is made, payments from the Orderer may be withheld in such a scope which is appropriate for the material defects that have been discovered. If the notification of defects was unjustifiably made, JULABO shall be entitled to demand that the Orderer reimburse it for its incurred expenditures (particularly inspection and transport costs) unless the lack of defectiveness was not recognisable to the Orderer.
6. Initially, JULABO must be granted the opportunity to render subsequent performance within an appropriate timeframe.

7. If the subsequent performance is unsuccessful twice, the Orderer may – notwithstanding any damage compensation claims in accordance with Art. XII – rescind the Agreement or reduce the purchase price. However, no right of rescission shall be valid for only a minor defect.
8. Claims for defects shall not be valid in the case of natural wear-and-tear or damage which is created after the transfer of risk owing to flawed or careless handling, excessive workloads, unsuitable operational resources, flawed construction work, an unsuitable construction site or owing to special external influences which are not required in accordance with the Agreement as well as in the case of non-reproducible software errors. If the Orderer or a third party has undertaken improper modifications or repair work, then likewise no claims for defects shall be valid for them and the resulting consequences.
9. The Orderer's claims for recourse against JULABO in accordance with Section 478 German Civil Code (Entrepreneur's Recourse) shall be valid in accordance with the statutory directives.
10. Otherwise, for damage compensation claims, Art. XII (Damage Compensation Claims) shall be valid. Any more extensive or other claims against JULABO and its vicarious agents upon the Orderer's part than those regulated in this Art. IX owing to a material defect shall be excluded.

X. Industrial Property Rights and Copyrights; Legal Defects

1. Unless something else has been agreed, JULABO shall be obliged to make the delivery merely in the country where the delivery destination is located unencumbered by industrial property rights and copyrights held by third parties (hereafter: "Proprietary Rights"). Insofar as a third party nonetheless asserts justified claims against the Orderer owing to the violation of Proprietary Rights caused by the deliveries rendered by JULABO which have been used contractually, JULABO shall be liable to the Orderer within the timeframe specified in Art. IX Para. 1 as follows:
 - a. JULABO shall, as it so chooses and at its own expense, either affect a usage right for the affected deliveries, alter them in such a manner that the proprietary right is no longer being violated, or exchange them. If this is not possible for JULABO at appropriate terms and conditions, the Orderer shall be entitled to the statutory rights of rescission or to reduce the purchase price.
 - b. JULABO's obligation to pay damage compensation is prescribed in Art. XII.
 - c. The aforementioned obligations of JULABO shall be valid only insofar as the Orderer promptly notifies JULABO in writing of the claims asserted by the third party and does not recognise a violation and JULABO reserves the right to undertake all measures to ward off the claims and conduct settlement negotiations. If the Orderer discontinues the usage of the delivery in order to mitigate damages or for any other important reasons, then he shall be obliged to notify the third party that the discontinuation of usage does not constitute a recognition of a proprietary-right violation.
2. Claims of the Orderer shall be excluded insofar as he is responsible for the proprietary right violation.
3. Moreover, the Orderer's claims shall be excluded insofar as the proprietary right violation has been caused through special instructions that have been issued by the Orderer, through a usage not foreseeable by JULABO or owing to the fact that the delivery was altered by the Orderer or used together with products not supplied by JULABO.
4. Moreover, in the case of proprietary right violations, the provisions of Art. IX Paras. 6, 7 and 10 shall be valid accordingly for the Orderer's claims that are regulated in Para. 1. a.
5. In the case that other legal defects are discovered, the provisions of Art. IX shall be valid accordingly.
6. Any more extensive or other claims than those regulated in this Art. XI upon the Orderer's part against JULABO and its vicarious agents owing to a legal defect shall be excluded.

XI. Contractual Adaptations

Insofar as unforeseeable events in accordance with Art. V Para. 2 substantially alter the financial significance or the contents of the delivery or have a substantial effect on JULABO's operations, the Agreement shall be appropriately adjusted in good faith. Insofar as this is not economically feasible, JULABO shall be entitled to rescind the Agreement. If JULABO intends to exercise this right of rescission, then JULABO must promptly announce this to the Orderer after becoming aware of the grave significance of the event and indeed even then if an extension of the delivery timeframe was initially agreed with the Orderer.

XII. Damage Compensation Claims

1. Any claims for damage compensation and the reimbursement of expenditures upon the Orderer's part (hereafter: "Damage Compensation Claims") shall be excluded –regardless of the legal reason – particularly owing to the violation of obligations from the contractual relationship and from tortious acts.
2. This shall not be valid insofar as mandatory liability is prescribed, e.g. in accordance with the German Product Liability Act, in cases of intentional wrongdoing, gross negligence, owing to the loss of life, physical injury or damage to health, owing to the violation of essential contractual obligations (an obligation whose fulfilment only then makes possible at all the proper implementation of the Agreement and upon whose fulfilment the contractual partner regularly relies and may rely). However, the Damage Compensation Claim for the violation of essential contractual obligations shall be limited to the contractually-typical, foreseeable damages unless intentional wrongdoing or gross negligence has been committed or liability exists owing to the loss of life, physical injury or damage to health. Any change in the burden of proof to the Orderer's detriment is not associated with the aforementioned provisions.
3. The statute of limitations period that is valid for claims for material defects in accordance with Art. IX Para. 1 shall also be valid for contractual and non-contractual Damage Compensation Claims upon the Orderer's part which are based upon a defect in the contractual goods. Damage Compensation Claims upon the Orderer's part owing to cases of intentional wrongdoing, gross negligence or owing to loss of life, physical injury or damage to health as well as in accordance with the German Product Liability Act shall nonetheless become statute-barred exclusively in accordance with the legal statute of limitations provisions.

XIII. Return and Waste Disposal in Accordance with the German Electrical Equipment Act

JULABO shall, at the Orderer's expense, take back the delivered Goods upon the end of their usage and properly dispose of them in accordance with the statutory directives.

XIV. Legal Venue and Applicable Law

1. If the Orderer is a merchant in accordance with the German Commercial Code (HGB), the sole legal venue for all disputes arising directly or indirectly from the contractual relationship shall be 77933 Lahr/Black Forest, Germany. JULABO shall nonetheless also be entitled to take legal action in the legal venue that is competent for the Orderer's commercial residence.
2. For the legal relationships in conjunction with this Agreement, German substantive law shall be valid subject to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Version: July 2019