



gym80 International GmbH
Wiesmannstraße 46, 45881 Gelsenkirchen GERMANY

GENERAL TERMS AND CONDITIONS

General Terms and Conditions of Payment and Delivery of gym80 International GmbH

1. Scope:

a. These General Terms and Conditions apply exclusively to our business relations with companies, legal entities governed by public law and special funds under public law. They do not apply in business transactions with consumers. Consumers, in the context of our terms and conditions, are natural persons entering into a financial transaction which is not considered a commercial transaction or one that involves self-employment. These General Terms and Conditions also apply to all future business relations, even if they are not expressly referred to in later contracts.

b. When placing an order or accepting an offer, the buyer shall accept our General Terms and Conditions as solely binding, relinquishing any right to subsequent revocation.

c. These terms and conditions shall be deemed accepted at the latest upon acceptance of our deliveries and services.

d. Any reference made by the buyer to its terms and conditions are hereby rejected. We shall not be bound by them even if we do not expressly object to them in individual cases.

e. Any terms and conditions of the buyer that deviate from these terms and conditions shall only apply if they have been expressly agreed by us in writing. This shall also apply to deviating agreements.

f. With the incorporation of these terms of payment and delivery, all previous GTC lose their validity. We are entitled to make changes to these terms of payment and delivery - with the exception of fees and service description - at any time, insofar as this becomes necessary due to changed circumstances (e.g. changes in legislation or case law) and is not unreasonable for the buyer. We shall notify the buyer of any changes in writing or by electronic means, provided this does not require unreasonable effort. The buyer is entitled to object to the changes within 14 days, otherwise the changes shall be deemed accepted.

g. If the buyer orders software products, he also undertakes to conclude a service contract with additional conditions, rights and obligations. The service contract is enclosed with the corresponding offer or order confirmation and/or can be viewed on our website www.gym80.de under the link GTC and saved and printed as a PDF file.

2. Offers, orders, amendments, self-delivery, deviations

a. Our offers are always subject to change and non-binding, unless we have made a binding offer in writing in individual cases.

b. The purchase contract shall be deemed concluded if we confirm acceptance of the buyer's order or offer in writing within three weeks of receipt or carry out the delivery in whole or in part. The deadline shall be deemed met if the declaration of acceptance is sent within the aforementioned period.

c. If the buyer wishes to make changes after the order confirmation has been sent or wishes to postpone the confirmed delivery date to a later date, the expenses incurred as a result shall be borne by the buyer.

If the goods ordered have already been produced, we are entitled to charge storage fees for the period between the confirmed delivery date and the new delivery date in accordance with section 6 (f) of our terms of payment and delivery.

Any request for changes or postponement of the delivery date by the buyer must be submitted to us in writing no later than 4



weeks before the confirmed delivery date.

d. We conclude our contracts with the buyer only under the proviso that we, in turn, receive correct and timely delivery from our suppliers. This shall only apply if and to the extent that we are not responsible for non-delivery to the buyer, in particular if a congruent hedging transaction has been concluded with our suppliers. If the goods ordered are not available, we shall inform the buyer immediately. Any payments already made by the buyer for the said goods shall be refunded without delay.

e. Minor deviations in quality and colour – especially those customary in the trade - are permissible for the goods to be delivered and do not constitute a material defect, unless the deviations contradict an assurance or guarantee.

3. Prices

a. Ordered products shall be invoiced at the prices listed in the order confirmation plus VAT and are quoted ex warehouse, excluding packaging and shipping costs.

b. Quotes and list prices are subject to change until the order is confirmed in writing and do not include VAT.

c. For orders with a delivery time of more than 4 months or where there is a delay in delivery of more than 4 months for which we are not responsible, we reserve the right to adjust our prices in line with any increases in the production costs on which the order confirmation is based (material costs, wages, energy costs, duties, etc.), including any incidental cost increases incurred through no fault of our own, up to the actual delivery date. This shall not apply if the buyer, for its part, has entered into an unrestricted contractual obligation vis-à-vis a consumer with respect to the purchased item.

4. Terms of payment, default, right of retention

a. Unless otherwise agreed in writing, our standard payment terms are 50 percent deposit when placing the order and the remaining 50 percent payable prior to delivery. Alternatively, a written adherence agreement can be submitted by a lender (leasing company/bank). Any other form of payment requires the written prior consent of the seller.

b. Our invoices are due immediately, but no later than upon delivery, without deduction. The deduction of discounts is not permitted.

If the buyer fails to pay on time, we are entitled to charge interest on arrears at the rate charged to us by the bank for current account overdrafts, but at a minimum of 9 percent p.a. above the respective base interest rate.

c. Goods selected and taken from our warehouse must be paid for immediately in cash, unless otherwise agreed in writing.

d. If goods ordered by the buyer are not in stock and must first be ordered or manufactured, a deposit of 50 percent of the agreed price must be paid at the time the purchase contract is concluded, in accordance with section 4 (a), with the remaining amount due before delivery.

e. Upon request, the buyer shall provide an irrevocable, indefinite and directly enforceable bank guarantee for the remaining purchase price that waives the right to object.

f. We are entitled to offset payments against older debts. If costs and interest have already been incurred, we are entitled to offset these payments first against the costs, then against the interest and last of all against the principal amount. If a provision to the contrary applies to the customer at the time of the performance, we can, at our discretion, base our calculations on this provision.

g. A payment shall only be deemed to have been made when we have unconditional access to the amount. Bills of exchange shall only be accepted on account of payment and subject to their eligibility for discount. The costs and expenses incurred in connection with discounting shall be borne by the buyer.

h. If the buyer does not meet its payment obligations, in particular if a cheque it submitted is not cleared, if its bank account lacks sufficient funds for an agreed direct debit payment, if it stops making payments or if we become aware of other circumstances that call into question the buyer's creditworthiness, we shall be entitled to demand payment of the entire remaining debt.



i. The retention of payments due to of counterclaims or the offsetting against such claims by the customer is only permitted if the counterclaims are uncontested or legally upheld. Furthermore, rights of retention may only be exercised if they are based on the same contractual relationship.

5. Delivery and lead time, force majeure

a. Delivery time specifications are only approximate. Binding delivery dates and deadlines must be agreed in writing. The delivery date shall be the day of dispatch ex works or ex warehouse.

b. In all cases of force majeure such as severe weather and natural disasters, as well as in cases of mobilisation, war, civil unrest, strikes, lockouts, operational disruptions, restrictions and shortages of raw materials and supplies and in the case of similar events that are beyond our control, the delivery time shall be extended by the duration of the hindrances and a reasonable lead time after the hindrance has ended. Should such circumstances make the execution of the contract unreasonable for one of the parties, the affected party may withdraw from the contract. Claims for damages by our customers are excluded.

c. Partial deliveries within the delivery period are permitted unless the customer cannot reasonably be expected to accept delivery in parts and at intervals.

d. If, after conclusion of the contract, it becomes apparent that our claim for payment is at risk due to the buyer's inability to pay, we are entitled to refuse services and set the buyer a reasonable deadline within which it must pay contemporaneously against delivery or provide collateral. If the buyer refuses or the deadline is not met, we are entitled to withdraw from the contract and/or demand compensation.

e. Requests for individual partial deliveries and the scheduling thereof shall be made in such a way that makes it possible for us to manufacture and deliver in accordance with the contract.

6. Shipping, transfer of risk, delay in acceptance, compensation

a. Unless otherwise agreed, the buyer shall bear the shipping costs (packaging and transport).

b. The mode of shipment shall be chosen by us, unless the buyer has explicitly stipulated a particular shipment method. Shipping and transport are at the risk of the buyer.

c. The risk is transferred to the buyer as soon as the goods have been handed over to the person in charge of transportation or have left our warehouse upon shipment. If shipment is delayed through no fault of our own, the risk shall transfer to the buyer upon receipt of notification that the goods are ready for dispatch. Unless expressly agreed otherwise in writing, the Incoterms 2000 Ex Works (EXW) clause shall apply. The delivery warehouse is located in Gelsenkirchen.

d. If a purchased item is to be returned for reasons for which we are not responsible, the buyer shall bear the risk until it arrives back at our factory.

e. If the buyer refuses or fails to take delivery of the goods ordered or is in delay, we are entitled to store the delivery items at the buyer's risk and expense. For this purpose, we may also use a forwarding agent or a warehouse keeper. However, we are under no obligation to take out insurance for the delivery items.

f. During the period of delay in accepting the goods, the buyer shall pay us a flat rate of 1.0 % of the purchase price per month or part thereof as storage charges, starting from the date of notification that the goods are ready for dispatch, as compensation for the storage costs incurred, without the need to provide further proof – up to a maximum total of 5 % of the purchase price. If higher storage costs are incurred, we are entitled to demand these from the buyer upon presentation of proof. The buyer reserves the right to prove that the storage costs are actually lower than the flat rate demanded.

g. If the buyer fails to pay the purchase price due even after a grace period has expired or refuses to accept the goods or declares that he does not wish to accept the goods, we may refuse to fulfil the contract and claim damages. We are entitled to claim damages from the buyer either at a flat rate of 25 percent of the agreed purchase price or compensation for the actual damage incurred. The buyer reserves the right to prove that the damage is actually less.



7. Reporting defects and warranty

a. The buyer is obliged to immediately inspect the delivered goods for visible defects, in particular for visible deficiencies or damage, and to report these to us in writing without delay upon receipt of the goods. The timely dispatch of a defect claim is sufficient to comply with the stipulated deadline. In the case of hidden defects, the buyer is obliged to report them to us in writing whenever they are discovered, but at the latest before the expiry of the limitation period in accordance with section 7 (i). Any defects found in the delivered software must be reported in writing without delay, at the latest within 5 days of installation. The burden of proof for all conditions, in particular, the existence of the defect, the time of ascertainment of the defect and the timely notification of the defect rests with the buyer. If the buyer fails to report a defect in compliance with the above, our liability for defects is excluded. The defect report must document the nature of defect in an appropriate manner.

b. Claims by the buyer relating to a defect on a purchased item shall be excluded if the defect was caused by failure to comply with the instructions on handling, maintenance and care in operating manual of the respective item or failure to observe the prescribed maintenance intervals, or if parts or accessories have been installed whose use was not approved by us, or if the purchased item was otherwise improperly handled.

c. Claims by the buyer relating to a defect on a purchased item shall also be excluded for used products and for goods that are not included in our product catalogue, but are manufactured as a custom-made product at the request of the buyer.

d. If we are not the manufacturer of the purchased item, we shall assign our warranty claims against our upstream suppliers to the buyer, excluding our warranty obligation towards the buyer, provided this does not unreasonably disadvantage the buyer. In particular, we shall be subordinately liable if and to the extent that the upstream supplier fails to meet the buyer's claims even after enforcement by a court of law. We shall reimburse the buyer for any costs that cannot be recovered from the upstream supplier.

e. If the goods are defective, we reserve the right to first choose whether to remedy the defect by replacement or repair (subsequent performance). In the event of subsequent performance, we are obliged to bear all expenses necessary for this purpose, in particular transport, travel, labour and material costs, unless these have increased due to the fact that the purchased item was brought to a location other than the place of fulfilment.

f. In accordance with the statutory provisions, we are obliged to take back new goods or to reduce the purchase price, even if a return deadline has not been established as is usually required, if the buyer's customer is an end consumer of the new movable item sold who has the right to demand that the buyer take back the goods or reduce the purchase price due to a defect in such goods (purchase of consumer goods), or if the buyer is confronted with a similar claim by a client under a resultant right of recourse (supplier's recourse). We are furthermore obliged to reimburse the buyer for any necessary expenses incurred, in particular transport, travel, labour and material costs, which the buyer had to bear in relation to the end consumer in the context of subsequent performance due to a defect in the goods that existed at the time the risk is transferred by us to the buyer. These expenses shall be reimbursed in the form of merchandise credits. However, the claim shall be deemed invalid if the buyer has not properly complied with its inspection and defect reporting obligations in accordance with section 377 of the German Commercial Code (HGB).

g. The obligation outlined in section 7 (f) shall be excluded if the defect is based on advertising claims or other contractual arrangements that do not originate from us or if the buyer has given the end consumer a special guarantee. The obligation shall also be excluded if the buyer himself, according to legal regulations, was not obliged to entertain a warranty claim by the end consumer or did not object to the claim of the end consumer on these grounds. This shall also apply if the buyer granted the end consumer warranties which extend beyond that required by the law.

h. If the subsequent performance fails, is impossible, is conclusively rejected by us or is unreasonable for the buyer or if a deadline set by the buyer for subsequent performance has expired without success or is unnecessary according to the statutory provisions, the buyer shall be entitled to choose between a reduction in the purchase price (reduction) or demanding the cancellation of the contract (withdrawal). By declaring its withdrawal or demanding a reduction, the buyer hereby waives its claim to delivery of a product free of defects. Any claims by the buyer for damages or reimbursement of wasted expenditure shall only be granted within the scope of the following section 8. Otherwise they shall be excluded. As long as we fulfil our obligations to remedy the defects, the buyer has no right to demand a reduction in the price or cancellation of the contract unless the remedy has failed.



i. For items reported defective for which no fault could be detected, we are entitled to charge for inspection costs.

j. Our warranty is subject to the currently valid warranty terms, which can be found at: <https://gym80.de/garantiebestimmungen/>.

8. Liability, exclusion of subsequent performance and withdrawal, performance period

a. With the exception of the circumstances outlined in paragraph (b) below, any liability for damages or reimbursement of wasted expenditure in the event of a breach of duty beyond the liability for defects outlined in section 7 above shall be excluded, regardless of the legal nature of the asserted claim. This shall also apply in the event of a breach of duty by our legal representatives or vicarious agents.

b. The exclusion of liability outlined in the previous paragraph shall not apply to claims by the buyer based on Product Liability Act, not in the event of injury to life, limb or health attributable to us, not in the event of a grossly negligent or intentional breach of duty, not in the event of a breach of an essential contractual obligation and not if a guarantee was given or if we have acted with intention to deceive. In such cases, we are liable in accordance with the statutory provisions. However, in the event of a breach of an essential contractual obligation due to minor negligence, our liability shall be limited to the amount of compensation for typical, foreseeable damage.

c. In the event of a breach of duty that is not based on a defect in the goods, the buyer may only withdraw if the circumstance justifying the withdrawal is based on a fault attributable to us and the breach of duty is so significant that the buyer cannot reasonably be expected to adhere to the contract.

d. If a deadline set by the buyer to remedy the defect has expired without a satisfactory result and the buyer does not, even after a subsequent request by us, clarify within an additional reasonable deadline set by us whether it will adhere to its claim for defect rectification or damage compensation in lieu of rectification, the defect claim shall be barred upon expiry of the reasonable deadline associated with this request.

9. Statute of limitations

a. All claims and rights of the buyer, irrespective of the legal basis, shall become statute-barred one year after delivery of the goods, unless our liability is based on wilful intent.

b. Notwithstanding the above provision, the statutory limitation period shall apply in the following cases:

- For claims for defects if we have fraudulently concealed the defect or have given a guarantee for the quality,
- For recourse claims by the buyer within the scope of a supply chain pursuant to section 478 of the German Civil Code (BGB),
- For claims for damages or claims for reimbursement of wasted expenditure arising from injury to life, limb or health,
- For claims under the Product Liability Act.

10. Retention of title

a. The delivered goods shall remain our property until all claims arising from the business relationship between us and the buyer have been paid in full. The inclusion of individual receivables in a running account and payment and acknowledgement of the balance of this account shall not affect the retention of title. In the event of default in payment on the part of the buyer, and after a grace period set by us has expired to no effect, we shall be entitled to take back the goods and sell them at the buyer's expense.

b. The buyer is entitled to resell the reserved goods in the normal course of business. However, it is not permitted to pledge or transfer the reserved goods to a third party as security. If the reserved goods are resold on credit, the buyer is obliged to conclude a retention of title agreement with its customer.

c. The buyer is obliged to handle the reserved goods with care. In particular, the buyer is obliged to ensure that the goods are stored and labelled properly.



d. The buyer hereby assigns to us its claims arising from the resale of the reserved goods. We accept this assignment. If the buyer includes receivables arising from the resale of the reserved goods in an open account relationship with its customers, it hereby assigns to us both the acknowledged balance as well as the causal balance up to the amount of the original account claim. Notwithstanding the assignment and our right to collect, the buyer shall be entitled to collect payment as long as it duly fulfils its obligations towards us and is not in danger of financial collapse.

e. If the reserved goods are resold together with other goods, regardless of whether the goods are resold without or after processing or combination, then the assignment as per above shall only apply to the extent of the invoice value of the reserved goods that are resold together with the other goods. In the event the buyer defaults on its payment obligations, it shall, upon request, provide the information on the assigned claims required for collection and notify the debtors of the assignment.

f. If the buyer refinances on a factoring basis, it hereby assigns to us the claims to which it is entitled against the factor in the amount of its outstanding balance from the business relationship with us.

g. The buyer is obliged to inform us immediately of any third-party enforcement measures against the reserved goods or against the receivables assigned to us and shall hand over the documents necessary for an intervention. Moreover, the buyer shall bear the costs of any justified intervention measures, unless they can be recovered from a third party.

h. Upon the buyer's request, we undertake to release the collateral to which we are entitled in accordance with the aforementioned provisions at our discretion insofar as their realisable value exceeds the claims to be secured by 10.0% or more. The buyer shall be entitled to a release if the estimated value of the goods assigned as security amounts to 150 % of the claims to be secured.

11. Final provisions

a. The place of fulfilment for all claims arising from the contractual relationship is Gelsenkirchen.

b. The place of jurisdiction for all legal disputes arising from the contractual relationship, including those concerning its establishment and validity, is Munich or, at our discretion, the buyer's general place of jurisdiction. Statutory regulations governing exclusive jurisdictional responsibilities shall remain unaffected. All disputes arising from or in connection with this contract shall be decided by a German state court, which ruling shall be final and binding.

c. The contractual relationship shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of all international and supranational legal systems, in particular the UN Convention on Contracts for the International Sale of Goods (CISG).

d. There are no side agreements to this agreement. Any amendments or additions to this agreement must be made in writing to be deemed legally valid. This shall also apply to the amendment of this written form clause.

e. The images shown are for illustration purpose only and may vary slightly from the actual product.

12. Data protection

We would like to point out that we only store, process and pass on personal data of our partners for the purpose to fulfilling our contractual obligations, in accordance with the provisions of the Federal Data Protection Act (BDSG), Regulation (EU) 2016/679 of the European Parliament and of the Council (General Data Protection Regulation) and the Telemedia Act (TMG). For more details on how we handle your personal data see our [Privacy Policy](#).

In this context, certain data (name, address, invoice details and late payments by the buyer) may be transmitted to credit agencies.

gym80 International GmbH (Published: 03/2022)