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CHECKLIST · AS OF NOVEMBER 2026

Terms of sale and delivery for the German market

for foreign suppliers

Incorporation, conflicting terms, UN Sales Convention, jurisdiction, delivery, payment, retention of title, warranty and limitation of liability: which clauses stand up in German courts and which internationally common provisions are invalid.

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> **NOTE**
>
> This checklist provides a general overview of the legal situation as of November 2026. It does not replace advice on an individual case. Laws, case law and practice change; no liability is accepted for accuracy in a specific case.

Overview

Suppliers selling to businesses in Germany can largely shape their own terms and conditions, but not without limits. Even between businesses, German courts review standard terms and conditions (Allgemeine Geschäftsbedingungen, AGB) strictly. Many clauses common internationally, such as blanket exclusions of liability, are invalid under German law.

This checklist is for suppliers based outside Germany that sell goods to German businesses (B2B). It shows which provisions belong in terms of sale and delivery, how to incorporate them effectively and where the limits of judicial review lie. Notes on selling to consumers are at the end.

> **REVIEW OF STANDARD TERMS ALSO BETWEEN BUSINESSES**
>
> Between businesses, the specific clause prohibitions of §§ 308 and 309 German Civil Code (BGB) do not apply directly. Courts nevertheless review standard terms under the general clause of § 307 BGB and draw on the assessments behind those prohibitions. An invalid clause is not reduced to what would be permissible; it falls away entirely and the statutory rules apply instead. A severability clause does not change this.

Effective incorporation

Standard terms apply only if they become part of the contract. Under German law, agreement on their application is sufficient between businesses, even implicitly. For international sales contracts governed by the UN Convention on Contracts for the International Sale of Goods (CISG), the Federal Court of Justice is stricter: the user must send the text to the other party or otherwise make it available; a mere reference is not enough (BGH, judgment of 31.10.2001 – VIII ZR 60/01).

- ☐ Attach the terms to the offer or order confirmation, not only to the invoice
- ☐ Refer expressly to the terms in the offer
- ☐ Provide the terms in the contract language or a language the customer understands; if in doubt, German and English
- ☐ In ongoing business relationships, agree that the terms apply to all future transactions (framework agreement)
- ☐ Document individually negotiated deviations; they always take precedence over standard terms (§ 305b BGB)

Conflicting terms

In practice, both sides usually refer to their own terms: the supplier in the order confirmation, the buyer in the purchase order. Under German law, neither version then applies to the extent that the clauses contradict each other. Only matching provisions apply; otherwise the statutory rules govern. The Federal Court of Justice also applies this principle to contracts under the CISG.

- A defence clause in your own terms prevents the customer's terms from applying tacitly.

- Clauses that are particularly important to you, such as limitation of liability or jurisdiction, should be agreed individually, for example in a framework agreement or in an order confirmation countersigned by the customer.
- A simple retention of title generally takes effect even if the buyer's terms exclude it; an extended retention of title does not.

Choice of law and UN Sales Convention

If seller and buyer are based in contracting states of the UN Sales Convention (CISG), it applies automatically. This includes Germany, Brazil, Portugal and Hungary, among others. Important: choosing "German law" includes the CISG, because it forms part of German law. If you do not want it to apply, you must exclude it expressly.

Issue	UN Sales Convention (CISG)	German sales law (BGB/HGB)
Notice of defects	Within a reasonable time, at the latest two years after delivery (Art. 39 CISG)	Between merchants without undue delay after delivery (§ 377 Commercial Code, HGB); otherwise the goods are deemed accepted
Damages	Strict liability; exemption only for impediments beyond the party's control (Art. 79 CISG)	Generally only in case of fault (§ 280 BGB)
Avoidance or termination	Only for fundamental breach (Art. 25, 49 CISG)	Generally after an additional period has expired without success (§ 323 BGB)
Limitation period	Not governed by the CISG; the supplementary national law applies	Warranty claims generally two years from delivery (§ 438 BGB)

> **WORDING**
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> If only German law is to apply, a clause such as the following is recommended: "The law of the Federal Republic of Germany applies, excluding the UN Convention on Contracts for the International Sale of Goods (CISG)." Whether the exclusion is advantageous depends on your role: as seller, you often benefit from the strict duty to inspect and give notice under § 377 HGB and from the fault-based liability of the BGB.

Jurisdiction and arbitration

Jurisdiction agreements are permitted between merchants (§ 38 Code of Civil Procedure, ZPO); where the parties are in different EU states, their validity is governed by Art. 25 of the Brussels Ia Regulation. Choose the forum according to where you will have to enforce in the event of a dispute.

- A German judgment is enforceable in all EU states without further proceedings.

- Outside the EU, for example in Brazil, a German judgment must first be recognised. Arbitral awards can often be enforced more easily there under the New York Convention.
- An arbitration clause should specify the arbitral institution, the seat, the language and the number of arbitrators.
- For claims against your German customers, a forum in Germany is usually the most practical choice, because that is where their assets are.

Delivery, prices and payment

Delivery

- ☐ Delivery term under Incoterms® 2020 with the exact place, for example "FCA Hamburg Incoterms® 2020"; it governs the transfer of costs and risk
- ☐ Mark delivery dates as binding or non-binding; a blanket exclusion of all rights in case of late delivery is invalid
- ☐ Allow partial deliveries where reasonable for the customer
- ☐ Force majeure clause with examples, a duty to inform and a right to withdraw if the event lasts longer
- ☐ Regulate the customer's duties to cooperate and take delivery and the consequences of default in acceptance

Prices and payment

Clause	What is permitted
Price adjustment	Only if transparent and linked to verifiable cost factors; unilateral increases at free discretion are invalid
Payment term	Freely agreeable; payment terms exceeding 60 days apply only if expressly agreed and not grossly unfair to the creditor (§ 271a BGB)
Default	Default interest of 9 percentage points above the base rate and the €40 lump sum (§ 288 BGB) apply by law; exclusion to the detriment of the creditor is invalid
Set-off and retention	Can be restricted, but must remain available for undisputed and finally adjudicated counterclaims
Cash discount and prepayment	Permitted; state conditions and deadlines clearly

Retention of title

Retention of title is the supplier's most important form of security. It is governed by the law of the place where the goods are located. For goods in Germany, German property law therefore applies, even if the sales contract is governed by another law.

Form	Effect
Simple retention of title	You remain the owner until the purchase price has been paid in full

Form	Effect
Extended retention of title	The buyer may resell or process the goods and in return assigns to you in advance its claims against its own customers or ownership of the new item
All-monies retention of title	Title passes only when all claims arising from the business relationship have been paid

AVOID OVER-COLLATERALISATION

Extended and all-monies retention of title require a release clause: if the value of the security exceeds your claims by more than 10%, you must release security on request. If the clause is missing or drafted too narrowly, you risk invalidity, particularly in the customer's insolvency.

Warranty

- ☐ Confirm the buyer's duty to inspect and give notice under § 377 HGB and regulate the form and deadline of notices, without shortening the deadline unreasonably
- ☐ Shorten the limitation period for warranty claims on new goods to one year; not for intent, fraud, guarantees or personal injury
- ☐ Reserve to the seller the choice between repair and replacement
- ☐ Limit reimbursement of removal and installation costs only to a limited extent; a complete exclusion is risky
- ☐ For goods ultimately sold to consumers: your customer's recourse within the supply chain (§§ 445a, 478 BGB) can only be restricted in return for equivalent compensation

CONSTRUCTION PRODUCTS

For items that, in accordance with their normal use, are incorporated into a building, a limitation period of five years applies (§ 438(1) no. 2 BGB). Shortening it in standard terms is possible only to a very limited extent.

Limitation of liability

Liability clauses modelled on Anglo-American contracts, such as a blanket exclusion of consequential damages or a liability cap for all cases, are regularly invalid in German standard terms. A tiered limitation is permitted:

Category	Liability in standard terms
Intent and gross negligence of management and senior employees	Cannot be excluded or limited

Category	Liability in standard terms
Injury to life, body or health	Cannot be excluded or limited
Claims under the Product Liability Act and under guarantees	Cannot be excluded (§ 14 ProdHaftG)
Simple negligence in breach of essential contractual obligations	Can be limited to typical, foreseeable damage
Simple negligence in breach of other obligations	Can be excluded

In addition, you may set maximum amounts for foreseeable damage if they reflect the typical risk of loss. If an amount is set too low, the entire clause may be invalid.

Further clauses

- Confidentiality and protection of know-how, drawings and samples
- Trademarks and intellectual property: responsibility when manufacturing to customer specifications
- Product and producer obligations: who is registered as producer in Germany under packaging, electrical equipment and battery law and who bears the disposal costs
- Export control and sanctions: reservation for export restrictions and the customer's duty to comply with re-export bans
- Data protection when processing customer data
- Written or text form clauses: they do not prevent oral individual agreements, but create clarity

> **SELLING TO CONSUMERS**
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> Towards consumers, the clause prohibitions of §§ 308, 309 BGB apply directly, and much is mandatory: the warranty period for new goods is two years and cannot be shortened; limitations of liability, jurisdiction clauses and the choice of foreign law are largely invalid. Online shops are also subject to the right of withdrawal and information duties. Use separate consumer terms.

Checklist and typical mistakes

Your terms of sale and delivery for German business customers should cover the following points:

- ☐ Scope (businesses only) and defence clause
- ☐ Incorporation: send the terms with the offer or order confirmation
- ☐ Conclusion of contract, offers and order confirmation
- ☐ Choice of law with an express decision on the CISG
- ☐ Jurisdiction or arbitration clause with a view to enforcement
- ☐ Delivery term under Incoterms® 2020, delivery dates, force majeure
- ☐ Prices, price adjustment, payment term, set-off
- ☐ Retention of title with release clause
- ☐ Notice of defects, limitation period and cure
- ☐ Tiered limitation of liability
- ☐ Confidentiality, intellectual property, producer and export obligations
- ☐ Language versions and which version prevails in case of discrepancies

Typical mistakes in practice

- The terms are mentioned only on the invoice or as a link in the email signature and therefore do not become part of the contract.
- German law is chosen without excluding the CISG, although the terms are tailored to the BGB.
- Liability clauses are copied from English or American templates and are invalid in their entirety.
- The extended retention of title lacks a release clause.
- A forum in the home country is agreed, although the judgment will later have to be enforced in Germany.
- The translation differs from the original and it is not specified which version prevails.

How WYN LEGAL can help

WYN LEGAL drafts and reviews terms of sale and delivery for foreign companies supplying to Germany, legally and from a tax perspective and in German, English, Portuguese and Hungarian. This includes adapting existing terms to German law, multilingual versions, framework and distribution agreements, and enforcing claims against German customers.

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