

General Terms of Delivery and Payment

Scope

1. These terms of sale apply to each delivery and master contract (hereinafter referred to as 'contract') and to all individual contracts and/or provisions of a contract (hereinafter 'individual contract') with companies, legal entities under public law and special trusts under public law (hereinafter 'contracting parties').

Our deliveries and services are subject to the following conditions.

Terms and conditions formulated by a contracting party that are not expressly accepted by us have no legal standing.

General Provisions

2. The contracting parties shall confirm the substance of any agreements made by word of mouth without delay in writing.
3. Orders are not binding until confirmed by us.
4. The information and images contained in brochures and catalogues refer merely to approximate values which comply with customary industry practice unless they have been expressly designated by us as binding.
5. We are entitled to refuse acceptance of an order from a contracting party if we consider that it places us at financial risk due to impaired ability of the contracting party to make payment for such an order. This is especially the case if and to the extent that the sum for which we are covered by our commercial credit insurers to secure our claims against the contracting party would be exceeded by the value of the order at the time it is placed or if our liability upon a possible default by our contracting party were to be raised by more than 10 percentage points over the excess to which we would have been liable before completion of this contract and the reasons for this increase can be attributed to the circumstances of the contracting party. The above applies to any extension of this contract. The same applies, notwithstanding the provision in Clause 24, to the fulfilment of an order covered by Section 321 Para 1.2 and Para 2 of the BGB (German Civil Code).
6. We are also entitled to terminate the contract with immediate effect if reasonable cause can be shown. Reasonable cause would apply in particular if became apparent to us after entering into a contract that our legitimate claims for payment might be at risk from lack of liquidity on the part of the contracting party and the contracting party failed to take out sufficient insurance for this eventuality within a reasonable time after being requested to do so. Statutory rights of termination and cancellation and the rights under Clauses 24 and 34 shall remain unaffected.
7. If any part of these Terms of Delivery and Payment is unenforceable or is subsequently shown to be so, the validity of the remaining provisions shall not be affected.

Long-Term and Call-Off Contracts, Price Adjustment

8. Contracts made without time limit and contracts of more than one year in duration may be terminated with a notice period of six months.

9. In the case of long-term contracts (contracts with a term of more than 12 months and those made without time limit), any significant change in wage levels, material costs or energy costs will entitle either contracting party to institute negotiations on an equitable adjustment of the price, taking these factors into account.
10. In the case call-off contracts, we need to be informed of binding quantities at least three months before the due delivery date, unless otherwise agreed.

Additional costs that are caused by a delayed call-off or by subsequent amendments to the order with regard to delivery date or quantity on the part of the contracting party will be at his expense, unless he is not responsible for the delay or amendment. Our calculation shall be decisive for this purpose.

Confidentiality

11. Each party will use all documents (including samples, models and data) and information that it acquires from the business relationship only for the agreed common purpose and will maintain the same level of secrecy in relation to third parties as they would with their own documents and information. This applies to any documents or information that the other party designates as confidential or has an obvious interest in keeping confidential.

This obligation shall begin upon receipt of the documents or information and ends 36 months after the termination of the business relationship.

12. The obligation does not apply to documents and information that are in the public domain or were already known to the contracting parties at the time of receipt and before being bound by confidentiality or are subsequently communicated by a third party who is authorised to disclose them or to documents and information developed by the contracting party without reference to confidential documents or information originating from the other contracting party.

Drawings and Descriptions

13. If one of the contracting parties supplies the other with drawings or technical documents relating to the goods to be delivered or to their manufacture, the contracting party providing such drawings or technical documents shall retain title thereto.

Samples and Means of Production

14. The production costs for samples and means of production (tools, moulds, master copies etc) are to be invoiced separately from the goods delivered unless otherwise agreed. This applies also to means of production which need to be replaced due to wear and tear.
15. The cost of maintenance and proper storage as well as the risk of damage to or destruction of the means of production are borne by us.
16. Should the contracting party suspend or terminate collaboration during the period of manufacture of samples or means of production, all manufacturing cost incurred up to that point will be borne by him.
17. The means of production, even if paid for by the contracting party, shall remain in our possession, at least until the supply contract has been fulfilled. Thereafter, the contracting party is entitled to demand that the means of production be handed over, provided an agreement has been reached on the timing of the handover and that the contracting party has fulfilled his contractual obligations in their entirety.

18. We will store the means of production free of charge for a three-year period after the last delivery to the contracting party. At the end of this period, we will ask the contracting party in writing to reply within six weeks concerning further disposal of the means of production. Our duty of safekeeping ends if, within this six-week period, no reply has been received or no new order has been placed.
19. Purchaser-related means of production may be used by us for jobs done on behalf of third parties only with the prior written consent of the contracting party.

Prices

20. Our prices are quoted in euros exclusive of VAT, packaging, freight, postage and insurance.

Terms of Payment

21. All invoices are payable within ten days from the invoice date.
22. In the event that we make a delivery, part of which is demonstrably and indisputably defective, the contracting party is still obliged to make payment for the non-defective goods, unless a partial delivery is of no use to him. More generally, the contracting party can require us to offer compensation for remedial or completion costs; any other claims will be met only if they are awarded by final judgement or if they are undisputed. Right of retention or refusal of performance on the part of the contracting party applies only within the above limits.
23. In the event that payment becomes overdue, we are entitled to charge default interest at the rate charged by our bank for overdraft facilities or at eight percentage points above the base rate of the European Central Bank, whichever is the higher.
24. In default of payment, we reserve the right to suspend the performance of our obligations until receipt of payment, provided we notify the contracting party in writing.
25. Bills of exchange and cheques will be accepted only if that is separately agreed and only as conditional payment and on condition of eligibility for discount. Discount charges are payable from the due date of the invoice amount. Any warranty for the timely presentation of the bill of exchange or cheque and for the entering of protest is excluded.

Delivery

26. Unless otherwise agreed, we deliver ex works. Compliance with the delivery date or delivery period will be determined by the date and time given by us on the notice of despatch or of availability for collection.
27. The delivery period begins with the despatch of our order confirmation and shall be reasonably extended if the provisions of Clause 52 are met.
28. Partial deliveries are permitted within reason. These will be invoiced separately.
29. Excess or short deliveries are permitted within a tolerance of ten percent of the total contract amount for technical reasons determined by production. The price charged will then be adjusted proportionately.

Despatch and Transfer of Risk

30. Once notification has been sent that goods are ready for despatch, the contracting party must immediately make arrangements for their collection. Otherwise, we are entitled to despatch them by a method of our own choosing or to store them at the expense and risk of the contracting party.
31. Unless otherwise agreed, we will choose the means and itinerary of transportation.
32. Upon transfer to the railway operator or to the freight forwarder/carrier or upon commencement of storage, but at the latest when the goods leave the factory or warehouse, the risk passes to the contracting party, even if we have agreed to effect delivery.

Delay in Delivery

33. If we foresee that the goods cannot be delivered within the agreed period, we will immediately inform the contracting party in writing, stating the reasons and, if possible, the expected delivery date.
34. If delivery is delayed by one of the circumstances described in Clause 52 or by an act or omission for which the contracting party is responsible, the delivery period will be extended as appropriate to the circumstances.
35. The contracting party is only entitled to cancel the individual contract if we are responsible for non-adherence to the delivery date and the buyer has given us a reasonable grace period with which we were unable to comply.

Retention of Title

36. We retain title to the delivered goods until all claims arising from the business relationship with the contracting party have been settled.
37. The contracting party is entitled to sell these goods in the ordinary course of business as long as he fulfils his obligations arising from the business relationship with us in timely fashion. However, he may neither pledge the reserved goods nor transfer title thereto by way of security. He is obliged to safeguard our rights in the event of a credit resale of such goods.
38. In the event of breach of contract by the contracting party, in particular failure to pay the purchase price when due, we shall have the right, after the expiry of a reasonable period of grace, to cancel the individual contract and reclaim our property; the statutory provisions applying to periods of grace remain unaffected. The contracting party is obliged to surrender our property.
39. The contracting party herewith assigns to us as security all claims and rights arising from the sale or (insofar as the contracting party has permission) rental of goods to which we have rights. We hereby accept such assignment.
40. Any treatment or processing of the goods sold subject to retention of title shall always be carried out by the contracting party for and on behalf us. If the reserved goods are further processed or inseparably mixed with items not belonging to us, we shall acquire co-ownership of the new item in proportion to the invoice value of the reserved goods to the other processed or mixed items at the time of processing or mixing.

If our goods are combined into a single item with other movable items or are inseparably mixed and if the other item is then considered to be the main component, the contracting party shall transfer pro rata co-ownership, insofar as the main item remains his property. The contracting

party shall safeguard ownership or co-ownership for us. The same provisions apply to items arising from processing, combination or mixing as for reserved goods.

41. In the event of debt execution measures by third parties against the reserved goods or the assigned claims, the contracting party shall notify us in writing immediately, handing over all necessary documents for us to intervene. This also applies to impairments or interference of any other kind.
42. If the value of the existing securities exceeds the entirety of secured claims by more than 20 percent, we are obliged to release security at the contracting party's request.

Quality Defects

43. The quality and characteristics of the goods shall be determined exclusively by the agreed technical delivery specifications. If we are required to deliver in accordance with drawings, specifications, patterns etc supplied by the contracting party, he shall bear the risk of fitness for the intended use. The decisive point in time for the contractual condition of the goods is the time of the passing of the risk pursuant to Clause 27.
44. In our deliveries, we will comply with the applicable legal regulations of the European Union and the Federal Republic of Germany, e.g. the REACH Regulation (EC Regulation No 1907/2006), the Law on Electrical and Electronic Equipment (ElektroG) and the Regulation on Materials Used for Electrical and Electronic Devices (ElektroStoffV) as national implementations of EU Directive 2002/96/EC (WEEE) and the German End-of-Life Vehicle Regulations (AltfahrzeugV) as the national implementation of EU Directive 2000/53/EC.

We will inform the contracting party about any relevant changes in our products, in particular those resulting from the REACH Regulation, and their impact on availability for delivery and suitability for use or quality, and we will agree with the contracting party on appropriate measures in individual cases.

45. We will not be held liable for defects caused by unsuitable or improper use, faulty assembly or commissioning by the contracting party or by a third party, normal wear and tear, or incorrect or negligent handling, nor for the consequences of improper or unauthorised modifications or repair work carried out by the contracting party or by a third party. The same applies to defects that cause only a negligible reduction in the value or suitability of the goods.
46. Warranty claims expire after 12 months. This does not apply in those cases where the law prescribes longer periods, especially for defects in a building or in a product that has been used for a building in accordance with the purpose for which it has been designed and that has caused a defect in the aforementioned building. Nor does the first sentence of this clause apply to loss or damage resulting from death, physical injury or damage to health in cases of intent or gross negligence or any other breach of essential contractual obligations (i.e. obligations which must be complied with in order that the contract can be fulfilled and on which the contracting party can trust and rely) on the part of our lawful representatives or senior management.
47. If acceptance of the goods or testing of initial samples has been agreed, we will not entertain any complaint about defects that could have been discovered by the contracting party had he taken due care and consideration during acceptance or sample testing.
48. The contracting party must allow us the opportunity to verify the existence of any alleged defect. Rejected goods must be returned to us promptly upon request; we are liable to cover the transport costs if the complaint is justified. If the contracting party fails to meet these obligations or proceeds without our consent to make changes to the goods which are the subject of the complaint, he will lose any warranty claims.

49. In the case of a complaint that is justified and submitted in timely fashion, we may, at our discretion, either remedy the defect or supply a defect-free replacement

If we fail to comply with our contractual obligations within a reasonable time, the contracting party is entitled to set a final deadline within which we must fulfil our obligations. After expiry of that period, the contracting party may demand a reduction in price, cancel the contract or have the necessary remedial work carried out either by himself or by a third party at our expense and risk. Once remedial work has been successfully carried out by the contracting party or by a third party, all claims by the contracting party will be satisfied with reimbursement of costs. Reimbursement is excluded for any increased expense incurred as a result of the goods being removed to another place after delivery by us, unless such removal is consistent with the intended use of the goods.

50. The contracting party's statutory rights of recourse against us apply only to the extent that the contracting party has not entered into any agreements with his customer which go beyond the statutory warranty claims.

Other Claims, Liability

51. Unless specified otherwise below, other claims and claims of a wider scope against us on the part of the contracting party are excluded. This applies in particular to claims based on breach of contractual duties or unauthorised action. We are therefore not liable for damage or loss that is not caused by the goods themselves. Above all, we are not liable for loss of profit or other financial losses sustained by the contracting party.
52. The foregoing limitations will not apply in cases of wilful intent or gross negligence on the part of our lawful representatives or senior staff or of culpable breach of essential contractual obligations, i.e. those obligations the fulfilment of which is essential to the due performance of the contract and on which the contracting party generally relies and is entitled to rely. In the event of culpable breach of essential contractual obligations, we will be held liable only for reasonably foreseeable damage typically arising from this kind of contract. This restriction will not apply in cases of wilful intent or gross negligence on the part of our lawful representatives or senior staff.
53. The restriction on liability shall also not apply in cases in which, under the German Product Liability Act (Produkthaftungsgesetz), there is liability for personal injuries or damage to property in respect of items used privately because of defects in the products supplied. The restriction shall also not apply in the case of death, physical injury or damage to health or if the warranted characteristics are absent or if a guaranteed quality is absent, if and to the extent that it was the specific purpose of the warranty or guarantee to cover the contracting party against damage which had not arisen in the goods themselves.
54. Insofar as our liability is excluded or limited, this also applies to the personal liability of our employees, workers, senior staff, lawful representatives and vicarious agents.
55. The legal provisions relating to burden of proof shall remain unaffected.

Force Majeure

56. Force majeure, strikes, riots, government actions, failure by our suppliers to deliver and other unforeseeable, unavoidable and serious circumstances shall absolve the contracting party from his obligations for the duration of the disruption and to the extent of their impact. This will also apply even if the above circumstances prevail at a time when the affected contracting party is in default, unless the default was caused deliberately or through gross negligence on his part. The contracting parties are obliged to provide all relevant information without unreasonable delay and to adjust their obligations to the changed circumstances in good faith.

Place of Performance, Jurisdiction and Governing Law

57. Unless otherwise stated in the confirmation of order, the place of performance is our domicile.
58. For all legal disputes, including bills of exchange or cheques, the place of jurisdiction shall be our domicile. We also reserve the right to take legal action in the court having jurisdiction over the contracting party's domicile.
59. The contractual relationship is exclusively governed by the laws of the Federal Republic of Germany.

Recourse to the United Nations Convention of 11th April 1980 on Contracts for the Sale of Goods (CISG – Vienna Sales Convention) is excluded.

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