

TERMS AND CONDITIONS OF SALE

1. General terms, scope

a) Our Terms and Conditions of Sale are exclusively applicable; conflicting terms of the customer or terms of the customer dissenting from our Terms and Conditions of Sale will not be accepted by us unless we expressly consent to their application. Our Terms and Conditions of Sale will be even applicable if we execute the delivery to the customer without reservation knowing about the conflicting terms of the customer or about the terms of the customer dissenting from our Terms and Conditions of Sale.

b) All undertakings stipulated between us and the customer for the purpose of the execution of this contract are laid down in this contract in a written form.

c) Our Terms and Conditions of Sale will also apply on all future business with the customer.

2. Offer, bidding documents

a) Any offer of ours is subject to change without notice unless otherwise expressly provided in the acknowledgement of order.

b) We reserve all proprietary rights with respect to our drawings, calculations and other documents. This especially applies for such documentation which is titled as "confidential". Any transfer to third parties by the customer is subject to our express consent in a written form.

3. Prices, conditions of payment

a) Unless otherwise provided in the acknowledgment of order, our prices are considered to be ex works, freight, duties, ancillary costs of import and packaging which are billed separately.

b) The statutory VAT is not included in our prices. If applicable it will be charged in the statutory amount at the date of billing and will be shown separately in the invoice.

c) Any cash discount needs specific stipulation in a written form.

d) Unless otherwise provided in the acknowledgement of order the net final invoice amount is fully due and payable without any right of deduction within 10 (ten) days after the date of billing. The statutory provisions of the Federal Republic of Germany with respect to the legal consequences of delayed payment do apply.

e) The customer is only entitled to offset if its counterclaims are legally enforceable or are accepted by us. Any right of retention is excluded. Should this exclusion not be enforceable the other contracting partner can only execute its right of retention to the extent it is based on the respective contract.

f) In case of deliveries abroad we reserve the right to request the issue of an irrevocable documentary letter of credit confirmed by an internationally respected German bank, to demand a collateral of the same value or to demand advance payment the amount of which being subject to our discretion before delivery. Deliveries on a cash against documents basis are not deemed as collateral and need special stipulation.

g) Instructions to pay, checks and bills are only accepted according to specific stipulation and are deemed as on account of payment only. All costs of collection and of discount will be charged and are immediately due and payable after disposal.

g) Payments will always be used to settle the oldest debts being due and payable including accrued interest and costs.

h) Interest on defaulted payment are calculated at the amount of base interest rate of 1 % per week plus VAT if applicable. They are to be calculated at a higher rate if we can prove a burden by a higher interest rate or at a lower interest rate if the customer can prove a lower burden.

i) In case of enduring default with payment we will be entitled to request advance payment for goods in transit and subsequent deliveries or to rescind from contracts partially or fully not being completed even after the settling of the default. The same applies if we become acquainted with circumstances which indicate that our claims are endangered. We are not obliged to disclose such circumstances.

j) Both in the case of discrete new orders and of follow-up orders we are not bound to the hitherto applicable prices.

4. Delivery obligation, acceptance obligation, liability

a) The beginning of the delivery period declared by us requires the clarification of all technical and commercial questions, the receipt of all documents necessary for the execution of the order, the receipt of all legally binding purchase order and of an advance payment if applicable.

b) The adherence to our delivery obligation further requests the timely and proper completion of the respective cooperation duties of the customer. We reserve the defense of nonperformance of contract.

c) The customer is obliged to accept the goods. In case of default of acceptance of the customer or in case of breach of other obligations to cooperate we are entitled to demand compensation of any damage incurred by us including additional expenditure. In case of default of acceptance, we are explicitly entitled to bail-out. We reserve further rights. In case of blanket order not including any stipulation of a delivery period, of a production lot size or of a specific acceptance deadline we are entitled to request a binding stipulation on the aforementioned as soon as four months after the stipulation of the blanket order have elapsed.

d) If the conditions according to clause (c) are met, the risk of accidental destruction or of accidental deterioration passes to the customer at the time it starts to be subject to default of acceptance or to debtor's delay.

e) We are liable according to the statutory provisions should the underlying purchase contract constitute a fixed-date purchase according to § 376 German Commercial Code. We are also liable according to the statutory provisions should the customer be entitled to claim loss of interest in further completion of contract as a consequence of our delivery default.

f) We are further liable according to the statutory provisions should the delivery default be based upon our willful or grossly negligent breach of contract. A fault of our representatives or of a person employed in performing our obligations is to be attributed to us. Should the delivery default not be based on a willful breach of contract to be represented by us, our liability is restricted to the predictable, typical damage. Any right of the customer to claim rescission of contract has to be executed within 14 days after its accrual by way of declaration towards us otherwise such right declines and the customer will be obliged to accept the delayed delivery.

g) We are also liable according to the statutory provisions should the delivery default to be represented by us be based on a culpably breach of material contractual obligations. In such a case, however, our liability is restricted to the predictable, typical damage.

h) For the rest we are liable in case of delivery default for every completed week of delay within the scope of a liquidation damage amounting up to 3 % of the value of the delivery but not beyond 15 % of the value of the delivery.

i) Further statutory rights of the customer are reserved.

j) In the event of force majeure, e.g. circumstances and incidents not be avoided by the diligence of a prudent business man, the contractual obligations between the parties do repose for the time of the interference and to the extent of its effect. Should the delays resulting from such force majeure exceed the period of six weeks both contractual parties are entitled to claim rescission of contract. No further claims do arise in such a case.

k) A delivery period agreed upon between the parties extends appropriately in case of labor disputes, especially in cases of strike and lockout if such obstacles are demonstrably of material influence on the completion of our delivery duty. In other cases of exceedance of the delivery deadline a grace period of 14 days is granted starting as of the time of the exceedance of the delivery period no specific declaration being necessary to trigger such grace period.

l) Partial deliveries are permitted.

5. Passage of risk, costs of packaging, delivery

a) Unless otherwise provided in the acknowledgment of order, ex works delivery deems to be agreed upon. The delivery is to be effected with the customer bearing its risk and costs.

b) Transport packaging and other packaging will not be taken back. The customer is obliged to take care for the waste disposal of the packaging, bearing the costs of such disposal, unless otherwise provided by applicable law. In such a case, however, the customer is obliged to reimburse the costs of waste disposal to us.

c) Pallets according to EU standards have to be exchanged when taking over the goods. Reusable packaging must be exchanged when taking over the goods or delivered back within two weeks, otherwise they are charged.

d) On request of the customer we will provide insurance cover for the delivery, the costs of such insurance to be born by customer.

e) Changes of the construction and the configuration of the goods delivered as well as changes of the scope of delivery remain reserved if the goods to be delivered may be used for the purpose agreed upon and if the changes are reasonable for the customer.

f) Excess delivery and short delivery up to 5 % of the order quantity are a common consequence of the way of production and are to be accepted by the customer.

g) Partial deliveries are expressly permitted and to be considered and to be paid as stand-alone deliveries.

6. Liability for defects

a) We warrant that our goods are free of defects according to state of the art. We do not warrant any specific attributes of the goods delivered by us. This applies both for products manufactured by us and for products and product parts which we acquired from third parties before. We do not warrant any specific composition or durability of our products according to § 443 German Civil Code. We do not grant any guaranty for materials provided by the customer and for the usability and serviceability of such goods for the purpose of completing the contract including the resulting consequences. There is no warranty at all if the defect arising is caused by improper treatment or use of the delivered goods or by non-compliance with the provisions regarding maintenance and fosterage of the delivered goods or by arbitrary reconditioning of the delivered goods. There is no warranty for common wear and tear.

b) Any claim of the customer with respect to defects requires that the customer abided properly by its duties to scrutinize and to rebuke according to § 377 German Commercial Code. Goods being rejected have to be stored by the customer properly by the time they are inspected by us.

c) In case of a defect of the contract goods we may opt for supplementary performance by way of remedy of the defect or for the delivery of a new item free of defects, either alternative to be completed within 30 days after receipt of the rejected goods. In case of remedy of the defect we are obliged to bear all expenditures necessary for such remedy, especially cost of transport, labor cost and cost of material. This cost may not exceed the purchase price. This cost are not to be born by us to the extent they are caused by the fact that the contract goods were transported to a place different from the place of performance.

d) Should the supplementary performance fail the customer may opt for rescission or for reduction of the purchase price. Any claim for damages is excluded. This applies especially for consequential damages.

e) We are liable according to the statutory provisions should the customer put forth a claim for damage based on willful or grossly negligent conduct including willful or grossly negligent conduct of our representatives or of a person employed in performing our obligations. In cases other than willful breach of contract our liability is restricted to the predictable, typical damage and to the twice of the contract value to the maximum.

f) We are liable according to the statutory provisions should we have culpably breached a material contractual obligation. In such a case our liability for damages is however restricted to the predictable, typical damage and to the twice of the contract value, yet five hundred thousand Euro to the maximum. We are not liable for consequential damages. This applies especially for lost profits.

g) Should the customer put forth claims for damages against us according to the above provisions, the claim for delivery is excluded.

h) We are not liable under any aspect for materials provided by the customer.

i) Any liability with respect to bodily harm or bodily injury or physical injury remains unaffected; this also applies for the mandatory liability according to the Product Liability Act.

j) Unless otherwise provided above, our liability is excluded.

k) The limitation period for claims based on defects is restricted to six months starting as of the date of the passage of risk. For other claims, a preclusion period of twelve months applies, starting as of the date acquaintance of the damage and of the person of the wrongdoer.

7. Joint liability

a) Any liability for compensation in damages beyond the provisions of § 6 above is excluded regardless of the legal nature of the claim put forth. This especially applies for claims for damages based on the violation of mutual confidence in the preparation of a contract, based on the infringement of other obligations or for claims for compensation of damage to property based on tortious acts according to § 823 German Civil Code.

b) To the extent the liability for damages is excluded or restricted towards us, such exclusion or restriction also applies to the personal liability for damages of our employees, workers, associates, representatives and persons employed in performing our obligations.

8. Reservation of ownership

a) We do reserve ownership of the object of purchase by the date of settlement of all payments resulting from the business relationship with the customer. In case of payment by check or bill, this applies by the date the check or the bill is cashed. In case of noncontractual behavior of the customer, especially in case of delayed payment, to take back the object of purchase. Such a take back does not deem as rescission from contract unless otherwise expressly declared by us. A garnishment of the object of purchase executed by us always deems as a rescission of contract. After taking back the object of purchase we are entitled to dispose of it should we have announced such disposal to the customer in advance keeping appropriate announcement period. The proceeds of such disposal will be deducted from the accounts payable of the customer, appropriate costs of disposal to be taken into respect.

b) The customer is obliged to handle the object of purchase with care and properly; especially the customer is obliged to provide sufficient insurance coverage for the risk of fire damage, water damage and theft on the basis of the replacement value of the object of purchase. The customer bears the costs of such insurance.

c) In case of garnishment or other interventions of third parties, the customer has to inform us without undue delay in a written form thus enabling us to file a suit according to § 771 German Code of Civil Procedure. Should the third party not be in a position to reimburse us for the costs of such a suit (including the costs of the court and the costs of the attorneys), the customer can be made liable for such costs by us.

d) The customer is entitled to resell the object of purchase in the ordinary course of business. The customer assigns to us all claims towards its buyers or towards third persons resulting from such resale up to the final amount of our claim invoiced to the customer (including VAT). This applies irrespective of whether the customer sold the object of purchase processed or not. The customer remains entitled to collect the claim even after such assignment. Our authority to collect on our own behalf remains untouched. We are obliged however not to collect the claim while the customer serves its obligations to pay on the basis of the proceeds collected, is not in delay with its payments and especially did not file for bankruptcy and stoppage of payment did not occur. Should this however become the case, we are entitled to request the customer to disclose the assigned claims and the respective debtors to us, to render to us any information necessary for collection, to hand over the corresponding documents and to inform the debtors (or third parties, as the case may be) about the assignment.

e) The converting or transformation of the object of purchase by the customer is always executed on our behalf. Should the object of purchase be converted together with other items not belonging to us we become co-owner of the new item at the ratio of the value (final amount of invoice including VAT) of the object of purchase to the value of the other items processed at the time of processing. For the rest, the same rules apply for the item being the result of the processing as do apply for the object of purchase delivered under reservation of ownership. We do not warrant in any respect for the new item towards the customer or any third person.

f) Should the object of purchase be mingled inseparably with other items not belonging to us we become co-owner of the new item at the ratio of the value (final amount of invoice including VAT) of the object of purchase to the value of the other items mingled at the time of mingling. Should the mingling happen in a way that the item of the customer becomes the main item it deems to be agreed upon that the customer transfers pro rata co-ownership to us. The customer will store the resulting sole ownership or co-ownership on our behalf. Clause (e) above, last sentence, applies correspondingly.

g) We are obliged to release the collaterals we are entitled to on request of the customer to the extent the marketable value of our collaterals exceeds the value of the claims for which the collaterals serve by more than 10%. We are free to select the collaterals to be released.

9. Place of jurisdiction, place of performance, other provisions

a) Place of jurisdiction deems to be at the place of our registered office. We are however free to sue the customer at the court competent for its place of business.

b) The laws of the Federal Republic of Germany are exclusively applicable. The UN Convention on the International Sale of Goods is not applicable; neither is the German international private law.

c) Unless the acknowledgment of order otherwise provides, our place of business or the domicile of the branch competent for execution of the order deems to be place of performance.

d) All provisions have to be executed in a written form. This especially applies for side agreements, undertakings and changes of contract.

e) If any provision of these Terms and Conditions of Sale is held to be invalid or unenforceable, all other provisions will remain in full force and affect and will not in any way be impaired. In such a case the parties will meet and agree to a replacement provision which is as close as is legally permissible to the provision held to be invalid or unenforceable.

f) Should due to the exclusiveness of other general terms and conditions these Terms and Conditions of Sale not be applicable, statutory provisions are only applicable to the extent both general terms are contradictory to each other. For the rest, our Terms and Conditions of Sale remain applicable.