

General Terms and Conditions for Deliveries

1. General Information

- 1.1 All of our deliveries and services (hereinafter the "Delivery/-ies") will be executed exclusively under these General Terms and Conditions for Deliveries (hereinafter the "Delivery Terms"). Any terms of the customer (hereinafter the "Customer"), which differ from these Delivery Terms or from statutory provisions or supplement these Delivery Terms or statutory provisions, apply only to the extent they are explicitly accepted by us in writing. We do not accept any such terms of the Customer even if we do not object to them after having received them or if we carry out any Deliveries without reservation. These Delivery Terms also apply to all of our future Deliveries to the Customer in the context of an ongoing business relationship.
- 1.2 These Delivery Terms apply only to commercial transactions with entrepreneurs, legal entities under public law, and special fund under public law.

2. Offers and Conclusion of Contract, Form

- 2.1 Our offers are always made without engagement and are non-binding. A contract with the Customer (hereinafter the "Contract") comes into effect only through an order of the Customer and our written order confirmation or upon the rendering of Delivery.
- 2.2 We may accept an order from the Customer within two weeks following its submission. Orders are binding for the Customer until the expiration of that period. Our silence does not allow the Customer to rely on the conclusion of a Contract. If the Customer receives our order confirmation late, he shall inform us about this fact without undue delay.
- 2.3 Any commercial terms shall be construed in accordance with the Incoterms applicable at the time of the conclusion of the Contract.
- 2.4 To the extent that written form is required according to these Delivery Terms or in the other integral parts of the contract, the text form in the sense of Sec. 126 b of the German Civil Code (*BGB*) (e.g. fax or e-mail) shall be sufficient to comply with the written form requirement.

3. Acceptance

- 3.1 Deliveries require acceptance only if this was explicitly agreed upon or if required by statutory provisions.
- 3.2 The Customer shall bear the costs of the acceptance.
- 3.3 Unless agreed upon otherwise, acceptance must be conducted within two weeks after announcement of the readiness for acceptance.
- 3.4 Should the Customer fail to carry out an agreed acceptance, which has to take place prior to the shipment without undue delay after announcement of the readiness for acceptance, we are entitled to dispatch the Delivery without acceptance or to store it at the Customer's cost and risk and charge it to him as delivered.
- 3.5 The Customer may not refuse acceptance because of immaterial defects.

4. Execution of Delivery, Delivery Dates

- 4.1 Unless otherwise agreed, Deliveries shall be made EXW (Incoterms 2010). Risk shall pass to the Customer upon separation of the goods and announcement of the readiness for shipment, but at the latest when the goods leave the shipping department.
- 4.2 Unless otherwise agreed, we determine the shipment route and means of shipment as well as the carrier and forwarder.
- 4.3 If we have agreed upon collection by the Customer, a Delivery that has been announced as ready for shipment as agreed contractually must be collected without undue delay; otherwise, we shall be entitled – at our own discretion - to ship the Delivery or to store it on Customer's cost and risk and charge it as delivered.
- 4.4 We are entitled to perform partial Deliveries to a reasonable extent. We may invoice partial Deliveries separately. Over- and short-deliveries in line with industry customs shall be permitted and are deemed agreed upon. This applies to early Deliveries accordingly.
- 4.5 Our Delivery obligations shall be subject to the reservation of proper and timely receipt of deliveries from our own suppliers.
- 4.6 The agreed delivery dates are deemed to be complied with upon announcement of the readiness for dispatch to the Customer, even to the extent that Deliveries cannot be dispatched in time without our fault.
- 4.7 Events of force majeure entitle us to postpone the Delivery by the duration of the impediment caused by the force majeure and a reasonable start-up period. All unavoidable events for which we are not responsible shall be deemed as events of force majeure,

particularly monetary policy, trade policy, and other governmental measures, strikes, lockouts, significant interruptions of operations (e.g. fire, machine breakage, raw materials or energy shortages) as well as obstructions of transport routes – in each case which are not only temporary – that make the Delivery substantially more difficult or impossible. Should the duration of events of force majeure or their equivalents exceed three months, we and the Customer shall both be entitled to rescind the contract. We will inform the Customer about the beginning and end of any such events as soon as possible.

- 4.8 If the Customer is entitled to claim damages due to delay, damages to be compensated shall be limited to an amount of 0.1% of the agreed net price of the Deliveries affected by the delay for each full week of the delayed Delivery, not exceeding, however, a total of 5% of the agreed net price for the Deliveries affected by the delay. This restriction shall not apply, if the delay is caused by intent or gross negligence.
- 4.9 Without prejudice to other statutory conditions, the Customer is only entitled to rescind the contract because of non-compliance with delivery deadlines or dates, if we are responsible for the non-compliance.

5. Prices and Payment

- 5.1 Unless agreed otherwise, our prices are net and cash payment prices. Our prices are EXW (Incoterms 2010) plus value-added tax applicable at the time of invoicing and shall be payable without deductions to our head office when our invoice is received. In the case of export Deliveries, any and all taxes, customs duties, and other public charges payable by us abroad or when exporting abroad shall be refunded by the Customer.
- 5.2 If the Customer is in default with payment, we are entitled – notwithstanding any further claims – to demand default interest in the amount of the actually incurred interest loss, however, at least interest at a rate of 8% points above the base interest rate.
- 5.3 In the event of default in payment regarding claims arising from a Contract with a Customer, we are entitled to declare all claims under that Contract immediately due or demand adequate security. In this case we shall also have the right to execute outstanding Deliveries only against prepayment or provision of adequate security.
- 5.4 If a significant decline in the Customer's financial situation becomes apparent after the conclusion of the contract, which places any of our claims at risk, particularly in the case of suspension of payments, filing of an application for the commencement of insolvency proceedings for the Customer's assets, or any bill or check protest, we also have the rights set forth in Sec. 5.3. If the Customer does not provide the advance payment or security within a reasonable period set by us, we are entitled, without prejudice to other rights of rescission, to rescind the contract.
- 5.5 The prices stated in the offer and order confirmation are based on raw materials prices, salaries, taxes, social contributions, and freight costs (hereinafter the "Cost Factors") applicable at the time of conclusion of the Contract. These Costs Factors have a direct impact on the sales prices of our goods. If the Cost Factors increase by a total of more than five percent between the conclusion of contract and shipment, we shall be entitled to increase the sales prices of our goods accordingly.
- 5.6 The Customer is only entitled to offset and retention rights to the extent that his counterclaims are undisputed or have been adjudicated with legally-binding effect.

6. Reservation of Title

- 6.1 We reserve title to all delivered goods until satisfaction of all claims accruing under our business relationship with the Customer (*Reserved Goods*).
- 6.2 The Customer is authorized to resell the Reserved Goods only in the ordinary course of business. The Customer is not entitled to otherwise dispose over the Reserved Goods, particularly not to pledge or transfer them by way of security.
- 6.3 The Customer is entitled to process Reserved Goods. Processing is free of charge and will be carried out exclusively for us as manufacturer in the sense of Sec. 950 of the German Civil Code (*BGB*) without creating any obligation for us. The processed articles are deemed Reserved Goods in the sense of Sec. 5.1. If reservation of title should nevertheless expire due to any circumstances whatsoever, it is deemed agreed with the Customer already now that ownership of the articles shall pass to us upon processing. The Customer shall keep them in custody free of charge.

- 6.4 If the Reserved Goods are combined or mixed with items that are not our property, we will acquire co-ownership of the new article. The extent of this co-ownership shall be determined by the ratio of the invoice value of the Reserved Goods to the invoice value of the other items. If our ownership right expires due to the combination or mixing, the Customer hereby assigns us, effective immediately, all ownership rights to which he is entitled in respect to the new article corresponding to the invoice value of the Reserved Goods and safeguards it for us free of charge. Our co-ownership rights shall be considered Reserved Goods in accordance with Sec. 6.1.
- 6.5 The Customer hereby assigns to us all claims from any resale of the Reserved Goods. If the Customer disposes of the Reserved Goods together with other goods that were not supplied by us, the assignment of the claim from the resale shall apply only to the amount of the resale value of the Reserved Goods. In the case of a resale of goods in which we own co-ownership shares, the assignment of the claim applies to the amount of the resale value of such co-ownership shares.
- 6.6 The Customer is authorized to collect the claims from the resale of the Reserved Goods assigned to us.
- 6.7 We have the right to revoke the resale permission pursuant to Sec. 6.2 and the collection authorization under Sec. 6.7, if a) the Customer is in default with payments under the business relationship; b) the Customer has disposed of the Reserved Goods outside of the ordinary course of business; or c) if a significant decline in the Customer's financial situation becomes evident after the conclusion of the Contract, which places any of our claims at risk, particularly in the case of suspension of payments, filing of an application for the commencement of insolvency proceedings regarding the Customer's assets, or any bill or check protest.
- 6.8 Upon request of the Customer, we shall release our securities to the extent that the realizable value of the securities exceeds the aggregate claims to be secured by more than 10%.
- 6.9 The Customer shall, at its own expense, insure the Reserved Goods against fire, breakage, water, and theft damage and prove this to us upon request.
- 6.10 The Customer shall inform us without undue delay of any attachment of the Reserved Goods or other third-party infringements.
- 6.11 Rescission of the contract is not required to assert reservation of title. Any taking back of goods, will be for security purposes only; this does not constitute a rescission of Contract.
- 7. Inspection and Notification Obligation**
- 7.1 The Customer is obliged to duly examine the amount, weight and packaging of the goods without delay after handing over of the Delivery at the agreed place in the case of shipment or, if picked up by the Customer, at the time they are handed over and to note any complaint in this regard on the delivery note or bill of lading. Otherwise, quantity, weight, and packaging are deemed as agreed upon. Without undue delay after the handing over of the Delivery, the Customer shall have the quality of the goods examined on a random basis and shall open the packaging (cartons, boxes, foils, etc.) for this purpose. The inspection obligation may include destructive examinations of the sample.
- 7.2 We must be notified of apparent defects in writing without undue delay, but at the latest five days after the handing over of the Delivery. We must be notified of hidden defects in writing without undue delay, but at the latest five days after their discovery. Otherwise, the goods shall be deemed approved. This Sec. 7.2 shall only apply to purchase contracts and contracts dealing with the supply of movable things to be produced or manufactured (*Werklieferungsverträge*).
- 7.3 After the Customer has carried out an agreed acceptance of the goods, any objection regarding material defects, which could have been detected during the acceptance, is excluded.
- 7.4 The notice of defects shall identify the nature and extent of the defect precisely. A copy of any notice to any of our representatives, commission agents, or agents shall be sent to us.
- 7.5 Upon request, the Customer is required to provide us with the rejected goods or samples thereof for examination purposes without undue delay. Such an examination may be carried out by us, our suppliers, or any other third party mandated by us for this purpose.
- 8. Defects**
- 8.1 If a defect of quality exists at the time of passing of risk and if this was reported to us in due form and time, we cure the defects by means of remedy or subsequent delivery (*Nacherfüllung*). We are entitled to choose between remedy or subsequent delivery.
- 8.2 Place of performance for the cure is our registered office. We are not obligated to reimburse shipping costs, which Customer had to bear as expenses necessary for curing any defect, insofar as the expenses are increased because the goods were subsequently taken to a different location than the initial place of destination.
- 8.3 If the cure proves unsuccessful, the Customer may choose, in accordance with statutory requirements, to demand a reduction in the price (*Minderung*) or to rescind the contract (*Rücktritt*). Section 9 below shall apply to any and all damage claims based on a defect in quality. Any further claims of the Customer shall be excluded.
- 8.4 Any rectifications of defects or replacement of goods carried out by us take place on a goodwill basis and without recognition of any legal obligation. An acknowledgement leading in a recommencement of the limitation period requires our express declaration to the Customer. Except for cases of an explicitly declared acknowledgement, no new limitation period will begin to run upon remedy or subsequent delivery.
- 8.5 We do not assume any guarantee regarding the quality of the goods or bear any procurement risk within the meaning of the law with any agreement on quality of the goods.
- 8.6 Warranty claims shall be excluded in case of losses arising after the transfer of risk as a consequence of incorrect or negligent treatment or due to external influences that are not within the field of our responsibility and which we have not assumed under the Contract (e.g. chemical or electrochemical influences).
- 9. Liability**
- 9.1 Claims for damages or reimbursement of expenses of the Customer (hereinafter: "Damage Claims"), irrespective of their legal basis, shall be excluded.
- 9.2 However, this exclusion of liability pursuant to Clause 9.1 above shall not apply:
- in the case of a liability pursuant to the German Product Liability Act (*Produkthaftungsgesetz*);
 - in cases of intent or gross negligence;
 - in the case of culpable injury of life, limb or health;
 - in the case of an infringement of material contractual duties, i.e. such duties whose fulfillment is essential for enabling the due performance of the Contract and on whose observation the Customer generally relies and may rely on. A liability because of a breach of material contractual duties is, however, limited to compensation of the foreseeable, typical contractual damage, unless we are liable due to intent or gross negligence, injury of life, limb or health, or under the German Product Liability Act (*Produkthaftungsgesetz*).
- 9.3 To the extent that our liability is excluded or limited pursuant to the preceding sections, the limitation shall also apply to the respective personal liability of our employees, vicarious agents, and legal representatives.
- 9.4 The foregoing rules will not imply any shift in the burden of proof to the disadvantage of the Customer.
- 9.5 In respect to damages caused by delay, Sec. 4.8 takes precedent over this Sec. 9.
- 10. Prescription**
- 10.1 The limitation period for claims and rights arising from defects of the Delivery is one year from the statutory commencement of the limitation period. In deviation from this, the statutory limitation period applies
- in case of Sec. 438 Subsec. 1 No. 1 a) (third-party *in-rem* right) and b) (right registered in the land register) of the German Civil Code (*BGB*), Secs. 438 Subsec. 1 No. 2, 634 a Subsec. 1 No. 2 of the German Civil Code (*BGB*) (building; object that has been used for a building in accordance with the way it is normally used and which has caused the defectiveness of the building and/or, as the case may be, planning/monitoring services for a building), in the case of recourse claims pursuant to Sec. 479 Subsec. 1 of the German Civil Code (*BGB*), and in the case of fraudulent intent (*Arglist*);
 - and in the event of Damage Claims additionally in the case of a liability due to intent or gross negligence, injury of life, limb or health, or under the German Product Liability Act (*Produkthaftungsgesetz*).
- 10.2 For all other claims of the Customer against us, the regular limitation period is reduced to two years from the statutory commencement of the limitation period. This shall not apply to Damage Claims in the cases referred to in Clause 10.1 b).

11. Technical information

We are not obligated to provide technical assistance or issue technical information. Any advice regarding the preparation of the goods for use, which we provide orally, in writing, or through tests, are provided to the best of our knowledge; nevertheless, they have no binding effect – including in relation to third parties. The Customer shall exclusively bear the risk of application, use, and suitability.

12. Packaging

Reusable packaging material such as particularly Euro-Pallets, any other containers, etc. remain our property. Should the Customer fail to return these materials to us in a reusable condition without undue delay following our request, we may charge the Customer replacement costs and demand immediate payment of these costs.

13. Confidentiality

13.1 The Customer shall treat our documents as well as our business and industrial secrets (hereinafter: "Information") as confidential. He is particularly not entitled to forward Information to third parties or to make it accessible to third parties without our prior written consent. To the extent we have agreed to the subcontracting to third parties, Customer shall commit the aforementioned third parties to such terms in writing. This confidentiality agreement shall remain in force for a period of ten years after the termination or, as the case may be, performance of the Contract. It does not apply to the extent that Information a) was

already known to the Customer upon conclusion of the Contract or became known to him subsequently and the disclosure was not caused by a violation of a confidentiality obligation, or b) was already public knowledge upon conclusion of the Contract or becomes publicly known subsequently.

13.2 The use of the Contract for advertising purposes is not permitted without our prior consent.

14. Miscellaneous

14.1 Place of performance for any and all liabilities is our registered office (*Essen, Germany*).

14.2 The ineffectiveness of individual provisions of these Delivery Terms or of other integral parts of the Contract shall leave the validity of the remaining provisions unaffected.

14.3 The courts at our registered office (*Essen, Germany*) shall have exclusive jurisdiction. We retain the right, however, to file an action against the Customer at the Customer's general place of jurisdiction or any other competent court. The above provisions regarding the place of jurisdiction shall also apply to legal proceedings related to bills of exchange and check.

14.4 Any and all legal relationships between us and the Customer shall be governed by the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (UN-CISG).