

Terms and Conditions of Sale

§1 - General Provisions

1. All of our deliveries, services and offers shall be made on the basis of these terms and conditions notwithstanding the fact that they may not have been expressly referred to during negotiations. We will not accept any differing terms and conditions notwithstanding that we may not have expressly rejected them nor by means of our referring to correspondence with the contractual partner in which reference is made to the contractual partner's terms and conditions. Our terms and conditions shall also apply to future business relationships in respect of contracts with tradesmen, legal entities under public law and special public law funds notwithstanding their not having been agreed afresh. Our terms and conditions shall be deemed to have been accepted from no later than the time at which the goods are accepted.
2. Any conditions of the purchaser which are contrary to or which deviate from our terms and conditions shall not apply unless we have expressly consented in writing to their applying.

§ 2 Offer

1. Our sales assistants are not authorised to make verbal supplemental agreements nor to give oral assurances that go beyond the scope of the written contract. All provisions agreed under this contract are recorded within the written contractual documentation. There shall be no supplemental verbal agreements.
2. Delivery dates are estimates only and are without obligation unless we have expressly agreed to their being binding. Statements relating to the goods to be supplied (e.g. technical data, tolerances, measurements, weight specifications etc.) and their illustration shall be for descriptive and identification purposes only and shall not be binding unless express confirmation in writing is given by us in this respect. We reserve the right to make technical changes or changes to the design of the goods to be supplied provided such changes are customary in the trade and provided they do not compromise the customer to an unreasonable extent and do not affect the goods' fitness for use.
3. Our offers are subject to change until the contract is concluded.
4. We reserve all ownership and copyrights in design drawings, samples, price quotations and similar business objects, whether tangible or intangible. They must be treated with the utmost confidence at all times. They must not be made available to any third party without our consent. In the event of any breach of these duties the purchaser shall be liable to us in full in accordance with legal provisions. Advertising using our name as a reference and similar promotional activities shall be prohibited unless our prior approval is sought.

§ 3 Prices

1. Our prices are quoted ex works exclusive of shipment and exclusive of packaging, both of which will be invoiced separately. Unloading and storage of the goods are the purchaser's responsibility. Value added tax as chargeable at the date of the invoice will be added to our prices. The cost of any transport insurance or similar insurance that has been arranged shall be borne by the purchaser unless otherwise agreed.
2. Each delivery may be invoiced separately in the event of deliveries being made in parts.

3. If on any given delivery date, which is at least four months after the date on which the contract was concluded, any changes should occur to the basis on which prices have been established (e.g. an increase in the price charged for raw materials, materials, wages, transportation or storage), we shall reserve the right to adapt our prices accordingly after informing the purchaser of this change, whereby the individual cost elements and their increase shall be given a fair weighting in determining any new prices. In the event that individual cost elements should increase whilst others decrease, this shall also be taken into consideration when determining the new price.
4. Our prices as applicable on the date of delivery shall apply in the event that prices are not agreed at the time the contract is concluded.

§ 4 Conditions of Payment

1. Unless the confirmation of order (or alternatively the invoice) states otherwise, payment of the net purchase price shall be due (without deductions) within 10 days from the date of invoice.
2. We reserve the right to charge interest on late payments at 9% above the base rate should the purchaser fall into arrears in respect of payment. We may at all times provide evidence of a higher rate loss due to interest and may charge the purchaser accordingly. In the event of any default in payment we shall be entitled to withdraw any allowances, discounts or other concessions granted. We shall have the right to demand that future deliveries be made on condition that payment be made in advance.
3. Breach of any of the conditions for payment, default or circumstances which may undermine the purchaser's creditworthiness shall result in the immediate acceleration of all claims.
4. The purchaser shall have no rights of set-off unless the purchaser's counterclaims have been established in a legally binding manner, or, admitted by us or they are undisputed.
5. The purchaser may exercise a right of retention insofar as the purchaser's counterclaim is based on the same contractual relationship or the counterclaim has been accepted, decided by a court of law or is pending judgement.
6. We are not obliged to accept bills of exchange or cheques. Credit given on either basis shall in all instances be deemed to be subject to redemption (by payment, not in lieu of payment); it shall be credited to the purchase less the discount charged to us on transfer, less stamp duty and bank charges and also less collection fees where applicable.
7. We reserve the right to raise other contractual or legal claims in the event of default.

§ 5 Delivery Period and Barriers to Delivery

1. The delivery period shall commence at the time at which the confirmation of order is dispatched, but no sooner than the purchaser has provided the relevant documentation, authorisation and clearances required to be provided, made a down-payment and clarified all technical issues.
2. The delivery period shall be deemed to have been observed if the goods to be delivered have left the factory before expiry of the delivery period, or the purchaser has been notified that the goods are ready to be dispatched.
3. In the event on any unforeseen circumstances which are not of our volition and which we are unable to avert despite reasonable efforts in the circumstances - regardless of whether they shall occur on our part

or on the part of a supplier – such as force majeure (war, fire or natural disasters) of delays in the supply of significant raw materials etc. – we shall be entitled to rescind the contract in part or in full or to extend the delivery period for the duration of the hindrance. We shall be entitled to the same rights in the case of any strike or lockout on our part or on the part of our suppliers. We will notify the purchaser without delay of any such circumstances.

4. Delivery is subject to our receiving the correct and timely supplies ourselves. The purchaser will be notified of any delays. Should our suppliers fail to supply us correctly or should they fail to supply us on time, through no fault of our own, then the delivery period will be postponed by an appropriate period. Alternatively we may in this instance elect to rescind the contract in respect of such goods as have not been delivered. Insofar as permitted under competition law we will assign to the purchaser any claims we may have against suppliers in respect of any delivery that has not been made as agreed under the contract. The purchaser shall not have any other rights to claim damages or reimbursement of expenses.
5. In the case of any delay in delivery the purchaser shall have a right to rescind the contract provided that a reasonable period of grace has passed in which delivery has not occurred; the purchaser shall be entitled to exercise this right without having granted a period of grace if it becomes impossible for us to provide the relevant goods. Without prejudice to clause 6 and §9, neither of which are intended to reverse the burden of proof, all claims for damages (including any consequential loss) shall be excluded; the same shall apply in respect of any claim for reimbursement of expenses. If a fixed deal has been agreed then we shall be liable in accordance with the applicable laws; the same applies in the event of a purchaser being able to assert that its interest in the contract being fulfilled has fallen away as a result of the delay for which we are responsible.
6. If shipment of goods is delayed at the purchaser's behest, the purchaser will be charged for the cost of storage from a period commencing one month after the date on which the purchaser was notified that the goods were ready to be dispatched.

§ 6 Passing of Risk

1. In the event that the purchaser is obliged to collect the goods, risk shall pass to the purchaser at the time the goods are singled out and made available as agreed under the contract. The same shall apply if the seller is using a carrier to convey the goods to the purchaser, in which case risk shall pass when the goods are handed to the courier. If it is the seller's duty to deliver the goods to the purchaser then risk shall pass when the goods leave the seller's factory premises. The same shall apply in the event of any default in acceptance.
2. Without prejudice to the purchaser's rights arising from §8 and §9, goods delivered must be accepted by the purchaser notwithstanding any immaterial defects in the goods. Delivery in parts shall be permissible provided it is reasonable to expect the purchaser to accept delivery in parts.

§ 7 Retention of Title

1. We shall reserve title to all goods delivered until such a time as the purchaser has paid all current and future debts resulting from the business relationship. This right of retention of title shall also apply to spare or replacement parts such as motors, control units etc. notwithstanding that such parts may have been built in already, since this does not mean that they have become major components within the meaning of §93 of the German Civil Code (BGB).

If a cheque/bill of exchange is processed, our retention of title shall also continue after the cheque has been paid until we are released from the liability under the bill of exchange. In the event of an open account relationship (business relationship), we shall retain the title until we have received all payments arising from the existing open account relationship; the retention relates to the recognised outstanding balance; in these cases, the regulations of this Section 7 shall apply accordingly.

2. We may retract the goods if the purchaser is in breach of the contract, particularly in relation to payment default. Such retraction of goods shall not constitute rescission of the contract unless we have granted a period of grace which has passed without the purchaser fulfilling its obligation and we have expressly indicated that we intend to rescind the contract. Any costs incurred by us in retracting the goods (transportation costs, in particular) shall be at the purchaser's expense. We further have the right to prohibit the purchaser from reselling goods or from processing goods delivered the title of which we have retained, and to recall the direct debit mandate (§7V). The purchaser may not request the delivery of goods that have been retracted where no express declaration of rescission was made until such time as the purchase price and all costs have been paid in full.
3. The purchaser must handle the goods with care (and this includes an obligation to carry out inspections and maintenance).
4. The purchaser may not mortgage, give as security or assign the goods delivered nor make any claims in lieu/a transfer of claims. In the event of the goods being mortgaged or of any other third party intervention, the purchaser must notify us in writing without delay so that we may commence proceedings in accordance with §771 of the German Code of Civil Procedure (ZPO). The costs of any such legal action under §771 of German Code of Civil Procedure (ZPO) that may remain despite our winning the case shall be borne by the purchaser.
5. The purchaser may resell, process or combine the purchased goods in the usual course of business; however, the purchaser agrees to assign to us all claims resulting from any resale, processing, merging or any other legal grounds (insurance or illegitimate acts, in particular) up to the value of the final amount invoiced (including value-added tax), along with any ancillary rights. Should any delivered goods continue to be part-owned by us by virtue of our having retained title to them, then assignment of any claims shall be in proportion to our share in the goods' ownership. Should the delivered goods be sold on jointly with any third party goods that are not owned by the purchaser then the resulting claims shall be assigned to us in such a proportion as equates to the final invoice value of our goods compared with the final invoice amount of the third party goods. If the assigned claims are to be included in any running invoice/account? then the purchaser hereby agrees to assign to us an appropriate proportion of the balance (including the final balance) from the open account; should interim invoices be drawn up and should it have been agreed that the amounts be carried forward then any claim resulting from the interim invoice to which we may be entitled in accordance with the aforementioned provision shall be treated as being assigned to us to be dealt with under the next invoice.

The purchaser shall continue to have a right to enforce any such claim notwithstanding any assignment, however this shall not affect our right to enforce a claim ourselves.

We agree to not enforce a claim so long as the purchaser can meet its payment obligations from the proceeds received and provide the purchaser is not on payment default, no petition for bankruptcy or liquidation has been filed and payment has not been suspended.

Should this be the case then the purchaser shall on request provide us with details of any claims that have been assigned and of who the debtors are, provide all the necessary details required for collection along with the corresponding documentation, and inform the (third party) debtor of the assignment.

This shall also apply in the event of the purchaser reselling, processing or mixing the goods in breach of contract.

6. Our right to retention of title extends to all products at full value resulting from the processing or modification of our goods, whereby these procedures shall be deemed to be carried out on our behalf so that we are deemed to be the manufacturer under property law. Should any third party rights of retention survive in the course of any processing or modification of our goods on connection with goods of third parties, the purchaser agrees to grant us joint ownership to the goods in proportion to the objective value of these goods; in this case the purchaser also agrees to store the goods for us in a diligent manner.
If goods to which we have retained title are joined with other moveable goods from a uniform item or are inseparably combined with other goods, whereby the other goods are deemed to be the principal goods, the purchaser hereby agrees to assign to us its right to part ownership in proportion to its ownership of the principal goods; the purchaser shall store the (part) owned goods for us. The same shall apply to goods created in this manner as to those goods delivered the title to which has been retained.
7. As security for our claims the purchaser agrees to assign its claims against third parties resulting from the combining of the delivered goods with other property. This assignment shall rank in priority to any other security.
8. The security to which we are entitled shall not be ascertained to the extent that the value of our security exceeds the nominal value of the claims that are to be secured by 50%; we shall be free to decide which security has been released.
9. The purchaser must ensure that any special conditions or formalities that are required by any country of destination of the goods in order for the retention of title to be valid are fulfilled.

§ 8 Liability for Material Defects and Defects of Title

We shall be liable for defects in goods delivered as follows, provided the purchaser has met its obligations to inspect and give notice of defects in accordance with §377 of the German Commercial Code (HGB) (whereby any notice of defects must be given in writing):

1. If goods are defective we shall have a right to choose whether to rectify the defect or to deliver non-defective goods (subsequent performance), provided the defect is not an immaterial defect.
We may refuse to remedy a defect if one or both of these methods of subsequent performance are impossible or disproportionate.
In addition, we may refuse subsequent performance if the purchaser has not met its payment obligations to an extent corresponding to the non-defective portion of the goods.
In the event of subsequent performance, we shall pay the expenses only up to the level of the purchase price to the extent that they do not increase by the goods having been brought to a place other than the place of performance.
We shall pay the expenses required for the purpose of effecting subsequent performance, in particular transport, travel, labour, and material costs; the payment of costs shall be excluded if additional costs are incurred from moving the goods to a location other than the place of performance.
2. If subsequent performance as set out at clause 1 above is impossible or fails, the purchaser shall be entitled to choose whether to reduce the purchase price or to rescind the contract in accordance with the applicable laws; it shall apply in the case of culpable delay or refusal to carry out subsequent performance, in particular, or where subsequent performance fails for the second time.

All other claims by the purchaser on whatever legal grounds shall be excluded or limited in accordance with §9.

3. We do not accept liability for loss on the following grounds: inappropriate or improper use, defective assembly by the purchaser or a third party, fair wear and tear, defective or negligent handling, inappropriate equipment, defective construction works, an inappropriate building site, alternative materials, chemical, electrochemical or electrical influences (unless these are our responsibility), or improper alterations or repairs by the purchaser or a third party which have not been authorised by us in advance.
4. The limitation period for claims for defects shall expire one year after delivery of the purchased goods, provided the claims are ones for which we have limited liability in accordance with §8 or §9. In the case of any goods used for a building in accordance with their usual application and which have become defective, the limitation period for claims shall expire after five years.
Claims to a reduction in price and to the exercise of a right of rescission shall be excluded.
If the situation set out in the third sentence of this clause applies, the purchaser may nevertheless refuse to pay the purchase price insofar as the purchaser would be entitled to do so as a result of the price reduction or contractual rescission; we shall be entitled to rescind the contract in the event of an exclusion of rescission and subsequent refusal to pay.
No reversal of the burden of proof is intended.
5. Warranties or guarantees shall not be deemed to have been validly given unless we have given them expressly in writing.

§ 9 Rescission by the Purchaser and Miscellaneous Liability on our part

1. The purchaser's legal right of rescission – with the exception of cases that fall within §8 – shall be neither excluded nor limited. Likewise it is not intended to exclude or limit any legal or contractual rights or claims to which we may be entitled.
2. We shall be liable without limit for intentional harm and gross negligence (including that of our legal representatives or agents) and for injury to life, limb or health. We shall also have unlimited liability in providing guarantees or warranties if a defect that is covered by a guarantee or warranty triggers liability. There shall also be no limit to our liability in relation to offences relating to the creation of a hazard, particularly in accordance with the German Product Liability Act (Produkthaftungsgesetz). This shall not affect any liability under the recourse principles under §478 et seq. of the German Civil Code (BGB).
3. In the case of any other culpable breach of significant contractual duties (cardinal duties, see para. (8) sentence 2) our remaining liability shall be limited to foreseeable damage as is usual for this type of contract.
4. All other forms of liability shall be excluded from this contract regardless of their legal grounds, in particular claims resulting from a breach of any main or ancillary duties under the contract, illegal acts and any other tortious acts.
5. The same exclusions, limitations and exceptions shall apply in respect of claims based on fault at the time the contract was concluded.
6. §9 shall apply analogously in the case of any reimbursement of expenses (with the exception of any reimbursement of expenses in accordance with §439 II or §635 II of the German Civil Code (BGB)).
7. Any exclusion or limitation of our liability shall also apply to our legal representatives and agents.

8. No reversal of the burden of proof is intended. Cardinal duties are significant duties, i.e. such duties which characterise the contract and on which the contractual partner can rely; these are therefore the significant rights and duties which are the prerequisites for contractual performance and which are indispensable in order to fulfil the contractual purpose.

§ 10 Place of performance, Jurisdiction Applicable Law, Contractual Language and Burden of Proof

1. The place of performance shall be the place at which the goods are dispatched (the factory or place of storage).
2. The place of jurisdiction shall be our head office provided the purchaser is a merchant, corporate body governed by public law or a public law fund. The same shall apply if the purchaser does not have a place of jurisdiction in Germany, or if the purchaser's head office has moved abroad since conclusion of the contract, or the purchaser's head office is not known at the time at which the legal action is brought. We may, if we wish, sue the purchaser in other permissible courts of jurisdiction.
3. This contract shall be governed by the non-harmonised law of the Federal Republic of Germany (German Civil Code (BGB), German Commercial code (HGB)). The application of UN sale of goods law (CISG) and any conflict of laws provisions under the Introductory Act to the German Civil Code (EGBGB) are expressly excluded from this contract. The contractual language is English.
4. None of the provisions agreed in any of the terms and conditions are intended to alter the legal or common law distribution of the burden of proof.

§ 11 Miscellaneous Provisions

1. Amendments to this contract shall not be valid unless agreed with us.
2. Should any provision contained in these terms and conditions be invalid or void in part or in full, this shall not affect the validity of the remaining provisions. The contractual partners undertake to consent to a provision that achieves as best as possible the purpose of the invalid or void provision within the business sphere.
3. We will not use any data regarding the purchaser for any purpose other than for the conclusion of business in accordance with the provisions of the relevant applicable data protection provisions. The purchaser may on written demand request access to any personal data of the purchaser that has been collected, processed or used.
4. All terms and provisions are gender-neutral and in all other respects non-discriminatory within the meaning of the German Equality Act (AGG).