

Terms & Conditions of Sale (as of: April 2009)

§ 1 General - Scope

- (1) These general terms and conditions apply exclusively; we do not recognise terms from the customer conflicting with or deviating from these general terms and conditions unless we have specifically agreed to their validity in writing. These general terms and conditions also apply if we, being aware of conflicting or differing terms from the customer, make delivery to the customer without reservation.
- (2) All agreements that are reached or will be reached at the conclusion of contract between the customer and us, relating to the implementation of the contract to which these general terms and conditions apply, are put in writing in this contract. Any changes or amendments to this contract must be done in writing. This also applies to the written form unless it has been annulled by an unmistakable oral agreement at a later stage.
- (3) These general terms and conditions only apply to business people in terms of the BGB [German Civil Code].
- (4) These general terms and conditions shall also apply to future contracts between the contractual parties until a new version applies exclusively.

§ 2 Offer – Offer documents

- (1) Our offer is non-binding, unless it has been specifically identified as binding.
- (2) Should the order qualify as an offer according to § 145 BGB we shall be able to accept this within 2 weeks.
- (3) We retain title and copyright to all illustrations, drawings, calculations and other documents. This also applies to any written documents that are marked "confidential". Before handing these to third parties the customer must obtain our express written consent.

§ 3 Prices – Terms of payment

- (1) Unless otherwise stated in our order confirmation our prices are ex warehouse/works excluding costs for packaging, rust protection and freight.
- (2) The statutory VAT is not included in our prices; this will be charged separately on our invoice at the statutory rate on the day of invoicing.
- (3) Any deduction of discount requires a separate written agreement.
- (4) Prices are quoted in Euro. Should payment be agreed in foreign currency the customer must settle exchange rate differences accruing to us from the date of order confirmation. This exchange rate adjustment is due at the same time as purchase price payment.
- (5) At our request, the customer must at his costs provide adequate securities for our claims from this contract such as liens on properties, collateral or assignments of claims.
- (6) Unless otherwise stated in our order confirmation, the purchase price is due for payment net (without deduction) on the 15th day after invoice date. The legal rulings on arrears apply. Should an individual case reveal that an appreciably larger damage has accrued, we are entitled to claim compensation for damages at a flat rate of 25% above the contract value after an adequate period of grace has expired.
- (7) Should the customer be in arrears by more than Euro 1,500 we are entitled to make the processing of all orders of the customer dependent on advance payment or provision of securities or refuse further fulfilment after an adequate period of grace has expired. In addition, all claims against the customer shall be due immediately irrespective of having received bank drafts.
- (8) Delivery promises of any kind, in particular, in terms of call-off orders are subject to deliveries being made without exceeding the maximum credit as agreed or determined by us.
- (9) If after conclusion of contract our claims are jeopardised by a deterioration in the customer's financial circumstances, or the customer jeopardises security rights due to us by transferring securities, assigning claims or any other action, we are entitled to demand advance payment or provision of securities or to withdraw from the contract – without prejudice to our other legal claims.
- (10) The customer only has the right to set-off if his counterclaims have been legally established, are undisputed or recognised by us. The customer may only exercise a right of retention if his counterclaim is based on the same contractual relationship.
- (11) We are entitled to offset claims from the customer against our claims.
- (12) In addition, we are entitled to offset claims from the customer against claims from other companies that the latter are entitled to from business relationships with the customer or other claims against the supplier. Decisive for the stipulation of companies so entitled is the last business report published at the time of conclusion of contract.

§ 4 Delivery Time

- (1) The start of the delivery time determined by us is subject to all technical questions having been clarified.
- (2) Furthermore, our adherence to delivery obligations is subject to the timely and correct fulfilment of the customer's cooperation obligation. We retain the right to object to the contract not being fulfilled.
- (3) An appropriate extension of the delivery time is granted when delivery is delayed due to unforeseen or exceptional circumstances at our premises, a sub supplier or freight company without fault on our part. The same applies in case of strikes or lockouts. Should this non-availability continue for more than a month we are entitled to withdraw from the contract. We shall refund any payments already made by the customer.
- (4) Should the customer delay acceptance of delivery or be liable for violating any other cooperation obligations, we are entitled to demand compensation for thus incurred damages including possible additional expenses. Goods that have been declared ready for dispatch at the agreed time must be called-off immediately; otherwise we are entitled to store them at the customer's cost and risk. In this case payment is due in terms of § 3 15 days after declaring readiness for dispatch. Storage is charged at a daily flat rate of 0.2% of the total order value from the start of delay in acceptance, however, up to a maximum of 5% of the total order value. Further claims or rights are reserved.
- (5) In case of a delay in delivery we adhere to the legal provisions if the delivery delay is due to intentional or gross negligent contract violation for which we are responsible. Our liability for damages is then limited to the foreseeable and typical damage with a maximum of 10% of the delivery value.
- (6) In case of delivery delays for which we are responsible, the customer is entitled to withdraw from the contract, after an appropriate dead line for accepting goods set by the customer has expired, as long as the declaration reaches us before the goods have been produced.

§ 5 Liability for defects

- (1) The customer's claims for defects are subject to the customer having correctly complied with the obligation to examine and to complain according to § 377 HGB [German Commercial Code].
- (2) Technical advice and recommendations on our behalf are based on appropriate testing but are beyond contractual obligations; especially, assessing the suitability of the goods ordered or recommended by us for the contractual purposes intended by the customer is entirely the customer's responsibility.
- (3) Should the customer assert an existing right of repair of defects or additional delivery, we are obligated to carry all necessary costs arising, in particular, transport, handling, labour and

- material costs as long as these are not increased by the purchased item having been moved to a location other than the place of delivery.
- (4) With the exception of intentional contract violation, liability for defects is limited to typical foreseeable defects.
- (5) We adhere to legal provisions if we are responsible for violating an essential contractual obligation. An essential contractual obligation exists if the violation refers to an obligation that the customer relied on, and also could rely on, being fulfilled. However, in this case also liability for damages is limited to typical foreseeable defects.
- (6) Should the customer be entitled to compensation for damages instead of performance, our liability in terms of paragraph (3) is limited to compensation for typical foreseeable damages.
- (7) The liability for culpable injury to life, body or health remains unaffected; this also applies to the mandatory liability according to the Product Liability Act.
- (8) Unless stated otherwise above, liability is excluded.
- (9) The period of limitation for damage claims is 12 months calculated from the time of passing of risk. In the event of a delivery recourse in accordance with § 479 BGB and for building parts in accordance with § 438 paragraph 1, No. 2b) the legal periods of limitation apply.
- (10) Defects to partial deliveries do not constitute a right to compensation for the remaining partial deliveries.
- (11) DIN tolerances apply to complaints regarding DIN standardised goods.

§ 6 Overall liability

- (1) Liability for damages beyond that provided in § 5 is excluded – regardless of what legal grounds the claim is based on. This applies, in particular, to consequential damages, to compensation for damages from default at contract conclusion, any other violations of obligations or tort claims for compensation for material damages according to § 823 BGB.
- (2) The limitation in (1) also applies insofar as the customer claims compensation for wasted expenses instead of compensation of damages in lieu of performance.
- (3) Any liability for damages that has been excluded or limited also applies to the personal liability of our employees, workers, assistants, representatives and agents.

§ 7 Retention of title

- (1) We retain title to the purchased item until all payments from the business relationship with the customer have been received. In the event of cheque procedure the retention is extended to the encashment of the accepted cheque by the customer and does not expire when we have received and credited the cheque.
- (2) Should a current account exist between the customer and ourselves we retain the title to the purchased item until all payments outstanding on the current account have been received. The retention relates to the acknowledged debit.
- (3) In the event of conduct on behalf of the customer that is contrary to the contract, especially payment arrears, we are entitled to demand the surrender of the purchased item. The demand for the surrender of the purchased item represents a declaration of contract cancellation. After recovering the goods we are entitled to resell them. The resale price will be credited to the customer's debt – less appropriate resale costs.
- (4) During the retention period the customer must treat the purchased item with diligence. The customer is, in particular, obligated to adequately insure the goods at replacement value against fire and water damage and theft at his expense. The customer must perform any required maintenance and inspections at his expense on time and to the necessary extent.
- (5) The customer must immediately report any pledges or other interference by third parties so that the assertion of our rights is ensured.
- (6) The customer is entitled to resale the purchased item in the regular course of business. However, he now already assigns all receivables, due from his buyers or third parties arising from resale, to us in the amount of our final invoice (inc. VAT) claim regardless if the goods are sold without or after processing. Despite their assignment the customer is authorised to collect the receivables from resale. This does not affect our right of collection. We commit ourselves not to collect the receivables as long as the customer meets his payment obligations from the payments received, does not fall in arrears, no insolvency or similar proceedings have been filed and no suspension of payments exists. Should this be the case, however, we can request the customer to make of the assigned claims and their debtors known to us, supply all information necessary for collection, hands over all relevant documents and informs the debtors (third parties) of the assignment. If we have a current account exists with the customer the receivables assigned to us in advance by the customer shall also apply to the acknowledge balance and in the case of insolvency to the then existing "causal" balance.
- (7) Any processing or alterations of the purchased items by the customer are always done on our behalf. Should the purchased item be processed with goods not belonging to us we shall acquire co-ownership of the new item in proportion of the value of the purchased item (invoice end amount incl. VAT) to the other processed items at the time of processing. The same conditions that apply to the purchased item delivered subject to retention of title apply to the item obtained through processing.
- (8) Should the purchased items be inseparably combined with goods not belonging to us we shall acquire co-ownership in the new item in proportion of the value of the purchased item (invoice end amount incl. VAT) to the other combined items at the time of combination. Should the combination result in the customer's goods constituting the main part of the new item then it is agreed that the customer assigns proportional ownership to us. The customer stores the thus created solely or jointly owned item for us.
- (9) The customer assigns any receivables due from third parties arising from the combination of the purchased items with a fixed property to us as security for our claims against the customer.
- (10) We undertake to release the securities due to us on the customer's request, if the realisable value of our securities exceeds the secured claims by more than 20% and not only temporarily. We retain the right to decide which securities should be released.

§ 8 Utilisation of products

The customer is solely responsible for the utilisation of the purchased item. Hereby, he ensures that all the applicable provisions as well as the relevant technical instructions and information are adhered to. Should personnel be assigned within the framework of utilisation, we shall select suitable experts. Personnel provided by us will only have a general advisory function; we do not assume any liability for this.

§ 9 Legal venue – Place of fulfilment

- (1) Our registered seat is the legal venue if the customer is a merchant. We are, however, entitled to bring an action against the customer in the court of his place of residence.
- (2) The laws of the Federal Republic of Germany apply. The application of the UN Convention on the International Sale of Goods is excluded.
- (3) Unless otherwise stated in the order confirmation, the place of fulfilment is our registered seat.