



General Terms and Conditions of Sale and Delivery

§ 1 General

Our sales terms shall apply exclusively. Any of the Purchaser's terms which contradict or differ from our sales terms shall not be recognized. Our sales terms shall also apply if we, in knowledge of terms by the Purchaser which contradict or differ from our sales terms, carry out the delivery to the Purchaser unreservedly. By accepting the goods delivered by us, the Purchaser consents to our terms.

§ 2 Offers

Our offers are subject to change and do not represent an obligation to accept any order. All offers are subject to prior sale. We shall only be bound to orders after having confirmed these in writing. This shall particularly apply to orders which have been accepted by a representative.

§ 3 Performance Data

Drawings, dimensions, or any other performance data shall only be binding if these have been explicitly accepted writing; however, we must exclude raw material- or production-related discrepancies in color, packaging, or weight. Any information in brochures, advertising material, or other sources of information shall not be considered quality agreements within the meaning of the warranty law. In the case of special reproductions, over-delivery of up to 5 % shall be permissible.

§ 4 Duty to Deliver and Duty to Accept

- a) The extent of delivery shall, within the scope of the delivery capabilities, conform to our written order confirmation. We shall be entitled to carry out partial deliveries.
- b) Our compliance with the duty to deliver requires the timely and proper fulfillment of the Purchaser's obligation. The right of objection to non-performance of contract shall be reserved.
If the Purchaser falls into default of acceptance or if the Purchaser culpably violates other duties to cooperate, we shall have the right to demand compensation for any damages arising in this respect, including any possible additional expenditures. In the case of default of acceptance, the risk of accidental loss or accidental deterioration of the object of purchase shall pass to the Purchaser at that point in time at which the Purchaser has fallen into default of acceptance or debtor's delay.
- c) We shall be liable in accordance with the legal requirements if the transaction is based on a sales contract which is a "Fixgeschäft" (contract where time is of the essence) within the meaning of § 286, Paragraph 2, No. 4 of the German Civil Code or of § 376 of the German Commercial Code. We shall also be liable in accordance with the legal requirements if, as a consequence of a default in delivery for which we are responsible, the Purchaser is entitled to assert that the Purchaser's interest in the further fulfillment of the contract has discontinued.
Furthermore, we shall be liable in accordance with the legal requirements if the default in delivery occurred due to a breach of contract which was caused deliberately or by gross negligence and for which we are responsible or if the default in delivery occurred due to a culpable violation of a significant contractual obligation. Any default by our representatives or auxiliary persons shall be assigned to us. If the default in delivery was not based on a deliberate breach of contract for which we bear responsibility, our liability for damages shall be limited to predictable, typically occurring damages. In any case, we shall be liable for each completed week of delay only up to the amount of 3 % of the delivery value; however, this amount shall not exceed 10 % of the delivery value.
- d) We shall only be obligated to deliver from our own production and from quantities of goods which are actually available to us.
- e) In the case of extraordinary events inland or abroad which are beyond our sphere of influence and cannot be predicted by us despite due diligence, and, in consideration of our other delivery obligations, make a delivery as per contract impossible or only possible under economically unacceptable conditions, we shall have the right to limit or cease delivery for the duration of the hindrance or - in the case of a longer lasting hindrance - withdraw from the contract or terminate the contract without notice. An extraordinary event shall, for example, exist in the case of war or warlike conditions and their resultant effects, in the case of unrests, disruptions in operations for which we are not at fault, measures of industrial action, restricting official or legislative measures, or hindrance or delay of transport. If events of the said type lead to a significant increase in manufacturing, procurement, or distribution costs, we shall have the right to increase prices accordingly through announcement; this shall also apply to agreed fixed prices. Accordingly, Item 6 b shall apply.
If the sufficient supply of the warehouse responsible for the delivery is either impossible or unreasonable due to said events, we shall immediately notify the Purchaser thereof and also inform the Purchaser on whether and from which other supply base a supply is possible and at what price. If the Purchaser rejects the price increase or the delivery from the other supply base, we shall no longer be bound to the duty to deliver. The same shall apply if the Purchaser does not respond within 14 days from the receipt of the notification. This consequence shall be pointed out to the Purchaser within the scope of the notification.
- f) The Purchaser's rescission from the contract or refusal of acceptance due to delivery delays shall be excluded as soon as the manufacture of the goods ordered by the Purchaser is initiated.

§ 5 Passing of Risk and Shipping

- a) The risk shall pass to the Purchaser as soon as the shipment has been handed over to the person carrying out the transport or as soon as the shipment has left our warehouse for the purpose of being shipped. If the shipment is delayed due to circumstances for which we are not responsible, the risk shall pass to the Purchaser on the day of readiness for shipment. The Purchaser shall bear all warehouse charges after the transfer of risk.
- b) Packaging shall be included in the deliveries. Mode of dispatch and packaging shall be at our discretion. If we are obligated to take back any packaging used for the transport, pursuant to § 4 of the Packaging Ordinance, the Purchaser shall bear the costs for the return transport of the used packaging.
- c) We shall be liable for damages and loss of goods during transport only in the case of improper packaging. If we assert complaints with the carrier in connection with the transport, this shall only take place for the account and at the expense of the Purchaser.
- d) Insurance of the goods for damages in transit shall only take place upon explicit request and at the Purchaser's expense.
- e) Apart from that, the "Incoterms 2000" shall apply in their respective latest version.

§ 6 Prices

- a) Prices are listed in EURO and per unit and do not include the respective value-added tax.
- b) If additional costs regarding the goods to be supplied by us arise after the signing of the contract, for example newly established or increased customs duties, transportation charges, taxes, or other duties, we shall have the right to increase the agreed upon price accordingly.
The same shall apply in the event that the international monetary value of the euro changes during the performance of contract if a specific value of the euro in relation to another currency was taken as a basis at the time of signing of the contract. If circumstances of the aforementioned type occur and lead to an increase in the price of ordered goods, we shall be obligated to immediately inform the Purchaser thereof. The Purchaser may withdraw from the contract within two weeks after the receipt of this notification. In a case like this, the Purchaser shall not be entitled to claim damages.
- c) For invoices with a net merchandise value of less than 100.00 euro, a markup for small-volume purchases in the amount of 10.00 euro shall be charged.

§ 7 Terms of Payment

- a) In the case of a default of payment on the part of the Purchaser, we shall, at the minimum, be entitled to the statutory default interest.
- b) We shall not be obligated to accept bills of exchange or checks as payments. Any possible acceptance shall take place for conditional credit only. Discount charges and collection charges shall be on the Purchaser's account. Payments by bills of exchange or checks shall only be considered fulfilled upon encashment; we shall not be obligated to lodge a protest. Any payment for which we return to the Purchaser for self-discount any bills of exchange having our signature as either drawer or endorser shall not be considered payment of the purchase price until the Purchaser has encashed these bills of exchange and we have been released from the endorser's liability.
- c) The day on which the amount is at our disposal shall be considered the day of receipt of payment; this shall apply to all means of payment.
- d) If payment terms are not met or if it turns out after the contract is entered into that the Purchaser has not met existing payment obligations toward third parties without any discernable reasons, we shall, in deviation of the agreed payment terms, be entitled to demand complete or partial advance payment or deposits concerning all entitlements, whether due or not yet due; this shall also apply to bills of exchange or acceptances with a later due date which have been accepted by us. We shall be entitled to refuse performance until we have received an advance payment or deposit, and we shall be entitled to withdraw from the contract if such advance payment or deposit has not been received by the deadline set for the advance payment or deposit. If payment by installments is agreed, the entire remaining balance outstanding shall be due for payment without further warning if the Purchaser completely or partially defaults on an installment for more than a week. The same shall apply if an application for insolvency proceedings is being filed on the Purchaser's assets, if the Purchaser submits an affidavit of means, or if the bill of exchange accepted by the Purchaser is protested. With the lapse of all obligations, all agreed upon discounts, bonuses, etc shall be disregarded at the same time.

§ 8

The Purchaser shall, also if notices of defects or counterclaims are asserted, only be entitled to set-off, retention, or reduction if we explicitly agreed to this in writing or if the counterclaims have been legally determined.

§ 9 Retention of Title

- a) The goods shall remain our property (conditional commodity) until the final payment of all receivables owed by the Purchaser, including future receivables created within the scope of our mutual business relationship.
- b) If the Purchaser acts in breach of the contract, particularly in the case of default of payment, we shall be entitled to take back the goods. Taking back the goods shall not constitute a rescission of contract unless we explicitly declare so in writing. We shall be authorized to utilize the goods after taking them back. The utilization proceeds shall be credited toward the Purchaser's obligations – minus appropriate utilization costs.
- c) During our ownership, the Purchaser shall bear the full risk in regard to the item, particularly the risk of loss, accidental destruction, or accidental deterioration. The Purchaser shall be obligated to sufficiently insure the goods against common risks. Any claims arising from a damage event, particularly against the insurers, are herewith already relinquished to us by the Purchaser so that we can secure our entitlement up to the amount of our claim.
- d) The Purchaser shall only sell the supplied goods within the scope of proper business transactions. The Purchaser shall not pawn the goods or assign the goods as security. By effecting this purchase, i.e. in advance, the Purchaser relinquishes to us all rights or claims arising from the sale or from any other legal grounds against the Purchaser's customers or third parties; this shall also include any possible compensation entitlement from credit insurance.
We authorize the Purchaser to collect for us the claims relinquished to us as long as we do not revoke this authorization. The Purchaser shall immediately transfer to us any amounts received if these are already due, or else separately take these amounts into safekeeping for us. The Purchaser shall immediately inform us of any measures of distraint taken by third parties or any other adverse effects on our property or on the claims or rights relinquished to us and shall, in the meantime, take all measures which cannot tolerate any delay to secure our claims and rights.
- e) The Purchaser grants us the right to enter the Purchaser's business premises and storage facilities for the purpose of inspection of the conditional commodity and to remove our goods from these locations if the requirements for this have been fulfilled.
- f) We commit to release the securities we are entitled to upon the Purchaser's request insofar as the value of our securities exceeds the claims to be secured by more than 20 %. We shall be entitled to choose which securities to release.
- g) Should the retention of title as per this section be invalid according to the law of the state in which the conditional commodity is located, a legally feasible security which most closely resembles the invalid one shall be considered agreed upon instead.

§ 10 Claims Arising from Defects

- a) The Purchaser shall only be entitled to assert claims arising from defects if the Purchaser has properly fulfilled the obligation to inspect the goods upon receipt and submit complaints if applicable as required by § 377 of the German Commercial Code. The Purchaser shall be required to diligently inspect the goods immediately after receipt. The Purchaser shall check – through trial processing if necessary – whether the delivered goods are free of defects and usable for the intended purpose. If the goods' specific peculiarities are of importance for the Purchaser's intended use of the goods, the Purchaser shall carry out a laboratory analysis by using the latest technology and by following the respective current specifications. Notwithstanding the shorter time limit for claims against the carrier, defects must be reported to us in writing no later than 14 days after delivery of the goods or else our liability shall be cancelled.
- b) The Purchaser shall bear the full burden of proof for all eligibility requirements, particularly for the defect itself, for the time the defect was observed, and for the timeliness of the notice of defect. In the case of quality complaints, we shall be given the opportunity to take samples.
- c) In the case of legitimate defects, we shall initially fulfill our warranty obligations by our choice of either eliminating the defect (subsequent improvement) or supplying an item which is free of defects (replacement delivery). If our subsequent performance fails, the Purchaser shall in principle be entitled to demand, at the latter's choice, a reduction of the payment or withdraw from the contract. However, in the case of only minor defects or only minor deviations in quality, the Purchaser shall not be entitled to the right to withdrawal.
- d) If the Purchaser chooses to withdraw from the contract by reason of a legal or material defect following a failed subsequent performance, the Purchaser shall not be additionally entitled to claim damages due to the defect. If the Purchaser chooses compensation for damage after failed subsequent performance, the goods shall remain with the Purchaser if this is not unreasonable. The compensation for damage shall be limited to the difference between the purchase price and the value of the defective item. This shall not apply if we have maliciously caused this violation of contract.
- e) We shall be liable in accordance with the legal requirements if the Purchaser has asserted claims for damages which are based on intent or gross negligence, including intent or gross negligence by our representatives or agents. If no blame of intentional violation of contract is assigned to us, liability for damages shall be limited to typical, predictable, average damage.
- f) Furthermore, we shall be liable in accordance with the legal requirements if we culpably violate a significant contractual obligation; in this case, however, liability for damages shall be limited to typical, predictable, average damage.
- g) Liability due to culpable injury to life, limb, or health shall remain unaffected; this shall also apply to the mandatory liability pursuant to product liability law.
- h) Unless specified otherwise above, liability shall be excluded.
- i) The limitation period for claims arising from defects shall be 12 months, computed from the passing of risk.
- j) The limitation period in the case of a delivery recourse according to §§ 478, 479 of the German Civil Code shall remain unaffected; it shall be 5 years, computed from the time of delivery of the defective object.
- k) The Purchaser shall not receive any warranties in a legal sense. Manufacturers' warranties shall remain unaffected.
- l) In principle, only the product description provided by us shall be considered the agreed upon quality of the goods. Public statements, extolling, or advertising concerning the goods shall not represent any contractual quality specifications of the goods. Any samples given by us shall only provide non-binding clues on the average outcome of the goods.
- m) In the case of an elimination of defects, we shall be obligated to bear all expenditures necessary for the elimination of defects, particularly freight, transport, labor, and material costs, unless these costs increase due to the fact that the object of purchase was brought to a location other than the place of delivery.

§ 11 Limitation of Liability

- a) In the case of breach of duty due to slight negligence, our liability shall be limited to average damage which is contract-typical, direct, and predictable for these types of goods or services. This shall also apply in the case of breach of duty due to slight negligence by our legal representatives, managers, or agents. We shall not be liable in the case of breach of insignificant contractual obligations due to slight negligence.
- b) The abovementioned limitation of liability shall apply regardless of the legal nature of the asserted claim, particularly if from default, other breach of duty, or unlawful act. They shall not apply to damages attributable to us if these arise from injury to life, limb, or health, or to claims by the Purchaser which arise from product liability.
- c) Any claims by the Purchaser for damages due to a defect shall fall under the statute of limitations one year from the delivery of the goods. This shall not apply if we can be accused of gross culpability, or in the case of damages to body and health for which we are accountable, or in the case of loss of the customer's life. This regulation on the statute of limitations shall also apply to the personal liability of our employees, representatives, and agents.

§ 13 Data Protection Information

We hereby declare that we store Purchasers' business-related data and explicitly affirm that we will use this data exclusively for the business relationship entered into with these Purchasers and only as far as permitted.

§ 14 Consultation

We provide technical advice to the best of our knowledge for the use of our products or the use of the products distributed by us. This advice is given free of charge and merely represents our experience; therefore such advice shall not be considered guaranteed. Such advice shall not justify any claims against us.

§ 15 Place of Jurisdiction – Place of Fulfillment – Applicable Law

- a) Our registered office shall be the place of jurisdiction if the Purchaser is a merchant, a legal entity of public law, or a special fund under public law; however, we shall be entitled to also bring an action against the Purchaser at the Purchaser's domicile. The same shall apply if the Purchaser does not have a general place of jurisdiction in Germany or if the Purchaser's domicile or usual whereabouts are not known at the time of the institution of proceedings.
- b) Place of fulfillment for the delivery shall be the respective dispatching warehouse or plant. Place of fulfillment for the Purchaser's payment obligation shall be our registered office.
- c) The law of the Federal Republic of Germany shall apply; the application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.