

Standard Terms and Conditions of Sale, Delivery and Payment

S1 Applicability, offer and conclusion of contract

(1) These Terms and Conditions shall have sole application. They apply only to enterprises, corporate bodies under public law or special funds under public law in the meaning of Section 310(1) of the German Civil Code (BGB). They shall also apply to all future orders. We do not recognise – and hereby object to – any contradictory or differing terms and conditions of sale that the Buyer may have. Nor shall such terms and conditions be valid for future orders, even if we do not object to them again in the individual case.

(2) Our offers are subject to confirmation. The order signed by the Buyer shall constitute a binding offer. We have the right to accept this offer within 2 weeks by sending an acknowledgement of the order or by delivering the goods.

S2 Scope of our obligations

(1) The scope of our obligations shall be defined in our written acknowledgement.

(2) In the interests of technical progress we reserve the right to make constructional and formal modifications until the time of delivery. However, such modifications shall not negatively affect the customer's interests in an unreasonable way.

(3) Drawings, illustrations and similar documents that belong to the quotations are only approximate and are not binding unless they have been designated as such. They are subject to the variations customary in the trade, particularly in relation to dimensions, structure, colour and weight.

S3 Passage of risk

Delivery shall be effected "ex works" in accordance with the Incoterms 2000.

S4 Delivery time, default

(1) The delivery time we specify shall not commence until all technical questions have been clarified and shall always be non-binding.

(2) We shall have complied with the delivery time if the shipping order has been placed or the customer has been notified that the goods are ready for delivery during the delivery time.

(3) In the case of force majeure and other unforeseeable, extraordinary circumstances beyond our control – e.g. problems in procuring materials, interruption of operations, strikes, lock-outs, lack of means of transport, intervention by governmental bodies etc. – also occurring among our own suppliers – the delivery period shall be extended by a reasonable amount of time if we are prevented from fulfilling our obligations on time. If these circumstances make it impossible for us or unreasonable to expect us to deliver the goods or to perform our services, we shall no longer be obliged to deliver. If the delay lasts longer than 2 months, the Buyer shall have the right to rescind the contract. However, we shall only invoke the circumstances set out above if the Buyer has been notified of them immediately.

(4) The Buyer's claims for damages against us due to late delivery shall be governed by the provisions in clause IX.

(5) If delivery by call-off has been agreed, we shall have the right to deliver and charge for the finished goods after 6 months at the latest, even if the customer has not yet called off the goods.

(6) We have the right to make part-deliveries. These shall be paid for separately within the time limits set out in clause V(3). If payment for a part-delivery is delayed, we shall have the right to discontinue the processing of the order.

(7) If nothing else has been agreed, we shall determine the means of transport and the route, without being responsible for selecting the fastest or the most inexpensive option.

S5 Prices and terms of payment

(1) The prices are quoted "ex works" in accordance with the Incoterms 2000, plus value-added tax. They do not include the costs of packaging, freight, customs duty, borderclearance and safeguards.

(2) In the case of contracts with an agreed delivery time of more than 4 months we reserve the right to bring our prices in line with higher costs, particularly due to collective agreements or increases in the costs of materials.

(3) Our invoices are payable within 14 days as from the date of the invoice, free of deductions.

(4) If the customer is late in paying our invoice we shall have the right to charge default interest at a rate 8 percentage points above the applicable base rate, but at least 10% interest. We reserve the right to claim higher damages due to default.

(5) Cheques and bills of exchange shall only be accepted on account of payment and by special agreement. Discount and bank charges shall be borne by the issuer. Payments shall not be deemed remitted until they have been credited to one of our accounts, free of any conditions.

(6) The Buyer shall only have rights of setoff if the Buyer's counterclaims have been recognised by a final court judgment, are undisputed or have been acknowledged by ourselves. The Buyer shall only be entitled to exercise a right of retention, in as far as the Buyer's counterclaim is based on the same contractual relationship.

S6 Tools

(1) The tools used to execute the order, for which we are entitled to charge a tooling cost, shall remain our property, free of any restrictions and freely disposable in every respect, even if the tooling cost is charged and paid. If the tooling cost is charged and paid, however, we shall not use the tool for deliveries to third parties or shall only do so with the Buyer's approval. After 2 years from the last delivery to the customer we shall no longer be obliged to store the tools.

(2) We undertake to carry out the necessary tool renewal measures (parts subject to wear) free of charge for the Buyer, up to the agreed output quantity. After the output quantity has been reached, we shall notify the Buyer of the necessary replacement measures that become necessary as a result of normal use. The Buyer shall bear the costs incurred.

(3) The Buyer assumes full liability towards third parties for parts and tools that are provided and that originate from the customer's construction and production facilities or from our production facilities in the version stipulated by the Buyer, if there is any violation of intellectual property rights. The customer shall indemnify us against any claims made by third parties as a result of such a violation, including the costs of pursuing our rights.

S7 Warranty and liability

(1) The Buyer's rights under warranty shall be subject to the condition that the Buyer has properly complied with its duty under Section 377 of the German Commercial Code (HGB) to examine the goods and give notification of any defects.

(2) Claims due to defects shall become time-barred within 24 months after the delivery of the goods. This provision shall not apply in as far as the law in accordance with Section 438 (1)(2) of the German Civil Code (BGB) (buildings and objects for buildings), Section 479 of the Civil Code (right of recourse) and Section 634a (1) of the Civil Code (construction defects) makes longer periods mandatory. Our approval must be sought before returning the goods.

(3) If the delivered goods should have defects, despite all the care that has been taken, and this defect was already present at the time of the passage of risk, we shall repair the goods or deliver a replacement at our discretion, as long as we receive a complaint within the time limit. We must always be given the opportunity to cure (i.e. remedy) the breach within a reasonable time limit. This provision shall not affect rights of recourse in any way at all.

(4) If the attempt to cure the breach is unsuccessful, the customer shall have the right to rescind the contract or to reduce the price of the goods.

(5) Claims due to defects shall not arise in the case of merely slight differences from the agreed quality, only an insignificant impairment of the goods' fitness for purpose, natural wear and tear and damage arising after the passage of risk as a result of faulty or careless handling, excessive strain, unsuitable materials or due to special external influences not envisaged in the contract. If the Buyer carries out unprofessional repairs or modifications, the Buyer shall have no claims due to defects in respect of such work and its consequences.

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(6) The Buyer shall have no claims due to the expenses that are necessary in order to cure a breach, particularly the costs of transport, travel, labour and materials, in as far as the expenses are higher because the goods that we have delivered have subsequently been taken to a different place than the Buyer's establishment, unless this has been done in accordance with the goods' intended purpose.

(7) The Buyer shall only have rights of recourse against us if the Buyer has not made any agreements with its customer that go beyond the statutory claims due to defects. Para. 6 shall apply accordingly as regards the scope of the Buyer's rights of recourse.

S8 Intellectual property rights

(1) The Buyer shall have no claims for damages if patents or other intellectual propertyrights of third parties are violated by the goods we deliver and/or their exploitation. This exclusion of liability shall not apply in as far as the violation has been caused intentionally or by gross negligence. The Contracting Parties shall immediately notify each other of any such violations of which they become aware and shall give each other the opportunity to counteract such claims by joint agreement. The Buyer shall indemnify us against any claims made by third parties and shall also bear the costs of pursuing our rights.

(2) Our delivery shall not mean the release of any patent rights in our favour or of any other intellectual property rights. The Buyer, rather, undertakes to treat all information that it receives in connection with the construction, development, manufacture or other processing of the items we deliver as a business secret. We retain title and copyright to illustrations, drawings, calculations and other documents that we have prepared; they may not be made accessible to third parties and must be returned or destroyed by no later than after the order has been processed.

S9 Limitation of liability

Our liability for damages and expenses (referred to below as "claims for damages") shall be governed by the statutory provisions, but only in as far as the Buyer asserts claims for damages that are based on intent or gross negligence, including intent or gross negligence on the part of our employees, workers, staff, representatives or vicarious agents. In the case of a breach of fundamental contractual obligations that jeopardise the purpose of the contract we shall also be liable in the case of slight negligence, although our liability shall be limited to the foreseeable and typical damage. The limitation or exclusion of liability shall not apply in the case of death, physical injury and/or damage to health, liability under the mandatory provisions of the Product Liability Act or liability under other legally binding provisions. Nor shall it apply if we have given a warranty for the quality of the goods sold or have assumed a procurement risk. We shall not otherwise be liable for damages. We shall particularly not be liable for damage not involving the consignment itself, for lost profits, interruptions to operations or other financial loss suffered by the Buyer.

S10 Reservation of title, assignment of claims

(1) We reserve title to the items delivered until we have received all payments under the supply agreement. If the Buyer should be in breach of contract, particularly late payment, we shall have the right to take back the items delivered. If we take back the items delivered, this shall not mean the rescission of the contract unless we have previously and expressly stated this to be the case in writing. The attachment of the purchased item by ourselves shall always mean the rescission of the contract. After taking back the purchased item, we shall have the right to dispose of it by sale. The proceeds from the sale shall be set off against the Buyer's debts – less reasonable selling costs.

(2) The Buyer must treat the purchased item with care and must particularly insure it sufficiently against fire, water and theft for the reinstatement value and at the Buyer's own expense. If any maintenance and inspection work is necessary, the Buyer must carry out such work in good time at its own expense.

(3) In the case of attachments and other interventions by third parties the Buyer must immediately notify us in writing so that we can bring an action in accordance with Section 771 of the Code of Civil Procedure (ZPO). In as far as the third party is not in a position to reimburse us for the court and out-of-court costs of bringing an action in accordance with Section 771 of the ZPO, the Buyer shall be liable for the ensuing loss.

(4) The Buyer has the right to resell the purchased item in the normal course of business, but hereby assigns to us all claims against its own customer or third parties as a result of the resale, up to the sum of the final invoiced amount (including value added tax), regardless of whether the purchased item has been resold without being processed or after being processed. The Buyer is authorised to collect this debt, even after assigning it. This shall not affect our right to collect the debt ourselves. However, we undertake not to collect the debt as long as the Buyer complies with its payment obligations in respect of the proceeds collected, has not defaulted on payment and, in particular, has not filed for insolvency or ceased payments. However, if this is the case, we may demand that the Buyer discloses the assigned claims and the names of the debtor, provides all details necessary for the collection of the debt, hands over the corresponding documents and notifies the debtor (third party) of the assignment.

(5) The processing, working or modification of the purchased item by the Buyer shall always be done in our name and on our behalf. If the purchased item is processed with other items that do not belong to us, we shall obtain co-ownership of the new item in the same ratio as that between the value of the purchased item and the other items processed at the time of being processed. The same shall apply in the case of amalgamation. If the Buyer's item is to be considered as the main item in such an amalgamation, it shall be deemed agreed that the Buyer shall transfer co-ownership of the relevant share to ourselves and shall store the item of which we are the sole owners or the co-owners on our behalf. The item created through processing or amalgamation shall also be subject to the same agreements as the item delivered subject to reservation of title.

(6) To secure our claims against the Buyer the Buyer shall also assign to us the claims that have been created against a third party by annexing the purchased item to land.

(7) We undertake to release any collateral on the Buyer's request in as far as the value of our collateral exceeds the value of the claims to be secured by more than 20% ; the choice of collateral to be released shall be at our discretion.

(8) The reservation of title and any other security rights that we have shall be valid until complete indemnification from any contingent liabilities that we have assumed in the Buyer's interests.

S11 Place of performance, place of jurisdiction, proper law, miscellaneous

(1) The place of performance for payments and the place of jurisdiction is Oberkirch for both Parties in respect of all present and future claims arising from the business relationship. However, we shall have the right to bring an action against the Buyer before the court that has jurisdiction in the Buyer's place of residence.

(2) All legal relations between ourselves and the Buyer shall be governed by the law of the Federal Republic of Germany. Its conflict of law provisions and the UN Sales Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

(3) If one or several provisions of these Terms and Conditions should be void, this shall not affect the validity of the remaining provisions or the contract as a whole. The clause that is void shall be replaced by one that is legally valid.

Issued January 2008