

GENERAL TERMS AND CONDITIONS OF SALE AND SUPPLY

§ 1 Applicability of the Terms and Conditions

1. Supplies, services and offers shall be made solely on the basis of these Terms and Conditions. They shall also apply to all future business relationships even if they are not expressly agreed to again. These provisions shall be deemed as accepted at the latest on receipt of the goods or services. Any confirmations contrary thereto expressed by the Purchaser and any reference to the Purchaser's terms and conditions of business or terms and conditions of purchase are herewith expressly objected to.
2. All agreements made between the Supplier and the Purchaser for the purposes of executing this contract shall be reduced to writing.

§ 2 Offer and Conclusion of Contract

1. Any offers made by the Supplier are subject to change without notice and are non-binding. Acceptance declarations and all orders placed are subject to written or facsimile confirmation by the Supplier for their legal effectiveness.
2. Drawings, images and illustrations as well as dimension, weight or other performance data stated in the catalogues or other technical documentation by the Supplier are only binding if these have been expressly agreed to in writing. The Supplier retains all proprietary, copyright and any other protective rights in the images and illustrations, drawings, sketches and other documentation. They may not be made accessible to third parties without the consent of the Supplier and shall be returned to the Supplier promptly on request.
3. The Supplier's sales staff are not authorised to conclude oral ancillary agreements or oral assurances beyond the content of the written contract.

§ 3 Prices

1. Unless stated otherwise, the prices stated in the Supplier's offers shall be binding on the Supplier for 30 days from the date of the offer. In other respects, the prices stated in the Supplier's order confirmation plus the respective statutory value added tax shall be decisive. Additional supplies, services and samples are invoiced separately.
2. Unless otherwise agreed to, prices are quoted ex works excluding packaging and insurance.

§ 4 Time of Delivery and Performance

1. Delivery dates or deadlines which are not expressly agreed to as binding in writing shall be regarded as being solely non-binding arrangements.
2. The Supplier is not responsible – even for bindingly agreed dates and schedules - for any delays in delivery and performance due to *force majeure* and due to events which make delivery more than merely temporarily significantly difficult or impossible for the Supplier – these events include in particular, but are not limited to, strike action, lockouts, terrorism, directives by authorities, etc. even if such events occur at the Supplier or at the Supplier's own suppliers. Such events shall entitle the Supplier to delay the delivery or performance by the duration of the hindrance plus an appropriate lead time or to, wholly or in part, withdraw from the contract on account of the non-fulfilled part.
3. If the hindrance should continue for longer than three months, the Purchaser shall be entitled to withdraw from the contract with respect to the portion not yet fulfilled after an appropriate grace period. If the delivery date is extended, or if the Supplier is freed from its obligation, the Purchaser will not be able to derive any claims for compensation of damages therefrom. The Supplier shall only be able to refer to the stated circumstances if the Supplier promptly informs the Purchaser thereof.

4. If the Supplier is responsible for any non-adherence to the bindingly promised deadlines and schedules or the Supplier is in default, the Purchaser shall be entitled to claim a penalty payment in the amount of 3% for each completed week of default, however to a total of a maximum of 15% of the invoice amount of the supplies and services affected by the default. Any claims beyond this are excluded unless the delay is based on gross negligence, at minimum.
5. The Supplier is entitled to part deliveries and part performance if this is reasonable for the Purchaser.
6. The Supplier's supply and performance obligations shall commence with the transmission of the order confirmation and require the timeous and proper fulfilment of the Purchaser's obligations, such as e.g. the provision of the documents, approvals and releases by the Purchaser as well as the payment of any agreed advance payments, etc. The delivery deadline shall be deemed as adhered to if the object of supply has departed from the factory premises prior to expiry of the deadline or if the Supplier has issued the readiness for shipment notification.
7. If the Purchaser is in acceptance default, the Supplier shall be entitled to demand compensation for any damages and any additional expenses which may have been incurred. The same shall apply if the Purchaser culpably violates any cooperation obligations. The risk of accidental deterioration and accidental destruction passes to the Purchaser on acceptance default.

§ 5 Passing of Risk

1. Unless otherwise agreed to, shipping shall be at the risk and cost of the Purchaser. The Supplier shall ensure that insurance cover for transport damages is obtained only at the express request and for the account of the Purchaser.

2. The Supplier shall not accept any return of transport packaging and any other packaging in accordance with the packaging regulations. The Purchaser shall dispose of the packaging at own cost.
3. Risk shall pass to the Purchaser as soon as the shipment has been handed over to the person undertaking the transport or once the shipment has departed from the Supplier's warehouse for purposes of shipping. If the shipment is delayed at the request of the Purchaser, risk shall pass to the Purchaser on notification of readiness for shipment.

§ 6 Rights of the Purchaser with respect to Defects

1. The products are supplied free of manufacturing or material defects and the period for the enforcement of any claims for defects shall be 1 year from delivery of the product. The warranty for used products is excluded.
2. If any operating or maintenance instructions by the Supplier are not adhered to, the products are incorrectly installed or commissioned, any changes are made to the products or maintenance work is not carried out properly, or if parts are exchanged or consumables are used which do not correspond to the original specifications any claims to defects in the products shall be nullified. The same shall apply if any inappropriate resources are used, natural wear and tear, incorrect or negligent handling and defects due to chemical, electrochemical or electrical influences, if the Purchaser does not refute a corresponding substantiated allegation that one of these circumstances caused the defect.
3. The Purchaser can only submit claims for defects if the Purchaser has properly complied with its inspection obligation and its obligation to give notice of defects pursuant to § 377 HGB (German Commercial Code).
4. In the event of justified notices of defects the Supplier shall, to the exclusion of the rights of the Purchaser to withdraw from the contract or to have the pur-

chase price reduced (reduction), be obligated to subsequent performance unless the Supplier is entitled to refuse subsequent performance on account of statutory regulations. The Purchaser shall grant the Supplier an appropriate period of time for subsequent performance. Subsequent performance may, at the option of the Purchaser, include remedying the defect (subsequent improvement) or supplying new goods. The Supplier shall bear the required costs in the event of defect remedy if these do not increase due to the contractual object being situated at a different location than the place of performance. If subsequent performance fails the Purchaser may, at its option, request that the purchase price be reduced (reduction) or declare withdrawal from the contract.

Subsequent improvement shall be deemed as having failed with the second unsuccessful attempt unless further subsequent improvement attempts are deemed as appropriate on account of the nature of the contractual object and are reasonable for the Purchaser.

5. Only the direct Purchaser is entitled to claims for defects from the Supplier; such claims may not be ceded.
6. Any unavoidable variations in quality, form, colour, weight or features, be they customary in the industry, minor or technical, shall not be regarded as defects and cannot be objected to. This shall also apply to supplies according to specimen or sample.

§ 7 Reservation of Title

1. Until all claims have been fulfilled (including all claims for the balance of a current account) which the Supplier is entitled to enforce against the Purchaser, now or in the future for any legal reason whatsoever, the following securities shall be granted to the Supplier, which the Supplier will release, on request and at the Supplier's option, to the extent that the value of such securities permanently exceeds the value of the claim by more than 20%.

2. The goods shall remain the property of the Supplier. Any processing or modification shall always be undertaken for the Supplier as the manufacturer however without any obligation for the Supplier. If the Supplier's (joint) title extinguishes through combination or commingling, it is herewith agreed that the Purchaser's (joint) title in the combined/commingled object shall pass to the Supplier on a pro rata (invoice value) basis. The Purchaser shall retain (joint) title of the Supplier free of charge. Goods for which the Supplier has an entitlement to (joint) title are designated below as goods subject to retention of title.
3. The Purchaser is entitled to process and sell the goods subject to retention of title in the ordinary course of business as long as the Purchaser is not in default. Pledges or assignments as security are not permitted. Any claims (including all claims for the balance of a current account) arising from resale or any other legal reason (guarantee, unlawful acts) with respect to the goods subject to retention of title are herewith assigned to the Supplier by the Purchaser by way of security to the full extent. The Supplier irrevocably authorises the Purchaser to collect the assigned claims for its account in its own name. This collection authorisation can only be revoked if the Purchaser does not properly fulfil its payment obligations.
4. If third parties should access the goods subject to retention of title, in particular pledges, the Purchaser shall make reference to the property of the Supplier and shall promptly inform the Supplier thereof to enable the Supplier to enforce its proprietary rights. If the third party is not in a position to reimburse the Supplier with the court or out-of-court costs incurred in this connection, the Purchaser shall be liable for these costs.
5. If the Purchaser should violate the contract, in particular if the Purchaser defaults on payment, the Supplier shall be entitled to withdraw from the contract and to request return of the goods subject to retention of title.

§ 8 Payment

1. The purchase price is due immediately on receipt of the invoice, net(without deduction), unless the order confirmation states a different payment date.
2. Deductions for discounts are only permitted by means of a special written agreement.
3. Despite any provisions of the Purchaser which may specify otherwise, the Supplier is entitled to first allocate payments to older debts and will notify the Purchaser regarding the allocation. If any costs and interest have already been incurred the Supplier is entitled to allocate the payment first to the costs, then to the interest and finally to the principal amount.
4. Payment shall be deemed to have been made once the amount is available to the Supplier. In the case of cheques, payments shall be deemed as having been made when the cheque has been paid.
5. If the Purchaser should enter into default, the Supplier is entitled to levy interest of 8 percentage points above the base interest rate as a flat rate compensation for damages from the time of default. Interest shall be levied at a lower rate if the Purchaser proves a lesser amount; the Supplier is permitted to prove damages to a higher amount.
6. If the Supplier should become aware of circumstances which cast doubt on the Purchaser's creditworthiness, in particular if a cheque is not paid or if payments should cease to be made, or if the Supplier becomes aware of other circumstances which cast doubt on the creditworthiness of the Purchaser, the Supplier is entitled to demand payment of all outstanding amounts even if the Supplier accepts cheques. In this case, the Supplier is also entitled to demand advance payments or collateral security.
7. The Purchaser is only entitled to offsetting, retention or reduction, even if notices of defects or counterclaims are enforced, if the counterclaims have been

legally established or are undisputed. The Purchaser is entitled to retention for counterclaims only from the same contractual relationship.

§ 9 Design Modifications

The Supplier reserves the right to undertake design modifications at any time, but is not obligated to also undertake such changes to products already supplied.

§ 10 Patents

1. The Supplier shall release the Purchaser and its buyers from claims arising from violations of copyrights, trademarks or patents unless the conceptual design of an object of supply originates from the Purchaser. The Supplier's release obligation is limited to the amount of the foreseeable damage.

Additional requirements for the release are that the Supplier be assigned the management of legal disputes and that an alleged violation of rights is only attributed to the construction of the objects of supply without combination or commingling or use with other products.

2. The Supplier has the right to exemption from the obligations assumed, as described in paragraph 1, by either
 - 2.1 acquiring the required licences for the patents which were supposedly infringed or
 - 2.2 making available to the Purchaser a modified object of supply or parts thereof and, in the event of an exchange against the infringed object of supply or part thereof, eliminate the accusation of infringement concerning the object of supply.

§ 11 Confidentiality

Unless expressly agreed to otherwise in writing, any information submitted to the Supplier in relation to orders shall not be regarded as confidential.

§ 12 Liability

1. Irrespective of the liability limitations mentioned below, the Supplier shall assume liability in accordance with the statutory provisions for injury to life, limb and health due to gross negligence or intentional breaches of obligations on the part of the Supplier, its statutory representatives or its vicarious agents as well as for damages included in the liability in accordance with the Product Liability Act.
2. The Supplier shall be liable in accordance with the statutory provisions for damages not mentioned in paragraph 1 and which are caused by intentional or grossly negligent breaches of contract as well as fraudulent intent on the part of the Supplier, its statutory representatives or its vicarious agents.
3. The Supplier's liability is limited to foreseeable, typical damages unless the Supplier, its statutory representatives or its vicarious agents have acted intentionally.
4. If the Supplier has provided a quality and/ or durability guarantee for the goods or parts thereof the Supplier shall also be held liable in the context of this guarantee.

For damages arising from the lack of a guaranteed quality or durability, but which do not occur directly on the goods, the Supplier shall however only assume liability if the risk of such damage is evident from the quality and durability guarantee.

5. The Supplier shall also be liable for damages which are caused by the Supplier by any slightly negligent violation of such contractual obligations the fulfillment of which is an essential component for the proper execution of the contract and adherence to which the Purchaser relies on and may regularly rely on. The Supplier is however only liable if the damages are typically associated with the contract and are foreseeable.
6. Any further liability is excluded regardless of the legal nature of the enforced claim; this applies in particular, but is not limited to, tort claims or claims for the reimbursement of futile expenses in place of performance. If the Supplier's liability is excluded or limited, this shall also apply to the personal liability of the Supplier's employees, workers, colleagues, representatives and vicarious agents.
7. Any damage claims enforced by the Purchaser on account of defect shall prescribe one year after delivery of the goods. This does not apply in the event of culpable injury to life, body or health or if the Supplier, its statutory representatives or vicarious agents act intentionally or with gross negligence.

§ 13 Applicable Law, Place of Jurisdiction, Severability

1. The law of the Federal Republic of Germany shall apply to these Terms and Conditions and the entire legal relationships between the Supplier and the Purchaser. The provisions of the United Nations Convention on Contracts for the International Sale of Goods are not applicable.
2. The place of performance and the place of jurisdiction for deliveries and payments (including actions for cheques and bills of exchange) as well as all disputes arising, directly or indirectly, from the contractual relationship shall be the place of the registered offices of the Supplier. The Supplier is however also entitled to bring an action against the Purchaser at its place of residence and/or place of business.

3. If any provision of these Terms and Conditions or a provision in the context of any other agreement are or become ineffective this shall not affect the effectiveness of the remaining provisions or other agreements. A provision which, in legally permissible terms, is as close as possible to the economic intent of the ineffective provision shall be agreed to.