

General Sales and Delivery Terms and Conditions

1. General clauses, scope of contract, written form

- 1.1 Our General Sales and Delivery Terms and Conditions only apply to transaction with companies according to article 310, paragraph 1 of the German Civil Code (BGB).
- 1.2 Our services and deliveries are made exclusively on the basis of these General Sales and Delivery Terms and Conditions. Business terms and conditions of the purchaser that contradict our business terms and conditions shall not apply, unless we confirm in writing that such terms and conditions are applicable. The following Sales and Delivery Terms and Conditions shall also apply if we have knowledge of conflicting or deviating terms and conditions of the purchaser and perform the delivery to the purchaser without reservation.
- 1.3 For repeat business, these Sales and Delivery Terms and Conditions as valid at the time of entering the contract shall form an integral part of the contract, even if this is not specifically mentioned.
- 1.4 Any verbal arrangements or concessions, including verbal assurances that the contract will be amended shall only be valid following our written confirmation.

2. Conclusion of contract

- 2.1 Our offers are non-binding, unless they include a specific period of validity.
- 2.2 If the order is an offer to enter into a contract, we shall be entitled to accept this offer within two weeks after receipt. Acceptance is confirmed by means of an order confirmation or performance of the delivery/service.

3. Offer documentation, approvals, general information

- 3.1 We reserve, with no limitations whatsoever, ownership rights and copyrights of all offers, quotations, calculations, drawings, samples and other material such as tools, specimens, illustrations, pictures, descriptions, models, documents, files, etc. made available by us to the purchaser. This also applies accordingly to material owned by third parties and made available by us to the purchaser. These documents and objects may only be disclosed to third parties with our explicit consent and must be returned to us on request when they are no longer needed by the purchaser in connection with the business transaction or if negotiations have not resulted in a valid contract.
- 3.2 Specifications regarding weight and dimensions, and information submitted in the form of drawings, diagrams, etc. shall only be binding, if the relevant documents are specifically identified as parts of the contract or if they are referred to in the contract.
- 3.3 The purchaser shall be responsible for the procurement of all approvals and permits, including export and import licenses, required for the shipment and use of the product. If we are requested to assist the purchaser in these matters, we shall be entitled to charge reasonable costs.
- 3.4 All information regarding the suitability, design, construction and application of our products and technical advice regarding our products is given to the best of our knowledge. The purchaser is however obliged to perform his own tests and assessments.

4. Product specifications, material defects

- 4.1 Our product descriptions and specifications do not constitute guarantees of quality or durability within the meaning of articles 443, 444, 639 BGB, unless such we have submitted such a guarantee in writing pursuant to articles 443, 444, 639 BGB.
- 4.2 With regard to the quality and scope of the delivery or service, the product description included with the order confirmation is deemed binding. Public statements made by us for marketing and other purposes regarding the characteristics and quality of our products shall not be binding, unless agreed specifically in writing with the purchaser.
- 4.3 No warranty on defects in materials and workmanship shall be granted for previously used products that are ordered as such, unless such defects have been fraudulently concealed. This does not affect the purchaser's right for compensation for damage according to section 13, clauses 1 a) to g).
- 4.4 In the event of defects in goods and services where these defects existed prior to the transfer of risk, we shall provide remedy by replacement or reworking as deemed most expedient to us. Parts that have been replaced in the course of such a repair of damages shall become our property and must be handed over to us by the purchaser on request.
- 4.5 The place of performance for reworking or replacement is our factory.
- 4.6 If the product has been moved to a location other than the place of delivery, any additional costs arising in connection with replacement or reworking shall be payable by the purchaser.
- 4.7 Claims for defects shall only be accepted, if the concern significant deviations from the agreed quality, specifications, serviceability and performance of the product.
- 4.8 For the purpose of remedy by reworking and replacement, the purchasers undertakes to engage with us to make suitable arrangements as regards access to the product for the time required for replacement or reworking. If no such arrangements are made, we shall reject any liability for consequential damage.
- 4.9 If we fail to provide remedy by replacement or reworking within a reasonable period of time, subject to exceptional circumstances as defined in law, the purchaser shall be entitled to withdraw from the contract in accordance with his statutory rights. For minor defects, the purchaser shall only be entitled to demand a reduction of the agreed price.
- 4.10 Our liability for damages or compensation for expenses due to defects in material shall be limited as laid down in section 13.
- 4.11 Notwithstanding the above clauses 4.1 to 4.10, we shall be liable for damage according to the statutory regulations, if we have made guarantees as regards a relevant product property or if a defect has been fraudulently concealed. This also applies in cases where the purchaser has sold the product to a third party and where this third party is taking recourse against the purchaser for such damage (article 478, paragraphs IV and V BGB).
- 4.12 If, following a complaint and/or return of the goods, our examinations and tests reveal that the products or services were not defective, and the complaint is therefore not valid, we shall be entitled to demand adequate compensation for shipping costs and expenses incurred for the examination and testing of the goods.
- 4.13 We shall reject any liability for damages arising from the following, unless we are responsible for the damage: Non-compliance with instructions and information in our operating manual, improper or excessive use of the product, incorrect assembly, installation or commissioning by the purchaser or a third party, non-compliance with the operating and ambient conditions specified in the technical documentation, normal wear and tear, incorrect or negligent handling of the product, incorrect or insufficient maintenance, incorrect operation, installation on unsuitable ground, damage caused by electrochemical or electrical influences.

- 4.14 We shall not be liable for damage caused by improper reworking or repair performed by the purchaser or a third party. This also applies to modifications and changes made to the product without our prior consent.
- 4.15 In the context of recourse of the purchaser against us, we shall only be liable for maximum the statutory claim for defects, irrespective of the agreement between the purchaser and the end consumer.
- 4.16 Information provided free of charge in the context of the sale such as technical advice, plans, drafts, calculations, etc. is not covered by liability.
- 4.17 A notice of defects made by the purchaser shall not be accepted in cases where our request to examine the allegedly defective product or services is not granted by the purchaser.
- 4.18 Reworking or replacement by us following a notice of defect shall not constitute an acknowledgement of liability.
- 4.19 Claims for defects made by the purchaser shall only be accepted, if the purchaser has conformed with his obligations according to article 377 of the German Commercial Code (HGB) as regards examination and proper complaint procedures. This also applies to claims made under warranty.
- 4.20 Our obligations outlined in section 4 for defects in material and workmanship are conclusive, save the provisions in section 13.
- 4.21 Where the goods supplied cannot be used by the purchaser as provided for in the contract due to our fault and as a result of non-performance or faulty execution of proposals and/or advice, before or after conclusion of the contract, or of any other contractual sub-agreements – in particular operating and maintenance instructions – the above clauses 4.1 to 4.20 shall apply accordingly, to the exclusion of further claims by the purchaser.

5. Defects in title

- 5.1 Unless agreed otherwise, our obligation to ensure that no intellectual properties rights of third parties (hereafter referred to as intellectual property rights) are infringed by our delivery or service applies only within the Federal Republic of Germany. Should the delivery or parts thereof at the time of signing of the contract infringe on an intellectual property right of a third party granted and published in Germany, resulting in justified claims for damage against the purchaser, we shall acquire the required utilisation rights on behalf of the purchaser or modify the product in such a way that there is no longer any infringement of such property rights. If this cannot be achieved within a reasonable period of time or at reasonable cost, the purchaser shall be entitled to withdraw from the contract or demand a price reduction. Under the above circumstances, we shall also be entitled to withdraw from the contract.
- 5.2 If, drawings or other information submitted by the purchaser infringes on the intellectual property rights of a third party, or if purchaser is accused by a third party of infringing on such rights, the purchaser shall not be entitled to take recourse against us and shall indemnify us against claims by said third party.
- 5.3 Our obligation of compensation for damages is limited as outlined in section 13.

- 5.4 We shall only be bound to our above obligations with regard to defects in title
- if the purchaser notifies us without delay of any action taken by a third party,
 - if the purchaser supports us in our defence against such claims or assists us to a reasonable extent in the completion of the modifications as outlined above,
 - if the purchaser does not restrict our means of defence, including the option of out-of-court settlement,
 - the defect in title is not caused by an unauthorized modification to the supplied goods or by the use of the product for a purpose not foreseen by us,
 - the defect in title is not the result of an instruction from the purchaser.
- 5.5 If the purchaser refrains from using the supplied goods in order to minimise the damage or for other important reasons, he is obliged to notify the third party claiming infringement of intellectual property rights that this does not constitute an acknowledgement of responsibility for any infringement.
- 5.6 In the event of a defect in title, causes 4.15 and 4.19.
- 5.7 Our obligations outlined in section 5 as regards defects in title are conclusive, save the provisions in section 13.

6. Pricing, payment, termination of contract, set-off and retention of title

- 6.1 Unless agreed otherwise our prices are Ex Works Sperrluttertal, D - 37444 St. Andreasberg, Germany (INCOTERMS 2010), subject to VAT at the applicable rate. Payment must be made in full after receipt of the goods and the invoice and within the agreed payment period.
- 6.2 For additional work or services and for modifications requested by the purchaser and/or made in his interest by us, we shall be entitled to invoice the purchaser according to the agreed unit prices and hourly rates for labour, or minimum the usual pay rates pursuant to article 632, paragraph 2 BGB.
- 6.3 The prices quoted in the offer apply only if the scope of the order corresponds to that of the offer.
- 6.4 For partial deliveries, we reserve the right to issue separate invoices for each partial delivery.
- 6.5 All payments must be made directly to one of our accounts. Our invoices are payable in full, inclusive of VAT. Charges, fees and other costs that might occur in connection with the explicitly agreed acceptance of bills of exchange or cheques shall be payable by the purchaser. Payment is deemed made on the date on which we have full access to the respective funds.
- 6.6 If the purchaser terminates the contract pursuant to article 649 BGB, we shall be entitled to compensation according to the terms laid down in 649 BGB. Alternatively, we shall be entitled to demand compensation for our expenses and loss or earnings by payment of 10 per cent of the agreed net order value. This pro-rate compensation shall not be payable, if the purchaser provides proof that we are not entitled to compensation pursuant to article 649 BGB or that our entitlement to compensation according to article 649 BGB is substantially lower than the demanded pro-rata compensation. This shall not affect our rights pursuant to article 649 BGB to claim further compensation for damages.
- 6.7 The purchaser shall only be entitled to set off his liabilities against receivables, if these are not contested by us or if the transaction is part of a synallagmatic business relationship. The purchaser shall not be entitled to set off payments against counter-claims, unless these claims are undisputed or recognised by declaratory judgement.

7. Use of software

- 7.1 If our delivery includes the provision of software products, the purchaser is only granted a non-exclusive right to use the software and the accompanying documentation. The software is made available for use on the designated product. The purchaser shall not be entitled to use the software on more than one system.
- 7.2 The purchaser shall be entitled to copy, reproduce, reprogram or localise the software as is permitted by law (articles 69 a. ff. of German Copyright Law (UrhG)). This also applies to the conversion of object code to source code. The purchaser shall not remove or modify the copyright note or any references to the producer of the software, unless we have specifically agreed to this in advance and in writing. The purchaser shall handle the software and the accompanying documentation as confidential.
- 7.3 We shall not be obliged to disclose the source code of the software product.
- 7.4 All other intellectual property rights in the software and the documentation remain the property of the respective owner, i.e. us or the software provider. The purchaser is not entitled to issue sublicenses.
- 7.5 We shall remain the owners of all inventions, designs and processes developed by us. No commercial or non-commercial intellectual property rights shall pass to the purchaser upon acquiring the product, save for the provisions in section 7.

8. Retention of title

- 8.1 The delivered goods shall remain our property until all outstanding payments arising from the business transaction, including future liabilities arising from contracts entered into at a later stage, have been settled in full. This applies if payments have been made against specific invoices. For purchasers who have an account with us, we shall retain title in the goods as a security for any outstanding amounts accepted and payable by the purchaser.
- 8.2 The purchaser is obliged to handle all goods in which we retain a title with due care, provided that he has access to them. The purchaser must further perform all required and customary inspection and maintenance tasks at his own expense. The purchaser must insure the goods at replacement value against fire, water damage and theft and assign compensation in the event of a claim to us. We herewith accept this transfer of benefit. The purchaser shall not be entitled to pawn or otherwise use the supplied goods as sureties before ownership has been passed to him.
- 8.3 The purchaser must notify us without delay of any damage or loss of the goods in which we retain a title. This also applies in cases where the goods have been seized or attached, whereby the purchaser must furnish us by post or by fax with all documents that we require to enforce or title in the goods. All costs and charges in connection with the enforcement of our title in the goods and their return shall be payable by the purchaser. The purchaser must notify us without delay of any change of ownership or address of his business.
- 8.4 In the event of breach of contract by the purchaser, in particular delay of payment of secured liabilities, and if payment is not received after granting a reasonable grace period, we shall be entitled to demand the return of the goods in which we retain title and/or withdraw from the contract. The statutory provisions on the dispensability of grace periods remain unaffected. A demand of return of the goods subject to retention of title or the pawning of these goods by us shall not constitute a withdrawal from the contract, unless confirmed otherwise by us in writing.
- 8.5 In the event of commencement of bankruptcy procedures against the purchaser, we shall be entitled to withdraw from the contract and demand immediate return of the goods in which we retain a title.
- 8.6 The purchaser shall be entitled to sell the goods subject to retention of title in the course of his normal business activities. The purchaser herewith assigns to us all receivables, to our final invoice amount (including VAT), to which he is entitled from the resale of the goods or any other utilisation of the goods by third parties, irrespective of whether the goods have been resold without or after

processing. We herewith accept this transfer of benefit. The purchaser shall be entitled to collect amounts outstanding from the resale of the goods after assignment to us. We reserve the right to collect such outstanding payments ourselves. We however undertake not to do this as long as the purchaser meets his obligations of payment and is not in default. In the event of default, bankruptcy, initiation of voluntary insolvency proceedings, or if we have good reason to suspect excessive indebtedness or imminent insolvency on the part of the purchaser, we shall be entitled to revoke the resale authorisation and collection authorisation granted to the purchaser. In such a case, we shall be entitled to demand that the purchaser discloses the assigned receivables and the relevant debtors as well as any other information required for the purpose of collection, and that the purchaser hands over the associated documents and notifies its customers (debtors) of the assignment.

- 8.7 If the goods subject to retention of title are resold by the purchaser together with other goods, the transfer of the demand shall only apply to the amount of the invoice value of the goods that are subject to retention of title.
- 8.8 If we are a co-owner of the resold goods subject to retention of title, the transfer of the demand shall amount to the portion of the total value that corresponds to our share in the goods.
- 8.9 The processing or modification by the purchaser of the goods subject to retention of title shall always be performed on our behalf and without any obligation for us. If the goods subject to retention of title are processed together with goods that are not purchased from us, we shall remain the owner of a share in the value of the new products (final invoiced amount including VAT) that represents the value of the goods supplied by us at the time of processing. If the purchaser, through bonding, mixing or otherwise, acquires full ownership of the goods subject to retention of title, he shall herewith transfer partial co-ownership to us, based on our share in the value of the new products (final invoiced amount including VAT) that represents the value of the goods supplied by us at the time of processing. In all above cases, the goods in which we have full or partial ownership shall be stored for us by the purchaser free of charge.
- 8.10 Where the goods supplied by us have become an inseparable part of a building structure or are permanently fixed to the ground, this shall only be done on a temporary basis.
- 8.11 The purchaser shall assign to us receivables from goods subject to retention of title, if the goods have been permanently installed in the property of a third party. We herewith accept this transfer of benefit.
- 8.12 For as long as we have an unsettled claim arising from a business transaction with the purchaser, the purchaser shall inform us on request about the actual location of the goods subject to retention of title and their current ownership.
- 8.13 We undertake to release the securities to which we are entitled at the request of the purchaser, if the marketable value of the securities exceeds the outstanding claims by more than 10 per cent. In this case, we shall choose the securities to be released.

9. Delivery terms

- 9.1 Delivery terms and periods are only binding, if they have been specifically agreed or confirmed by us. The delivery period begins with the date of the order confirmation but not until the purchaser has submitted all required documentation, authorisations and permits, has clarified all issues with regard to delivery and has, if applicable, paid the agreed deposit.
- 9.2 The delivery terms can only be met by us, if the purchaser performs all his obligations in connection with the above in due time.
- 9.3 Our deliveries are subject to the correct and timely delivery by our suppliers. Should we become aware of possible delays, we shall notify the purchaser immediately.

- 9.4 The delivery terms and periods shall be extended, if the purchaser fails to meet his duties for timely delivery or if delivery is prevented by a circumstance beyond our control. Such circumstances include force majeure, labour disputes, delayed approval by authorities, transport and traffic hindrances, disturbances in the power supply and other circumstances that significantly affect our operational capability ability, or that of our suppliers. This also applies to circumstances that occur during the delay period.
- 9.5 The delivery period shall also be extended, if we are requested or ordered by the purchaser to perform additional work or modify the agreed design.
- 9.6 We shall be entitled to make partial deliveries, as far as this is acceptable to the purchaser.
- 9.7 The delivery terms shall be deemed fulfilled, if the notification that the goods are ready for dispatch has been sent to the purchaser in due time, or if the goods have left our works within the stipulated delivery period. For goods that are subject to acceptance procedures, the relevant date is the date of the completion notification or the notification that the goods are ready for acceptance.
- 9.8 In the event that our delivery is delayed, the purchaser shall only be entitled to withdraw from the contract, if we are responsible for the delay. The above provision shall not reverse the burden of proof to the disadvantage of the purchaser. If the purchaser wishes to avail of his right to withdraw from the contract, he must notify us within a reasonable period of time whether he wishes to cancel the order or to receive the goods/services.
- 9.9 Our liability in the event of delayed delivery/performance of service shall be limited according to the provisions in section 13.

10. Export licences

If the goods or parts thereof are subject to statutory export licences or similar restrictions, including export restrictions by the US government, the purchaser is obliged to notify us without delay in writing of this fact and the extent of these restrictions.

11. Transfer of risk, acceptance procedure, delayed acceptance

- 11.1 Unless agreed otherwise, the goods are shipped at the risk and at the expense of the purchaser. The risk of loss or damage is transferred to the purchaser upon handing over the goods to the person responsible for transport, even if the transport vehicle is provided by us. This also applies to deliveries where we pay the costs, free shipping to the customer and deliveries free domicile, and deliveries that require further work on our part on site, for example in connection with installation or delayed commissioning.
- 11.2 For contracts for services, the risk is transferred to the purchaser upon acceptance. The acceptance procedure must be completed at the agreed acceptance date, or after our notification of readiness of acceptance. The purchaser shall not be entitled to refuse acceptance on the grounds of minor defects.
- 11.3 If dispatch or acceptance is delayed due to circumstances beyond our control, the risk is transferred to the purchaser on the date of the notification of readiness for dispatch or readiness for acceptance respectively.
- 11.4 If the purchaser fails to accept the goods in due course or fails to cooperate, or if our delivery is delayed for other reasons for which the purchaser is responsible, we shall be entitled to compensation for damages and additional costs (e.g. storage costs) arising from the delay.

12. Impossibility or incapability of performance

- 12.1 If we are unable to perform our duties under the contract prior to transfer of risk, the purchaser shall be entitled to withdraw from the contract with immediate effect. This also applies in cases where, at the time of ordering, we are unable to fulfil a part of the order and the purchaser has good reason to reject partial delivery or performance. If the purchaser does not cancel the contract at this stage, he shall be liable for the share of the agreed price that corresponds to the partial delivery or performance. Our liability in the event of impossibility or incapacity of performance shall be limited according to the provisions in section 13.
- 12.2 If impossibility or incapacity of performance occurs during the acceptance delay or if the customer is solely or mainly responsible for these circumstances, he shall remain liable for consideration.

13. Liability

- 13.1 In the event of breach of contract on our part, including delayed and/or defective delivery/service, we shall only be liable for damage (including damage caused not to the delivered item) – subject to other contractual or statutory provisions – in the event of
- a) malicious intent
 - b) gross negligence
 - c) non-accidental damage to health, including serious or fatal injury
 - d) fraudulent concealment of a defect
 - e) peremptory liability under the German Product Liability Act
 - f) slight negligence in conjunction with a breach of an essential contractual obligation. In the case of the latter, claims shall be limited to reasonably foreseeable damage typical of this kind of contract. An essential contractual obligation is a duty under the contract that is essential for the achievement of the purpose of the contract. Such obligations include our duties arising directly from the contract, as well as other duties that are material for the proper fulfilment of the contract and where the purchaser can reasonably expect to be able to rely upon.
- Further claims for damages, including for consequential damages, are excluded.
- 13.2 Our liability in connection with the loss of data shall be limited to the costs that would have arisen for data recovery, if the purchaser had made proper data backups.
- 13.3 The above clauses regarding limitation and exemption of liability shall also apply to the personal liability of our employees, agents and representatives.

14. Period of limitation

- 14.1 All claims of purchaser – on whatever grounds – must be made within twelve months. This does not apply to claims in relation to guarantees of quality, fraudulently concealed defects and claims pursuant to section 13, clauses 1 a) to g), which are subject to statutory regulations. The statutory regulations also apply to defects in buildings and in materials that, in line with their customary utilization, have been used in building construction and have caused a defect in the building, and to recourse on the part of the purchaser in connection with the purchase of consumer goods (article 479 BGB).
- 14.2 The beginning of statutory limitation is determined by law.

15. Compliance

The purchaser shall be prohibited from making use of child labour or forced labour, either directly or indirectly. He shall take suitable measures to prevent any form of discrimination against certain groups in society within his company and with regard to the selection of subcontractors and/or suppliers. The purchaser is further obliged to provide a safe working environment for his staff, to minimise the impact of his activities on the environment and to refrain from any corrupt acts.

Where we act as purchasers or client, we shall also adhere to these principles.

16. Confidentiality, transfer of benefit, place of performance, jurisdiction, applicable law and severability

- 16.1 The purchaser undertakes to handle all confidential commercial and technical information disclosed to him in connection with the contract in strictest confidence. The purchaser undertakes to handle all data made available to him for the purpose of this contract with due care, not to use it for any other purpose than the intended and not to disclose it to third parties. To enforce confidentiality, it is the duty of the purchaser to enter into binding confidentiality agreements with his employees and/or agents.
- 16.2 The transfer of any benefits of the purchaser under a contract, including the transfer of claims for compensation, shall only be permitted with our explicit consent.
- 16.3 The place of performance of all obligations from the contract is the place of our registered offices.
- 16.4 If the purchaser is a registered trader, a legal entity under public law, or a special asset governed by public law, any disputes arising from a contract shall be settled before a competent court at the place of our registered offices. We reserve the right to bring action against the purchaser before a court at the place of general jurisdiction of the purchaser.
- 16.5 The contract is governed by German Law.
The United Nations Convention on Contracts or the International Sale of Goods (UN Sales Convention) of 11/04/1980 is not applicable.
- 16.6 The decision or declaration that one or more of the clauses of a contract, or of these General Sales and Delivery Terms and Conditions, is null and void or contains omissions shall have no effect on the remaining clauses.
An invalid clause shall be replaced by a statutory regulation that best reflects the intent and purpose of the initial clause.
- 16.7 The language of the contract is German. If the contracting parties agree to use another language, the German version shall remain binding in all cases.