

I.

Validity of the Terms and Conditions

Our deliveries and services are based exclusively on the following conditions:

1. Conflicting or conditions of the customer deviating from our general terms and conditions shall not be recognized, insofar as we do not expressly consent to this in writing.
2. Conclusions and agreements – particularly if they change our conditions – shall only become binding for us through written consent. All agreements made between us and the customer shall be laid down in written.
3. These terms and conditions shall only apply to contractors, legal persons under public law and funds governed by public law.

II.

Delivery conditions

1. Offer and conclusion of contract, offer documents

- a) Drawings, illustrations, measures, weights or other performance data shall only be binding if this is explicitly agreed in writing.
- b) Our employees shall not be authorized to make verbal ancillaries or to make verbal assurances beyond the contents of the written contract.
- c) We shall retain the right of property and copyright to illustrations, drawings, calculations and other documents. The customer must receive our express written consent before passing these documents on to third parties.

2. Prices

Unless otherwise indicated in the order confirmation, our prices are subject to change without notice and ex-works, excluding packaging and transport. Our prices do not include statutory VAT. It will be added at the legal rate on the billing date and stated separately on the invoice. In the event of the lack of a compensation agreement, the prices stated on our current price list at the time of delivery apply.

3. Period for delivery and performance

- a) Periods of delivery and dates are in general not binding unless a certain delivery date or period has been confirmed explicitly in written.
- b) The delivery period shall begin – provided the complete clarification of the contractual basis – on the day of order acceptance, in the event of an order confirmation with its dispatch, however not before the provision of any documents, authorizations, approvals by the customer and not before the receipt of any agreed down payment. The delivery deadline shall have been complied with when the readiness for dispatch has been advised or the delivery item has left the factory before expiry of the deadline.

In the event that we are detained from the execution of our performance by circumstances which we were unable to avoid despite reasonable care, the delivery period shall be reasonably extended. The same shall apply in the event of delays in delivery and performance due to force majeure and due to event which render deliveries more difficult or impossible for us – this includes particularly strikes, lockout, official instructions etc. - even if they affect our supplier or their own suppliers. Such cases entitle us to defer the delivery and/or performance for the duration of the obstruction plus an appropriate start-up time or with regard to the non-completed part to withdraw wholly or in part from the contract. The aforesaid also applies to binding and non-binding agreements on deadlines and dates.

- c) In the case of our default, a claim of the customer to a compensation for delay shall be limited to one half of one percent for every completed week of delay, in total however to a maximum of 5 % of the invoice value of the deliveries and performances affected by the delay.

d) Further compensation claims due to the delay of the delivery – this includes claims for damages instead of performance – shall be excluded in all cases of delayed delivery, irrespective of whether such periods are binding or non-binding and/or contractual or statutory.

Aforementioned liability limitations shall not apply in cases of malicious intent and gross negligence, a culpable breach of essential contractual duties, and injury to life, body and health. In the event of a culpable breach of essential contractual duties, liability shall be limited to the reasonably foreseeable damage which is typical for the contract – except in cases of deliberate acts or gross negligence.

These regulations shall not reverse the burden of proof to the disadvantage of the customer. A withdrawal from the contract shall be only possible for the buyer if we are responsible for the delay of the delivery – irrespective of all other legal requirements.

e) Our company's adherence to the delivery and performance obligations presupposes the timely and proper fulfilment of the purchaser's obligation.

f) Should the purchaser be in default of acceptance or if he violates other cooperation obligations, we shall be entitled to demand compensation for the damages incurred to us including additional expenses, if any. In the event of default of acceptance or debtor's delay on the part of the purchaser, the risks of accidental deterioration and accidental loss shall pass to the purchaser.

g) If performance of the services is delayed on request of the purchaser by more than 14 days after we indicated our readiness to perform, we shall be entitled to charge the purchaser with storage fees for each month commenced, amounting to 0.5 % of the price of the deliverables affected, at the most however 5 % in total. Further claims for compensation remain unaffected. The purchaser is at liberty to prove that no damage or a damage has arisen which is below the allowance.

4. Acceptance

a) Unless otherwise stipulated in the order confirmation, delivery is agreed to be 'ex works'. The goods shall be regarded as contractually delivered if the purchaser has accepted the goods or the if he does not, not timely or not completely adhere to the agreed acceptance.

b) The amounts ordered may be exceeded or undercut by up to 10 %.

c) Technical data, product compositions and standardisations serve exclusively to designate the goods and are not assurances of characteristics. Furthermore, unless otherwise agreed, the general, material-compliant allowances customary in trade apply.

d) The rights to design and form changes remain reserved for the entire period of delivery unless the delivery item is not substantially changed thereby and the modifications are reasonable for the purchaser.

e) Partial deliveries are permissible and will be invoiced individually.

f) Call orders shall be purchased in total within the agreed period. Otherwise, we shall be entitled to deliver and invoice the remaining amount. Additional costs caused by a non-conforming call of the purchaser, for instance, due to failure to comply with the agreed period or subsequent alterations of the call order, shall be borne by the purchaser. Our right to deny delivery in the event of a non-conforming call shall not be affected thereby.

5. Packaging, dispatch and passing of risk

a) Unless otherwise agreed, the goods is sold unpacked. Possible transport and packaging costs shall be borne by the purchaser.

b) Transport packaging and all other packaging according to packaging regulations are non returnable. The purchaser shall be obligated to dispose of packaging at his own charge.

c) Objects on loan provided to the purchaser (e.g. transport containers, jugs, casks, crates, palettes etc.) shall remain our sole and unconditional property even if a deposit has been made by way of pledge. The purchaser shall return them after purposive use immediately in a perfect and cleaned condition. If the purchaser fails to comply with this obligation even after an additional period of grace has been set with refusal to accept further performance, we shall be entitled to invoice the purchaser with replacement costs. The purchaser shall be entitled to provide proof that no damage or a much lesser damage incurred.

d) Upon delivery to the person responsible for shipping (i.e. forwarder, carrier) at the latest however when leaving the factory or storage, the risk – including confiscation – transfers to the purchaser, irrespective of whether the dispatch took place from the place of performance or who bears the freight costs. This shall also apply if the purchaser conducts the transport himself. If the goods are ready for dispatch and their shipment or their acceptance is delayed for reasons not imputable to us, the risk shall be transferred to the purchaser upon receipt of the notification of readiness to dispatch. The risk shall be particularly transferred to the purchaser upon receipt of notification to dispatch if the dispatch is delayed on request of the purchaser.

III.

Terms of payment

1. If the payment deadline is exceeded or other cases of delay, interest shall be invoiced in the amount of credit costs incurred to us, however, a minimum of 8% p.a. above the relevant base interest rate, according to Act § 288 (2) BGB/German Civil Code. Additional claims due to delayed payment shall remain unaffected as well as the purchaser's right to provide proof that no or substantially lesser damages occurred.
2. We shall be entitled, despite differentially worded provisions of the purchaser, to initially offset payments against the latter's older debts. If costs and interest have already accrued, our company shall be entitled to offset the payment initially against the costs, subsequently against the interest and lastly against the main performance.
3. Should our company become aware of circumstances which call the purchaser's credit standing into question – e.g. dishonouring of a cheque, cessation of payments, etc. - we shall be entitled to declare the entire remaining debt due for payment even if cheques or bills have been accepted. In this event we shall be furthermore authorised to demand advance payments or securities and to forbid the resale of the goods delivered under retention of title and additionally demand their return or transfer of the current inventory of the supplied goods at the expense of the purchaser.
4. A payment shall only be deemed to be effected if our company can permanently avail itself of the amount invoiced. In the event of cheque lodgements these shall only be regarded as received when the funds have been credited to our account.
5. Set off rights can only be granted to the purchaser if his counter-claims have been legally established or are undisputed.

IV.

Disclosure and data protection

1. The purchaser shall be obligated to disclose all information required for the execution of the transactions. In doing so, he shall take extreme care regarding the correctness and completeness of his information. We shall be entitled to accept the information without examination. The purchaser shall be held responsible for any damages inflicted on us resulting from incorrect or incomplete information.
2. It should be noted that data received from the customer within the context or in connection with this business relationship – irrespective of the fact if he or a third party communicated the data – shall be recorded, processed and protected, according to the legal provisions (Federal Data Protection Act).

V.

Retention of title

1. We shall continue to retain title to the sold goods until all claims (including all balance claims from current accounts) our company is entitled to on whatever legal grounds against the purchaser have been paid, even if payments are made to specially designated claims. The reserved ownership shall be security for our current account claims.
The purchaser shall be obligated to store the goods subject to retention of title separately from other goods, to insure them against fire, water damage and theft and to label them at our request.

2. Treatment, processing and restructuring of the goods subject to retention of title shall be performed on our instructions – hence for the seller as manufacturer – and with no obligations on our part. Should the purchaser nevertheless acquire goods, both parties have agreed that at the time the goods are generated the co-ownership share shall be transferred to us, which is equal to the value of the goods subject to retention of title (gross invoice value) in proportion to the value of the processed goods and the purchaser shall keep the goods in custody for us free of charge. § 947 Sentence 1 BGB shall remain reserved.
3. The processed goods shall serve as security up to the amount of the gross invoice value of the goods subject to retention of title. The produce of such processing shall be the subject to the same conditions as the reserved goods. They shall be treated as reserved goods for the purpose of these conditions.
4. The purchaser shall be only entitled to proceed and/or sell our goods subject to retention of title in the ordinary course of business at his standard business conditions as long as he is not in default. Furthermore, he shall ensure that the claim arising from the resale will be transferred to us. He shall not be entitled to other dispositions of the reserved goods. The claims of the purchaser arising from a resale shall be transferred to us as agreed by both parties; it is irrelevant in this respect if the reserved goods are resold without or after processing or to one or more buyers. The transferred claim serves as security equal to the amount of the gross value of the reserved goods sold respectively. If the reserved goods are sold together with other merchandise not belonging to us by the purchaser, the assignment of the claim arising from the resale shall be deemed effective only to the amount of the gross invoice value of the reserved goods. The same shall apply to claims of the purchaser due to loss or damage to the reserved goods.
The purchaser shall also transfer the claims to secure our claims made against him that accrue vis-a-vis third parties by attaching the purchased object with a real property.
5. The purchaser shall be only entitled to collect the claims transferred to us as long as he fulfils any obligations to us. Our right to collect the claim ourselves shall remain unaffected thereby. Pledging or transferring the goods as security or another assignment of the claims transferred to us shall be excluded. On our request the purchaser shall name the third party debtors, notify them of the transfer to us and provide us with the necessary information to enforce the assigned claims.
In the event of access of third parties to the reserved goods, particularly seizures, the purchaser shall point out the ownership of the seller and notify the latter immediately, so that the seller can implement his/her right of ownership. In so far as the third party is in no position to reimburse the seller for any judicial or extra-judicial costs arising in the context, the purchaser shall be liable for these. This shall apply particularly for costs arising by third party proceedings.
If the purchaser behaves in a manner contrary to the contract – particularly default of payment – the seller shall be entitled to repossess the reserved goods or demand, where appropriate, the assignment of the purchaser's right to recover possession against any third parties. The repossession or the seizure of the reserved goods by the seller shall not constitute a withdrawal from the contract. The seller shall be entitled to utilize the goods after their repossession, the utilization proceeds shall be set off against the liabilities of the customer – less reasonable utilization costs.
6. Should the value of the securities exceed our claims in total by more than 20 %, we shall be obligated on request of the purchaser to release securities at our discretion.

VI. Warranty

1. Warranty claims shall become statute barred after 12 months. This shall not apply if longer periods are mandatory by law, particularly according to § 438 section 1, subsection 2 of the BGB (Buildings or fittings and fixtures for buildings), § 479 section 1 (Regress against suppliers), and § 651 BGB (Contract on the delivery of movable goods to be manufactured or produced).
2. If our company's operating or product instructions are not complied with, products are modified or consumable materials are used which do not conform to the original specifications, all warranties shall lapse. The same applies in cases of incorrect or negligent handling after the passage of risk,

- like e.g. excessive strain, inappropriate equipment, incorrect assembly and/or set up by the purchaser or a third party.
3. Identifiable defects of the goods are to be lodged **without delay** after arrival at their destination and before their treatment or processing. The purchaser's obligation of examination extends to the entire delivery. The purchaser has to accept the goods despite any possible defects and to expertly store them. Defects that cannot be discovered immediately upon diligent inspection are to be notified without delay **after their discovery**, following immediate termination of treatment and processing. The purchaser shall make his claims in written and give detailed information on the claimed individual defects, provide us promptly – on request - with samples of the rejected goods and permit us to inspect them.
 4. In the event of a defect, the opportunity for subsequent performance shall be initially granted. In case of an unsuccessful subsequent performance, the purchaser shall be entitled to reduction of the purchase price or withdrawal from the contract. All other claims of the purchaser, including claims for damages, on whatever legal grounds, particularly those arising from unlawful acts, shall be excluded. The exclusion of liability also includes further claims due to consequential damages, like e.g. loss of production and profits. The aforementioned provisions on the exclusion of liability and on the limitation of liability shall not apply if a mandatory legal liability reason exists. This applies particularly to cases of wilful intent, gross negligence, injury to life, body or health, and claims in accordance with the German Product Liability Act. The exclusion of liability shall neither be effective in the absence of assured properties, non-compliance with essential warranty agreements or the violation of essential contractual obligations (cardinal obligations). If cardinal obligations are violated, claims for damages shall be however limited to foreseeable, contract-typical damages, unless intent or gross negligence prevails or liability is assumed due to injury to life, body or health. The aforementioned provisions shall not entail shifting the burden of proof to the detriment of the purchaser.
 5. If the purchaser should have transferred the goods to a third party before the complaint was raised, possible warranty claims may be fulfilled at the purchaser's registered office at our discretion. Apart from that, claims made by the purchaser on the grounds of costs occurred in the course of supplementary performance (e.g. transport, road, labour, and material costs) shall be excluded to the extent insofar as an increase of costs occurred by taking the performance goods – after passage of risk - to a location different from the respective business site of the purchaser, unless the transfer to another location is in accordance with the designated use of the goods.
 6. The purchaser may claim legal recourse against us only insofar as he has not reached any agreements with his buyer which go beyond the scope of statutory compensation claims. The content of the recourse claim shall be determined according to the provisions stated under section 5 above.

VII.

Total liability

1. Claims for damages or expenses (hereinafter: damage claims) made by the purchaser shall be excluded, irrespective of their legal grounds.
2. The above shall not apply if compulsory liability comes into effect, for instance in cases of wilful intent, the injury to life, body or health and in cases of claims according to the product liability act. The exclusion of liability shall not take effect if warranted qualities are missing, guarantees have not been met or essential contractual obligations have been violated. In the event of violation of essential contractual obligations, the claim for damages shall, however, be limited to the foreseeable contract-typical damage unless wilful intent or gross negligence prevails or liability is assumed due to injury to life, body or health. The aforementioned provisions shall not entail shifting the burden of proof to the detriment of the purchaser.
3. If the purchaser has a valid claim for damages according to the aforementioned provisions, the period of limitation for warranty claims, according to Section VI. 1, shall apply.

VIII.

Intra-Community supply (Section 6 a Value Added Tax Act)

We will only execute a tax-free intra-Community supply if the purchaser has provided the corresponding information, indicating that the legal requirements for such actions have been met. The purchaser shall be liable for the correctness of the information. Should the particulars provided prove to be inaccurate and our company is subsequently held liable for unpaid taxes, the purchaser shall be obligated to indemnify us from these claims upon first written request.

IX.

Place of performance and jurisdiction

1. Place of performance for both contractual parties shall be Gütersloh/Germany.
2. Where the purchaser is a registered trader, a legal entity under public law or a special assets fund under public law, for all claims arising from business ties Gütersloh/Germany is agreed as court of jurisdiction; we reserve the right at our discretion to sue the purchaser at his place of general jurisdiction and to appeal to the district court independently of the amount in dispute. The same court of jurisdiction shall apply if the purchaser does not have a general jurisdiction in the Federal Republic of Germany, if he has transferred his place of residence or customary abode outside Germany after conclusion of the contract or where his place of residence or customary abode is unknown at the time the complaint is filed.
3. The contractual relationship shall be subject to the domestic law of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

X.

Severability clause

Should an individual provision in these terms and conditions or a provision within the framework of other agreements be or become ineffective, this shall not affect the validity of all other provisions and agreements.