

General Terms and Conditions of Sale As at March 2017

I. Validity / Conclusion of contract

1. These General Terms and Conditions of Sale apply to all - including future - contracts with companies, legal entities under public law and public law special funds, for deliveries and other services, including contracts for works and services and the supply of non-fungible items. In the case of third-party business, the conditions of the price list and shipment provisions of the supplier shall also apply.
2. Purchase conditions of the Purchaser shall not be recognised even if we do not expressly object to these again upon receipt.
3. Our offers are non-binding. Verbal agreements, undertakings, assurances and guarantees from our employees in connection with the conclusion of the contract shall only become binding as a result of our confirmation in written form.
4. In the event of doubt, the Incoterms in their relevant latest version shall be definitive for the interpretation of commercial terms.

II. Prices

1. Unless agreed otherwise, the prices and conditions of the price list that is valid when the contract is concluded shall be applicable. The goods shall be calculated "gross for net".
2. In the case of third-party business, we shall be entitled to increase the agreed price to the extent that our upstream supplier increases this price prior to delivery of the goods. This shall only apply if there is a period of more than three months between conclusion of the contract and delivery. In such cases, the Purchaser may withdraw from contracts, provided that it sends us its declaration of withdrawal immediately after receiving our notification of the increase.

III. Payment and offsetting

1. Unless otherwise agreed or stated otherwise in our invoices, the purchase price shall be due immediately after delivery, without any discount, and must be paid so that we have access to the amount on the due date. This shall apply even if the test certificates pursuant to DIN EN 10204 agreed for delivery are missing or are received late. The Purchaser shall be liable for the costs of the payment transaction.
2. The Purchaser shall only hold a right of retention and the authorisation to offset claims to the extent that its counterclaims are undisputed or have been legally established as final and absolute, said counterclaims are based on the same contractual relationship with them and/or would entitle the Purchaser to refuse their performance in accordance with Article 320 of the German Civil Code [Bürgerliches Gesetzbuch].
3. If the payment term is exceeded or in the event of delay, we shall calculate interest at 8% above the base rate, unless higher interest rates have been agreed. In addition, we shall calculate a flat-rate charge for delay of 40.00 euros. We reserve the right to assert a further penalty for delay.
4. If, following conclusion of the contract, it becomes apparent that our payment claim is endangered due to a lack of financial solvency on the part of the Purchaser, or if the Purchaser falls behind on payment of a significant amount, or if other circumstances arise that allow us to conclude that there is a significant deterioration in the Purchaser's ability to pay after conclusion of the contract, we shall be entitled to the rights set out in Section 321 of the German Civil Code. In such cases, we shall also be entitled to declare that all accounts receivable from the ongoing business relationship that are not yet payable are now due for payment.
5. An agreed discount shall always relate only to the invoice amount, excluding freight, and shall be dependent on the full settlement of all liabilities due from the Purchaser at the point of the discount. Unless otherwise agreed, discount periods shall commence on the date of invoice.

IV. Execution of deliveries, delivery periods and deadlines

1. Our delivery obligation shall be subject to correct and prompt delivery by our own suppliers, unless we are responsible for the incorrect or delayed delivery by our own supplier.

2. Information on delivery times is approximate. Delivery periods shall start on the date of our order confirmation and shall be valid only subject to prompt clarification of all details of the order and prompt fulfilment of all the Purchaser's obligations, such as provision of all official certificates, submission of letters of credit and guarantees or payment of down payments.
3. The time of dispatch from the factory or warehouse shall be decisive for compliance with delivery periods and dates. These shall be deemed to have been met with notification of readiness for dispatch if the goods cannot be sent out in good time for reasons outside our control.
4. In the event of a delay in delivery, the Purchaser may set an appropriate grace period for us and, after it has elapsed without effect, withdraw from the contract to the extent that the contract has not yet been fulfilled. In such cases, claims for compensation shall be governed by Section XI of these Terms and Conditions.

V. Retention of title

1. All delivered goods shall remain our property (goods subject to retention of title) until all claims have been satisfied, in particular including the relevant balance claims to which we are entitled as part of the business relationship (title retention until all outstanding accounts have been paid). This shall also apply to claims arising in future and conditional claims, for example from acceptor's bills of exchange, and also if payments are made in respect of specially designated claims. This overall reservation of title shall finally lapse with the settlement of all claims that are outstanding at the time of payment and included in this overall reservation of title. However, the overall reservation of title shall not apply to advance payment or cash transactions that are processed on a delivery versus payment basis.
2. Work on and processing of the goods subject to retention of title shall take place for us as the manufacturer within the meaning of Article 950 of the German Civil Code, without obligating us. The goods that have been worked on and processed shall be regarded as goods subject to retention of title within the meaning of No. 1. Where goods subject to retention of title are processed, connected and combined with other goods by the Purchaser, we shall hold co-ownership of the new item in proportion to the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other goods used. For the event that our ownership ceases to exist due to connection or combination, the Purchaser shall hereby transfer to us the ownership rights that it holds from the new stock or the item, in the scope of the invoice value of the goods subject to retention of title, and shall keep these safe for us free of charge. Our co-ownership rights shall be regarded as goods subject to retention of title within the meaning of No. 1.
3. The Purchaser may only sell the goods subject to retention of title in the usual course of business, subject to its normal terms and conditions of business, and as long as it is not in arrears, provided that the claims from the resale pursuant to Nos. 4 to 6 are transferred to us. The Purchaser shall not be entitled to dispose of the goods subject to retention of title in other ways.
4. The claims arising from the resale of the goods subject to retention of title shall hereby be assigned to us, together with all securities that the Purchaser acquires for the claim. They shall serve as security to the same extent as the goods subject to retention of title. If the goods subject to retention of title are sold by the Purchaser together with other goods not sold by us, the claim arising from the resale shall be assigned to us in the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other goods sold. In the case of the sale of goods in which we hold co-ownership shares pursuant to No. 2, a proportion corresponding to our co-ownership share shall be assigned to us.
5. The Purchaser shall be entitled to collect accounts receivable resulting from the resale. This collection authorisation shall lapse in the event that we revoke it, but no later than with a delay in payment, failure to honour a bill of exchange or application to

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open insolvency proceedings. We shall only make use of our right of revocation if, following conclusion of the contract, it becomes apparent that our payment claim arising from this contract or from other contracts with the Purchaser is at risk due to the Purchaser's lack of solvency. At our request, the Purchaser shall be obliged to notify its customers immediately of the assignment to us and to provide us with the documents required for collection.

6. The Purchaser must inform us of any seizure or other impairment by third parties without delay. The Purchaser shall be liable for all costs that must be incurred for release of the seizure or for return transport of the goods subject to retention of title, unless said costs are refunded by third parties.
7. If the Purchaser falls behind on payment or fails to honour a bill of exchange when it falls due, we shall be entitled to take back the goods subject to retention of title, and where necessary to enter the Purchaser's premises for this purpose, and to sell the goods subject to retention of title as best as possible, offsetting the proceeds against the purchase price. The same shall apply if, following conclusion of the contract, it becomes apparent that our payment claim arising from this contract or from other contracts with the Purchaser is at risk due to the Purchaser's lack of solvency. Taking back the goods shall not constitute a withdrawal from the contract. This shall not affect the provisions of the German Insolvency Code [Insolvenzordnung]
8. If the invoice value of the existing securities exceeds the total secured claims, including accessory claims (interest; costs and similar) by more than 50%, we shall be obliged to release securities of our choice to this extent at the request of the Purchaser.

VI. Weights

1. For the weights, the weighing procedure carried out by us or by our upstream supplier shall be definitive. Proof of weight shall be provided by submission of the weighing slip. Where legally permissible, weights may be determined without weighing, in accordance with the standard. We shall be entitled to determine the weight without weighing, in accordance with the standard (theoretical), plus 2 ½% (commercial weight).
2. Item quantities, bundle numbers and similar specified in the dispatch note shall be non-binding for goods charged by weight. Insofar as no individual weighing usually takes place, the total weight of the shipment shall be valid in each case. Differences between the calculated individual weights shall be distributed among these on a proportional basis.

VII. Test certificates / Acceptance procedures

1. Written agreement shall be required for the provision with the delivery of inspection certificates ("certificates") in accordance with EN 10204. We shall be entitled to provide such certificates in the form of copies. Where no explicit agreement exists, the charge for inspection certificates shall be based on our price list or on the price list of the issuer in question (delivery plant).
2. If an acceptance procedure is agreed, it can only take place in the delivery plant or our warehouse immediately following notification of readiness for acceptance. The Purchaser shall ensure that we are able to commission the acceptance service provider it chooses in its name and on its behalf or on behalf of its customer. Unless otherwise agreed, this authorisation shall be deemed to have been granted with the designation of an acceptance service provider in the order.
3. The personal acceptance costs shall be borne by the Purchaser, while the material costs shall be charged to the Purchaser in accordance with our price list or the price list of the delivery plant.
4. In the event that, through no failing of our own, the acceptance does not take place, or does not take place promptly or in full, we shall be entitled to dispatch the goods without acceptance or to store them at the costs and risk of the Purchaser and charge the Purchaser for this.

VIII. Dispatch, transfer of risk, packaging, partial delivery

1. We shall determine the shipping route and means of shipping, as well as the forwarder and carrier.
2. Goods that have been reported as ready for dispatch in accordance with the contract must be called immediately, otherwise, following a warning, we shall be entitled to ship them as we choose at the expense and risk of the Purchaser or, at our discretion, to store them and invoice them immediately.
3. In the event that, through no fault of our own, transport on the planned route or to the planned location in the planned time period is rendered impossible or significantly more difficult, we shall be entitled to deliver by another route or to another location; the Purchaser shall be liable for the resulting additional costs. The Purchaser shall first be given the opportunity to comment.
4. With the handover of the goods to a forwarder or carrier, but no later than upon the goods leaving the warehouse or the delivery plant, the risk, including that of seizure of the goods, shall be transferred to the Purchaser for all transactions, including deliveries carriage-paid and free domicile. We shall only arrange insurance on the instructions and at the expense of the Purchaser. The Purchaser shall be liable for the duty and costs of unloading.
5. The goods shall be delivered unpackaged and without any protection against rust. We shall deliver the goods packaged if this is customary in the trade. We shall be responsible for packaging, protection and/or transport equipment in line with our experience, at the expense of the Purchaser. These items will be taken back at our warehouse within an appropriate time period. We shall not be liable for the costs incurred by the Purchaser for return transport or for disposing of the packaging independently.
6. We shall be entitled to make partial deliveries to a reasonable extent. Furthermore, we shall be entitled to exceed and undercut the agreed delivery quantities in a reasonable manner. Where an "approximate" quantity is stated, this shall entitle us to exceed/undercut the quantity by up to 10%.

IX. Call orders, ongoing deliveries

1. In the case of transactions with continuous delivery, calls and classification for approximately equal monthly quantities must be issued to us; if this is not the case, we reserve the right to carry out the determination ourselves at our reasonable discretion.
2. If the individual calls taken together exceed the quantity specified in the contract, we shall be entitled, but not obliged, to deliver the additional quantity. We may charge the additional quantity at the prices valid at the time of the call or the time of delivery.

X. Liability for material defects

1. The internal and external properties of the goods, particularly their quality, type and dimensions, shall be determined in accordance with the agreed standards, or failing a differing agreement in line with the DIN and EN standards applicable at the point of conclusion of contract, or failing such standards in line with custom and trade practice. References to standards and similar sets of rules, to inspection certificates pursuant to EN 10204 and similar certificates, and information regarding qualities, types, dimensions, weights and usability of the goods shall not constitute any promises or guarantees, just as declarations of conformity and corresponding labels or marks such as CE and GS shall not.
2. The statutory provisions shall apply for the inspection of the goods and notification of defects, with the proviso that the obligation to inspect the goods following delivery shall also extend to any test certificates pursuant to or in line with EN 10204, and that we must be notified in writing of any defects in the goods and test certificates.
3. Where the intention is to install the goods, the Purchaser, within the framework of Section 377 of the German Commercial Code [Handelsgesetzbuch], shall be obliged to check the internal properties of the goods that are vital for the use prior to installation and to notify us immediately of any defects in the goods.

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4. In the case of a justified notice of defect, submitted within the applicable time period, we may choose to rectify the defect or to deliver a fault-free item (supplementary performance). The place of performance for the supplementary performance shall be our registered office. If the supplementary performance fails and/or is refused, the Purchaser shall be entitled to assert its statutory rights. If the defect is not significant and/or the goods have already been sold, processed or reconfigured, the Purchaser shall only have the right to reduce the purchase price.
5. We shall only be liable for expenses associated with supplementary performance insofar as they are appropriate for the individual case, particularly in proportion to the purchase price of the goods, but under no circumstances beyond 150% of the purchase price. We shall only accept further expenses, such as those incurred in connection with the installation and removal of the defective item, in accordance with Section XI of these Terms and Conditions.
6. If the Purchaser does not immediately give us the opportunity to convince ourselves of the defect, and in particular if it does not immediately provide the disputed goods or samples thereof for the purposes of testing, all rights due to the material defect shall lapse.
7. In the case of goods that have been sold as downgraded material, the Purchaser shall not hold any rights due to material defects in relation to the stated reasons for downgrading and such defects as the Purchaser would usually expect. In the case of the sale of Ila goods, our liability due to material defects shall be excluded.
8. Further claims held by the Purchaser shall be governed by Section XI of these Terms and Conditions. This shall not affect the Purchaser's rights of recourse pursuant to Sections 478 and 479 of the German Civil Code.
2. These restrictions shall not apply in the case of culpable breach of major contractual obligations, the infringement of which endangers achievement of the contractual purpose, or the fulfilment of which is necessary for orderly execution of the contract in the first place, and on the observation of which the contractual partners may regularly rely. Furthermore, these restrictions shall not apply in the case of culpably effected damage to life, body and health, even if and to the extent that we have accepted the guarantee for the condition of the sold item, as well as in cases of mandatory liability pursuant to the German Product Liability Act [Produkthaftungsgesetz]. This shall not affect the rules concerning the burden of proof.
3. Unless otherwise agreed, contractual claims arising for the Purchaser against us on the occasion of and in connection with delivery of the goods, including compensation claims for material defects, shall become statute barred one year after delivery of the goods. This time period shall also apply to such goods as are deployed in line with their usual manner of use for a structure and the defectiveness of which we have caused, unless this manner of use was agreed in written form. This shall not affect our liability and the statute barring of claims arising from intentional and grossly negligent breaches of obligations, culpably effected damage to life, body and health, and the statute barring of recourse claims pursuant to Sections 478 and 479 of the German Civil Code. The statutory limitation periods shall apply for these.

XI. General restriction of liability and statute of limitations

1. We shall only be liable - including on behalf of our management employees and other vicarious agents - as a result of breach of contractual and non-contractual obligations, particularly due to impossibility of performance, delay, fault during contract preparations and unauthorised action - in cases of intent and gross negligence; in cases of gross negligence this shall be limited to the damage typical of the contract that was foreseeable when the contract was concluded. For the rest, our liability, including for damage caused by defects and consequential damage, shall be excluded.

XII. Place of performance, place of jurisdiction and applicable law

1. The place of performance for our deliveries shall be our warehouse; for deliveries ex works it shall be the relevant delivery plant. The place of jurisdiction shall be Munich or the registered offices of the Purchaser, as we choose.
2. All legal relationships between us and the Purchaser shall be governed by non-standardized German law, particularly the German Civil Code/German Commercial Code (BGB/HGB), in addition to these Terms and Conditions. The provisions of the Vienna UN Convention of 11 April 1980 on Contracts for the International Sale of Goods shall not be applicable.

XIII. Applicable version

In the event of doubt, the German version of these General Terms and Conditions of Sale shall be definitive.