



General Terms and Conditions of Sale, Delivery and Payment

1. General, scope of application

- (1) Unless agreed otherwise in writing, only the terms and conditions below apply to all our deliveries, goods and services, including future ones. Upon placing an order, but no later than when delivery is taken of the goods, the Purchaser acknowledges these terms and conditions, which counter any contrary terms and conditions of purchase or other general contractual conditions of the Purchaser. They will not be acknowledged by us unless we have expressly consented to their validity in writing. Our terms and conditions also apply if we deliver the products, goods and services in acknowledgement of the Purchaser's contrary terms and conditions or such terms and conditions that differ from our terms and conditions.
- (2) Subsidiary agreements, amendments and supplements – including the written form clause – must be made in writing in order to be valid.
- (3) Our General Terms and Conditions of Sale, Delivery and Payment apply in business dealings with companies, legal entities under public law and public law utility funds.

2. Conclusion of contract, prices

- (1) Orders are not accepted until they are confirmed in writing by us or are implemented. Our raising of an invoice is deemed written confirmation of the order. Our proposals and prices are subject to change without notice. Unless agreed otherwise, our prices are established in the price list applicable on the day of delivery plus Value Added Tax. They are to be understood ex our warehouse Neumünster excluding transportation packing.

3. Delivery, transfer of risk

- (1) Delivery deadlines and delivery periods are only binding upon us if we have specifically confirmed them in writing as firm delivery dates, subject to the proviso that we ourselves obtain proper and timely delivery from our suppliers. Delivery periods commence once the contract is concluded.
- (2) In the event of delayed, defective, insufficient volume of or unsuccessful delivery on the part of our suppliers or it being unreasonable for us to procure goods, and in the event of force majeure, industrial disputes, breakdowns and stoppages without fault, public disorder, official measures and other unforeseeable, extraordinary and blameless events affecting us or our suppliers, about which we shall notify the Purchaser if possible, we are entitled to extend the delivery deadlines and delivery periods to a fair and reasonable extent or to cancel the whole or part of the contract. If the delivery period should be extended or we become released from the obligation to deliver, the Purchaser cannot derive any claims for compensation therefrom. If there should be such a delay in delivery of more than 4 months, the Purchaser may cancel the contract. Other rights to cancel the contract remain unaffected.
- (3) If we should default on delivery owing to reasons for which we or our agents are responsible, we shall be liable only in the event of wilful intent or gross negligence. (see Clause 8.)
- (4) If binding delivery deadlines or delivery periods are exceeded (including the cases specified in the preceding paragraph), the Purchaser is entitled – except in the event of fixed date transactions – to cancel the contract once a period of grace to be stipulated by the Purchaser of at least 3 weeks has passed. We are entitled to effect part deliveries. In the event of part delivery, the Purchaser may only cancel the whole contract if the partial fulfilment of the contract is of no interest to the Purchaser.
- (5) The Purchaser is obliged to take delivery of the goods. If the Purchaser should fail to do so, we may make use of our statutory rights.
- (6) Delivery is made for the Purchaser's account and risk. The risk of accidental loss and accidental impairment of the goods transfers to the Purchaser when the goods are delivered. If the goods are ready for dispatch, and dispatch or taking delivery is delayed due to reasons for which we are not responsible, the risk is transferred to the Purchaser from the time notification to the effect that the goods are ready for dispatch is received. In the event of the goods being dispatched to the Purchaser, the risk is transferred at the place of storage when they are loaded onto our own or a third party's means of transport of our choice or when the goods have left our warehouse for the purpose of dispatch. (see Clause 11)

4. Payment, entitlement to set-off and retention

- (1) Our invoices are payable immediately upon receipt / date of invoice. We reserve the express right to decline cheques and bills of exchange. We accept them only pending full discharge of the account receivable and with no guarantee of timely presentation and protestation. Costs of discount and bills of exchange shall be borne by the Purchaser and are due immediately.
- (2) If due dates are exceeded, maturity interest is payable, and in the event of undue delay, interest on arrears is payable at the rate of 5%. The interest on arrears is to be set at a higher or lower rate if we prove an encumbrance with a higher rate of interest or the Purchaser prove a lesser encumbrance. If there should be a substantial deterioration in the Purchaser's financial position, if we become aware of poor financial circumstances or the Purchaser fail to observe agreed payment terms, all our accounts receivable shall be due at once, even in the event of a delay having been granted and irrespective of any bill of exchange having been discounted; further claims for compensation notwithstanding, we are entitled to cancel the contract if the Purchaser fails to make an advance payment of the purchase price or to offer security for said price within 7 days of the corresponding demand.
- (3) The Purchaser may only set off with uncontested claims or claims established in law. The Purchaser has no right of retention.

5. Reservation of title and anticipatory assignment

- (1) Until all our present and future accounts receivable, due to us on whatever legal basis, are paid, including the respective outstanding balance from any figurative or real current account, we remain the owners of the goods delivered. Any processing or transformation of the reserved goods shall be on our behalf as manufacturer, albeit without obligation for us. If the reserved goods should be processed or combined with other goods not pertaining to us, we are entitled to co-ownership of the new object in proportion of the gross amount invoiced for the reserved goods to the trade value of the other goods used. If the Purchaser should acquire sole ownership of the new object, it shall assign to us as of now its co-ownership share in accordance with the gross amount invoiced for the reserved goods used. The Purchaser shall keep the new objects in safe custody for us free of charge with the diligence of a reliable businessman. The Purchaser is entitled to resell the delivered goods or goods created by processing only in the normal course of business upon the agreement of a reservation of title. The Purchaser is not entitled to pledge the goods or transfer ownership of them by way of security. The Purchaser assigns to us as of now all accounts receivable with subsidiary rights to which it is entitled arising from the disposal or other application of the reserved goods. In the case of disposal or other application with objects vested with third-party rights, only the partial amount corresponding to the gross amount invoiced shall be assigned to us. The assigned accounts receivable serve to secure all claims under Clause 5 para. 1.
- (2) The Purchaser is authorised to collect the assigned account receivable. In the event of payment being delayed or suspended, bankruptcy or settlement proceedings being applied for or initiated, or in the event of any other financial collapse of the Purchaser, or if



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the Purchaser should fail to comply with the duties arising from the ownership, we may revoke the authorisation to collect and demand that the Purchaser notify us of the assigned accounts receivable and the debtor, provide all the information required for collection, hand over the appurtenant documents and inform the debtor of the assignment. Under the same preconditions we are entitled to revoke the resale and/or processing of the reserved goods, to fetch the reserved goods at once, to this end to enter the Purchaser's business premises and storerooms unobstructed, and if we so choose to utilise said goods. Our taking possession of the reserved goods does not affect any further rights of ours. Taking back the reserved goods does not imply that we are cancelling the contract.

- (3) The Purchaser is required to notify us immediately of third-party seizure of the reserved goods or the accounts receivable assigned to us. The Purchaser shall reimburse us for the costs incurred in defending third-party interference.
- (4) Should the value of the guaranty put up for us exceed our total accounts receivable by more than 20%, at the Purchaser's request we shall be obliged to release surplus guaranties as we see fit.

6. Notification of defects

- (1) The Purchaser is obliged to examine the goods immediately upon receipt – at all events therefore prior to installation. Complaints regarding volumes and defects must be made in writing by traders within 10 days of receiving the goods – in the case of latent defects, within the same period of time after detecting the damage, otherwise all warranty claims are excluded. The criterion is when we receive the notification of defects.

7. Warranty / liability for defects of quality

- (1) The period of limitation for defects of quality is 1 year. This also applies to claims for compensation of loss or damage subsequent to defects, unless claims can be made on the grounds of tort.
- (2) If there is a defect in the object of sale for which we are responsible, we are entitled to opt for rectifying the defect (remedying the defect) or for a replacement delivery quid pro quo against return of the goods objected to. In the case of rectifying the defect, the costs to be borne by us shall be limited to the costs of labour and materials. We shall not bear any other costs, except for the costs of transporting the object of sale back to the place of performance or the place to which said object was to be dispatched under the original contractual arrangements. The Purchaser must make claims for rectification of defects to us. If we should not be prepared or in a position to rectify the defect/make a replacement delivery, in particular if this is prolonged beyond fair and reasonable deadlines owing to reasons for which we are responsible, or should the remedying of defects/replacement delivery prove otherwise unsuccessful, the Purchaser may opt between demanding a reduction or cancelling the contract. The rectification/remedying of defects is deemed as having been unsuccessful as and when 2 deadlines stipulated to us for subsequent performance pass to no avail. The preconditions for exercising the right to rescission are determined by § 323 of the BGB [German Civil Code].
- (3) Warranty/defect of quality and compensation claims are precluded insofar as impairment in quality of the goods is due to natural wear and tear or improper handling of the goods. This applies in particular to such impairment as occurs due to improper subsequent improvement undertaken by the Purchaser or unauthorised third parties. Liability for defects of quality is precluded for defects that the delivered object did not have at the time the risk was transferred, and for defects due to improper handling, incompetent fitting/installation or natural wear and tear. The Purchaser is required to demonstrate and prove that the fitting/installation was carried out competently.
- (4) The Purchaser must make claims for remedying of defects to the Vendor.
- (5) In the event of a defect due to defective fitting instructions, the Vendor is obliged to be liable for defects of quality only if the fitting/installation of the object sold was otherwise carried out competently. It is to be demonstrated and proved by the purchaser that it was carried out competently.

8. Liability

- (1) We are liable for damages – except for warranted qualities – only in the event of wilful intent or gross negligence. We are not liable for ordinary negligent loss or damage caused by a defect in the object of sale.
- (2) Unless we are accused of wilful breach of contract, our liability is restricted to the typical loss or damage foreseeable when the contract was concluded. If the claim for damages is based on a culpably omitted rectification of defects, in terms of fitting and disassembly costs it is restricted to the corresponding rates on the DAT/Schwacke List. As for the rest, liability for damages is precluded; in this respect we are especially not liable for loss or damage not sustained by the object of sale. This restriction does not apply to injury to life, limb or health. If the loss or damage is covered by an insurance policy taken out by the Purchaser for the claim concerned (with the exception of fixed sums insurance), the Vendor is liable only for disadvantages for the Purchaser associated therewith, e.g. higher insurance premiums or interest disadvantages until settlement of claims by the insurance company.
- (3) Should a warranted quality be missing, we are liable, to the exclusion of further rights, only to compensate for loss or damage subsequent to defects that should be covered by the warranty. Qualities of the delivery objects are only deemed warranted if we have declared the warranty expressly as such in writing. Particulars in catalogues and lists do not constitute a warranty of qualities. Likewise all particulars in our proposals and confirmations of orders regarding dimensions, weight and other technical data do not constitute a warranty of quality.
- (4) The limitation of liability applies to the same extent to our legal representatives, agents, vicarious agents and our employees as well as to their personal liability.

9. Contractor's recourse

- (1) If the Purchaser should sell the sold object on to a consumer in the course of its business and has to take back this object or reduce the purchase price in consequence of the defectiveness of the object, the Purchaser may claim liability for defects of quality without a time-limit being set.
- (2) In addition, the Purchaser may demand compensation for expenditure incurred vis-à-vis the consumer if the defect claimed by the consumer was already extant at the time the risk was transferred to the Purchaser. Costs of transportation, tolls, labour and materials in particular are deemed expenditure.
- (3) Under this contractor's recourse, the Purchaser has no entitlement to damages.

10. Advice

- (1) Our advice and any project productions are provided free of charge and without obligation, unless agreed otherwise in writing. In terms



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of warranty and liability, the preceding provisions apply accordingly.

11. Return of goods

- (1) We are not obliged to take back flawless goods ordered and properly delivered, unless we have declared in writing that we agree to take the goods back in a particular case.
- (2) If we should be in agreement, the goods shall be dispatched back to us at the Purchaser's expense. The Purchaser is obliged to assume a flat rate 20% of the net purchase price, though no less than EURO 2.50 per item, as costs of rewarehousing/taking back goods, provided the goods are being taken back owing to reasons for which the Purchaser is responsible. The same applies if we take reserved goods back into our possession owing to reasons for which the Purchaser is responsible. This shall not affect our right in a particular case to make our taking goods back dependent on the payment of higher costs, or in the case of taking back reserved goods to claim higher costs incurred by us.
- (3) We shall not take back transportation packing and any other packing, with the exception of returnable pallets and Europool skeleton containers. The Purchaser is obliged to take care of the disposal of the packing at its own expense.

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

- (1) The place of performance for deliveries and payments is Neumünster.
- (2) German law alone applies, to the exclusion of conflict of laws and the United Nations Convention on Contracts regarding the International Sale of Goods.
- (3) The place of jurisdiction for all disputes arising from the business relations including all claims arising from cheques and bills of exchange is Neumünster.

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