

Conditions of Sale and Supply

1. General:

The following conditions apply exclusively to all our present and future quotations/offers, supplies and services (including wage labour) vis-à-vis commercial customer ("entrepreneurs") within the meaning of § 14 BGB (German Civil Code). We hereby exclude the customer's own conditions to the extent that they conflict with the present Conditions.

2. Conclusion of contract:

Our quotations/offers are given without obligation and are subject to change. Contracts will only be concluded on the basis of an order from the customer and our written acknowledgement of the order. Agreements with our employees and representatives require our written confirmation to be valid. Measurements, weights, performance specifications and illustrations are approximate only. Quotation documents such as e.g. brochures, drawings and material specifications remain our property. They are subject to copyright protection and may not be disposed of in any way whatsoever.

3. Changes:

We reserve the right to correct mistakes or errors in the quotations/offers, order acknowledgements or invoices. We further reserve the right to change or modify our performance, provided that such change or modification is in line with the usual commercial practice or, respectively, reasonably acceptable to the customer. We are in particular entitled to deliver other products than those ordered, provided that the technical specification is the same or deviates only inconsiderably from that of the ordered products. We may pass on to the customer higher prices for products of a higher technical specification, if the increase in prices is inconsiderable.

4. Prices:

Unless otherwise agreed, we will charge the prices valid at the time of supply. Fixed prices need to be expressly agreed as such in writing and will not apply to repeat orders or in the case of subsequent changes in the delivery quantities or delivery times on the part of the customer. All prices are ex works, exclusive of packing and freight charges, plus the statutory value-added tax. If, in the case of orders with a pre-defined delivery time of more than two months or in the case of contracts for delivery by instalments or recurrent deliveries ("Sukzessivlieferungsverträge") over a period of more than two months, the pricing factors (customs duties, wages, raw material prices, changes in exchange rates etc.) are subject to an increase of no less than 5% as referred to the net prices of the goods after acknowledgement of the order but prior to delivery, and if neither current daily prices nor a fixed price has been agreed, we may adjust the prices accordingly. If the price was agreed in foreign currency, the customer will have to reimburse for any detriment incurred by us due to a change in exchange rates by paying an additional charge on the price which was originally agreed.

5. Terms of payment:

Unless otherwise agreed in writing, our invoices are due and payable net cash within 30 days from the date of the invoice, but in no case prior to the receipt of the goods. The customer may not set off any counter claims, unless we have acknowledged the counter claim or the counter claim was established by a court decision which has become final and non-appealable. The customer is not entitled to retention, unless such right to retention is based on the very same contractual relationship. Existing warranty claims do not prevent our claims from becoming due. All payments by the customer will be set off against our oldest claim, regardless of whether the payment is expressly declared to be made for certain specified goods. If we should become aware of any circumstances or facts which suggest a poor creditworthiness of the customer, we may, in addition to the rights under § 321 BGB (German Civil Code), claim the provision of sufficient security or payment of the accounts receivable. This applies in particular if, in the case of trade credit insurance, the insured total amount of receivables is reduced to a level below the balance of our claims against the customer. If the customer is in default with the payment of part of our claims, we may – without prejudice to any other rights to which we may be entitled – demand immediate settlement of all our claims and, for security purposes, claim return of all goods which were delivered by us subject to retention of title. Amounts credited for return of goods or under mutual agreement may only be used up by way of the purchase of goods.

6. Deliveries:

Our deliveries are subject to proper and timely delivery by our pre- or sub-suppliers. Delivery times and dates are non-binding and only serve as approximate dates, unless a specific date for delivery was explicitly agreed as binding. The agreed delivery time starts to run from the conclusion of the contract and is deemed to have been complied with from the date of notice of readiness for dispatch. The delivery time will be extended by the period during which the customer is in default with the fulfilment of his obligations under this or any other contract concluded with us. We are allowed to make partial deliveries within reasonable limits and issue invoices for such partial deliveries, too. Circumstances and events which hinder due performance on our part and may not be prevented by us exercising reasonable diligence and care, e.g. force majeure, industrial action, riots, energy shortage, work restrictions, non-availability of traffic or transport means, operational disturbances in our premises or the premises of our pre-suppliers or similar events or circumstances will relieve us of our obligation to perform the contract for the duration of these circumstances or events. If delivery should be rendered impossible due to such event or circumstances, we are not obliged to perform. In such a case, the customer will only be entitled to withdraw from the contract if the delay in delivery is reasonably unacceptable to him. Apart from that and without prejudice to the right of rescission under § 437 no. 2 BGB (German Civil Code), the customer will only be entitled to withdraw from the contract for non-compliance with the delivery time or failure to perform in conformity with the contract if such non-compliance or failure is attributable to us and the customer has beforehand granted us a reasonable additional period for performance of no less than 4 weeks by written notice or, respectively, if the granting of such a grace period is deemed dispensable by law. Unless otherwise agreed, delivery will be ex works. If we dispatch the goods at the customer's request, the risk will pass to the recipient at the time of dispatch (hand-over to the person responsible for the transport), even if delivery was agreed freight paid. Loss and damages occurring during the transport are also at the risk and cost of the recipient. Transport insurances will only be effected at the express request and at the expense of the customer. If the goods are ready for dispatch but the dispatch or the taking of the delivery is delayed for reasons which are not attributable to us, the risk will pass to the customer from receipt of the notice of readiness for dispatch. Deliveries need to be taken immediately but no later than within 8 days from the date of the notice of readiness for dispatch. If the customer, after expiry of such period, fails to take delivery within an additional period of another 8 days or, respectively, definitely refuses to take delivery ("ernsthafte Annahmeverweigerung"), we may claim damages for non-performance ("Schadensersatz wegen Nichterfüllung") or rescind the contract in whole or in part. If delivery is made no later than 14 days after the agreed delivery date, we will not be deemed to be in default ("Verzug"). If partial delivery has already been made, the customer may assert his claims for default only with respect to such quantity of the goods as has not been delivered yet, unless the partial delivery is unacceptable to the customer from an objective point of view.

7. Warranty:

The customer must report visible defects in writing without delay ("unverzüglich"), but no later than within one week from the receipt of the goods, and, in the case of hidden defects, immediately ("unverzüglich") after their detection, but no later than within one year from the receipt of the goods. Deviations in the measurements, quantity, weight and colour which are usual in commercial practice do not constitute a defect. In the case of justified complaints for defect, we will, at our choice and at no expense to the customer, deliver a substitute or perform subsequent remedy ("Nachbesserung") or reimburse the counter-value of the goods. If the subsequent remedy fails or if we fail to declare in due time how we will make good for the defect (choice of warranty as described hereinbefore), the warranty claims granted to the customer by law will revive. Claims for damages may only be asserted against us within the limits of sec. 9, unless a guarantee as to the quality of the goods ("Beschaffenheitsgarantie") was given by us or we have fraudulently concealed a defect in the goods. If the customer rejects to accept possible and appropriate subsequent remedy, the warranty claim will lapse as a whole. The fulfilment of the warranty does not give rise to new or separate warranty claims and does not cause new time limits to start to run. We do not give any warranty for the usability of the goods for the purposes intended by the customer, unless the requested usability was expressly agreed and confirmed to be the intended contractual purpose. In particular, we do not give any warranty for the eventuality of the goods being somehow prevented from being sold or their use being somehow hindered or restricted by certain government regulations (e.g. embargo provisions or the duty to obtain export permits). Information, advice or recommendations given with respect to the usability, compatibility and other features of the goods will only be binding on us if explicitly confirmed in writing vis-à-vis the customer or the potential customer.

8. Retention of title:

Title to the goods delivered by us will only pass to the customer after all unsettled claims from the commercial relationship with the customer have been satisfied. In the case of current accounts, the retention of title is deemed a security for the outstanding balance. The customer is entitled to process the goods subject to retention of title within the framework of his ordinary business operations. In case the ownership of the supplier is extinguished due to processing, alteration, combination or integration of the delivered goods, the customer hereby transfers to us his title to the new product and holds it in safekeeping for us with the due diligence and care of a businessman. If goods belonging to a third party are integrated into the new product, we will only share title to, and become co-owner of, the new product in the proportion of the value of our goods subject to retention of title to the value of the third party goods used. If the acquisition of a co-ownership share is excluded by law, the customer will assign to us, as a substitute, his right to compensation, if any, in the corresponding amount. The customer is obliged to give us immediate ("unverzüglich") notice of seizure or any other impairment of our rights by third parties and must provide us with all documents which might be required for legal defence. The customer is entitled to resell the goods subject to retention of title in the ordinary course of trade, provided that it is ensured that the buyer to whom the goods are resold by the customer will only acquire title to the goods after payment of the purchase price in full. If the customer resells the goods delivered by us subject to retention of title, irrespective of the condition of the goods, the customer hereby assigns to us the receivables arising out of this resale. The customer is entitled to collect the receivables arising out of the resale. We may, however, revoke the collection authorisation at any time, if the customer fails to duly perform his obligations under the contract. Upon our request, the customer will have to notify the third party buyer of the assignment of the receivables, and will have to provide us, following the revocation of the collection authorisation on our part, with the information and documents required for the assertion of our rights. In the event of the worsening of the creditworthiness or reliability and solvency of the customer, we will further be entitled to request immediate separation and recovery of the goods subject to retention of title and take measures to safeguard and enforce our security interests without limitation. Included therein is in particular the right to take possession of the goods subject to retention of title as well as the right, also for persons authorised by us, to enter the customer's premises for such purpose.

9. Liability:

Unless otherwise expressly stipulated in these Conditions, the customer may claim damages from us, irrespective of the legal ground, only in the event of intentional or grossly negligent conduct and in the event of culpable breach of fundamental duties under the contract. Our liability for negligent breach of fundamental duties under the contract and for gross negligence on the part of our vicarious agents or other persons engaged by us in the performance of our obligations ("Erfüllungsgehilfen") is restricted to the typical foreseeable damage. Our liability for the injury of the customer's life, body or health remains unaffected.

10. Export control:

The customer will procure and obtain at his expense all licences and permits and documents required for the export or import which are necessary for the purchase and resale, if any, of the products ordered with us.

11. Place of performance ("Erfüllungsort"), Governing law, Place of jurisdiction:

The place of performance is the location of our supply plant. The laws of the Federal Republic of Germany, to the exclusion of the UN Sales Law, will apply. The place of jurisdiction will be the registered office of our head quarters, provided that the customer is a merchant, a legal entity under public law or a special fund under public law ("öffentlich-rechtliches Sondervermögen") or if the customer has no general place of jurisdiction ("allgemeiner Gerichtsstand") in Germany. We may, at our discretion, also sue the customer at his registered office. The contractual provisions are subject to German law.

12. Final provisions:

The customer may not transfer any rights or claims against us to a third party without prior written agreement. The eventual invalidity of any individual provision(s) of these Conditions of Sale and Supply shall not affect the validity of the remaining provisions hereof.

13. Wage labour:

The present Conditions of Sale and Supply apply to wage labour mutatis mutandis. Our liability for defects does not include damages which are due to non-detected defects in the material which was provided to us by the customer or, at his order, a third party.

14. EDP:

Personal data of the customer will be collected, processed and stored for the purpose of contract execution (including in particular accounting, invoicing).

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