

General conditions and terms for sales and delivery

Ed. Date: August 2011

§ 1 General provisions - Scope of application

- (1) All our present and future supplies and services (hereafter referred to as supplies only) shall be exclusively based on the General Conditions and Terms for Sales and Delivery hereafter, unless expressly otherwise agreed in writing. Conditions and terms of the customer shall not apply, unless we have expressly accepted them in writing. Our General Conditions and Terms for Sales and Delivery shall also apply in cases where we, being aware of customer terms and conditions, provide delivery to the customer without reservation.
- (2) All and any agreements between us and the customer for the execution of this contract must be laid down in writing. Supplementary verbal agreements must be confirmed in writing.
- (3) Our General Conditions and Terms for Sales and Delivery are valid only for companies as defined by Art. 14 of the German Civil Code (BGB).

§ 2 Offers – Conclusion of contract - Documents

- (1) If a purchase order qualifies as an offer in the sense of § 145 German Civil Code (BGB), we are entitled to accept this order within a period of 10 working days.
- (2) Unless expressly defined to be binding, any pictures, drawings, weights and sizes that are part of our offer are only approximate values. We reserve title and property rights to all pictures, drawings, calculations, models, cost estimates and other documents; these documents may not be made available to third parties without our prior written consent. These documents shall be returned to us upon request and free of charge.

§ 3 Prices – Terms of payment

- (1) Our prices shall be „EXW our delivering site (Incoterm 2000)“ unless otherwise specified in our offer or confirmation of order, excluding packaging and value added tax in the respective statutory amount, which will be charged by separate invoice. The applicable rate of VAT is determined as the rate valid at the date of invoicing.
- (2) The application of discounts must expressly be agreed upon in writing.
- (3) As far as not otherwise stipulated, payment of the purchase price (net – i.e. without any deductions) must be made within 30 days of the date of invoice. Payments shall be considered made only to the extent we can freely dispose of them at our bank. We only accept checks and bills of exchange on account of performance. Banking charges shall be paid by the customers. They shall be due immediately.
- (4) We shall be entitled to demand interests exceeding the base rate by 8 percentage points as of due date, should the purchaser be in arrears. Should we be capable to provide evidence of a larger damage caused by arrears we shall be entitled to such claim.
- (5) Due to the unstable purchase prices we reserve the right to adjust our prices. If after a period of 2 months after having agreed to the prices and to the extent the purchase prices (particularly purchase prices of raw-materials and materials) change and if we are not responsible for this change, we are entitled to adjust our prices accordingly.
- (6) The price agreed to is based on the quantities specified by the customer as its estimated (serial-) requirements. If the quantities called-for by the customer fall more than 15% below this estimated (serial-) requirement for more than 6 months, we are entitled to adjust the prices accordingly. This provision also applies to the supply of spare parts after end of serial production.
- (7) The customer can only assert setoff and retention rights if its counterclaims have become res judicata, or are undisputed.

§ 4 Delivery time, reservation of self-supply, partial delivery

- (1) The delivery time starts with the forwarding of the confirmation of order but not before the clarification of all technical questions and details of the execution, and receipt of the agreed-upon advance payment. If we do not send a confirmation of order for a customer's call-off, the delivery time will start 10 working days after receipt of the call-off. The term for delivery shall be deemed to be kept if, by the expiring date, the goods are placed at the disposal of the customer .
- (2) Adherence to our supply commitment presumes the punctual and orderly fulfillment of the customer's obligations. Change requests by the customer will extend the delivery time until we have investigated the feasibility and by the amount of time needed to implement the new guidelines into production.
- (3) Our obligation for delivery is subject to the timely and correct supply of semi-finished products by our suppliers, unless we ourselves are responsible for incorrect or delayed delivery.
- (4) In the event of default of delivery due to ordinary negligence, our liability shall be limited to 0,5 % per completed week of delay, and to a maximum of 5 % of the net order value of the part of order concerned by the delay. Claims for damages instead of the performance under § 9 shall not be affected thereby. The customer shall inform us, at the time of conclusion of the contract at the latest, on any contractual penalty clauses existing with his purchasers.
- (5) If shipping is delayed due to circumstances for which we are not responsible, we shall charge for storage at our delivery site, at least 0.5% per month of the invoice amount of the stored delivery.
- (6) Partial deliveries will be accepted to a reasonable extent.

§ 5 Force majeure

- (1) Unforeseen, unavoidable events and events for which we are not responsible (for example force majeure, strikes and lockouts, operational breakdowns, difficulties in the procurement of material and energy, transportation delays, insufficient work force, energy and raw materials, authority measures and difficulties in the procurement of permits, in particular import and export licenses) shall extend the period of delivery by the duration of the interference and its effects. This shall also apply if such circumstances occur with our suppliers or during an existing delay in performance.
- (2) If this interference is not merely temporary, both parties shall be entitled to withdraw from the contract. In the cases listed in § 5 (1), claims for damages are excluded.

§ 6 Passage of risk

The risk shall pass to the customer according to EXW our delivering site (Incoterms 2000) even if, as an exception, we have accepted further services such as shipping costs or delivery.

§ 7 Packaging

We will take back all packaging of our products which accrue in Germany at the respective delivering site during normal working hours at the customer's cost. The packaging must be returned clean, free of residues and sorted by type of material. In case of repeated deliveries and after prior agreement with the customer, the return of transport packaging might also be carried out with a subsequent delivery, e.g., in exchange for other, equivalent transport packaging.

§ 8 Liability for defects

- (1) Defects shall be advised to us in writing and promptly, latest, however, 5 days after receipt of the goods, in case of hidden defects latest 5 days after discovery. If these periods are exceeded, all claims and rights arising from the liability for defects shall expire.
- (2) For justified claims we will provide warranty by rectification of the goods or substitute delivery at our discretion. If the rectification or substitute delivery is unsuccessful, denied or delayed in an unjustified manner, the customer may, after unsuccessful expiry of an adequate extension of the delivery period, demand a reduction of the purchase price or – in case of not immaterial defects – withdraw from the contract and demand compensation of damages instead of performance according to the provisions in § 9.
- (3) We shall not bear any costs resulting from re-performance, if the purchased goods have been placed in a location other than the business location of the customer after delivery.
- (4) Violation of the rights of third parties shall only be considered a defect if these rights of protection exist in the Federal Republic of Germany. However, we are not liable to the extent that the goods are produced according to the customer's specifications, drawings, models, etc. and we did not know or did not have to know that the production of these goods violates any third-party rights.
- (5) The limitation period for claims from defects in delivery shall amount to 12 months from the passage of risks, unless we are liable for bodily injury, have intentionally or by gross negligence broken our duty, intentionally misrepresented the defect by silence, or have accepted a guarantee exceeding to above term, or a longer statutory period is imperative.

§ 9 General liability

- (1) Claims for damages – irrespective of their kind – against us shall be excluded if we, our legal representatives or vicarious agents caused the damages through ordinary negligence. This limitation of liability shall not apply to personal injury nor to assumption of a contractual guarantee, nor to a breach of essential contractual duties. Essential contractual duties are such duties whose performance are necessary for the proper fulfillment of the contract and in whose performance the customer regularly trusts and is allowed to trust and whose breach endanger the achievement of the purpose of the contract. However, in case of a guarantee our liability shall be limited to the extent of the guarantee and, in case of ordinary negligently breach of essential contractual duties, to customary and foreseeable damages. Claims according to the German Product Liability Act (Produkthaftungsgesetz) shall remain untouched.
- (2) Claims for damages shall become statute-barred one year after the customer has discovered the damage and that it is compensable or should without gross negligence have discovered the damage and that it is compensable. Claims according to the German Product Liability Act (Produkthaftungsgesetz), for bodily injury and for defects are unaffected.

§ 10 Reservation of ownership

- (1) We reserve ownership of delivered goods until all receivables due from the customer under this business relationship have been paid and all checks and bills of exchange accepted from the customer in the course of business relations have been credited irrevocably. In case of an open account relationship, reservation of ownership shall be extended to the accepted balance.
- (2) The customer shall be obliged to treat the reserved goods with care and to maintain them; it shall be particularly obliged to insure them on its own account against loss and damages for their reinstatement value. The insurance policy as well as proof of payment of premiums shall be presented to us upon request. The customer assigns its insurance claims to us already at this point in time subject to the condition subsequent that ownership is transferred to the customer.
- (3) Handling and processing of reserved goods by the customer shall always be done on our behalf, in the sense of § 950 German Civil Code (BGB), without obliging us. New goods produced from the handling and processing of reserved goods shall be reserved goods in the sense of these terms and conditions. If reserved goods are mixed or combined with other goods by the customer, we shall acquire co-ownership in the new goods at the ratio of the invoice value of the reserved goods to that of other materials used. If our ownership expires in case the mixture is effected in such manner that the subject of the customer is to be considered the main subject, the customer shall assign us a pro-rata-co-ownership in the new subject already at this point in time and preserve the new subject for us without remuneration. The new subjects are reserved goods in the sense of these terms and conditions.
- (4) The customer shall be entitled to sell the reserved goods only in the proper course of business. It assigns to us, already at this point in time, the full amount of all receivables that accrue to it from the sale or use on behalf of a customer against the same or third parties.
- (5) Pledges or transfers by way of security or other disposal of reserved goods are not permitted. The customer shall inform us immediately in writing on pledges, seizures or other confiscations of the goods by third parties. Costs originating from the defense of any action affecting the reserved goods shall be for the account of the customer if they cannot be collected from third parties.
- (6) The customer shall be entitled to collect receivables assigned to us, as long as it meets its payment obligations to us from collected proceeds. If the customer fails to meet its payment obligations, we may revoke the resale and/or processing authorization and demand that the customer discloses the assigned receivables and the respective debtor to us, provides all statements necessary for collection, delivers the pertaining documents and informs the debtors of the assignment. In case of a default in payment, we shall be entitled to take back the reserved goods and the customer is obliged to deliver it. In order to obtain delivery of the goods, the customer shall acquiesce entrance to its premises. The return of reserved goods shall not constitute a withdrawal from the contract. If we withdraw from the contract, we shall be entitled to dispose of the items at our discretion.
- (7) If the value of securities exceeds our total receivables by more than 10 % we shall, upon request of the customer, release securities to the respective extent at our discretion.

§ 11 Place of performance – Court venue - Governing law

- (1) The place of business of our delivering site shall be the place of venue for any disputes arising from this purchase order; however, we shall be entitled to bring any action against the customer also before his general place of venue.
- (2) The exclusive place of performance shall be the place of business of our delivering site.
- (3) German law shall be applicable. The provisions of the UN Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980, shall not apply.