

General Terms and Conditions

§ 1 Application

1. These general terms and condition shall apply exclusively. Differing or contrary terms shall not apply except if expressly agreed upon in writing. These general terms and conditions shall also apply if we perform delivery despite our knowledge of differing or contrary terms.
2. These general terms and conditions shall also govern all future transactions between the parties.
3. Agreements on an individual basis with the purchaser shall have priority over these general terms and conditions. They must be agreed upon in writing.

§ 2 Offer, conclusion of contract

1. Pricelists, circular letters and general offers sent by us do not constitute offers within the meaning of § 145 BGB (German Civil Code).
2. Insofar as the order constitutes an offer within the meaning of § 145 BGB, we are entitled to accept this offer within two weeks unless the order determines a differing period.
3. All the details given in technical documents, brochures or other printed publications are only approximately significant, unless the exact conformity is required for the contractual purpose. The details do not constitute guaranteed features, they constitute mere descriptions of the goods. Alterations according to custom and usage, alterations which represent improvements and alterations on the basis of legal specifications are admissible unless they impair the usability for the contractual purpose.

§ 3 Prices

1. Our prices are in EURO ex works, exclusive of the respective statutory VAT and exclusive of costs for packaging and delivery according to § 5 para. 2, except as otherwise expressly agreed upon.
2. Delivery and billing are subject to our applicable basis rates at the time of conclusion of contract in the respective currency, considering the respective applicable discounts or surcharges for material price increases. In case of changes of prices of raw materials

of at least 10% during the performance of a contract, our applicable prices of the day of delivery shall apply.

§ 4 Period of delivery

1. Specifications on the period of delivery are considered as approximation, unless a fixed period or a fixed date has been assured or agreed upon. If shipment has been agreed between the parties, period and dates of delivery refer to the time of transfer to the carrier, freighter or other person instructed to transport the goods.
2. In case of default in acceptance or other culpable breach of duties to cooperate by the purchaser we are entitled to claim any resulting damage including but not limited to additional expenses. Further claims are reserved.
3. The period of delivery will be extended in case of force majeure by the period of obstruction in addition to a reasonable start-up period, if, through no fault of our own, we are restrained from the timely fulfilment of our obligations. Unforeseeable incidents, which we are not responsible for and which unreasonably impede or make impossible the delivery equate force majeure. Examples for such incidents include material supply problems, operational interruptions, strike, lockout, unavailability of means of transport, intervention by authorities, energy supply problems etc., even if those incidents occur to our suppliers. Should these incidents continue for more than two months, both parties have the right to cancel the contract.
4. In case of delays or the impossibility of the delivery, regardless of the reason for such impossibility, our liability is limited subject to § 10 of these general terms and conditions.

§ 5 Delivery, passing of risk

1. Delivery is ex works, this is also the place of performance.
2. Upon request of the purchaser the goods will be shipped to another destination. Unless otherwise agreed upon, we are entitled to choose the mode of transport (in particular carrier, dispatch route, packaging).
3. The shipment will be insured by us only at the express request of the purchaser and at his own expense against theft, breakage, transport-, fire- and water damage, or other insurable risks.

4. The risk of loss or damage to the goods passes to the purchaser upon transfer at the latest. In case of shipment of the goods the risk of loss or damage to the goods passes already with the transfer of the goods to the carrier, freighter or other person instructed to transport the goods. If we undertake to ship the goods by ourselves, the risk of loss or damage passes to the purchaser with the loading on board of the transport vehicle.
5. In case of default in acceptance or other culpable breach of duties to cooperate by the purchaser, the risk of loss or damage to the goods passes to the purchaser upon the moment of default in acceptance or upon the moment of other breach of duties to cooperate.

§ 6 Payment

1. The purchase price is due and payable within the period specified in the offer or in the letter of acknowledgement.
2. Upon maturity default interest in the amount of 8% above the respective base interest rate of the European Central Bank p.a. shall accrue. We reserve all rights to claim further damages for delay.
3. The purchaser shall be entitled to offset only insofar as the purchaser's counterclaim is undisputed or assessed in a legally binding judgement, his opposing rights are based upon defects of the goods subject to § 8 of these general terms and conditions or if the purchaser may invoke other opposing rights which reciprocally relate to our purchase price claim.
4. If it becomes obvious after the conclusion of the contract, that the fulfilment of our purchase price claim is endangered by a deficient financial ability of the purchaser (e.g. in case of an insolvency request), we are entitled to refuse performance according to the statutory provisions and – if applicable after setting a deadline – to cancel the contract (§ 321 BGB). In case of contracts concerning the production of unique goods (individual production) we are entitled to immediately cancel the contract; the statutory provision regarding the dispensability of setting a deadline remain unaffected.

§ 7 Retention of title

1. The property in the delivered goods shall not pass to the purchaser until all our current and future claims arising from the sales contract and our on-going business relationship have been settled by the purchaser. In case of breach of contract by the purchaser, including default in payment, we are entitled to take possession of the

goods. The retraction of the goods by us does not constitute a cancelation of the contract, however, we reserve the right to cancel the contract.

2. The purchaser shall handle the goods with due care, maintain suitable insurance for the goods and, to the extent necessary, service and maintain the goods.
3. As long as our current and future claims arising from the sales contract and the on-going business relationship with the purchaser have not been settled, the purchaser shall immediately inform us in writing if the goods become subject to rights of third persons or other encumbrances.
4. The purchaser may resale goods subject to the above retention of title in the cause of his regular business. For this case, the purchaser hereby assigns all claims arising from such resale, whether the goods have been processed or not, to us. Notwithstanding our rights to claim direct payment, the purchaser shall be entitled to receive the payments on the assigned claims. To this end, we agree to not demand payment on the assigned claims to the extent the purchaser complies with all his obligations for payment and does not become subject to an application for insolvency or similar proceedings or to any stay of payments. However, if this is the case, we are entitled to demand disclosure of the assigned claims and the respective debtors from the purchaser as well as all other information required for the collection of payment, delivery of all associated documents and notification of the debtors of the assigned claims.
5. The processing of the goods by the purchaser is always done on our behalf. If the goods are processed with other goods which we have no property in, we shall become co-owner of the goods in the ratio of the value of the goods subject to retention of title to the value of the newly manufactured goods. The newly manufactured goods are subject to the same provisions as the goods subject to retention of title.
6. We commit ourselves to release above securities on demand of the purchaser insofar as the liquidable value of the above securities exceeds the secured claim by more than 10%; we reserve the right to decide which parts of the security will be released.
7. If the retention of title in the form of this provision is ineffective under the law of the country of destination, the purchaser is obliged to cooperate in creating a respective security which complies with the laws of that country.

§ 8 Warranty claims of the purchaser

1. Precondition for any warranty claim of the purchaser is the purchaser's full compliance with all requirements regarding inspection and objection according to § 377 HGB (German Commercial Code).
2. Any claim by the purchaser based on a defect has to be in writing. As a general rule, a prompt notification has to be carried out within 10 days.
3. Warranty claims shall be time-barred after 12 months of the statutory start of the limitation period. In case of damages arising from an injury of life, body or health and in case of intent or gross negligence on our part or by our agents or assistants in performance, sentence 1 of this provision shall not apply and the statutory limitation rules shall apply. If the goods constitute objects in the sense of § 438 para. 1 no. 2 BGB (i.e. building materials and building components), the statutory limitation rules shall apply as well.
4. If the delivered goods are defective, we shall be entitled first at our sole discretion to either repair the goods or to replace the goods. The right to refuse the subsequent performance under the statutory conditions remains unaffected.
5. The right of the purchaser to claim damages or to claim reimbursement of futile expenses is limited to the rights arising from § 10 of these general terms and conditions.

§ 9 Intellectual property rights

1. We assume liability that the goods are free of intellectual property rights of third parties.
2. However, precondition for such warranty is, that the purchaser immediately notifies us in writing if third parties raise intellectual property rights and that the purchaser coordinates with us amicably under consideration of the principle of good faith the treatment of these claims as well as the enforcement of his rights. If one of these requirements is not fulfilled, we are released from our liability. If an infringement of intellectual property rights of third parties occurs, of which we are liable subject to these terms and conditions and if therefore the purchaser is legally binding barred from using the delivered goods, we shall be entitled at our sole discretion and our expense to either
 - a) provide the purchaser with the right of usage for the goods or
 - b) redesign the goods while maintaining the contractual function of the good or

- c) replace the goods by other goods of equal performance which do not violate any intellectual property rights or
- d) take back the goods upon reimbursement of the purchasing price.

Further or other claims by the purchaser on the basis of intellectual property rights are excluded, except for claims for damages. Any claims for damages for the purchaser are subject to the restrictions of § 10 of these terms and conditions.

- 3. If the purchaser modifies the goods or undertakes the installation of additional equipment or the combination of the goods with other equipment or devices and if intellectual property rights are infringed by such action, our liability shall cease.

§ 10 Liability

- 1. Unless expressly provided in these terms and conditions, we are liable in case of violations of contractual and non-contractual duties according to the statutory provisions of the applicable law.
- 2. We are liable for damages – for whatever legal reason – in case of intent or gross negligence. In case of simple negligence we are only liable
 - a) for damages arising from the injury of life, body or health,
 - b) for damages arising from the infringement of an fundamental contractual duty (obligation whose fulfilment is a prerequisite for enabling the proper execution of the contract and obligations in whose compliance the purchaser relies and may rely on).

Unless there is an intentional breach of duty, our liability for damages is limited to the foreseeable, typically occurring damage. In any event, our liability is limited to the amount of 15 times of the purchase price of the respective order or to 250.000,00 EUR per claim, whatever is higher, unless in case of an intentional or gross negligent breach of duty or damages arising from the injury of life, body or health. The consideration in case of a contributory negligence of the purchaser remains unaffected.

- 3. The limitation of para. 2 does not apply if we fraudulently conceal a defect or if we have assumed a guaranty for the consistency of the goods. The same applies to claims of the purchaser according to the German Product Liability Act.
- 4. In case of a breach of duty which does not constitute a defect, the purchaser may only cancel or terminate the contract if we are responsible for the breach of duty. A further right of termination of the purchaser (especially according to §§ 651, 649 BGB) is

excluded. In other respects, the statutory requirements and legal consequences shall apply.

§ 11 Miscellaneous clauses

1. This contract shall be governed by the laws of the Federal Republic of Germany (excluding the Convention on Contracts for the International Sale of Goods). Requirements and effects of the retention of title according to § 7 are subject to the applicable law of the respective storage location of the goods, as far as the choice of law in favour of German law is invalid or ineffective.
2. Exclusive place of jurisdiction for all disputes arising out of or in connection with this contract shall be Ulm (Donau), Germany.