

Terms and conditions of sale and delivery

applicable for deliveries starting 01/02/2014

1. General

- 1.1. Our offers, deliveries and services are subject exclusively to these terms and conditions. We do not accept terms and conditions of the customer that deviate from our terms and conditions, unless we have expressly agreed in writing to their validity. Deviating agreements apply only for a particular contract and not for subsequent contracts, unless expressly agreed otherwise.
- 1.2. All agreements, subsidiary agreements and amendments to the contract must be in writing. This also applies to cancellation of this written form requirement. Verbal or written promises that deviate from our contract terms and conditions and/or from the order confirmation must be approved by our management in order to be valid. Our office staff and sales representatives are not authorised to make deviating agreements or to grant special conditions.

2. Offers and contracts

- 2.1. Our offers are subject to alteration without notice. A delivery contract or other contract is formed only if we have confirmed the customer order or other order in writing or if we have delivered the goods.
- 2.2. Our order confirmation is created automatically and requires no signature for its validity.
- 2.3. We reserve the ownership and copyrights to illustrations, drawings, calculations and other documents. This also applies to such written documents that are marked "confidential". Before passing them on to third parties the customer requires our express written permission.

3. Prices and payments

- 3.1. Prices are calculated based on the prices in our binding price list applicable on the date of delivery, unless a fixed price has been expressly agreed to in writing.
- 3.2. All prices are net prices without statutory value added tax, which the customer is obligated to pay in full, in addition to the purchase price.
- 3.3. For orders with a net merchandise value of less than € 50.00 there will be a surcharge of € 15.00 for below-minimum order quantity.
- 3.4. If our other material procurement costs, energy costs or wage costs/wage-related costs increase between the date of the order confirmation and the date of delivery, then we are entitled to adapt an agreed-upon fixed price accordingly. In the event of a price increase totalling more than 5% the customer is entitled to withdraw from the contract immediately, however not later than 10 work days after learning of the price increase.
- 3.5. Unless expressly stipulated otherwise, payments must be made within 10 days of the invoice date with a 2% discount and within 30 days of the invoice date without discount. Entitlement to a discount does not exist if older, due and payable invoices are unpaid.
- 3.6. In the event that payment deadlines are not met we are entitled to charge interest totalling 8 percentage points above the base interest rate (247 German Civil Code) p.a. Furthermore, all of our claims will become immediately due and payable.
- 3.7. The customer is only permitted to offset counter-claims if these counter-claims are undisputed or non-appealable. Due to defects the customer can retain at most 3 times the amount of the cost of the alternative performance. When exercising the right of retention the customer is obligated to provide security for the unpaid partial amount by bank guarantee or deposit with a notary, at our option.

4. Delivery

- 4.1. Delivery periods (deadlines) begin with the date of our order confirmation, however not before the receipt of any stipulated advance payments and not before definitive clarification of all details of the order and furnishing the required certificates and/or provision of all necessary documents. The delivery deadline is deemed to have been met if by the time of its expiration the object has left our factory or our warehouse or notification has been sent that it is ready for dispatch if the goods cannot be dispatched on schedule through no fault of ours. Unless specially agreed otherwise, deadlines are deemed approximate.
- 4.2. If deadlines not expressly designated as "fixed" in the order confirmation are not met, the customer can set an appropriate grace period for delivery/performance. We cannot be in default until the time of expiration of this grace period.
- 4.3. Deadlines are extended regardless of our rights from delayed payments on the part of the customer by the period by which the customer does not fulfil his obligations toward us.
- 4.4. We reserve the right of correct and on-schedule delivery by our suppliers, insofar as the incorrect delivery by our suppliers is beyond our control.
- 4.5. Unforeseeable, extraordinary events beyond our control, such as labour disputes, disruptions in operations, governmental measures, disruptions in transport or other cases of force majeure, regardless of whether these events occur at our facilities or those of our suppliers, release us from the obligations of the respective contract; hindrances of a temporary nature however only for the duration of the hindrance, plus an appropriate lead time. The afore-mentioned circumstances are also beyond our control if they already arise during a delay that has occurred. If the delivery subsequently becomes impossible or unreasonable for one party, both parties are entitled to withdraw from the contract.
- 4.6. Our liability for damages from delay due to a slight negligent infringement is excluded, unless the infringement results in injury to life, limb or health. This stipulation does not involve a shift in the burden of proof to the disadvantage of the customer.
- 4.7. If the liability for damages from delay is based not only on a slight negligent breach of duty, the customer is entitled, to the exclusion of further claims, to demand indemnification only that for each full week of delay totals 0.5%, however no more than 5% of the value of that part of the overall delivery that cannot be used in due time or in accordance with the contract as a result of the delay.
- 4.8. We are entitled to make partial deliveries, insofar as they are reasonable for the customer. Partial deliveries can be invoiced separately.

5. Shipment and transfer of risk

- 5.1. Unless agreed otherwise, the delivery is ex works (Essen). If Incoterms have been agreed to as terms of delivery, the version that is valid at the time the contract is concluded applies.
- 5.2. If the goods are sent at the request of the customer to a different location than the place of fulfilment, the customer will bear all costs incurred as a result. We are free to choose the transport route and the carrier. The customer must report damages from transport to us and the carrier immediately upon receipt of the goods, stating the type and extent of damage. Insurance of the goods against damage from transport, loss during transport or breakage will be provided only at the express request of the customer, who will be charged accordingly.
- 5.3. For deliveries ex works, dispatch and transport always take place at the risk of the customer. This also applies in the case of third-party deliveries and the return of goods. The risk, also in the case of a partial delivery, is transferred to the customer as soon as the shipment has been handed over to the person executing the transport or for the purpose of dispatch has left one of our warehouses or in the case of delivery ex works, our factory.

6. Retention of title

- 6.1. All delivered goods remain our property (reserved goods) until fulfilment of all claims, regardless of the legal basis, including claims arising in the future based on contracts concluded at the same time or later. This also applies if payments are made for specially designated claims. If there are indications that justify the assumption of the customer's inability to pay or the threat of such, we are entitled to withdraw from the contract without notice and to request surrender of the goods.
- 6.2. Processing and conversion of the reserved goods is performed on our behalf as the manufacturer, in accordance with § 950 of the German Civil Code, without any obligation on our part. The processed goods are deemed reserved goods in accordance with section 8.1. In case of processing, combination, mixing or blending of the reserved goods with other goods by the customer, we are entitled to co-ownership of the new object in proportion of the invoice value of the reserved goods to the invoice value of the other goods used. If our ownership expires due to combination or mixing, the customer hereby transfers the ownership of the new assets or object to the extent of the invoice value of the reserved goods and will keep the goods in safe custody at no cost to us. The resulting co-ownership rights are deemed reserved goods in accordance with section 8.1.
- 6.3. The customer is entitled only within the scope of regular business operations and as long as he is not in default to resell or process the reserved goods or to combine them or otherwise integrate them with other objects (resale). Any other disposition of the reserved goods is not permitted. Third-party attachments or other access to the reserved goods must be reported to us immediately.
- 6.4. The customer hereby assigns to us his claims arising from the resale of the reserved goods. These claims serve as security to the same extent as the reserved goods. The customer is entitled and authorised to resell the goods only if it is guaranteed that his resulting entitlements are assigned to us.
- 6.5. If the reserved goods are sold by the customer at a total price together with other goods not delivered by us, the claim from the resale is assigned for the amount of the invoice value of our respectively sold reserved goods.
- 6.6. If the assigned claim is included in a current account, then the customer hereby assigns to us a part of the balance corresponding to the amount of this claim, including the final balance of the current account.
- 6.7. The customer is authorised to collect the claim assigned to us, until we revoke this authorisation. We are entitled to revoke this authorisation if the customer fails to properly fulfil his payment obligations from the business relations with us or if we become aware of circumstances that are suited to significantly diminish the customer's credit standing. If the requirements for exercising the right of revocation are given, the customer shall at our request inform us immediately of the assigned claims and their debtors, provide all information necessary for collecting the claim, surrender to us the corresponding documents and notify the debtor of this assignment. The customer is not entitled to assign the claims otherwise, also not on the basis of our direct debit authorization.
- 6.8. If the realisable value (invoice amount of the goods or nominal value of the legal claims) of the securities existing for us exceed the secured claims altogether by more than 50%, we are obligated at the request of the customer to release securities of our choosing.
- 6.9. If we claim the retention of title, then this is deemed withdrawal from the contract only if we state this expressly in writing. The right of the customer to be in possession of the reserved goods expires if he does not fulfil his obligation from this contract or another contract.

7. Liability for defects

- 7.1. We are not liable for improper or unsuitable use, especially excessive strain, incorrect installation or incorrect use by the customer or third parties, wear and tear, incorrect and negligent treatment and handling, especially by untrained personnel.
- 7.2. The customer is obligated to carefully inspect the delivered goods – also if samples or specimens had been sent previously – immediately upon receipt at his premises to ensure that the delivery is complete and in order. The delivery is deemed approved if a notice of defect is not received in writing, by telex or telefax within 10 work days of receipt of the goods at the destination or if the defect was not obvious during a regular inspection, within 10 work days of discovery of the defect. This also applies to additional deliveries. In the case of an additional delivery, if a notice of defect is received within 10 days of receipt of the goods at the destination, it is deemed approved. Our sales representatives are not authorised to accept notices of defects and incorrect quantities.
- 7.3. If the customer accepts defective goods, although he recognises the defect, then he is entitled to the claims and rights with respect to notice of defects only if he reserves this right due to the defect at the time of acceptance.
- 7.4. We are liable for customer claims due to defective goods for a period of two years starting from the time of delivery. The liability for defects of title in accordance with the statutory provisions is not affected by this clause. The liability for damages due to defects is stipulated in section 10.

- 7.5. Bei In case of justified notice of defects the customer initially has only a claim for alternative performance, which we can render at our option and our discretion by remedy or delivery of goods that are free of defects. If the alternative performance has failed, is unreasonable for the customer (§ 440 German Civil Code) or dispensable, because::
- 7.5.1. we definitively reject the alternative performance,,
 - 7.5.2. we fail to effect the alternative performance by a contractually defined deadline or within a stipulated period and the customer has contractually bound the continuation of his performance interest to the punctuality of the performance or
 - 7.5.3. special circumstances exist that in consideration of mutual interests justify immediate withdrawal (§ 323, par. 2 German Civil Code), then the customer is immediately entitled to reduce the purchase price or at his option to withdraw from the contract or request compensation for damages in lieu of performance or compensation for futile expenses in accordance with section 10.
- 7.6. For the performance of all remedy of defects and subsequent deliveries deemed necessary by us at our discretion, the customer shall grant us the necessary time and opportunity; otherwise we are released from the liability for defects. Only in urgent cases in which operational safety is jeopardised or to prevent inordinate damage, in which case we are to be notified immediately, or if we are in delay with the remedy of the defect, does the customer have the right to remedy the defect himself or through third parties and to request that we reimburse him for the necessary costs.

8. Liability for damages

- 8.1. We are liable for damages arising from the injury to life, limb or health in accordance with the statutory provisions.
- 8.2. Otherwise, our liability due to infringements of duties and our non-contractual liability is limited to deliberate action and gross negligence. The liability for gross negligence on the part of our employees, staff and individual vicarious agents is excluded in this connection.
- 8.3. Excepted from section 10.2 is the infringement of essential contractual duties (cardinal duties). In this case we are also liable in the case of slight negligence due to our own fault and the fault of one of our employees, staff or individual vicarious agents.
- 8.4. The liability is limited to the typical damage reasonably expected by us upon conclusion of the contract based on the circumstances known to us at the time.
- 8.5. Any further liability is excluded, regardless of its legal basis. In particular, we are not liable for the lack of business success, lost profit, indirect damages, consequential damages caused by a defect and damages from third-party claims.
- 8.6. The above limitations of liability apply likewise for claims for compensation of futile expenses (§ 284 German Civil Code).
- 8.7. Claims for damages directed against us, regardless of the legal grounds, are subject to a limitation period of two years from the statutory start of the limitation period, at the latest however from the delivery of the goods.
- 8.8. The above stipulations do not involve a reversal of the burden of proof to the disadvantage of the customer.
- 8.9. Claims for damages in accordance with the Product Liability Act are not affected by this clause.

9. Returns

The return of purchased goods or unravelling of the contract is beyond the cases in sections 4.4, 9 and 10 permissible only in exceptional cases and after obtaining our express approval. Goods returned without our approval will be rejected or returned to the customer carriage forward. The transport of returned goods in accordance with the above is always at the risk and expense of the customer.

10. Place of performance, place of jurisdiction, applicable law

- 10.1. Place of performance for the obligations of both parties is Essen.
- 10.2. The sole place of jurisdiction for all disputes in the case of merchants is the competent court for our registered office. We are entitled, however, to bring action against the customer at another legal place of jurisdiction.
- 10.3. The relationship between us and the customer is subject to German law with the exception of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the rules of International Private Law.
- 10.4. If single provisions should be invalid or become invalid due to a circumstance arising at a later time, this will not affect the validity of the remaining provisions.