

General Conditions of Sale and Terms of Delivery

These general Terms and Conditions apply exclusively for trade with companies, public law entities or public law entities with special funds [Sect. 310 Par. 1 BGB (German Civil Code)].

§ 1 Scope

The following conditions of sale and terms of delivery are valid for all our deliveries and other services. Our general conditions of sale and terms of delivery are also valid if we have knowledge of opposing or deviating conditions of the customer and execute the delivery or service without reservation whereby such opposing or deviating conditions are only binding for us if we have approved the validity of said conditions expressly in writing, in text form or per e-mail.

§ 2 Conclusion of a contract, scope of supply and services

(1) Our offers are only binding if made in writing and expressly identified as binding. Our offers are binding for 60 calendar days as of the date of the offer unless stated otherwise in the offer. Acceptance of our offers requires the written form.

(2) Any orders that are not based on our offer or that deviate – even in part – from our offers, require our written order confirmation. Machine-generated order confirmations fulfil this formal requirement.

(3) If the conclusion of the contract is confirmed by us in writing (order confirmation), then the contract is considered to be valid for the confirmed scope of supply and services and the confirmed conditions provided the customer, after receiving the order confirmation, does not object in writing, in text form or per e-mail.

(4) We reserve the right to make changes to the intended design, choice of material or model when the contract is concluded provided these changes are not in conflict with the order confirmation or the specification of the customer. The customer will agree to further changes provided they remain within the usual commercial limits and are deemed reasonable for the customer.

(5) Details regarding dimensions, weight and other points in documents contained within the offer or the order confirmation (also pictures or drawings) are to be understood as approximate values provided they are not expressly declared to be binding.

§ 3 Prices, packaging, price increases

(1) Our prices are subject to sales tax. In the absence of other arrangements, our prices are valid as "ex works" excluding packaging, shipping costs and transportation, which are invoiced separately where applicable. The disposal of the packaging is the responsibility of the customer whereby the packaging is not taken back by us.

(2) We are entitled to pass on the price increases of our suppliers as well as increases of our cost prices for raw materials, auxiliary products and operating supplies as well as increases of wages and salaries to the customer after the contract is concluded by a percentage surcharge corresponding to the price increase.

(3) We are also entitled to separately invoice the customer for additional costs for modifications requested by the customer even if we did not expressly reserve this right when we accepted the request for modification.

§ 4 Delivery time, availability of material, transfer of risk/insurance, part deliveries

(1) In the absence of an agreement to the contrary, the delivery time begins when clarification of our scope of delivery is finalized. It extends by a reasonable amount, when, and where required, the customer, according to the circumstances, does not produce the required or agreed participating actions or if the customer decides on changes to the service or product. The delivery time extends further by the period of the obstruction due to other circumstances in the sphere of the customer, due to a strike, or due to a lock-out ordered by the appropriate association (also at a supplier or sub-contractor), as well as due to an act of force majeure.

(2) The agreed delivery time is based on the assumption that the required raw material is available within the usual period starting from the time of the delivery agreement. If the raw material has limited availability, the delivery time extends accordingly. We will advise our customers at an early stage about the limited availability of raw material and about any possibility of setting up a buffer stock of raw material.

(3) The delivery time shall be considered met if notice of readiness for dispatch has been given or the delivery item has left the plant prior to its expiry.

(4) If the goods have to be dispatched, the risk of accidental loss of the goods or accidental loss of condition of the goods is transferred to the customer when the goods are handed over to the transportation company whereby this is also valid if the delivery to the transportation company is not made by us (direct shipment through our suppliers) or if we use our own workers for the transportation. Insurance is taken out only at the express instruction of the customer, in his name, and at his cost, whereby the processing of a claim on the insurance is the responsibility of the customer.

(5) Should deliveries be ready for dispatch and be delayed through no fault of our own, the risk shall pass to the customer no later than upon our notification of readiness for dispatch.

(6) Part deliveries are permissible.

§ 5 Warranty for defects, limitation of claims

(1) After delivery, the goods must be immediately inspected. The customer must notify us immediately, however no later than 6 working days after handover, if it is established that there are any discernible defects, missing quantities and other deviations from the agreed scope of delivery. If the actual delivered quantity (pieces, weight) deviates from the quantities listed on the freight papers, the customer, when he receives the goods, must notify the last transportation company which handled the goods, otherwise an excess quantity is deemed to be approved or the right to claim for an additional delivery is excluded. Notice of non-discernible defects must be given immediately after their discovery.

(2) In the case of a defect which does not significantly reduce the value or the suitability of the goods, the customer is not entitled to demand supplementary performance or reduce the purchasing price. In other cases, if the claim is made in time and is well-founded, we will offer supplementary performance whereby at our discretion we will either take back the defective products and supply products free of defects (replacement delivery) or we will remove the defect(s) (rectification of defects). Should supplementary performance fail twice, the customer can at his discretion reduce the purchasing price or withdraw from the contract.

(3) Claims relating to defective performance are subject to a time limitation of one year after the delivery of the goods. This shall not apply insofar as the law on buildings and the right of recourse pursuant to Sect 479 Par. 1 BGB dictates longer terms.

(4) Any claims of the customer for costs incurred due to supplementary performance (in particular transport, labour and material costs) shall be excluded insofar as there is an increase in costs because the delivery item has been shipped to a place other than the customer's place of business, unless shipment is made according to its prescribed use.

(5) Subject to the provisions of the following clause 8, further claims made by the customer due to defective performance are excluded, regardless of the legal ground.

§ 6 Payment date, cheques and bills of exchange, obligation to provide security and withdrawal in the case of delay

(1) Wage claims from tool (development) orders are due for payment without deduction:

- 30 % of the value of the contract is due when the order is confirmed;
- a further 60 % of the value of the contract when the first samples are presented;
- a further 10 % of the value of the contract after completion and tool acceptance, but at the latest 30 days after the presentation of good parts.

(2) Payment for stamped parts is due within 30 days after the invoice date without deduction and remuneration for wage labor is due for payment within fourteen days after the invoice date, also without deduction. All other receivables are due for payment as soon as the performance due has taken place; they are payable in full within 30 days after receipt of the invoice.

(3) Cheques and bills of exchange from third parties are in principle not accepted by us whereby in general we shall not be liable for presentment in good time or the lodgment of a protest. Discount charges and other note charges must always be paid by the customer.

(4) The customer shall make the payments to our designated bank account. Our employees and agents are only authorized to receive payments if they have our written authorization.

(5) If an outstanding payment according to the contract after our first reminder due to non-payment is not made within eight days, then we can make further deliveries to the customer – also on the basis of other contracts concluded with the customer – dependent on simultaneous payment or simultaneous provision of a reasonable amount of security. After a further reminder and an effectless expiration of a period of grace, we are entitled to withdraw from an individual contract or all contracts concluded with the customer if the performance has not been completed or only partly completed and demand compensation instead of the performance without the necessity of having to offer the respective notification (refusal to accept performance). In addition, we can make all our accounts receivable against the customer due for payment and exploit our security.

§ 7 Setting off, right of retention

Setting off by the customer is only permissible with undisputed receivables or receivables found to be legally binding and the exertion of a right of retention is only permissible due to undisputed counterclaims or counterclaims found to be legally binding which are based on the same contractual relationship.

§ 8 Compensation and reimbursement of expenses

(1) In accordance with statutory provisions we shall be fully liable for damages that fall under one of our guarantees (warranty).

(2) Furthermore, we are liable for tortious injury to life, limb or health, unless such injury is not due to a violation of duty on our part, and for damages due to a violation of duty on our part, unless such violation is not based on intent or gross negligence on our part. Our liability under the Product Liability Act, insofar as compulsory, shall remain unaffected.

(3) In all other respects we shall not be liable to pay compensation for defects or other violations of duty except where such damages can be attributed to a culpable violation of material contractual duties; in this case our liability shall be limited to such damages as we had foreseen as a possible consequence of the violation of duty upon conclusion of the contract or could have foreseen considering the circumstance we knew or had to know.

(4) Our liability for defects or other violations of duty according to the above clause (3) is, in case of material damage, further limited to the amount of coverage of our liability insurance, of which we will inform the customer on request, and, in case of economic loss, to the lost profit from the use of the specific delivery.

(5) Any violation of duty on the part of our legal representatives or agents shall be considered a violation of duty on our part. The above provisions do not limit any possible statutory rights of withdrawal.

§ 9 Retention of title

(1) Our deliveries are, without exception, made with reservation of title. The title of the goods delivered by us (hereinafter referred to as "reserved goods") is only transferred to the customer after the customer has settled all of his financial obligations arising from the business relationship.

(2) The customer is only allowed to connect or mix the reserved goods with other items or to process the reserved goods or to sell the reserved goods in the usual course of business. In particular, the customer is not allowed to pledge such goods or assign the goods by way of collateral.

(3) If the reserved goods are mixed with other items or intermixed so that they can no longer be separated or are connected with another item (main item) so that they become the significant component part of that item, then it is agreed that part ownership of the whole quantity or the main item is transferred to us according to the proportion of the invoice value of the reserved goods to the value of the other items or to the main item at the time of the mixing or the intermixing. The customer will store the whole quantity or the main item for us with due diligence at no cost.

(4) The processing of the reserved goods is always made for us without any resulting financial obligations for us. If the reserved goods of other suppliers are processed at the same time, the previous paragraph is correspondingly valid.

(5) If the reserved goods are the subject of a purchasing contract, contract for work and services or another contract between the customer and a third party which will result in ownership of said goods passing to the third party, then the customer already now assigns his claims for money consideration to the amount of the purchase price of the reserved goods with the addition of a flat-rate surcharge of 15 % for interest and costs over to us. We accept this assignment already now. The customer is not allowed to agree a prohibition of the assignment of claims with his contract partner and only deliver as far as he is concerned with retention of title whereby on our request he must name his contract partner and disclose or pass on the required information and documents so that we can pursue our legal rights. For the collection of the assigned claim the customer is, without prejudice to our authority, allowed to collect the receivables himself whereby we ourselves will only collect the receivables if the customer comes into default of payment or has a financial collapse (application to open bankruptcy proceedings, suspension of payments).

(6) The customer must advise us immediately of any pledging of goods or other access to the reserved goods and if necessary send us a duplication of the bailiff's return.

(7) If the value of our security exceeds the total value of our claims for payment by more than 20 %, then on request from the customer we will respectively release securities at our discretion.

§ 10 Non-disclosure, industrial property rights of third parties

(1) The customer must maintain secrecy regarding our expertise and our company secrets which will become known to the customer in connection with the execution of the order. The customer must take all reasonable precautions to ensure that our expertise and company secrets are not disclosed and that they are only used in connection with the order and the later use of the goods according to the order.

(2) The customer has the burden of proof to establish that our expertise and our company secrets were in the public domain or were known to him previously to the contract.

(3) The customer assures us that in the manufacture of or sale of goods which we produce according to his drawings, pictures or other specifications, the industrial property rights of a third party are not violated and he releases us from any possible claims made by third parties due to the violation of industrial property rights whereby the responsibility for carrying out research on the industrial property rights lies exclusively with the customer.

Furthermore, any claims of the customer shall be excluded insofar as the violation of industrial property rights or copyright is caused by usage not foreseeable by us or by the fact that the delivery is altered by the customer or used together with products not delivered by us.

§ 11 Tools, Equipment, Parts

(1) Molds, stamping and other tools manufactured by ourselves or by third parties on our behalf shall remain our property. This also applies if we invoice the customer for manufacturing costs.

(2) We carefully store the molds and tools for any possible follow-up orders and maintain these without any obligation to accept follow-up orders or to be bound by the agreed prices for a previous order arising therefrom. The customer shall bear any possible maintenance costs. Should the molds or tools be damaged or destroyed despite proper storage and maintenance, the customer shall indemnify us for the damage. Our duty to store and maintain the tools expires if the customer fails to place further orders for the product in question within one year after the last delivery.

(3) The customer shall deliver any insertion parts to our plant carriage paid and in faultless condition as well as in such quantities, including a reserve of 5 %, and in sufficient time for us to be able to work on the order without interruption. The customer shall reimburse us for any additional costs arising from late delivery or lack of quantity or quality of the insertion parts. In such cases we reserve the right to interrupt production and not resume production until a later point in time compatible with our operational requirements; any financial, time-related or other consequences of such measure shall be borne by the customer.

§ 12 Place of fulfilment, court of jurisdiction, applicable law

(1) The place of fulfilment for all obligations from the respective contract, including the duty of payment, is our company headquarters.

(2) The court of jurisdiction is our company headquarters. This shall also apply, if the customer, after conclusion of the contract, transfers his residence abroad or transfers his usual domicile abroad, or, if his residence or usual domicile, at the time of the legal action, is not known. In all cases we are entitled to take legal action against the customer at his residence or place of business.

(3) This contract is subject to the law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods(CISG).

If there is a dispute, the original German text is authoritative and takes precedence over the English translation.

V3, November 2005