

# Terms of Sales, Delivery and Payment

## 1. General

All orders hereunder are accepted subject to the following terms. Any other conditions mentioned by the customers unless expressly accepted in writing are not binding. This also applies to those cases when we did not explicitly contradict. Our terms only apply to business people and legal representatives of public law and property under public law.

## 2. Purchases

Purchases effected with us have to be accepted as agreed. Upon refusal of delivery we reserve the right to claim damages. In case the delivery of samples or trials preceded the purchase in which the purchaser had the chance to convince himself of the kind of goods, quality, design and execution the purchaser cannot object to the kind of goods, quality, design and execution in any way. We reserve the right to adjust or improve our goods compared with samples sent previously or previous deliveries.

## 3. Cost estimates and offers

We retain the unlimited property and copyright of the use of our cost estimates, drawings and other documents; they shall not be disclosed to third parties. If the order is not placed drawings and documents have to be returned immediately.

## 4. Terms of Delivery

The beginning of the period of delivery set by us requires the final solution of all technical questions. Periods of delivery will be extended appropriately in case of labour disputes especially strike and lockout as well as in case of unforeseen events. This also applies when the corresponding circumstances happen to sub-suppliers. The event of such obstacles shall be reported to the customer immediately. The right to claim damages due to delay or non-compliance only applies to the customer when our delayed delivery is based on intent or gross negligence.

## 5. Passing of Risk and Dispatch

Incoterms apply in their latest version. If the acknowledgement does not explicitly mention another clause of the Incoterms, clause EXW (the works acknowledging the order) shall apply.

## 6. Complaints

Complaints and other objections regarding obvious defects have to be raised in writing immediately, 10 days after receipt of the goods at the latest, hidden defects immediately as well, however, 10 days after their discovery at the latest and no later than 6 months after receipt of the goods. Upon expiration of the a. m. deadline warranty claims of any kind are not possible.

## 7. Warranty

In general the obligation to examine and reproach according to §§377, 378 HGB (German Commercial Law) applies. As far as a defect of the purchased goods appears we have the right and it is our choice either to repair or exchange the goods. If we are not willing or not in the position to repair/exchange, or if this exceeds an appropriate timeframe based on reasons which we have to justify, or if we fail to repair/exchange in any other way, the customer has the right to decide whether to withdraw from the contract or ask for a corresponding reduction of the purchase price. We have the option to try a repair twice before the customer may use the a.m. rights. As far as there is no contradiction in the subsequent paragraphs, further claims no matter of which legal base are excluded. We are therefore not liable for damages which we did not occur on the purchased goods themselves, especially we are not liable for missed profit or any other damage to the property of the customer. The a.m. exclusion of liability does not apply if the cause of damage is intent or gross negligence. Furthermore it does not apply if the customer enforces damage claims based on §§ 463, 480 section 2 BGB (German Civil Law) for non-performance due to lack of a confirmed feature. As far as we negligently fail to meet an essential duty of the contract our liability to pay damages on goods or people is limited to the amount covered by our product liability insurance. We are prepared to show our policy to the customer on request. The warranty period is 6 months effective with the transfer of risk except if we have agreed to longer warranty periods in the individual contract. Our warranty periods are prescription periods and also apply to claims for damages as a result of defects if no claims based on tortious act are put forward.

## 8. Delivery and Price

We generally dispatch from our respective works according to Incoterms "EXW", ex works, including packing if no other agreement has been made. The value added tax with its official value at the time invoicing shall be added to the price. Partial shipments are permitted. In case of special manufacture we have the right to ship plus/minus 10% of the ordered volume.

## 9. Terms of payment

Upon cash payment as well as cash payment in advance we grant a 2% cash discount. Cash discounts do not apply to payments by drafts. Drafts and cheques are only accepted if especially agreed to and for payment purposes including all collecting and discount expenses. We do not guarantee the timely presentation and submission of the protest of a bill. If a customer is delayed interest payments for delay used in banking will be charged, however, at least 4% above the discount rate of Deutsche Bundesbank (German Federal Bank). This does not exclude the additional claim for damages due to delay. Payments have to be effected directly to us; our commercial representatives are not authorized to receive payments. Invoices concerning partial deliveries are individually due according to their date of issue. If no terms of payment have been agreed to payment within 8 days with 2% discount, 30 days net of date of invoice shall apply.

## 10. Compensation/Right of Retention

The retention of payments or the compensation with possible counter-claims of the customer is only allowed if the counter-claims have been accepted by us or are legally confirmed.

#### **11. Reservation of Title**

We reserve the title of the purchased goods until the final payment of all payments resulting from the business relationship with the customer. If the customer acts against the sense of the contract, especially in case of delayed payment, we have the right to take the goods back. This does not constitute our resignation from the contract unless we explicitly confirm this in writing. After taking the goods back we are free to utilize them. The proceeds from the utilization shall be credited against the customer's liability reduced by appropriate utilization costs. A distress or other interventions of a third party shall be immediately reported in writing by the customer. If the third party is not able to reimburse our legal and extra-legal costs of a claim concerning a release of our property (intervention claim according to §771 ZPO) the customer is liable for the loss. The customer has the right to resell the goods in an ordinary business relationship; he already transfers all claims amounting to the final value of the invoice (incl. Value added tax) resulting from the resale to his customers or third parties independent of the fact whether the delivered goods were resold without or after processing. The customer has the right to collect the debt after the transfer of this debt to us. This does not affect our right to collect the debt ourselves. We are obliged, though, not to collect as long as the customer meets his payment obligations, have no delayed payments, and an application for bankruptcy or settlement proceedings is not pending. If this is the case we can ask the customer to present the transferred claims and their debtors, make the necessary statements, hand over the corresponding documents and advise the debtors (third parties) of the transfer. If the goods delivered are processed to another mobile item this processing is done with us. The acquisition of property by the customer is excluded in accordance with § 950 BGB (German Civil Law). If the goods delivered are processed or mixed together with other items not belonging to us we acquire the property of the newly produced goods in relation to the value of the remaining goods at the time of manufacture. For these new goods created by the process the same applies as for goods supplied with reservations. Reservations and all other securing rights applying to us remain in existence up to the complete payment of all debts resulting from the business relationship. If these securities exceed all debts resulting from this business relationship by more than 20% we are obliged to release upon request by the customer.

#### **12. Cession**

We have the right to transfer our debts against our customers to third parties without the approval of our customers.

#### **13. Liability**

Our liability is exclusively based on these regulations. The claim for damages raised by the purchaser against us and our agents and executors for whatever legal reason, especially in case of fault when signing the contract, violation of contractual side duties and tortuous act, is excluded unless they are in result of the intent or gross negligence. The a.m. limitations of liability do not apply to claims according to §§ 1,4 of the Product Liability Law.

#### **14. Place of Performance and Place of Jurisdiction**

Place of performance are the premises of the seller. Jurisdiction is also the premises of the seller as long as the customer is a business man or legal representatives of public law and property under public law. We have the right to sue the purchaser at the court of his residence.

#### **15. Jurisdiction**

German legislation only shall apply.

#### **16. Legality**

If any of the aforementioned regulations of the contract do not become part of the contract in part or in total or if they have become or are invalid the rest of the contract shall remain in full force.

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