

General Terms and Conditions of Sale

1. Scope of Application

- a) All shipments, services, sales and quotations are subject to these Terms and Conditions of Sale (following only "GT&C"). They apply only in relation to entrepreneurs within the meaning of § 14 BGB (German Civil Code) as well as legal entities of public law and public law special funds, but not to consumers. They are also valid for all future business transactions, even in cases where they are not expressly re-agreed upon.
- b) We herewith expressly reject all customer's general terms and conditions of business which are opposed to our GT&C. Even in cases where a customer informs us of his own terms and conditions, our GT&C become effective at the latest at the time of receipt of the goods and/or services. Letters of confirmation received from and returned to a customer are not binding even if they are not expressly rejected.
- c) Agreements, supplements or understandings which deviate from these GT&C are not binding, unless we have confirmed these in writing.
- d) The ineffectiveness of one contractual condition (including these GT&C) shall not prejudice the validity of the contract. In the event of a condition of these GT&C becoming invalid, we are authorized to replace the ineffective condition by an effective ruling, which, as far as possible, shall correspond with the economical purpose of the ineffective condition.

2. Quotation and Conclusion of the Contract

- a) Our quotations are without obligation and not binding; only the order of the customer represents a binding offer to conclude the purchase contract. Statements of acceptance and all orders become valid only through our written confirmation, which can be given also by e-mail or by fax; acceptance can also be implicitly declared through the delivery of the goods.
- b) Drawings, illustrations, dimensions, weights and other performance data in catalogues and brochures are approximately only and only binding when they are expressly agreed on in writing. We reserve the proprietary rights and copyright on all drawings, illustrations, plans and other documents. These shall not be disclosed to third parties without our prior consent.

3. Prices

- a) The valid prices are those mentioned in our order confirmation plus the statutory Value Added Tax rate, when applicable. Except as otherwise expressly agreed upon, our prices are ex warehouse / ex works exclusive of additional costs (esp. packaging, costumes). Additional supplies or services will be invoiced separately. Packaging is not returnable; the customer is obliged to recycle or dispose of the packaging at his own expense under due observation of the stipulations of the applicable German packaging regulation.
- b) In the event of an increase of raw material prices or energy costs, the contracting parties undertake to negotiate new prices, provided that the duration of the delivery period is longer than four (4) months. If such agreement cannot be reached, we are entitled to cancel the contract. Any claim (esp. compensatory damages and reimbursement of expenses) beyond such remedy is precluded for both parties.

4. Terms of Delivery and Execution

- a) Delivery times and dates given by us are not binding, except as otherwise expressly agreed upon. In cases of shipment binding delivery time and dates shall be considered as met upon handing over of the goods by the agreed delivery date to the person carrying out the transportation.
- b) Our supply obligation is subject to correct and timely delivery from our suppliers („self-supply“), unless the delayed or incorrect supply is caused by our fault. Even if binding delivery times or dates were agreed on, we do not accept responsibility for delays in delivery and service caused by force majeure or similar unforeseeable and unavoidable circumstances, such as war, unrest, problems in procuring material, strike, lockout, shortage of personnel, lack of means of transport, terrorism, fire, flood, governmental regulations (including export prohibition) etc. (regardless whether such circumstances affect us or our suppliers or their sub-contractors). Such circumstances entitle us to postpone the delivery or service by the period of their duration plus a reasonable starting up time. On the occurrence of any event of Force Majeure, we shall give reasonable notice of such event to the customer without delay. In case the restriction lasts longer than 3 months both parties are entitled to cancel the elements of the agreement not fulfilled yet in writing.
- c) If the dispatch of goods is impossible because of circumstances in the sphere of the customer which are beyond our control, we are entitled without prejudice to immediate invoicing and to store such goods elsewhere at customer's risk and expense, if our storage capacity is not sufficient.
- d) We are entitled to execute partial shipment or service at any time to the extent its acceptance is not unreasonable for the customer, especially if the partial delivery or service can be used by the customer, the delivery of the outstanding goods or services is secured and no significant additional costs arise thereby for the customer. In the event of orders having to be shipped on call, the single shipments shall be spread over the agreed delivery period as evenly as possible, provided no agreements to the contrary were made. Quantities left in our stock after expiry of the agreed delivery period can be cancelled without prejudice to damages. The invoicing of goods produced but not called off at the time of expiry of the delivery period will be made at the end of the delivery period. We are entitled to store such goods elsewhere at customer's risk and expense.

- e) Failure of meeting binding delivery dates and times does not relieve the customer, wishing to withdraw from an agreement or demand damages for non-fulfillment, from having to set a reasonable (esp. compared to the initial delivery time) period of notice – as a rule three weeks – containing the explicit statement that he will otherwise reject the fulfillment and withdraw from the contract on expiry of the period of notice.

5. Delivery, Transfer of Risk

- a) Except as otherwise expressly agreed upon delivery is made ex works / ex warehouse. In the case of customers who pick up the goods themselves, risk shall pass to the customer at the agreed place of delivery. At the request, risk and expenses of the customer, the goods will be delivered to another place of destination. Except as otherwise expressly agreed upon, we are entitled to choose the type of shipment (means of transportation, manner, company, packaging, route). In the event of a sale by dispatch, the risk of loss or damage for the good delivered is passes to the customer at the time when the goods are handed over to the forwarder, carrier or any other third party appointed to execute the transport. If the dispatch or the handover is delayed as a result of a circumstance for which the customer is responsible, then the risk passes to the customer at the day on which the goods are ready for dispatch and we have notified this to the customer.
- b) Any additional freight charges caused by subsequent change of manner of shipment, shipping route, destination or similar circumstances influencing the freight charges are to be borne by the customer, insofar as the customer has caused such change.

6. Warranty

- a) We are liable for defects pursuant to § 434 German Civil Code as follows: The goods shall be inspected upon their arrival at the point of destination without delay and shall be handled with care. Complaints, if any, shall be made in written form within 7 working days from the receipt of the goods; the same shall apply for any initially hidden defects after their detection by the customer. § 377 Commercial Code shall apply in any case. The provisions of § 478 German Civil Code (delivery regress) shall remain unaffected.
- b) If the customer detects defects, he is not entitled to sell, process, alter or transform the goods until we have agreed with customer about the further proceeding or until independent proceedings for the taking of evidence has been carried out.
- c) The customer shall inform us about damages due to the transport immediately. The customer shall take care of the formalities with the carrier directly.
- d) Justified notices oblige us to correct the defects or to substitute the goods or services at our option in due consideration to the legitimate concerns of the customer.
- e) We are not liable for any damage caused by wrong instructions received by or through the customer, improper storage or processing or use.
- f) If it is for us impossible or involves a disproportionate effort or we otherwise fail within a reasonable period of time to correct the defect or substitute the good or service, the customer has solely the right to withdraw from the contract or to reduce the purchase price accordingly. If the defect is caused through our fault, the customer may demand compensation for loss suffered according to following Section 7.
- g) If the customer does not give us the reasonable opportunity and a fair amount of time to convince ourselves of the defect and carry out the required subsequent fulfillment (correction of defects or substitution of goods), any warranty claims expire.

7. Limitation of Liability

- a) Our liability to claims for damages, irrespective of the legal grounds, but especially due to impossibility, delay, deficient or wrong delivery, contract violation and action in tort is, in so far as there is a question of blame in such case, limited in accordance with this Section 7.
- b) We are liable for damage only in case of intent or gross negligence or the lack of warranted qualities, breach of guarantee or fraud. In cases of slight negligence we are liable only for damage caused by a breach of essential contractual obligations (obligation the proper fulfillment of which constitutes a condition sine qua non and on the fulfillment of which the customer relies on, and may rely on, regularly); in this case our liability is limited to the reimbursement of the foreseeable, typically occurring damages.
- c) The aforementioned limitation of liability (with respect to cause and amount) shall apply accordingly for employees, authorized representatives and vicarious agents („Erfüllungsgehilfe“). In the case of gross negligence of vicarious agents and non-executive employees we are liable solely for typically occurring and foreseeable damages.
- d) The regulations of law concerning the burden of proof are not affected by the limitation of liability.
- e) The aforementioned limitation of liability of this Section 7 shall not apply for claims pursuant to the Product Liability Act or damages resulting from loss of life, physical injury or damage to health.

8. Statute of Limitations

All claims fall under statute of limitation after twelve (12) months from the beginning of the statutory statute of limitation, regardless of the legal cause. This does not apply for claims due to the Product liability Act or for deliberate or malicious acts, in cases of § 479 German Civil Code as well as to claims according to Section 7 d).

9. Terms of Payment, Offset, Assignment and Costs

- a) Net payment of all invoices shall be due within 30 days after the date of the invoice. The customer may offset payment only against uncontested or legally established receivables; the same shall apply to the exercise of rights of retention.
- b) We expressly reserve the right to refuse the acceptance of cheques and bills of exchange and we only accept them on account of payment. Discounting charges and bill taxes are at the customer's expense and shall be due for payment immediately. By waiving the contradicting provisions of Sections 366 and 367 of the German Civil Code, and in spite of any customer's conditions to the contrary, we are entitled to stipulate which debts are settled with the payments made by the customer.
- c) We are entitled to assign any claim against the customer to any third party and to transmit to the assignee all necessary data for the sole purpose of the collection of the receivable.
- d) In cases of default we are entitled to charge default interest at the rate of interest usually charged by the commercial banks, whereby such interest rate shall not be lower than 8 % added to the current basic rate of interest announced by Deutsche Bundesbank. We reserve the right to assert further claims for damages caused by default.
- e) In case of the customer's default with due payments, we are entitled to demand immediate payment of all unexpired claims arising out of the ongoing business relationship with the customer.
- f) In case of the justified assertion of our rights outside Germany, the customer is obliged to reimburse us all costs (including lawyer fees, courts costs and costs of an execution) in connection with such assertion.

10. Retention of Title

- a) The goods shall be delivered under prolonged and extended retention of title with the result that they remain our property until all claims against the customer are settled. The customer may process the goods subject to retention of title within the scope of regular business operations. This authorization shall cease upon default of payment, suspension of payments by the customer or when a request for the opening of insolvency proceedings is filed against the customer. Processing or transformation shall always be for our account in our status as the manufacturer, without simultaneously obligating us. If our property ceases to exist as an individual product through transformation or processing, it is agreed herewith that the customer's ownership right on the new product is proportionately (invoice value) assigned to us. The customer shall act as custodian of our joint property free of charge. Jointly owned goods are also considered to be subject to retention of title.
- b) The customer is entitled to sell goods subject to retention of title, provided, however, that he is not in default with payment, has suspended payments or is subject of a request for the opening of insolvency proceedings. Pledging and assignment by bill of sale as security for a debt are not permitted.
- c) For the purpose of securing our claims the customer herewith assigns to us all claims resp. the part of the claims representing our proportionate ownership arising from resale of the goods subject to retention of title or from any other legal ground (insurance, willful act, etc.) including all balance claims out of current accounts. We herewith authorize the customer to collect the claims assigned to us in his own name for our account. This authorization for collection can be revoked if the customer fails to properly meet his liabilities. In the event that a third party is claiming, the customer will indicate our title and inform us without delay. In the event of breach of agreement by the customer, in particular default of payment, we are entitled to take back the goods subject to retention of title or, if necessary, to demand assignment of the customer's claims against third party for return of the goods. Our taking back or pledging of the goods subject to retention of title does not constitute withdrawal from the agreement.
- d) Until the whole sum payable under the contract is paid the customer is obliged to insure the goods towards all storage risks at his own expense and to provide proof of this at our request. If the total value of securities which we are entitled to exceeds our total claims against the customer by more than 20 %, we are obliged to release securities or return them at our option.
- e) Our rights arising from retention of title and all clauses in the GT&C shall remain in force until we have been completely discharged of all contingent liabilities established in connection with the payment of the purchase price (payment by cheque and bill of exchange), which we accepted in the interest of the customer.

11. Place of Performance, Venue and Applicable Law

- a) The place of performance for delivery, service and payment, shall, for both parties, be Osnabrueck, Germany.
- b) The Local Court of Osnabrueck, Germany shall be the exclusive place of jurisdiction for all legal disputes arising directly or indirectly from this agreement, inclusive of all litigations in connection with bills of exchange, cheques and other documents.
- c) The law of the Federal Republic of Germany is applicable to all GT&C and all legal relations between us and the customer. The application of the UN Convention on the International Sale of Goods is explicitly excluded.