

CONDITIONS OF SALES AND DELIVERY

1. General

- 1.1** These Standard Terms and Conditions of Sale and Delivery shall apply to all pre-sent and future deliveries and services of our Company under all Sale, Service, Labour and Work Delivery Contracts (“Contracts for Sale and Delivery”). Conditions imposed by the Buyer shall not be binding for the Seller and are expressly objected hereby. We are also not obligated to them if we do not contradict them again in writing after receipt.
- 1.2** The Contract will take effect with a dispatch of our written confirmation of order (by mail, fax or email). Any subsequent alterations of the Contract require our express written confirmation.
- 1.3** Unless the Contract stipulates otherwise, drawings, sketches, weight data and other documents relating to the offer, shall only be an approximate estimate and shall be non-binding. This shall likewise apply to any public statement, in particular - but not limited to - advertising or any other statement or representation characterising the qualities of the article of sale. We retain any property rights and copyright in our estimate of costs, drawings, photos and any other documentation relating to the Contract; access to this documents may not be granted to a third party without our prior written consent.
- 1.4** The interpretation and construction of the delivery conditions (e.g. EXW, FOB, DDU) shall be governed by the latest edition of the “INCOTERMS” as published by the International Chamber of Commerce.

2. Prices and payment conditions

- 2.1** Prices are current daily prices; they are quoted net (ex V.A.T.) ex works and/or customs warehouse. The current daily prices as valid on the day of delivery shall be invoiced. Down payments/Amounts paid as deposit shall not be deemed to be partial performance. Bills of exchange and cheques shall not be considered as payment until they are cashed. Any discount charges and bank charges shall be borne by the Buyer.
- 2.2** Unless otherwise expressly agreed upon, payment has to be made as follows: 30 days net after the receipt of a commercial invoice or any other request for payment, irrespective of the arrival of the article of sale.
- 2.3** In case the due date is determined according to the calendar, the Buyer is in default of payment, if he did not effect payment upon that due date. If a due date is not fixed in the Contract, the Buyer is in default of payment on receipt of a dunning letter or - without such letter - at latest 30 days after the receipt of a commercial invoice or any other comparable request for payment.
- 2.4** Upon delayed payment, the Buyer has to pay interest from the date of maturity data rate of 8 % above the prime lending rate p.a.; the Seller’s right to claim compensation for further losses caused by the default of the Buyer shall remain unaffected thereby.

- 2.5** The Buyer shall not have any right of retention irrespective of its legal basis. A set off of counterclaims is only admissible if either we expressly acknowledge such counter claims as valid and due or they have been finally declared and determined to be valid and due by an un-appealable court decision or arbitral award.
- 2.6** If in a country of destination licenses or other permissions are required, the Buyer shall - when placing the order - forward the number, date and the validity including the maturity of any licenses or permissions.

3. Delivery period

- 3.1** The delivery periods commences upon the date of the Seller's confirmation of order, however, not until all technical and commercial details of the sales transactions are clarified and agreed upon and licenses - if any - are produced. The delivery period shall be deemed to have been complied with when a notice for consignment has been sent to the Buyer within this period of delivery. Any alterations in the design, layout or performance of the article of sale demanded by the Buyer within the fixed delivery period shall interrupt or extend the delivery period appropriately.
- 3.2** Partial deliveries or deliveries by instalment are permitted.
- 3.3** Unforeseeable circumstances entitle the Seller to defer delivery for the duration of such event plus an additional preliminary handling time as may be appropriate under such circumstances. Unforeseeable circumstances are any impediments beyond the Seller's control which the Seller cannot prevent by reasonable care as may be appropriate according to the circumstances of the transaction, such as e.g. war, currency, economical or other acts of sovereignty, civil commotions, natural events, fire, strikes, lock-outs, non-delivery of supply materials and/or vendor parts, stoppage of traffic, operational disturbances and any other events of force majeure, by which the performance of the contract is substantially hindered, endangered or impossible. In the event that an unforeseeable circumstance occurs, the Seller is - without being obliged to pay damages - entitled to rescind the Contract. The Buyer may demand a statement from the Seller as to whether the Seller will rescind the Contract or deliver within an additional a period of time as may be appropriate to the circumstances. If no statement is given by the Seller, the Buyer may rescind the Contract. However, the Buyer may not refuse partial deliveries/deliveries by instalment and/or partial performance.
- 3.4** If deliveries are delayed for other reasons, the Buyer shall fix in writing an additional period of time of reasonable length for performance by the Seller of his obligations. Only upon expiration of such an additional period of time as fixed by the Buyer without the article of sale being dispatched by the Seller, the Buyer is entitled to cancel those supplies, which have not been dispatched or been declared ready for dispatch prior to the expiration of such extension. The Buyer may be entitled to withdraw from the entire contract only, if partial performance or deliveries in instalments are of no interest to him. If the Buyer suffers damages due to a delay in delivery for which we can be held responsible, we shall compensate any proven damages for delay, limited, however, to an amount of 0.5 % of the contract value of those items of the consignment per full week delay, which cannot be timely used or used as contractually agreed upon due to the delay, limited, however, to a maximum of 5 % of the respective contract value. Further claims due to a delay in delivery, shall be exclusively awarded according to the provisions of § 7 below. The Buyer's right to rescind the contract if an additional period of time as fixed by the Buyer passes without effect shall remain unaffected.

- 3.5** If the Buyer does not accept the delivery on the agreed upon delivery date, he shall nevertheless be obliged to pay the purchase price. In this case, we will arrange for storage of the article of sale at the expenses and risk of the Buyer.

4. Dispatch, packaging and passing of risk

- 4.1** Deliveries by the Seller are Ex Works. Costs for freight, insurance and customs shall be borne by the Buyer. Unless otherwise agreed upon, delivery shall be effect unpacked. Transport insurances will only be effected at the express wish of the Buyer in his behalf and on his account.
- 4.2** The article of sale will be shipped at the risk and expense of the Buyer. The risk shall pass to the Buyer in the moment the article of sale is handed over to the freight forwarder or carrier, however, in any case no later than on leaving the Seller's warehouse or the Seller's delivery premises; this shall likewise apply in cases where the parties agreed upon a delivery free to the named place of destination. If the dispatch is delayed due to a conduct of the Buyer, the risk shall pass to the Buyer in the moment the notice of readiness for dispatch is being posted.
- 4.3** Articles of sale in respect of which notice of readiness for dispatch has been posted, must be called promptly, i.e. without undue delay. Otherwise the Seller - at his option - shall be entitled to either dispatch these items or store them or arrange for storage at the risk and expenses of the Buyer and to invoice them immediately.

5. Retention of title

- 5.1** The Seller retains the title and the absolute ownership of the article of sale until settlement of all our accounts and other claims - irrespective of there legal basis -, even though payment in respect of specifically designated claims has eventually been made. Regarding open accounts, the retention of title shall serve as collateral for any open balance claims. In case of installation or assembly works owed to the Buyer, the title in the article of sale passes not until payment of such installation or assembly works respectively that portion of the total amount of payment which is equivalent to the installation or assembly works is received by the Seller. If payment is to be made by bill of exchange or by cheque, the Seller shall retain his title until the Buyer has honoured its obligations and no claims out of the bill of exchange can be raised against the Seller. This shall likewise apply to any contingencies, commitments or any other debts, we may incur in the interest of the Buyer.
- 5.2** Any converting, manufacturing or processing of an article of sale subject to a retention of title is carried out for us as manufacturer in the meaning of § 950 of the German Civil Code, without, however, obligating us. In case the Buyer processes, re-models or assembles the article of sale subject to our retention of title with items or articles not owned by the Seller, the Seller shall acquire a title in the newly produced item or article ("Product") equivalent to the ratio of the value of the processed, re-modelled or assembled article - subject to a retention of title - to the invoice value of any other articles used for the production of the newly produced item or article.

- 5.3** If the retained article of sale is mixed or assembled with other articles and our retention of title thereby expires, it is hereby agreed, that the title to the new Product or mixture passes in the proportion of the invoice value of the retained article of sale and that the Buyer stores the new product gratuitously (gratuitous deposit).
- 5.4** The newly processed, re-modelled or assembled Product shall be deemed to be articles of sale subject to retention of title according to these General Conditions of Sale and Delivery.
- 5.5** The Seller is - in the ordinary course of business - entitled to process, assemble or resell the retained article of sale, provided that he is not in default with his payment obligations, has not suspended his payments or applied for court receivership or a similar protection. It is hereby agreed and the Buyer hereby assigns to the Seller any all claims together with any ancillary rights which he may have acquired against his customers as a result of the resale, generally, in the full resale amount; in case the retained article is resold with articles not owned by the Seller, only in the invoiced value of the article of sale delivered by the Seller; in case of an resale after processing, manufacturing or assembly, in the amount of the value of our proportional co-ownership share. Unless the Seller has given his prior written consent, the Buyer shall not be entitled to any transfer or disposition of rights in respect of the article of sale other than agreed hereunder, in particular, the Seller shall neither pledge the retained article nor transfer its ownership by way of security.
- 5.6** If third parties raise claims or assert rights with regard to the retained article of sale, the Buyer shall notify the Seller thereof without undue delay.
- 5.7** The Buyer is authorised to collect the debt of any receivables assigned and principally payable to us. If the Buyer is in default with his payment obligations or in case of a substantial decrease of his financial circumstances in the meaning of No. 5.5 above, the Seller shall be entitled to revoke that authorisation.
- 5.8** In those cases (No. 5.7 above), the Seller shall also be entitled to claim possession of the retained article of sale for security purposes only; exercise of the rights attached to the retention of title shall not be considered as withdrawal from the contract; the Buyer may not raise any right of retention against any such claim.
- 5.9** If the value of the collaterals exceeds the value of the secured receivables by more than 20 %, the Seller shall - upon request of the Buyer - release at his option securities.
- 5.10** In case the retention of title is qualified as invalid in the country, to which the article of sale has been shipped, such collateral for the Seller's claim of the purchase price shall be deemed to have been agreed upon, as can be validly stipulated for in the respective country and which corresponds as closely as possible to the retention of title under these conditions from an economical and legal point of view. The Buyer shall be committed to take and perform any steps and measures actually or legally necessary to insure that we acquire a security on the article of sale which corresponds as closely as possible to the retention of title under these conditions.

6. Warranties and representations

- 6.1** The Buyer shall examine the goods immediately upon receipt with reasonable care and give notice to the Seller about any defects discovered during such examination within a preclusive period of 2 weeks either in writing, by fax or telephone. The Buyer shall give notice to the Seller about any other defects (in particular hidden defects) at latest within 2 weeks after discovery, if the Buyer is a fully qualified merchant in the meaning of the German Commercial Code or a public law entity.
- 6.2** Guarantees and any other warranties, representations or promises have to be explicitly designated as such. Technical specifications in advertising brochures, leaflets or other publications which were publicly made and/or published by the Seller, his sub-suppliers, agents or any other person employed by the Seller for the performance of an obligation for which he is responsible, shall only be binding if explicitly designated in the confirmation of order as binding.
- 6.3** If a claim raised by the Buyer without undue delay proves to be legitimate, the Seller is - at his option - entitled to either remedy the defect (repair of the article of sale) or substitute supply.
- 6.4** The Seller shall bear the costs of remedying defects or a substitute including shipping costs if the latter are - by way or individual agreement - not to be borne by the Buyer
- 6.5** The Buyer shall at his option - have the right to rescind the contract or raise a claim for a price reduction, if the Seller - considering the exemptions allowed by law, allows an additional period of time for remedying the defect or a substitute delivery as fixed by the Buyer to pass without effect or if a substitute remedy or supply with regard to the same defect fails twice.
- 6.6** Any other or further warranty claims are excluded hereby. The same shall apply regarding any consequential damages that may occur as a consequence of the defect on other items as the article of sale (consequential damages). In this respect and to that extent, the Seller's liability has - also in case of warranty claims - to be determined according to No. 7 below.
- 6.7** All warranty obligations hereunder only extend to parts produced by the Seller. In the case of parts not produced by the Seller, in particular - but not limited to -, e.g. measuring instruments, couplings, siphon holes and pressure hoses, the Seller's warranty is limited to any warranty claims assigned to the Seller by the supplier for such parts. In such a case, a claim against the Seller cannot be raised unless the enforcement of the assigned claim fails.
- 6.8** The Seller's warranty obligations expire, if the article of sale has been dismantled by a third party or altered by the incorporation of parts produced elsewhere and any damages occurring were caused by such modifications. The Seller's warranty obligation also expires, if the Buyer does not duly observe the Seller's instruction for the handling of the article of sale (operating manual). Moreover, the warranty obligation is excluded if it is established that the maximum allowable number of revolutions or the maximum pressure has been exceeded.
- 6.9** The period of limitation for any warranty claims of the Buyer is 12 months beginning with the delivery of the Contract Product.

7. General limitation of liability

7.1 If the Buyer is unable to use the delivered article of sale according to the Contract through our fault or as a result of the omission or deficient execution of proposals and advice given before or after the conclusion of the Contract or through a breach of secondary duties under the Contract, in particular, instructions for operation and maintenance of the article of sale, to the exclusion of any other claims, the provisions of No. 6 above shall apply.

7.2 For any damages which do not occur on the delivered article of sale itself, the Seller is - for whatever reason - only liable for

- intent,
- gross negligence of his shareholders/board members or senior executives,
- negligence or intentional injury, loss of life or damage to health,
- defects which the Seller had maliciously conceded or for which he has guaranteed,
- for any defects of the delivered item privately used, if liability is mandatory under product liability laws (Produkthaftungsgesetz) for personnel injury or physical damage to items of private use.

In case of a fundamental breach of Contract, the Seller can also be held liable for any gross or slight negligence of his employees; in the latter case the Seller's liability is limited to direct contractual damages, reasonably foreseeable at the moment of the conclusion of the Contract. Any further liability is expressly excluded hereby.

7.3 The period of limitation for any claims of the Buyer - irrespective of their legal basis - is 12 months. For damage claims according to No. 7.2 the statutory period of limitation shall apply; for warranty claims No. 6.9 is applicable.

8. Place of performance, jurisdiction and applicable law

8.1 The place of performance for the Seller's obligations is in case of an Ex Works sale, the Seller's premises, in Berching, Germany.

8.2 The place of jurisdiction for all disputes arising out of or in connection with these Conditions of Sale and Delivery and/or out of or in connection with any individual contract concluded in the execution thereof or based upon this standard terms, is the Seller's place of business, Berching, Germany. However, the Seller shall have the right to raise a claim against the Buyer at the Buyer's place of business.

8.3 All legal relations between the Seller and the Buyer shall be governed by the German law as it applies between domestic parties. The provisions of the private international law and the United Nations Convention on Contracts for the International Sale of Goods dated 11.04.1980 (CISG) shall not apply.