

General Conditions of Sale and Delivery

I. General Remarks

1. The following General Conditions of Sale and Delivery shall apply to all sales relationships and services between us as seller or deliverer (hereinafter referred to as "Seller") and our customers (hereinafter referred to as "Buyer") insofar as the Buyer is an entrepreneur, or a corporate body under public law. Our General Conditions of Sales and Delivery shall constitute the content of all present and future orders and transactions with the Buyer. Conflicting or deviating conditions of purchase or other reservations made by the Buyer shall not be entirely or partially valid unless the Seller has expressly agreed to such in writing in individual cases. Our General Conditions of Sale and Delivery shall apply, even if we are aware of deviating general terms of the Buyer and do not object to them.

II. Offers, Orders

1. The Seller's offers shall not be binding with respect to price, quantity, delivery time and availability. Such offers are deemed to be an invitation to the Buyer to place a concrete order with the Seller (offer from the Buyer).
2. Orders of the Buyer shall become binding for the Seller and the Buyer upon receipt of the Seller's written order acknowledgment (or invoice or delivery note) by the Buyer.

III. Prices

1. The prices invoiced shall be the Seller's prices effective at the time of delivery, plus statutory value added tax (VAT).
2. Should the Seller, in the interval between conclusion of the contract and delivery, effect a general change of prices or payment conditions, the Buyer shall have the right to withdraw from the contract within two weeks of having been informed of such changes. The right of withdrawal shall not apply to long-term supply contracts (contracts for the performance of a continuing obligation).
3. The weight or the quantity of the products on which the invoiced amount is to be calculated shall be determined by the Seller.

IV. Payment

1. Our prices shall exclude value added tax (VAT). All payments, including down- and prepayments, must include the statutory value added tax. Basis for the calculation of the value added tax is the day of issuing the invoice.
2. Discounts will be only given upon a written agreement. The purchase price shall be due upon receipt of the invoice and, unless otherwise agreed or specified in the invoice, payable within 30 days from the date of the invoice. Payments shall not be deemed to be made until the balance has been settled on the Seller's accounts.
3. The Seller reserves the right to use payments for the settlement of the invoices which have been outstanding longest, plus any interest on arrears and costs accrued thereon, in the following order: costs, interest, principal claim.
4. The Buyer shall not have the right to withhold payments insofar the Buyers counterclaim is not based on the same contractual relationship. Counterclaims may only be offset if they are uncontested or have become legally recognized.
5. Where the Seller has reason to doubt the Buyer's solvency or creditworthiness and the Buyer is not willing to make advance payments in cash or provide the Seller with security as requested, the Seller shall have the right as long as he has not yet performed his obligations, to resign from the contract.
6. If the date of payment is not met by the Buyer the Seller shall have the right to retain other shipments and to claim back already delivered products. Further rights of the Seller with respect to default of meeting the payment obligations by the Buyer are explicitly reserved.

V. Delivery

1. The Seller shall make every effort to deliver as early as possible. There shall be no fixed periods for delivery. However, the clarification of all technical and commercial issues must be completed prior to the beginning of a delivery period determined by the Seller. Delivery to the Buyer shall be subject to punctual delivery of the appropriate goods to the Seller by its own suppliers.
2. Should the parties, notwithstanding the preceding paragraph, have agreed on a fixed period for delivery, and should the Seller default with the supply, the Buyer shall grant the Seller a reasonable respite, in general four weeks.
3. The day of delivery shall be the day on which the products leave the Seller's plant or warehouse or, if that day cannot be ascertained, the day on which the products are placed at the Buyer's disposal.
4. If the Buyer is in default of acceptance, the risk of a coincidental loss or impairment of the products shall pass over to the Buyer. The Buyer is obliged to compensate the Seller for any damages accrued thereof, including delay based additional costs like storage costs, transporting costs etc. Further claims of the Seller are explicitly reserved.

VI. Force Majeure

Force majeure of any kind, unforeseeable production, traffic or shipping disturbances, fire, floods, unforeseeable shortages of labor, utilities or raw materials and supplies, strikes, lockouts, acts of government, and any other hindrances beyond the control of the party obliged to perform which diminish, delay or prevent production, shipment, acceptance or use of the products, or make it an unreasonable proposition, shall relieve the party from its obligation to supply or take delivery, as the case may be, as long as and to the extent that the hindrance prevails. If, as a result of the hindrance, supply and/or acceptance is delayed by more than eight weeks, either party shall have the right to cancel the contract. Should the Seller's suppliers fail to supply him in whole or in part, the Seller shall not be under obligation to purchase from other sources. In such cases, the Seller shall have the right to distribute to the Seller available quantities among his customers based on appropriate criteria developed by the Seller

VII. Shipment

1. The Seller reserves the right to choose the route and the mode of transport. Any additional costs resulting from special shipping requests made by the Buyer shall be borne by the Buyer.
2. The Incoterms® referred to in the Seller's offer or in the Seller's order confirmation shall apply. If the Seller has not determined a dispatch type according to the Incoterms® rules the risk of destruction, loss or damage shall pass to the Buyer upon dispatch of the products or, if they are collected by the Buyer, at the time they are placed at the Buyer's disposal.
3. Damages of the products occurred during the transport from Seller to the Buyer shall be addressed directly by the Buyer in writing to the accountable carrier in compliance with the designated respites.

VIII. Retention of Title

1. Until receipt of full payment of all current and future receivables under the business relationship with the Seller, including incidental receivables, and claims for damages the Seller reserves title in the sold products, even if the sold products itself are fully paid by the Buyer. Title to the products shall also remain with the Seller if the Seller's claims have been included in a current account and the balance of this account has been struck and acknowledged.
2. Any processing of products under title retention by the Buyer shall entitle the Seller to receive complete ownership of the newly created items. In case such processing is carried out with other goods the Seller shall receive immediate co-ownership of the newly created items in relation to the invoice value of used products of the Seller compared with other goods used. Insofar a combination or inseparable commingling of the products under title retention with other goods not belonging to the Seller has taken place in such a way that the products of the Seller become the principal, then the parties are deemed to have agreed that the Buyer shall transfer to and maintain for the Seller a co-ownership interest in the newly created items in relation to the invoice value of the products under title relative to the invoice or market value of the newly combined or commingled items.
3. The Buyer is obliged to store products under title retention as well as processed or combined items with appropriate care.
4. If the Buyer is in default with its payment obligations the Seller has the right, even without withdrawal from the contract and without granting an additional respite, at the sole costs of the Buyer, to request an interim withdrawal of the products in title retention.

5. If products under title retention are intended for commercial resale by the Buyer, the Buyer is entitled to sell them to its customers as part of its ordinary course of business as long as the Buyer complies with all its obligations of the business relationship with the Seller. With respect to a resale of products under title retention, the Buyer hereby assigns to the Seller, and the Seller hereby accepts, as security for all if the future claims, including subsidiary claims, the Buyer will have against its customers in consideration for the resale of the products under title retention. If the Buyer sells items of which the Seller has co-ownership resulting from processing or commingling of the products pursuant to clause VIII. 2., the assignment shall be limited to the portion of the invoice value which corresponds to the Seller's co-ownership. Approved balance claims out of current account agreements shall be assigned by the Buyer to the Seller at conclusion of the contract in the amount of the open claims of the Seller against the Buyer. The Buyer shall not have the right to pledge, chattel mortgage or otherwise encumber the products to which the Seller retains title. When reselling the products under retention as well as goods processed or commingled with products under retention the Buyer shall make the passing of the title subject to full payment of the products and items by his customers.
6. The Buyer is entitled to collect the claims of products under retention or processed or commingled items on its own behalf as long as the Buyer complies with its payment obligations. The Buyer is not entitled to pledge or assign such claims. The Buyer has to inform the Seller immediately but within three working days at the latest about pledges or other access from third parties to products in retention or assigned claims.
7. If the Seller believes his claims to be at risk, the Buyer shall, at the Seller's request, mark the products under retention clearly as property of the Seller, inform his customers of the assignment of his claims to the Seller and supply the Seller with all necessary information and documents (also in electronic form) that are useful or necessary for the Seller to collect the assigned claims.
8. If the value of the security provided to the Seller exceeds the value of the claims to be safeguarded by more than 15 percent, the Seller shall, at the Buyer's request, release security of his own choice accordingly.

IX. Damages, Limitations of Liability

1. No claims for compensation may be lodged by the Buyer - including those of a non-contractual nature - for any minor negligent breach of duty by the Seller, his executive staff or other agents, unless such breach concerns a duty that is crucial for the object of the contract (cardinal obligation).
2. The Seller shall only be liable for lost profit, indirect damage, consequential loss, any other indirect damages or any damages which could not be foreseen at the time of conclusion of the contract if such damages occur due to a gross negligent fault of the Seller or one of his managerial employees. This limitation of liability is correspondingly valid for claims against employees and agents of the Seller.
3. The above limitations shall not apply to damage resulting from death, injury or damage to health. However, this shall not affect the applicability of compelling statutory liability regulations such as, for example, liability as to the product liability law.

X. Notification of Defects

1. For obvious defects, ascertainable by proper examination, notification of defects shall only be recognized if filed to the attention of the Seller in writing within two weeks of receipt of the products. Thereby the Seller shall be informed with supporting evidence, samples and packing slips, stating the invoice number and date, batch number on the products and packings as well as any other markings available.
2. Hidden defects must be notified to the Seller in writing immediately upon discovery, but not later than five months after receipt of the products. This shall not affect the periods of limitation. The burden of proof that a defect is a hidden defect shall rest with the Buyer.
3. Products forming the subject of a complaint shall not be returned to the Seller except with the Seller's written consent.

XI. Buyer's Rights in the event of Defects

1. Warranty claims made by the Buyer shall only entitle the Buyer to be supplied with a replacement. If the replacement provided by the Seller is also defective, the Buyer may reduce the purchase price or opt to cancel the contract. Claims for damages as defined in Section IX shall remain unaffected by the above.
2. In case the Buyer has been claimed successfully based upon the provisions governing the purchase of a consumer good and for that reason the Buyer initiates warranty recourse against the Seller, the Buyer's claims under a right of recourse in accordance with the regulations of the purchase of consumer goods shall remain unaffected. Section IX shall apply to any claim for damages.
3. The Buyer must inform the Seller immediately and without delay of any case of recourse within the supply chain. Statutory claims under a right of recourse by the Buyer against the Seller shall only persist insofar that agreements entered into by the Buyer with its customers do not exceed the statutory warranty claims.

XII. Periods of Limitation

All warranty claims fall under a period of limitation of 12 months from the time of transfer of risk. Compelling regulations governing the statutory period of limitation or the question of liability, such as liability as to the product liability law shall remain unaffected.

XIII. Properties of Products, Technical support, Use and Processing, Intellectual Property Rights of Third parties

1. Unless agreed otherwise in writing the properties of the goods shall be exclusively determined as stated in the product descriptions, specifications and labeling of the Seller. Public statements, brochures, claims or advertising shall not be classed as information on the properties of the item for sale. Identified uses for the products pursuant to the European REACH Regulation shall neither constitute an agreement on the corresponding contractual quality or the products nor the designated use under the contract.
2. Properties, durability, identified uses of the products and any other information shall in no case constitute a warranty, unless otherwise agreed in writing. If such warranty is agreed in writing the parties must at least agree on the contents, duration and areal coverage of such warranty. In addition, the term warranty has to be used explicitly.
3. Technical advice provided by the Seller verbally, in writing or by way of trials is given in good faith but without warranty. The Seller's technical advice shall not release the Buyer from the obligation to test the products supplied by the Seller as to their suitability for the intended processes and uses. The application, use and processing of the products are beyond the Seller's control and therefore entirely the Buyer's responsibility. The Buyer is solely responsible that the use of delivered products or the marketing of newly created items does not interfere with third parties intellectual property rights, in particular patent rights.

XIV. Applicable Law, Interpretation of Trade Terms

1. German law shall apply. Application of the Uniform Law on the International Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods - both dated July 17, 1973 - and of the UN agreement on the sale of goods of April 11, 1980 shall be excluded.
2. Customary trade terms shall be interpreted in accordance with the Incoterms® referred to in the offer or the order confirmation of the Seller. In case no reference has been made which Incoterms® version (2000 or 2010) shall be applicable, the Incoterms® 2010 shall be applied.

XV. Place of Performance and Jurisdiction, Invalidity of Individual Clauses

1. Place of performance for delivery shall be the Seller's dispatch department. Place of performance for all payments shall be Kürten, Germany.
2. Place of jurisdiction for both parties shall be Cologne, Germany. The Seller shall furthermore have the right to sue the Buyer at the Buyer's general place of jurisdiction.
3. Should any clause in these General Conditions of Sale and Delivery be or become invalid in full or in part, this shall not affect the validity of the remaining clauses or remaining parts of the clause concerned. The parties shall replace any invalid arrangement by an effective one which conforms as far as possible to the economic purpose of the invalid clause.