

Conditions of sale

Status: November 2009

I. Offer and conclusion of contract

1. The below contractual terms and conditions alone shall apply for all offers and orders placed with us. The terms and conditions of our customers shall not apply to us even if we have not expressly objected to them.
2. Our offers shall be subject to change without notice. A contract shall only materialise after we have confirmed it in writing unless a written contract has been entered into otherwise or the order has already been carried out without having been confirmed.

II. Scope of the obligation to render performance

1. The scope of our performance shall be defined by our written order confirmation alone.
2. Specimens upon which an order is based shall not be binding and shall therefore not substantiate any liability under warranty unless they have been expressly designated as being binding and a warranty is expressly furnished. Statements about the quality features of goods shall not in themselves constitute a warranty.
3. We shall be entitled to render part performances provided that the Customer can be expected to accept them given the particular circumstances. The invoices raised for such part performances shall be payable irrespective of when the entire performance has been rendered.
4. Minor shortfalls in consignments normal in commerce generally and in the specific trade in particular shall not entitle the Customer to withdraw from the contract and to demand compensation for damages instead of delivery.
5. If it has been agreed that goods are to be supplied by call-off, the Customer must take delivery of the goods within one year from the point in time at which we notify him that the goods are ready for delivery by call-off.

III. Price and Payment

1. The prices shall be invoiced ex Works. Value added tax will be payable in addition to our prices. Goods shall be supplied at the prices valid on the date of delivery. In the event of an unforeseeable imposition or increase in customs duties, taxes, import surcharges, etc. the purchase price applicable in Sentence 2 for the Buyer shall have to be increased by a reasonable amount to reflect the change in circumstances. No price changes may be made after the goods have been delivered. Price increases are to be notified by written notification stating the reasons. We shall still be entitled to

raise prices in accordance with the principles regarding the disruption of the foundation for business.

Fixed prices or prices differing from those in the price lists in force at the relevant point in time shall be subject to express written consent. Fixed prices shall apply in particular for call-off orders for a period of one year. Once a year has elapsed we shall reserve the right to increase the fixed prices by a reasonable sum equal to the amount by which the unit prices and a proportion of the overheads for the ordered goods have increased since notification that the goods were ready for call-off.

2. Unless an agreement has been made otherwise, our invoices are to be paid as follows:
 - a) 2 % prompt payment discount for payment in cash, cheque or bank transfer – to be received or credited to our account within 8 days from the date of invoice,
 - b) or payment in full within 30 days from the receipt of invoice.

Drafts shall only be accepted by prior agreement on account of payment or subject to being discounted. All discounting shall be for the Customer's account and will be payable in cash immediately.

3. If the Buyer is in default, we shall be entitled to demand default interest in accordance with Section 288 of the German Civil Code [BGB] amounting to 8 percentage points above base rate.
4. In the event of non-compliance with our terms of payment or in circumstances of which we become aware after entering into the contract, and which are an impediment to the Buyer's creditworthiness from a bank's perspective, all accounts – regardless of the term of drafts which we may have accepted – shall become payable immediately, after a payment reminder has been sent out. In such circumstances we shall be entitled to only supply / render outstanding goods and services against payment in advance or if a security is furnished or to withdraw from the contract after a reasonable subsequent period of time or to demand compensation for damages instead of performance.
5. The Buyer may not offset any counter claims he may have against us which are contested by us and which have not been declared final and absolute in a court of law. The Buyer shall not be entitled to a right of retention.

Information from a respected credit reference agency or bank shall be regarded as proof of facts and circumstances calling the Buyer's creditworthiness into question.

IV. **Delivery period**

The delivery period shall be extended as appropriate if unforeseen hindrances occur beyond our sphere of control, or hindrances for which our suppliers are responsible. This shall also apply in those cases in which the hindrances occur during a default already existing.

V. **Passing of risk and taking delivery of the goods**

The risk shall pass over to the Buyer when the goods are handed over to a haulier, freight forwarder or other party collecting them, but no later however than when the goods leave our works, even if the goods are transported by our own means of transport.

VI. **Reservation of title**

1. We shall reserve the title to the goods until all present or future accounts created by the business relationship with the Buyer have been paid. If the Customer pays by cheque, or if we issue him with a refinancing draft for this so that the reservation to title shall only lapse when a claim may no longer be asserted against us based on the draft. If running accounts have been established, the reservation of title shall be regarded as a security for our balance of account. If the goods subject to reservation of title are processed or treated, this shall take place on our behalf, and, more specifically, without us having to pay for this. Such work shall not place us under an obligation either so that we are to be regarded as the manufacturer in accordance with Section 950 of the German Civil Code [BGB], that is, we shall retain title to the products at any point in time and regardless of the extent to which they have been processed. If the goods subject to reservation of title are processed by the Buyer with other goods not belonging to us, we shall be entitled to co-ownership of the new thing in proportion to the invoiced value of the goods subject to reservation of title to the other processed goods at the point in time of processing. In other respects the same shall apply as for the goods subject to the reservation of title. For the purposes of these terms and conditions they shall be regarded as goods subject to reservation of title.
2. The Buyer's accounts created by the resale of the goods subject to the reservation of title are assigned to and accepted by us here and now as a security for all our accounts from the business relationship, and to be more precise, regardless of whether the goods subject to reservation of title have been processed or not and whether they are been sold to one or more buyers. Authorisation granted to the Buyer to collect accounts shall lapse if an application for insolvency is made for the Buyer's business.

3. The Buyer is only entitled and authorised to resell the goods subject to reservation of title on the basis of a purchase contract, contract for services, contract for work done and materials supplied or similar contracts, if the account created by the resale passes over to the Seller. The Buyer is not entitled to dispose of the goods subject to reservation of title otherwise. At the Seller's demand the Buyer shall be obliged to announce to the third party buyer that the account has been assigned to the Seller and that payment is to be made to him.
4. If the value of the securities we hold exceeds the accounts owed to us by the Buyer by more than 20% we shall consequently be obliged at the request of the Buyer or a third party placed at a disadvantage by us holding excess securities to release such excess securities.
5. The Buyer must not pledge the supplied item or assign it by bill of sale as a security. If execution is levied upon the item, or if it is confiscated, or disposed of otherwise by third parties, we are to be notified of this straight away.
6. In the event that the Buyer is in breach of contract, in particular with default in payment, we shall be entitled to take back the goods subject to reservation of title after effective withdrawal from the contract. The costs of taking back the goods subject to reservation of title shall be for the Buyer's account.
7. The Buyer shall bear the risk for the goods supplied by us subject to reservation of title. He shall be obliged to treat the goods with care and keep them in safe-keeping. He must take out sufficient insurance cover against loss, (theft, fire etc.) He hereby assigns his claim in the event of a loss against the insurance company to us, and to be more precise, a preferential proportion amounting to the purchase price of the goods supplied and owned by us. This shall also apply if the insurance does not cover the entire loss so that in such a case we cannot be expected to pay part of the compensation.
8. The Buyer's accounts against his buyer(s) are assigned to us here and now on account of payment or drafts taken in payment. The hand-over of the draft is replaced by the Buyer looking after the received draft for us in safekeeping.

VII. Liability for defects in supplied goods

1. Supplied goods are to be inspected immediately after they have been delivered to their destination and handled with the due diligence of a prudent businessman. If a defect is apparent, we are to be notified immediately. If no notification is made of the defect, we shall have no warranty obligations at all unless it was not possible to identify the defect when the goods were inspected.
2. Concealed defects must be notified immediately after they have been discovered. They may however only be asserted against us in those cases in which we receive a written notification of defects within six months from the dispatch of the consignment.

3. If complaints are substantiated, we shall only take back the goods if they are still in the same condition in which they were in when they were supplied and replace them free of charge with perfect goods. We may however choose to refund the Customer the purchase price for the faulty goods instead of carrying out a repair or supplying replacements. A warranty shall only be furnished for the replaced item and for a repaired item for the same period the original item supplied was covered by warranty.
4. We shall be liable to the Customer for compensation for damages – regardless of whatever reason upon which his claim is based – if we are guilty of intent or gross negligence. If we are guilty of ordinary negligence we shall only be liable
 - a) for damages based on loss of life, personal injury or physical harm,
 - b) for damages arising as a result of a breach of an important contractual obligation, in this case our liability shall be limited to refunding the reasonably foreseeable damage typical for the contract,
 - c) for useful service life and quality warranties,
 - d) in accordance with the German Product Liability Act.

The above limitations of and exclusions from liability shall apply to the same extent to our executive bodies, legal representatives, employees or other assistants. The statutory regulations governing the burden of proof shall not be affected by this.

5. The Customer's shall only be entitled to rights of recourse against us in accordance with Section 478 of the German Civil Code [BGB] (Recourse of a firm) to the extent that the Customer has not entered into any agreements over and above the statutory warranty claims.

VIII. The Customer's rights

1. In the event that performance is impossible, the Customer may withdraw from the contract and demand compensation for damages instead of performance.
2. If impossibility occurs during default in taking delivery of the goods on the part of the Customer, or as a result of him being to blame, he shall continue to be obliged to render his counter-performance as a result.
3. If there is default in performance within the meaning of Section IV of these terms and conditions of business, and the Customer grants us, if we are in default, a reasonable subsequent period of time, and if we fail to render performance within this subsequent period of time, the Customer shall consequently be entitled to withdraw from the contract and to demand compensation for damages instead of performance.

IX. The obligation to pass over information

The Buyers are not entitled to information in accordance with Section 312e Para. 1 No 1 to 3 of the German Civil Code [BGB].

X. Packing

Packing will be charged at cost and will not be taken back.

XI. General Provisions

1. These general terms and conditions of business and all legal relationships between us and the customer shall be governed by the law of the Federal Republic of Germany. No international or supranational (contractual) legal systems shall apply, in particular the Vienna Convention on the International Sale of Goods dated 11th April 1980 (CISG).
2. The place of fulfilment is the principal place of business of the branch delivering the goods. The place of jurisdiction is Herford. This shall also apply for proceedings restricted to documentary evidence and for proceedings based upon a bill of exchange or cheques.
3. Should a provision in these terms and other agreements entered into be or become invalid, the validity of the remainder of the contract shall not be affected as a result.