

General Sales and Delivery Terms

§ 1

Scope

- (1) Our deliveries, services and offers are exclusively subject to these terms and conditions. We do not accept any terms and conditions of the customer that are differing from or conflicting our sales and delivery terms unless we have given our express consent to their validity in writing. Our sales and delivery terms shall also apply if we effect a delivery to the customer without reservation while being aware of terms and conditions of the customer that are differing from or conflicting our sales and delivery terms. With the receipt of our goods or services, at the latest, our terms and conditions are considered to be accepted. Any confirmation to the contrary of the customer and the reference to customer's terms of business and purchase are hereby objected to.
Our sales and delivery terms shall also apply to all futures business transactions with the customer.
- (2) Any arrangements agreed between us and the customer regarding the execution of this contract are stipulated in this contract in writing.
- (3) Our staff members, except for the managing directors and authorized officers (Prokurist), are not authorized to make verbal additional agreements or oral commitments. Any action of these staff members must be expressly approved by us in order to be valid.
- (4) Our sales and delivery terms only apply to companies that are subject to § 310 clause 1 of the German Civil Code (BGB).

§ 2

Offer – Documents

- (1) If the order corresponds to an offer according to § 145 of the BGB, we can accept it within two weeks. Our offer will be binding for a period of 30 calendar days, unless otherwise agreed upon in writing.
- (2) The scope of delivery is subject to our written order confirmation, in the event that our offer is time bound and accepted on the due date it shall be subject to the offer, unless an order confirmation was given in due time. Additional agreements and alterations require our written confirmation.
- (3) We reserve the right for design modifications, as far as they concern customary and/or insignificant changes, especially if they will improve the goods. However, we are obliged to implement such modifications also on products that have already been supplied.
- (4) The documents being part of this offer, such as figures, drawings, weight and dimension specifications are not fully decisive, unless they were expressly declared as such by us.
- (5) We reserve the title of and the copyright or any other rights for the offer documents (e.g. figures, drawings, descriptions); they shall only be made accessible to third parties if transfer to third parties was expressly approved by us.

§ 3

Prices

- (1) Unless not otherwise agreed, prices of our price lists and offers are net cash (without any deductions) inclusive of packing but exclusive of shipping, i.e. ex works (EXW) to the amount applicable on the date of issuing the invoice. Billing is performed immediately after transfer of risks. Furthermore, we shall be entitled to issue an invoice for a down payment amounting to 100 % of the value of goods within two weeks after indicating readiness for shipment.
- (2) Cash discount deduction shall require a special written agreement. A cash discount deduction is subject to the punctual discharge of any obligations of the customer resulting from the business relationship.
- (3) Fixed prices are subject to an express written agreement. With the exception of a fixed price arrangement, we reserve the right of changing our prices in a reasonable manner, if cost reductions or cost increases – particularly due to wage agreements or material price changes – occur after contract conclusion. If required by the customer we will prove such changes.
- (4) Catalogue device orders are subject to the supplier price lists applicable on date of purchase order. In case of a period of more than 4 months between ordering and delivery our list price valid on date of delivery shall apply. In case of ordering special devices and equipment we shall be entitled to invoice wage and material price increases plus a reasonable overhead rate, if they occur after submitting the offer until the date of completion.
- (5) If we do not estimate we will charge day prices that are based on the wage hours to be confirmed by us plus possible accommodation allowances, travel expenses and material costs. Special or change requests placed by the customer after confirmation of order or starting production will be charged accordingly.
- (6) If there are no settlement dates fixed, payment of our invoice falls due within 30 days after invoice date and without any deductions. In spite of differing terms of the customer, we shall be entitled to firstly offset payments against the oldest debt of the customer. If costs and interests have already incurred, we shall be entitled to firstly offset the payment against the costs, then against the interests and finally against the principal service.
- (7) In case of paying by instalments the complete remainder of the debt and any other claims will fall due if the customer is behind with the payment of at least one instalment.
- (8) If the customer pays by bank transfer, the payment will be considered effected when it is credited to our account. In case of paying with cheque, payment will be considered effected as soon as the cheque has been sent and credited to our account. Payment by bill requires our previous consent for each individual case – here we reserve the right to determine special payment terms for bills. This shall also apply if the customer writes us a cheque for partial or complete settlement of the bill amount. Any discount and note charges are to be borne by the customer and must be paid immediately.
- (9) If the customer is in default, we shall be entitled to charge interests to the amount of the interest rate calculated by the commercial banks for open credits from the respective date – however, at least to the amount of 9 % above the applicable base rate of interests.
- (10) If the customer does not fulfil the payment obligations – in particular, does not cash a cheque or a bill, suspends payment or in the event that other circumstances occur, which give reason to doubt the creditworthiness of the customer – we shall be entitled to accelerate maturity of the complete remainder of the debt, even if we have accepted bills or cheques. In this case, we shall also be entitled to demand payment in advance or a security and to withdraw from the contract after a reasonable period of grace or to claim damages due to non-performance.
- (11) The customer shall only be entitled to offset, withholding or reductions – even if notifications of defects or counterclaims are asserted – if we have given our express written consent or if the counterclaims have been recognized by declaratory judgment.

§ 4

Delivery Period

- (1) The delivery period starts with the mailing of the order confirmation, but not before the customer has provided all required documents, permissions and authorizations and the first agreed instalment has been received. Furthermore, the beginning of the delivery period depends on the clarification of all technical issues.
- (2) The delivery period is considered observed when the delivery item has left the plant before the delivery period has expired or when readiness for shipment has been indicated by us.
- (3) The compliance with our delivery commitment also depends on the timely and proper fulfillment of the customer obligations. The right of defense (non-performance) is excluded if the customer is in default or if the customer is not responsible and customer does not accept our goods or services in spite of calling and setting a deadline, we shall be entitled to charge the costs caused by storage after the expiry of the time-limit – in case of storage on our premises, however, we can charge at least 1/2 of 100 of the invoice amount for each month as damage caused by delay (lump sum). Any further legal claims shall remain unaffected; in particular, increased labour, material and production costs as well as costs caused by downtimes are for the account of the customer. The customer shall be entitled to provide evidence that no or a lower damage was caused as a result of customer's default. After setting a time limit and the expiration of which without fulfillment, we shall be entitled to other dispositions of the delivery item and to effect delivery to the customer within a reasonably extended period of time.
- (4) If it is agreed that the delivery shall be performed by us, the customer shall ensure access and that our products can be moved into the corresponding place unhindered.
- (5) We shall be entitled to defer delivery or service by the duration of the obstacle occurring plus a reasonable start-up time or to withdraw from the contract fully or in part due to fact that any provisions were not fulfilled, if the delay of delivery or services is subject to force majeure or other events, which will make delivery significantly difficult or impossible to us. These will include material quality problems also occurring subsequently, malfunctions, strikes, lockouts, strikes, work stoppages, official directives, etc. Also in the event that they occur at our suppliers or the sub-suppliers of which, unless we or our sub-suppliers are responsible for them. This shall not apply if we are already in default.
- (6) If the delay subject to § 4 (5) lasts longer than 3 months, the customer shall be entitled to withdraw from the unfulfilled part of the contract after setting a reasonable period of grace.
- (7) If we are in default, the customer shall be entitled to a compensation for delay to the amount of 0.5 % for each completed week of the default, but in total not exceeding 5 % of the invoice value of the delayed deliveries and services. Further claims, particularly claims for damages of any kind, shall be excluded, unless we have caused the delay in a grossly negligent or intended manner.
- (8) If the production, shipping or assembly are delayed due to reasons for which the customer is not responsible and customer does not accept our goods or services in spite of calling and setting a deadline, we shall be entitled to charge the costs caused by storage after the expiry of the time-limit – in case of storage on our premises, however, we can charge at least 1/2 of 100 of the invoice amount for each month as damage caused by delay (lump sum). Any further legal claims shall remain unaffected; in particular, increased labour, material and production costs as well as costs caused by downtimes are for the account of the customer. The customer shall be entitled to provide evidence that no or a lower damage was caused as a result of customer's default. After setting a time limit and the expiration of which without fulfillment, we shall be entitled to other dispositions of the delivery item and to effect delivery to the customer within a reasonably extended period of time.
- (9) If it is agreed that the delivery shall be performed by us, the customer shall ensure access and that our products can be moved into the corresponding place unhindered.

§ 5

Shipment and Transfer of Risks

- (1) Shipment is effected ex works and at the expense of the customer. If no other written instruction was given, we will effect shipment according to our best judgement. However, liability for choosing the cheapest and fastest mode of dispatch shall be excluded.
- (2) The mode, means and route of transport as well as the kind and extent of the necessary protection means, the forwarding company or the carrier and packing are left to our discretion. This is done at our expense and under the exclusion of any kind of liability. On the request and at the expense of the customer, the delivery can be insured against theft, breakage, transport, fire and water damages as well as against other insurable risks.
- (3) Transport packages and all other kind of packages according to the packaging regulations are not taken back, except for pallets. The customer is obliged to dispose of the packages at his/her own expense.
- (4) Risk shall be transferred to the customer once the consignment goods have been handed over to the person in charge of transportation or once they have left our plant for being shipped. In the event that shipment is made impossible without our fault, risk shall be transferred to the customer after indicating readiness for shipment. The delivered items – also when having insignificant faults – must be accepted by the customer; the rights of § 3 shall remain unaffected.
- (5) If the customer should fall behind with the acceptance of the goods or a due payment, in part or in full, we shall be entitled to withdraw from the contract after the expiration of a reasonable time-limit without fulfillment. Furthermore, we shall be entitled to charge either the actually incurred costs to us or a lump sum of 1 % of the invoice amount of the delayed deliveries and services for each completed week of delay – however, a maximum of 5 % of the invoice amount. The right of withdrawal shall also apply in the event that circumstances will become known after contract conclusion, which may show that the financial situation of the customer – at the moment of contract conclusion or afterwards – may put our payment claims at risk and the customer is – in spite of being requested – not willing to pay with delivery or to provide a security. This shall also apply in the event that the customer makes false statements regarding his/her financial situation or creditworthiness. Furthermore, we shall be entitled to prohibit the sale, mixing and processing as well as to withhold or to refuse, in part or in full, any further deliveries being subject to this or other contracts and to demand immediate payment of all deliveries. On our request, the customer shall also be obliged to store the goods provided by us separately at his/her own expense, to mark them and to make them available for being picked up by us.
- (6) Partial deliveries shall be permitted.

§ 6

Retention of Title

- (1) Until the complete settlement of the total liabilities resulting from this business relationship (including possible collateral claims and possible expenses incurred in the interest of the customer) the following securities shall be granted to us – which we will release upon request of the customer and according to our choice, if their value exceeds the claim lastingly by more than 20 %.
- (2) The goods shall remain our property. In case of behavior of the customer that is contrary to the contract, particularly in case of payment default, we shall be entitled to demand the delivery item back. Taking back the delivery item does not mean that we withdraw from the contract, unless we have expressly declared withdrawal in writing. A garnishment of the delivery item is always considered a withdrawal from the contract by us. After taking back the delivery item we shall be entitled to make use of it; the proceeds of such usage are to be offset against the liabilities of the customer – less reasonable usage costs.
- (3) The customer is obliged to treat the delivery item with care, and in particular, to insure it at his/her own expense and at replacement value against theft, fire and water damages. If maintenance and inspection work is required customer shall perform them in due time and at his/her own expense.
- (4) Customer performs processing and modifications always for us as manufacturer, but without any obligation for us. If our (co-)ownership ceases due to mixing, already now it is spread upon the (co-)ownership of the customer regarding the unit item (einheitliche Sache) – transferred to us according to the value percentage (invoice value). The customer shall store our joint property free of charge. Goods of which we are entitled to be co-owners are hereinafter referred to as goods subject to retention of title. On open account the goods subject to retention of title are considered a security for our outstanding balance claim and this is also in the event that payments for particular claims are made. An account balance is considered accepted if the customer does not object to the balance notification within 2 weeks after receipt.

- (5) The customer shall be entitled to process the goods subject to retention of title in the normal course of business and to conditional sale, as long as he/she is not defaulting on his/her obligations or transfers by way of security shall not be permitted. As a precaution, the claims resulting from the purchase or other legal causes (insurance, illegal action) regarding the goods subject to retention of title (including outstanding balance claims from the open account) will already now be fully assigned to us by the customer. We revocably authorize the customer to collect the claims assigned to us for our account and on his/her own behalf. Upon our request the customer shall disclose the assignment, give us the necessary details and hand over the necessary documents.
- (6) If third parties access the goods subject to retention of title the customer shall point out that they are our property and inform us immediately. Costs and damages are borne by the customer.
- (7) If the customer should not fulfill his/her payment obligations or if he/she suspends payment or does not cash a cheque or a bill, the supplier shall be entitled to take direct possession of the goods subject to retention of title at any time.

§ 7

Warranty and Liability

- (1) If the delivery item is defective or lacking any promised features or gets damaged due to manufacturing faults or material deficiencies within the period of warranty, the warranty claims of the customer are first limited to supplementary performance or compensation delivery at our option within a reasonable period of time. Only in the event that supplementary performance fails the customer may at his/her option cancel the purchase or demand a reduction of the price. The failing of the supplementary performance normally requires for an amendment a twice done unsuccessful attempt, provided this would be reasonable. In case of foreign goods which are an integral part of the delivery, our liability may be at first be limited to the assignment of claims that we are entitled to raise against the suppliers of the foreign goods. According to § 439 of German Civil Code the assigned claims include supplementary performance or compensation delivery. If we make use of this right, the customer shall not be entitled to withdraw. In the event that supplementary performance or compensation delivery fails, a reduction of the price can be demanded. Only after previous unsuccessful extrajudicial use of a third party the warranty claims against us that were blocked so far will be renewed.
- (2) The use of a third party is particularly unsuccessful if the third party has rejected the warranty claims, has got into financial collapse or the warranty claim is not asserted against the third party.
- (3) Obvious defects, especially damages caused by transport, missing parts and wrong deliveries, shall be reported immediately, at the latest within a period of 2 days after receipt of the delivery. Rejected goods shall neither be processed nor installed.
- (4) The customer shall report other defects immediately in writing, at the latest within a period of two weeks after receipt of the delivery item, the provisions in paragraph 2 shall remain unaffected. The defective delivery items are to be provided to us for inspection in the same condition as they had been at the moment of fault detection. Defects that were not detected despite careful examination during this period must be reported immediately in writing when being detected.
- (5) We do not assume liability on the item, caused by inappropriate handling by the customer or a third party, unless the damages were caused by our fault. The onus of proof lies with the customer.
- (6) The time of warranty is 24 months, concerning goods that are usually used for construction, and 12 month concerning all other goods. The time of warranty of 12 months is essential in particular, concerning exchangeable technical components, especially motors, ventilators and heaters. The customer is obliged – besides reporting the existing faults in writing as prescribed in clause 3 – to send the faulty goods back only after receiving a corresponding damage mark from us, which will enable the customer to assign his/her goods to a certain order allowing the fast processing of fault cases. The shipping costs will be repaid to the customer by us if the goods are really defective. If the customer does not give us the possibility of supplementary performance, we shall be exempted from liability. The customer is only entitled to clear the fault by himself/herself or have the fault cleared by a third party in urgent cases when operational safety is at risk or for defending disproportionately large damages – in such cases we are to be informed immediately – or if we are in default of clearing the fault; the customer is also entitled to demand the compensation of the necessary costs.
- (7) In the following cases we do not assume liability for damages resulting from:
 - > wear and tear
 - > dynamically stressed parts and products
 - > unauthorized assembly or unauthorized startup by the customer or a third party
 - > inappropriate or incorrect usage
 - > incurred or negligent handling
 - > non-observance of the operation and maintenance manual
 - > non-observance of the technical documentation
 - > use of inappropriate equipment
 - > unauthorized modifications or repair work performed by the customer or a third party
 - > inappropriate building ground or assembly site
 - > chemical or electromagnetic impacts unless they are caused by the supplier
- (8) If touching up or a compensation delivery is impossible or the customer has set a reasonable period of grace for touching up or compensation delivery in vain he/she shall be entitled to withdraw from the contract. The customer shall always be entitled to withdraw from the contract in case of lack of guaranteed features.
- (9) For touching up and compensation delivery we assume the same liability as for the original delivery item.
- (10) To the best of our knowledge, we will provide our customers with information and advice concerning the use of our products. We are only liable for defects beyond the statutory duty. If a special payment was agreed upon, since our liability is limited to maximum 25 % of the special payment, unless we have caused the damage in a grossly negligent or intended manner.
- (11) Claims for damages resulting from the violation of contractual obligations and from illegal actions shall be excluded both against the user and the vicarious agent of whom, unless it was acted in a grossly negligent or intended manner. This shall not apply to mistakes as far as a principal obligation is concerned. This exclusion of liability shall not apply in case of lack of features that have been guaranteed, if such guarantee is intended for safeguarding the customer against damages that have not occurred on the delivery item itself (so-called consequential damages). Liability is limited to the damage that is reasonably foreseeable at the moment of contract conclusion and that is typical for this type of contract - in any case, however, it is limited to the maximum amount covered by our liability insurance. According to the Product Liability Act, any claims of the damaged party resulting from personal injury or damage to private property damages shall remain unaffected by these liability exclusion regulations.

- (12) Any further claims of the customer, in particular claims for damages, for what legal cause soever, are excluded. We are neither liable for damages that have not occurred on the delivered goods themselves nor for other financial losses of the customer. The warranty disclaimer shall not apply to damage to persons. To other damages it does not apply if the cause of damage is deliberate act and gross negligence. It does also not apply if the damage results from the lack of condition which was guaranteed by us.
- (13) The persons authorized by us to perform fault inspections shall not recognise faults or give binding explanations for us.
- (14) We do not accept (BGB) (German law) containing the provisions regarding the rights of recourse of the enterprises supplied by us shall remain unaffected by the aforementioned provisions. They shall apply under the condition that our customers (dealers) undertake to mark such goods correspondingly that were rebuilt or modified by them after delivery.
- (15) We shall not be liable for faults resulting from unauthorized rebuilding work performed by the customer before transferring them to the consumers.
- (16) If the customer violates the obligation of labelling and a fault is detected afterwards, which results from rebuilding works, the customer shall compensate the costs incurred to us from fault clearance. Our liability for deliberate act and gross negligence shall remain unaffected.

§ 8

Export

- (1) The customer shall – unrequested – indicate the country to which delivery is to be effected within one week after receipt of order confirmation. The customer shall be responsible for getting information about the applicable regulations and provisions regarding the import to the country of destination. Irrespective of whether the customer indicates the final place of destination for the delivered products, the customer shall be responsible for obtaining the necessary permissions of the responsible foreign trade agency before exporting such products. The supplier is not obligated to give information.
- (2) The customer shall ensure the compliance with the currently applicable AWG/AWW/EG Dual Use Regulations as well as with the US export regulations. He/she shall communicate the provisions to be observed to the supplier. If the customer intends an re-export of the goods he/she shall be obliged to obtain the necessary permissions.
- (3) Any further delivery of goods by the customer to third parties – with or without our knowledge – requires the transfer of export permission conditions. The customer shall be fully liable in the event of non-compliance with the applicable provisions.
- (4) The contract with the customer is concluded under the express reserve that the provisions of the applicable AWG/AWW/EG Dual Use Regulations and the US export provisions are complied with. If we cannot supply to the customer due to the aforementioned provisions, the customer shall expressly abandon possible claims against us – irrespective of what kind they are.

§ 9

Data Protection, Property Right

- (1) According to the provisions of the Data Protection Act we inform the customer about the fact that we process and transfer personal data necessary for business transactions within the company and by means of electronic data processing.
- (2) In the event that third parties assert the violation of industrial property rights regarding the delivery item against the customer, he/she shall be obliged to give us immediate notice.

§ 10

Place of Jurisdiction, Severability, Applicable Law

- (1) The exclusive place of jurisdiction is Auerbach.
- (2) The substantive law of the Federal Republic of Germany shall exclusively apply. The Uniform Law on the International Sale of Goods shall be excluded.
- (3) If any of the provisions of these terms and conditions or any of the provisions of other agreements should prove to be or to become ineffective, this does not affect the effectiveness of the remaining provisions or other agreements. The ineffective provision shall be replaced by an effective provision which as closely as possible approximates to the economic purpose of the ineffective provision.
- (4) From 01.03.2015, for newly concluded contracts only these general sales, delivery and payment terms shall apply.