

Terms and Conditions

Preliminaries

These Terms and Conditions apply for industrial and commercial customers as well as customers in trade and public administration. Where the term „company“ is used in the following, alongside companies within the definition of Section 14 of the German Civil Code, it will also encompass legal persons established under public law and special funds under public law (Section 310 I 1 of the German Civil Code).

I. Scope of application and data protection

1. Our Terms and Conditions alone apply in respect of all supplies and services including quasi-contractual arrangements within the definition of Section 311 II and III of the German Civil Code. We do not acknowledge any of the customer's business conditions that are contrary to our Terms and Conditions, even where these have been presented to us, unless we have expressly agreed their applicability in writing. These Terms and Conditions are also applicable for all future legal and quasi-contractual arrangements made with our customers.
2. By accepting our supplies and services, companies are acknowledging the applicability of our Terms and Conditions. Furthermore, all individual and ancillary agreements that are to have precedence over these Terms and Conditions must be made in writing where these deviate from our Terms and Conditions.
3. All customer data recorded during registration or ordering will be stored by us and further processed for the purpose of executing orders and providing customer support. The aforementioned information constitutes notification within the terms of Section 33 of the German Federal Data Protection Act.

II. Offers, formation of the agreement

1. All offers relating to our goods are subject to confirmation irrespective of whether these are set out in catalogues, data carriers and/or electronic media. These do not constitute any binding offer on our part and we therefore do not assume any procurement risk in this regard. During the validity period of catalogues, data carriers and/or electronic media, we also reserve the right to remove or substitute products in the current range, to change prices and amend other conditions such as the product characteristics for example.
2. Information, images, drawings, details regarding weights or dimensions as well as all technical data together with references to E, DIN, VDE standards or data contained in catalogues, on data carriers, in electronic media and other published advertising do not constitute warranties (assurances) but are instead merely descriptions about characteristics and quality and may be amended at any time before the formation of the agreement. Technical details contained in offers only constitute a warranty if these are clearly labelled as being a warranty or assurance. Otherwise, they only concern a description of characteristics and quality. We reserve the right to implement modifications and changes to the ordered goods where this is within the parameters of technical advances, including following the formation of the agreement. We furthermore refer to XII. no. 4.
3. We retain the legally established copyright as well as the ownership in catalogues, data carriers and electronic media and other sales documentation (but not including miscellaneous advertising mailings); these items (apart from miscellaneous advertising mailings) may not be given to any third parties. All types of use of the aforementioned documentation, in particular of the drawings, designs and logos contained therein, require our prior permission.
4. Our offers are made subject to confirmation. The order submitted by the customer constitutes a binding offer for its part. We are entitled to accept this offer within 14 days of having received the order and may do so by either issuing a written confirmation of order or by sending the customer the ordered goods within the same period.

III. Prices, payment conditions

1. Unless an alternative price agreement is concluded, the price stated is the net price in Euro with the respective statutory value-added tax being additionally payable. Unless otherwise stated by us, our prices set out in the catalogue, offer, eShop or price lists will be valid. Since the delivery and payment conditions which are set out in our most recent price lists on the day of the order or as stated by us in specific cases. Catalogues and price lists can be inspected in our retail premises or may be requested from us free of charge.
2. With respect to certain articles we reserve the right to make inquiries to the manufacturer in relation to prices and other conditions in relation to the customer's particular order. We will process and respond to customer requests in this context without delay. In our response we will inform the customer if it will be supplied directly by us or by the manufacturer instead (possibly with us acting as agent) and, where relevant, at what prices and under what other terms and conditions.
3. Delivery is rendered carriage-paid. Unless otherwise noted on the order confirmation, the goods will be deemed delivered once these have been made ready for collection by the purchaser and the purchaser has been accordingly notified of this. We do not assume any liability for defects, loss and/or deterioration of the duly delivered goods that occurs between the delivery and collection of the goods by the customer unless this is the result of our deliberate act or gross negligence. We refer to IV. 4. in this regard. In the event that delivered goods are not promptly collected, we furthermore reserve the right to charge fees in respect of storage or similar charges and to remit these charges to the customer. With regard to the contractual arrangement between us and the customer this is fundamentally a situation where the customer is required to collect. If no agreement has been made with the customer regarding the dispatch of the goods, the customer itself will be responsible for such costs.
4. Unless otherwise specifically agreed in writing, our invoices are due for payment 30 days

after being issued. The grant of discounts must be agreed in advance and in writing. Checks and payment orders are only accepted by us upon condition of fulfilment. Payment is only deemed made once the applicable sum is credited to our account. We do not accept bills of exchange by way of payment.

5. We are entitled, from the 31st day following the receipt of our invoices, to charge interest at the rate of 8% over the base interest rate p.a. We will also charge 5.00 Euro for each payment reminder issued during a period of default; the customer may demonstrate that lower reminder (dunning) costs were incurred. All customers will in any case be required to pay statutory default interest. We are in all cases entitled to claim higher losses as proven.
7. The right to set-offs on the part of the customer are excluded, unless these relate to counterclaims declared valid by a conclusive court judgement or which are undisputed or acknowledged by us. The customer only has a right of retention with respect to counterclaims that are established by way of the same contractual arrangement.
8. In the event of a default of payment on the part of the customer, we reserve the right to demand cash on delivery or advance payment before executing orders.

IV. Delivery time, receipt of goods

1. We are entitled, particularly in connection with large orders, to undertake part deliveries to that extent that this is reasonable for the customer to accept.
2. Stated delivery dates or periods will be deemed to be non-binding details unless expressly agreed upon in writing. Provided we can demonstrate that we have arranged an appropriate cover transaction with our sub-suppliers and furthermore demonstrate that our sub-suppliers failed to supply us in time, compliance with delivery periods is conditional upon the accurate and punctual receipt of our own supplies. We will promptly report any foreseeable delays.

In any case compliance with delivery times is conditional upon the conclusive clarification of all technical details, the provision of any relevant details on the part of the customer as well as receipt of any advance payment.

3. With regard to a sale to be performed at a fixed point in time within the definition of Section 286 para. 2 no. 4 German Civil Code or Section 376 of the German Commercial Code, we are liable in accordance with the statutory provisions. The same applies in the event that, as a result of a delay in delivery for which we are responsible, the customer is entitled to assert that it has no further interest in the continued performance of the agreement. In this case, our liability is limited to the foreseeable losses typical for this type of contract, provided the delay in delivery is not due to a deliberate breach of contract for which we are responsible; in such cases the culpability of our representatives and vicarious agents will be attributable to us.

We are likewise liable to the customer for other delays in delivery in accordance with the statutory provisions, if these are due to a deliberate or grossly negligent breach of contract; in such cases the culpability of our representatives and vicarious agents will be attributable to us. Our liability is limited to the foreseeable losses typical for this type of contract, provided the delay in delivery is not due to a deliberate breach of contract for which we are responsible.

In the event that a delay in delivery for which we are responsible is due to the culpable breach of a significant contractual obligation, whereby the culpability of our representatives and vicarious agents will be attributable to us, we will be liable according to the statutory provisions with the proviso that in this case the liability to pay compensation will be limited to the foreseeable losses typical for this type of contract.

All other more extensive liability is excluded in respect of any delay in delivery for which we are responsible. The foregoing is without prejudice to the statutory claims and rights of the customer to which, alongside its claim to compensation, it is entitled to by way of a delay to delivery for which we are responsible.

4. If the customer is in default of acceptance, we are thereby entitled to demand compensation in respect of the loss sustained together with all additional costs incurred. The same applies in the event that the customer culpably breaches its duties of co-operation. Upon the establishment of any default of acceptance or debtor's default, the risk of accidental deterioration and accidental loss will pass to the customer.

V. Transfer of risk, shipment

1. Where agreed and upon demand of the customer, the goods will be dispatched to its preferred delivery address (sale by delivery to a place other than the place of performance pursuant to Section 447 of the German Civil Code). The risk passes - including in relation to shipment from a warehouse and in the case of a orders executed by third parties, i.e. a shipment from the warehouse of our sub-suppliers - to the customer as soon as the article has been passed to the carrier, freight contractor or other person or organisation charged with executing the shipment. Upon the request of the customer we will arrange transport insurance at the cost of the former.

2. If the shipment is delayed for reasons for which the customer is responsible, the risk will then pass to the customer on the day on which the goods were declared ready for shipment.
3. Without prejudice to its rights under XII, the customer is required to take receipt of goods even where these manifest insignificant defects.
4. We reserve the right to examine export law provisions together with the customer's compliance with these. In the event that such provisions are infringed, we are entitled to postpone the delivery until such time as the impediment for which the customer is responsible is removed.

VI. Retention of title

1. We retain the ownership to all of the goods delivered by us vis-à-vis companies until the settlement of all our claims arising from the supply agreement, including until the payment

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of all our claims arising out of the existing business arrangement with the customer, including incidental costs and interest (extended retention of title as well as refinancing bills).

2. Until such times as otherwise revoked, we give our consent to the resale within the customer's normal course of business of the goods subject to the retention of title (reserved goods). The goods may not be made subject to a lien nor be used to provide collateral security in favour of a third party. The customer hereby in advance assigns to us its claims against third parties in respect of the resale of reserved goods. We here and now accept this assignment. We are entitled to inform the third party (which the customer is obliged to identify) of the assignment of the claim and to enforce the assigned claim in our own name.

3. If the claim arising from the resale by the customer has been collected in a current account, the customer hereby assigns to us its claims in the current account vis-à-vis the third party. We here and now accept this assignment. The assignment is made for that sum which the customer has charged in respect of the resold reserved goods.

4. As soon as and to the extent that the realisable value of the collateral provided exceeds our claims by more than 20%, we are duty bound upon demand by the customer to release securities, the decision as to which securities should be released being at our discretion.

5. The customer must inform us immediately in writing in relation to any liens asserted by third parties, or any other such interventions, and it is also required to inform the lien holder of the existence of the retention of title. Upon demand the customer is required to present us with a copy of the memorandum (deed) of the lien. Any provision as collateral security and the assignment or the provision of a lien in respect of the reversionary interest is not permitted.

6. In the event of any breach of contract on the part of the customer, in particular default of payment on its part, we are entitled to take back the purchased article. If we take back the goods from the company, this constitutes a rescission of the contract and we may re-market the said goods by implementing a resale at our sole discretion, provided we have given advance reasonable notice of the threat of resale. We will set-off the proceeds from the sale, minus the resale costs, against the debts of the customer.

7. If we are entitled to take back the goods, the customer is duty bound to enable one of our employees to perform a stock check of the currently available reserved goods.

8. The customer is required to treat all such goods in a careful manner so long as these remain our property. Where maintenance and inspection works are required, the customer must arrange for these to be regularly performed at its own cost. In particular it must insure the goods at their replacement value against risks relating to damage or destruction as a result of fire, water damage and theft.

VII. Warranty for defects

1. The following provisions regarding warranties for defects apply only for newly manufactured articles/delivered goods. Used goods/machines are sold as found.

2. The warranty claims of merchants within the commercial law definition are conditional upon the fulfilment of their duties in relation to the examination of goods and the reporting of defects pursuant to Section 377 German Commercial Code. Promptly upon receiving the goods, non-commercial customers are required to examine them for material defects, delivery of incorrect articles and incorrect amounts. Non-commercial customers are required to notify us in writing of material defects, deliveries of incorrect articles and incorrect amounts within 14 days of receiving goods. The date of the dispatch of this notice is authoritative for ascertaining if this period is adhered to.

3. If the purchased item is defective, we have the option of rendering subsequent performance either by eliminating the defect or delivering an item free of defects. The customer must grant us a reasonable period in which to render subsequent performance. We will bear the necessary costs inherent in the elimination of the defect, provided these have not been increased through the removal of the purchased item from the place of performance to another location. Only once two of our attempts at subsequent performance have failed or if we have unjustifiably refused to render subsequent performance or have failed to comply with a period stipulated for subsequent performance will the customer be able to assert its other statutory warranty entitlements. Our duty to pay compensation is limited to losses typically foreseeable for the type of contract.

4. If the goods are to be returned to us during the course of subsequent performance/elimination of the defect, we are only duty bound to accept the goods if the return delivery was notified by the customer and we confirmed the acceptance of the goods shipment in writing. If a return delivery is made without prior notification, we reserve the right to refuse to receive it. We will not bear any costs of shipment in such cases.

5. The customer is only entitled to expect fitness or usability of the goods which extends over and beyond the normal use or which deviates from such normal use, or a quality that is not usual for goods of a similar nature, if this is established by way of an appropriate agreement or on the basis of statements made within the definition of Section 434 para. 1 sentence 3 of the German Civil Code. We are available to the customer to provide it with information and advice to the best of our knowledge in relation to the use of our goods. We will however only be liable over and beyond the provisions of no. 3 if a separate consulting agreement has been concluded or if a payment over and beyond the purchase price of the goods has been agreed in respect of such services.

6. Claims in relation to material defects are limited to a period of one year, starting from the date of delivery of the goods, unless we fraudulently concealed the defect. The short limitation period does not apply in respect of compensation claims relating to death and personal injury for which we, our statutory representatives or vicarious agents are culpable or in relation to deliberate/grossly negligent acts performed by us, our statutory representatives or vicarious agents.

7. The defective state must be demonstrated by the customer. Instances of incomplete delivery or the delivery of incorrect goods or any other breaches of accessory duties for which we are responsible within this contractual arrangement must likewise be proven by the customer and we will be granted a reasonable period by the customer in which to rectify the said breach. In the event of an incomplete delivery, we are entitled to rectify insignificant shortfalls either by means of subsequent delivery or through the issue of a credit note.

8. In the event of non-compliance with the operating and maintenance instructions enclosed with the delivered item by the manufacturer or supplier or if modifications were made to the article, all warranties will be rendered invalid, insofar as these circumstances played some part in the occurrence of the defect.

9. If an item/product delivered by us has a defective title, we are entitled at our discretion to eliminate this defect either through the delivery of a substitute article of equivalent value and comparable usability or by reaching an agreement with the appropriate third party.

VIII. Traceability

If the customer passes any goods delivered by us onto a third party, it will ensure that these remain traceable by taking appropriate measures. It will in particular ensure that in the event of a measure required for reasons relating to product liability laws (e.g. product recall, product warning) the delivered goods can be located and the most recent customer can be contacted promptly. If the customer does not pass the goods delivered by us onto any third party, but instead utilises/consumes these within its own operations, it will likewise ensure, in the event of a requisite measure pursuant to sentence 2, that the delivered goods still in storage or in use can be located.

IX. Liability/disclaimer

1. We are unreservedly liable in accordance with the statutory provisions for death and personal injury caused by the deliberate or grossly negligent breach of duty by us, our statutory representatives or our vicarious agents, as well as for damage/loss which is encompassed by the liability established under the product liability laws. We are liable pursuant to the statutory provisions for damage/loss which is not encompassed by sentence 1 and which is caused by deliberate or grossly negligent acts or bad faith for which we, our statutory representatives or vicarious agents are responsible. In this case the liability to pay compensation is however limited to the foreseeable losses typical for this type of contract, in the event that we, our statutory representatives or our vicarious agents did not act deliberately. In the event that we have given a guarantee in respect of quality and/or durability we will be liable on the basis of and within the terms of this warranty. We are only liable under this warranty for damage caused indirectly by the goods, if the risk of such damage is encompassed within the warranty.

2. In the event of a breach of duty from which we are responsible, the customer will grant us a reasonable period (at least 3 weeks) in which to eliminate the breach. Only once this period has expired may the customer rescind the agreement and/or claim compensation. Claims for compensation in lieu of performance as well as the losses incurred due to the delay are limited to the losses sustained through reliance on the assurance made by use. Claims for compensation in respect of the failure to render or properly render contractual performance are limited to the sum of the purchase price.

3. We are also liable for damage which is caused by ordinary negligence where the negligence relates to the infringement of a contractual duty, compliance with which is of special importance for the achievement of the contractual objective (cardinal obligation). We are however only liable insofar as the damage is typical and foreseeable in relation to this agreement.

4. Any other more extensive liability is excluded irrespective of the legal nature of the asserted claim; this applies in particular to claims in tort or claims for the compensation of fruitless expenses in lieu of performance; our liability in respect of delays is not hereby affected. Insofar as our liability is excluded or limited, this applies equally in respect of the personal liability of our employees (of whatever grade or type) as well as our representatives and vicarious agents. Strict liability pursuant to the statutory provisions is in any case excepted from this.

5. This regulation on liability applies equally in respect of quasi-contractual arrangements within the definition of Section 311 para. 2 and 3 of the German Civil Code.

6. In the event that our products are required to comply with safety regulations, these will relate to such provisions as are applicable in Germany; in the event that goods are transported abroad we will not be liable for the failure to comply with the locally applicable regulations - only the customer is responsible in this regard.

X. Place of performance, applicable law and court

1. The place of performance for deliveries, payments to merchants within the commercial law definition, legal persons established under public law and special funds under public law is that place of business specified in our declaration offer/acceptance. Disputes will be heard before the relevant court in Nuremberg. This last provision also applies in the event that no court in Germany has general jurisdiction over the customer's registered business location or if its domicile/business address or usual place of residence is not known as the time that the action is initiated.

2. This agreement will be governed by the law of the Federal Republic of Germany to the exclusion of the rules on the conflict of laws. The provisions of United Nations Convention on Contracts for the International Sale of Goods are not applicable.