

1. General

1.1 These General Terms and Conditions shall apply to the following:

- Persons who act in the exercise of their commercial or self-employed professional activity when concluding the contract (entrepreneurs)
 - Legal persons under public law or a special fund under public law
- And to all – including future – deliveries and services of our company within the framework of purchase, work and service contracts.

1.2 We expressly object to any deviating, conflicting or supplementary terms and conditions of the customer. They shall not bind us even if we have not expressly objected to them again after receipt by us or if we carry out the delivery to the customer without reservation in the knowledge of the customer's general terms and conditions.

1.3. Legally relevant declarations and notifications of the customer with regard to the contract (e.g. setting of a deadline, notification of defects, withdrawal or reduction) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax).

2. Conclusion of contract

2.1 Our offers are subject to confirmation and non-binding. The order of the goods by the customer shall be deemed a binding contractual offer. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within 14 working days of its receipt. Acceptance may be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the customer.

2.2 Supplements and amendments to the agreements made, including these Conditions of Sale and Delivery, must be made in writing in order to be effective. With the exception of managing directors and authorised signatories, employees of the seller are not entitled to make oral agreements deviating from the written agreement. In order to comply with the written form, mediation by means of telecommunications, in particular telefax or e-mail, shall suffice, provided that the copy of the signed declaration is transmitted.

2.3 Drawings, illustrations, technical data, descriptions of weight, dimensions and performance published by us are only approximate unless their usability for the contractually intended purpose requires exact conformity or unless they are expressly designated as binding in the order confirmation. They are not guaranteed characteristics, but descriptions or markings of the delivery or service. Deviations customary in the trade and deviations that occur due to legal regulations or represent technical improvements as well as the replacement of components by equivalent parts are permissible as long as they do not impair the usability for the contractually intended purpose. We reserve ownership rights and copyrights to all documents, papers and data mentioned in this Clause 2.4; they may not be made accessible to third parties.

2.4 The customer assumes sole responsibility for the documents he provides, such as drawings, gauges, samples or suchlike. The customer shall be responsible for ensuring that the execution drawings submitted by him do not interfere with the industrial property rights of third parties. We shall not be obliged to examine whether the submission of offers on the basis of execution drawings submitted by the customer infringes the industrial property rights of third parties in the event of execution or for other reasons. If claims are nevertheless asserted by third parties, the customer shall indemnify us from this insofar as he is responsible for the assertion of claims by the third party.

3. Prices

3.1 Our prices shall apply to the services and scope of delivery listed in the order confirmations and, unless otherwise agreed, shall include loading ex works or ex warehouse. All other costs, such as packaging, freight, customs duties, mineral oil levies, insurance premiums, etc. as well as the statutory value added tax shall be charged additionally.

3.2 If our manufacturing costs increase for reasons beyond our control (e.g. input material, alloy surcharges, wages, etc.) or if freight, public charges or fees are introduced or increased after conclusion of the contract, we shall be entitled – even in the case of carriage paid and/or duty paid delivery – to change the price accordingly if the customer is a registered trader or a legal entity under public law or if the ordered goods are only to be delivered four months after conclusion of the contract. In the event of substantial price increases, the customer shall be entitled to withdraw from the contract.

3.3 We generally sell in euros. In the case of sales in a foreign currency, we are entitled to charge the customer with a possible exchange rate loss arising from the conclusion of the contract until receipt of payment.

4. Payment and offsetting

4.1 Unless otherwise agreed, our prices are to be paid within 30 days without deduction from the invoice date. The date of receipt by us shall be decisive for the date of payment. Payment by cheque is excluded unless agreed separately in individual cases.

4.2 If the term of payment is exceeded, we shall be entitled to charge interest in the amount of the respective bank rates, but at least 9% above the respective base rate of the European Central Bank. We reserve the right to assert further claims for damages caused by default. § 353 HGB remains unaffected.

4.3 If, after conclusion of the contract, the customer's financial circumstances deteriorate significantly and our claim to consideration is jeopardised, we shall be entitled to refuse performance and – if necessary after setting a deadline – withdraw from the contract in accordance with the statutory provisions (§ 321 BGB); the statutory provisions on the dispensability of setting a deadline shall remain unaffected.

4.4 Offsetting against counterclaims of the customer or retention of payments due to such claims shall only be permissible if the counterclaims are undisputed or have been legally established.

5. Scope of delivery, delivery periods and dates

5.1 Delivery periods and dates are only approximate unless we have expressly designated them as binding in writing. The delivery period shall commence on the day of our order confirmation, but not before all technical and commercial details have been clarified and any necessary approvals have been obtained, unless otherwise expressly agreed or promised. Any changes in the design of the delivery item requested by the customer within the delivery period shall extend the delivery period accordingly.

5.2 We reserve the right to under-deliver or over-deliver up to 10% in the case of custom-made products or order-related production.

5.3 We are entitled to make partial deliveries if:

- the partial delivery can be used by the customer within the scope of the contractually intended purpose,
- the delivery of the remaining ordered goods is ensured and
- the customer does not incur any considerable additional expenses or additional costs as a result thereof

(unless we agree to bear such costs).

5.4 The occurrence of unforeseen events entitles us to postpone delivery for the duration of the hindrance and a reasonable start-up period. Unforeseen events are those circumstances that we cannot avert with reasonable care in the circumstances of the case, e.g. war, currency and trade policy or other sovereign measures, civil unrest, forces of nature, fire, strikes, lockouts, non-delivery of input material through no fault of our own in the case of congruent covering transactions, traffic and operational disruptions and other cases of force majeure, which jeopardise, substantially complicate or render impossible the performance of the delivery contract. In cases of substantial complication, impossibility or hindrance of a duration that is not only temporary, we are entitled to withdraw from the contract without granting damages. The customer may demand a declaration from us as to whether we withdraw from the contract or deliver within a reasonable period of time. If we do not make such a declaration, the customer may withdraw from the contract.

6. Shipment and transfer of risk

6.1 Unless otherwise agreed in writing, the goods shall be delivered unpacked. If packaging has been agreed, this shall always be done in the customary manner against payment.

6.2 The delivery item shall be shipped at the expense and risk of the customer. The risk shall be passed on to the customer when the goods are handed over to a forwarding agent or carrier, at the latest, however, when they leave our warehouse or delivery plant, even in the case of delivery free to destination. If acceptance has been agreed, this shall be decisive for the transfer of risk. For the rest, the statutory provisions of the law governing contracts for work and services shall also apply mutatis mutandis to an agreed acceptance. Delivery or acceptance shall be deemed to have taken place if the customer is in default of acceptance.

6.3 Goods reported ready for dispatch must be called off immediately. Otherwise, we shall be entitled, at our discretion, to dispatch them or to store them at the expense and risk of the customer and to invoice them immediately. In case of storage by us, the storage costs shall amount to 0.5% of the invoice amount of the goods to be stored per week. The proof of higher damages and our legal claims, in particular compensation for additional expenses, reasonable compensation and termination, shall remain unaffected; however, the lump sum shall be offset against further monetary claims. The customer shall be entitled to prove that we incurred no damages at all or only considerably less damages than the aforementioned lump sum.

6.4 Transport insurance shall only be taken out by us on the basis of a special written agreement for and for the account of the customer; this shall also apply in cases where free delivery to the place of destination is agreed.

7. Retention of title

7.1 All delivered goods shall remain our property (reserved goods) until all claims arising from the entire business relationship have been satisfied, irrespective of the legal basis, even if payments have been made for specially designated claims. In the case of a current invoice, the reserved property shall serve as security for our balance claim. If the cheque/bill of exchange procedure is carried out between us and the customer, the retention of title shall remain in effect until we can no longer be legally held liable for the bill of exchange. The same applies to other contingent liabilities that we enter into for the customer.

7.2 Processing of the reserved goods shall be carried out for us as manufacturer within the meaning of §§ 950 BGB (German Civil Code) without any obligation on our part. The treated and processed goods shall be deemed reserved goods within the meaning of Clause 1.

7.3 If the goods delivered by us are mixed or combined with other objects and our ownership of the reserved goods expires as a result, the customer shall transfer co-ownership to us in the ratio of the invoice value of our reserved goods to the total value of the new object and shall store these goods for us free of charge. The goods resulting from the processing or from combination or mixing shall be deemed to be reserved goods within the meaning of Clause 1.

7.4 The customer may resell the reserved goods only in the ordinary course of business at his normal terms and conditions and as long as he is not in default, provided that the claim from the resale together with ancillary rights is transferred to us to the extent resulting from the following paragraphs. The customer is not entitled to dispose of the reserved goods in any other way. The use of the reserved goods for the fulfilment of contracts for work and services and delivery contracts shall also be deemed a resale.

7.5 The customer's claims arising from the resale or any other legal reason (insurance, tort) in respect of the reserved goods are hereby assigned to us in full. They shall serve as security to the same extent as the reserved goods within the meaning of Clause 1.

7.6 If the reserved goods are resold by the customer together with other goods, the claim from the resale shall be assigned to us in the amount of our invoice amount. In the event of the resale of goods in which we have co-ownership shares in accordance with Clause 3, a part of the claim corresponding to our co-ownership share shall be assigned to us.

7.7 The customer is entitled to collect claims from the resale unless we revoke this collection authorisation; we are entitled to do this in the event of the customer's payment arrears and in the event of a significant deterioration in his financial circumstances. At our request, the customer is obliged to inform his customers immediately of the assignment to us – unless we do so ourselves – and to provide us with the information and documents necessary for collection of the claims.

7.8 In the event of breach of contract by the customer, in particular non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or demand the return of the reserved goods on the basis of the retention of title. The demand for surrender does not at the same time include the declaration of withdrawal. Rather, we are entitled to only demand the return of the goods and reserve the right to withdraw from the contract. If the customer does not pay the due purchase price, we may only assert these rights if we have unsuccessfully set the customer a reasonable deadline for payment beforehand or if such setting of a deadline is superfluous according to the statutory provisions.

7.9 The customer must inform us immediately in writing if an application is filed for the opening of insolvency proceedings or if third parties intervene, e.g. by seizing the reserved goods. The goods subject to retention of title may neither be pledged to third parties nor assigned as security until the secured claim has been paid in full.

7.10 If the value of the securities existing for us exceeds our claims by more than 10% in total, we are obliged to release securities of our discretion at the request of the customer.

8. Warranty claims of the customer

8.1 The statutory provisions shall apply to the customer's rights in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly or defective assembly instructions), unless otherwise specified below.

8.2 The customer's claims based on defects presuppose that he has fulfilled his statutory obligations to inspect and give notice of defects (§§ 377, 381 HGB). In the case of goods intended for installation or other further processing, an inspection must always be carried out immediately prior to processing. If a defect becomes apparent upon delivery, inspection or at any later point in time, we must be notified thereof in writing without delay. In any case, obvious defects must be reported in writing within 14 working days of delivery and defects not recognisable during the inspection within the same period as soon as they are discovered. If the customer fails to properly inspect the goods and/or give notice of defects, our liability for the defect that has not been reported or that has not been reported on time or properly shall be excluded in accordance with the statutory provisions.

8.3 If the delivered item is defective, we may initially choose whether to provide subsequent performance by remedying the defect (subsequent improvement) or by supplying a defect-free item (replacement delivery). Our right to refuse subsequent performance under the statutory conditions shall remain unaffected.

8.4 The customer shall give us the time and opportunity required for the owed subsequent performance, in particular to hand over the goods in question for inspection purposes. In the event of a replacement delivery, the customer must return the defective item to us in accordance with the statutory provisions. Subsequent performance shall include neither the removal of the defective goods nor their reinstallation if we were not originally obliged to install them.

8.5 We shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs as well as any dismantling and installation costs, in accordance with the statutory provisions, if a defect actually exists. Otherwise, we may demand reimbursement from the customer for the costs incurred as a result of any unjustified request to remedy defects (in particular testing and transport costs), unless the lack of defectiveness was not identifiable to the customer.

8.6 In the case of production/delivery according to a design specified by us from the customer or according to customer specifications or customer drawings, we shall not assume any liability for defects for suitability for the intended purpose; in this case, our liability for defects shall only extend to execution in accordance with the drawings.

8.7 Our liability for defects does not exist in the following cases: Unsuitable or improper use, overloading, faulty assembly or commissioning by the customer or third parties, natural wear and tear, faulty or negligent treatment, unsuitable operating materials, chemical, electrochemical or electrical influences, insofar as they are not within our area of responsibility. Claims of the customer for damages or futile expenses shall only exist in accordance with Clause 8, even in the case of defects, and are otherwise excluded.

8.8 Any liability for material defects shall be excluded in the case of used objects of purchase; this shall not apply in cases of fraudulent concealment or breach of a guarantee, gross negligence and culpable injury to life, limb and health.

9. Other liability

9.1 Unless otherwise stated in these Conditions of Sale and Delivery, including the following provisions, we shall be liable for any breach of contractual and non-contractual obligations in accordance with the statutory provisions.

9.2 We shall be liable for damages – for whatever legal reason – within the scope of liability for culpa in contrahendo, intent and gross negligence. In the event of simple negligence, we shall be liable, subject to statutory limitations of liability (e.g. care in our own affairs, insignificant breach of duty), only for

- a) for damages resulting from injury to life, body or health,
- b) for damages resulting from the breach of an essential contractual obligation (obligation, the fulfilment of which is essential for the proper performance of the contract and on the observance of which the contractual partner regularly relies and is entitled to rely); in this case, however, our liability shall be limited to compensation for the foreseeable, typically occurring damage.

9.3 The limitations of liability resulting from Clause 9.2 shall also apply to breaches of duty by or for the benefit of persons for whose actions we are responsible in accordance with the statutory provisions. They shall not apply if we have fraudulently concealed a defect or assumed a guarantee for the quality of the goods and for claims of the customer under the Product Liability Act.

10. Statute of limitations

10.1 The general limitation period for claims arising from material defects and defects of title shall be one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance. The above limitation period shall also apply to contractual and non-contractual claims for damages by the customer based on a defect in the goods.

10.2 The customer's claims for damages pursuant to Clause 9.2 subclause 1 and subclause 2 a) and under the Product Liability Act shall, however, become statute-barred exclusively in accordance with the statutory limitation periods.

11. Place of performance, place of jurisdiction and applicable law

11.1 The place of performance for our deliveries shall be the supplying plant in the case of deliveries ex works and our warehouse in the case of other deliveries.

11.2 The exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Duisburg. Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected by this provision.

11.3 These Conditions of Sale and Delivery and the contractual relationship between us and the customer shall be governed by the laws of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

12. Personal data

We are entitled to store and process the customer's personal data by means of electronic data processing.