

General Conditions of Sale and Delivery ("Conditions of Sale")



Status: 03/2017

1. Scope of Validity: Our deliveries and services are exclusively subject to these Conditions of Sale. Terms that vary (a) from these Conditions of Sale, including any general conditions of Purchaser, or (b) those specified by law, shall only be considered binding if they have been confirmed by us in writing. Our delivery of goods, performance of services or acceptance of payments does not constitute a recognition on our part of conditions that vary from these general terms and conditions.

2. Quotations, Contracts: Our offers are made subject to confirmation. A contract is only formed when we give written order confirmation or when orders are fulfilled by us.

3. Writing Clause:

3.1 Amendments, supplements or the cancellation of a contract or these Conditions of Sale including this clause 3.1, must be made in writing and agreed by both parties.

3.2 Any statement and notifications issued by Purchaser after conclusion of the contract are only effective if they are made in writing.

4. Prices: Unless otherwise agreed, our prices are quoted ex works and do not include the cost of packing. Value added tax shall be payable separately in the statutory amount in effect on the invoice date.

5. Payment, Assignment of Payment Claims, Delay of Payment, Set-off:

5.1 Unless agreed otherwise, payment to us by Purchaser has to be effected 5 days after delivery of the goods or performance of the services.

5.2 Without any approval from Purchaser we are entitled to assign our payment claims. If the goods have been processed, combined or mixed by Purchaser with goods of others the amount of the anticipatory assigned payment claims is restricted to the value of the reserved goods.

5.3 In case of any delay of payment by Purchaser any and all existing payment claims become due immediately.

5.4 Set-off by Purchaser is permitted only with claims that are undisputed or have been upheld by final decision of a court of competent jurisdiction.

6. Place of Performance, Shipment:

6.1 The place of performance of delivery or service shall be our place of supply or storage.

6.2 If shipment of the goods has been agreed upon, we shall ship the goods at Purchaser's risk. Furthermore, we shall specify the manner of shipment, shipment route and carrier.

7. Partial Shipment and Performance: Partial shipment and performance shall be possible in an acceptable scope.

8. Delivery Schedules; Delay:

8.1 If we fail to comply with agreed to delivery or performance schedules or other contractual obligations, Purchaser shall establish an additional delivery period of reasonable length. Such additional delivery period shall be at least three (3) weeks.

8.2 If delivery or performance does not occur by the end of the additional delivery period and if Purchaser for this reason intends to exercise its option of withdrawing from the contract or claiming damages instead of delivery, Purchaser shall notify us of this expressly by requesting delivery and establishing a further additional reasonable delivery or performance period. Purchaser shall upon our request within a reasonable time period declare, whether Purchaser - because of the delay in delivery / performance - withdraws from the contract and / or whether Purchaser claims damages instead of delivery, or whether Purchaser insists on delivery / performance within the further additional delivery or performance period.

9. Transport Insurance: We are authorized to cover appropriate transport insurance on behalf and at the expense of the Purchaser in an amount at least equal to the invoiced value of the goods.

10. Retention of Title:

10.1 The goods sold shall remain our property until all claims arising out of our business relationship with Purchaser have been satisfied. If the goods have been processed or finished by Purchaser, our retention of title shall extend to the new finished product.

10.2 If the goods have been processed, combined or mixed by Purchaser with goods of others, we acquire joint title pro rata, to that part of the goods that represents the invoiced value of our goods in relation to the total value of the other goods which have been processed, combined or mixed.

10.3 In the event our goods are combined or mixed with finished goods of Purchaser or of any third party, Purchaser hereby assigns its rights to us with regard to such finished goods. If Purchaser combines or mixes our goods with finished goods of a third party for compensation, Purchaser hereby assigns to us its right to compensation from such third party.

10.4 Purchaser may, in the ordinary course of its business, resell any goods which are subject to our retention of title. If, upon such resale, Purchaser does not receive the full purchase price in advance or upon delivery of such goods, it shall agree with its customer a retention of title in accordance with these conditions. Purchaser hereby assigns to us all its claims arising from such resale and its rights arising from the said agreement for retention of title. When required by us, Purchaser shall advise its customer of such assignment of rights and provide us with the information and documents necessary to enforce our rights. Notwithstanding the foregoing, Purchaser shall only be entitled to collect payments from claims from such resale to any third party as long as Purchaser properly satisfies its liabilities to us.

10.5 In the event that the security interests granted to us exceed the value of our claims, we shall, when requested, be obliged to release security interests which we deem appropriate. In the exercise of our retention of title a withdrawal of contract can only then be seen, if we have beforehand expressly declared this in writing.

11. Force Majeure: Conditions of Force Majeure shall relieve us from our delivery and performance obligations. The same rights shall apply with respect to cases of interruptions in our supplies of energy or raw materials or in cases of industrial disputes, governmental decrees, breakdowns of transport or of our operations or if our suppliers fail, due to force majeure events, or for the foregoing reasons to deliver at all, or fail to deliver in a proper or timely manner.

12. Product Information: Notwithstanding anything to the contrary in this clause, any information about properties, durability and other data shall represent guarantees only if they are expressly agreed and indicated as such in writing by us. Unless otherwise agreed by the parties, the contractual characteristics of the products shall exclusively be based on the

applicable product specifications published by us. Written and verbal information about our products, equipment, plant and processes is based on research and our experience in the field of applied engineering. We provide this information, which is accurate to the best of our knowledge, and reserve the right to make modifications and upgrades to it, but assume no liability in respect of it other than as agreed in the terms of an individual contract. The aforesaid shall not relieve Purchaser of its obligation to verify the suitability of our products and processes (or any applications and processes of third parties) for the use or application intended by Purchaser. This shall also apply to the protection of third party intellectual property rights as well as applications and processes.

13. Complaints: All Purchaser complaints, particularly those regarding the quality or quantity of the goods, must be submitted to us in writing without delay, but not later than ten (10) days from delivery of the goods or in the case of latent defects within ten (10) days from the date such defect(s) is discovered or should have been discovered through the exercise of reasonable investigation. If Purchaser does not advise us of complaints or notices of defects in accordance with such deadlines or in the agreed form, our deliveries and services are deemed to be without defect with respect to the complaint or notice being not timely or not according to the agreed form. If Purchaser knowing of defects accepts our deliveries or services, Purchaser shall only be entitled to rights deriving from such defects if Purchaser has expressly reserved such rights in writing.

14. Rights of Purchaser in Case of Defects:

14.1 Purchaser cannot derive rights from a defect in our goods and services if only negligible impairment of the value or the usage of our goods and services exists. In the event of justified claims arising from the quality of the delivered goods or services, we reserve the right, solely at our discretion, to either replace or repair the goods. For this, we always are to be given the opportunity within reasonable time. If our repair or replacement fails to remedy the defects, Purchaser shall be entitled to either adjust the purchase price or withdraw from the contract.

14.2 Further Purchaser may claim damages pursuant to statutory requirements and refunds of its actual out-of-pocket expenses necessary for the purpose of repair or replacement. Refund shall be precluded should such expenses be increased because the goods were later transported to a place other than the seat of Purchaser, unless such transport corresponds to the intended use of the goods or is agreed between the parties. For the avoidance of doubt Section 15 shall apply to claims for damages and refunds under this section 14.2.

14.3 Claims of Purchaser for recourse against us as provided for by statutory law are only given to the extent Purchaser has not with its customers agreed to provisions surpassing the legal rights in case of defects. Where such claims are for refund of expenses, section 14.2 applies accordingly.

14.4 As far as claims against Purchaser have been successful pursuant to the regulations for consumer goods purchases, regress claims by way of recourse demands shall not be void pursuant to the provisions governing consumer goods purchases.

15. Limitation of Liability:

15.1 We, our legal representatives, employees, and persons employed in performing our obligations can only be held liable for damages and recourse claims of Purchaser, irrespective of the legal basis therefor, based on (i) breaches of obligations deriving from the contract (ii) tortious acts (iii) intentional misconduct or gross negligence on our part, the part of our legal representatives, employees or persons employed in performing our obligations, or (iv) if the breach of our contractual obligations violates the essence of the contract (essential obligations). In the case of slightly negligent breaches of essential obligations, our liability for damages shall be limited to the foreseeable damage typical for a contract of this nature, and at most to €50,000 or twice the invoiced value of the goods or services in question if this value exceeds €50,000.

15.2 The aforementioned limitation of liability or of damages shall apply to all our liability under these Conditions of Sale but shall not apply in cases of damage to life, body or health or damage to private property under the product liability law (ProdHaftG) or in other cases of mandatory liability.

16. Statute of Limitations: Purchaser's claims for warranty, damages or regress entitlements shall expire one year from the commencement of the statute of limitation stipulated by law, unless defect claims refer to a product that was used appropriately in construction and has caused the building to be defective. In such case, the statute of limitation shall be four (4) years. The above statutes of limitations shall not apply if we have acted intentionally or if the ProdHaftG or other statutory requirements mandate our liability in the event of damage to life, body or health of others or causing damage to private property.

17. Compliance with Statutory Regulations, Rescission:

17.1 Unless otherwise agreed in writing with Purchaser in individual cases, Purchaser shall be responsible for compliance with statutory and regulatory requirements for the import, transport, storage, and use of the products.

17.2 Inasmuch as the statutory or regulatory approval requirements applies to the export of our delivery / service at the time of delivery / performance and such export approval is not granted upon request, we shall be entitled to rescind the contract.

18. Place of Jurisdiction: If Purchaser is a merchant, the place of jurisdiction shall be our commercial domicile. If we institute legal proceedings against Purchaser, we have the option to also institute legal proceedings at the Purchaser's place of jurisdiction.

19. Applicable Law: The contract and the legal relationship with the Purchaser shall be governed by German Law, excluding conflict of laws principles.

20. Trade Terms: If any trade terms have been agreed pursuant to the International Commercial Terms (INCOTERMS), they shall be interpreted and apply according to INCOTERMS 2010.

21. Severability: Should any of these Conditions of Sale be deemed wholly or partly invalid, this shall have no effect on the validity of the remaining conditions.