

Terms and Conditions of Sale, Delivery and Payment

Valid from May 2020



1. SCOPE

- (a) Our Terms and Conditions of Sale, Delivery and Payment ("Terms and Conditions" in the following), given in the following, are intended to apply only to businesses. They do not apply to consumers.
- (b) Our Terms and Conditions apply to all our present and future contracts, offers, services and deliveries. Deviating conditions of the customer shall not bind us unless otherwise expressly agreed. This also applies to conditions that concern an issue not regulated in these Terms and Conditions.
- (c) Our offers are not binding unless otherwise expressly agreed.
- (d) Modifications to, deviations from, and any and all auxiliary agreements to these Terms and Conditions must be agreed in writing between us and the customer.

2. PRICES

- (a) The prices according to the valid price list shall apply, unless otherwise agreed in writing. Prices shall be ex works (EXW) plus VAT legally applicable on the delivery date.
- (b) The weights, number of pieces and quantities determined by us shall be decisive unless the customer contradicts them without delay, within 14 days at the latest.
- (c) Should prices increase or decrease considerably after conclusion of a contract, the new prices shall apply for the goods still to be supplied. In case of an increase of prices the customer shall be entitled to immediately - not later than 14 days after receipt of the price increase information - terminate the contract by a written notice. The termination shall not affect any supplies rendered before the price increase.

3. APPLICATION ENGINEERING ADVICE

- (a) It shall be at the customer to test the goods for the intended use. Any elaboration, engineering advice and/or any recommendation supplied by us shall not constitute any obligation and/or liability for us. They shall not relieve the customer of any duty to undertake tests and trials of the suitability of the products for the intended purposes or methods - if necessary with the assistance of experts. In particular if thinner, curer or additional components, which are not supplied by us, are added.

4. DELIVERY

- (a) Delivery shall be ex works (EXW) unless otherwise specifically agreed.
- (b) The customer shall be obliged to pick up goods immediately when reported to be ready for shipment. Otherwise we shall be entitled at our discretion either to deliver or to store the goods - in case of an emergency even outside - at the expense of the customer. One week after the beginning of the storage the goods shall be deemed to be delivered and can be invoiced. In this case we shall not be liable for any damage of the goods.
- (c) In the case of agreed pick-up, the risk of accidental loss and/or worsening of goods or services supplied shall pass to the customer when goods are handed over. The risk shall pass over to the customer with the access of notice, if the customer does not accept the goods despite receiving the notice of readiness for dispatch. In all other cases, said risk/s shall pass to the customer at the moment the goods are handed over by us to the carrier. Shipment mode and route shall be selected by us - if not otherwise specifically agreed. Extra costs due to deviant wishes by the customer shall be borne by the customer.
- (d) Partial shipments shall be permissible insofar as they are reasonable for the customer.
- (e) We point out that for the delivery of goods we are dependent on being delivered ourselves by suppliers. We shall be entitled to withdraw from a contract in the case we are not or not timely self-supplied with necessary goods to perform the contract if having congruently contracted a supplier and if not being responsible for the delay. Any own liability for damages shall be excluded. We have to give notice about the not or not timely self-supply to the customer.
- (f) Major interruptions of operations that cannot be foreseen and/or are no fault of ours, overrunning of delivery deadlines or non-performance of our suppliers and/or operations interruptions due to shortage/s of raw material/s, energy or staff, strikes, lockouts, transport media availability problems, traffic difficulties and/or force majeure affecting us and/or our suppliers shall extend the delivery period by the duration of such hindrance to performance insofar as it is relevant to the availability of the goods. Beginning and end of all such hindrances shall be advised by us to the customer without delay. If delivery is delayed for more than one month by such hindrance, then both we and the customer shall be entitled to withdraw from the contract with regard to those goods affected by said hindrance/s without any liability in law for damages being incurred. The legal right of the customer to withdraw in the event of disruption of supply resulting from a circumstance for which we are responsible shall remain unaffected. The same shall apply to claims for damages pursuant to Section VIII below.
- (g) If delivery is in rented containers, then these have to be returned to us within 60 days after receipt empty and free of charge. Loss and/or damage to such rental packaging means shall be borne by the customer to the extent he is responsible for the loss/damage. Rental containers may not be used for other purposes or for other products; they are solely intended for use in transporting the goods supplied. Labelling may not be removed.
- (h) One-way packaging container shall not be accepted back by us; instead, we shall appoint a third party to the customer who will recycle said packaging as legally required.

5. PAYMENT

- (a) The invoiced amount shall be due for payment by the 15th of the month following the invoicing month without deduction. Discounts and rebates shall only be granted on the basis of specific individual agreements.
- (b) Discounts and/or rebates on new invoices shall be excluded where older invoices have not yet been paid in full.
- (c) If the customer pays with bills of exchange the claim shall be ceased not before the bill of exchange was converted successfully.
- (d) Set-off due to customer's claims shall be excluded unless the claim is undisputed or finally recognized by a court judgment. Same shall refer to retention rights. The above constraints shall not apply to set-offs or retentions to customer claims that are based on deficiencies of the goods.
- (e) In case the customer has several outstanding debts and does a payment not cover all claims, the paying back rules in § 366 para. 2 German Civil Code shall apply, even if the customer pays on a special claim.

6. RESERVATION OF TITLE

- (a) We reserve title in all goods supplied until complete and full payment has been rendered for the goods (reserved property). Further the goods supplied shall remain our property until all claims arising from the current commercial relationship with the customer have been settled. This reservation of title shall remain in force even if some of our claims are incorporated in current invoicing, shown as a balance and recognised as such. Purchase price claims shall not expire as long as any exchange liability accepted by us in this connection - as for example in a cheque-bill of exchange procedure - has terminated.
- (b) Processing or mixing shall be undertaken by the customer without any liability arising on our part. In the event of mixture or processing with other goods not belonging to us, the customer shall transfer to us co-ownership in the new resulting good/s as security for our claim/s pro rata to the value of the reserved property to that of the other good/s processed. The customer shall be obliged to store the new good/s for us.
- (c) The customer shall be entitled to dispose of the reserved property in the normal course of business as long as he fulfils his obligations under the commercial relationship with us in time. Claims arising from the sale of goods in which we have property rights shall be assigned to us by the customer to the extent of our ownership share as security for our claim/s. The customer shall be entitled to collect claims assigned to us in the normal course of business as long as he fulfils his obligations under the commercial relationship with us in time. The customer shall not be allowed to assign the claims. This constraint shall not apply if

the customer assigns the claim for the reason of factoring only and the factoring company is obligated to pay out our part of the claim directly to us as long as our claim against the customer is in existence.

If the customer mixes or combines the reserved property supplied with a main ingredient from a third party, then he shall assign to us his claim/s for payment against the third party in the amount of the invoice value for the goods delivered as security for our claim/s. We accept this assignment.

The customer shall have to render us all information required on the goods we own on demand as well on the claims assigned to us and so advise his own customer.

- (d) The customer shall have a duty to store the reserved good/s carefully and well and secure it/them against loss or damage at his own expense. He shall assign his claims arising from the insurance policies concerned to us in advance. We accept said assignment.
- (e) If the value of the securities rendered to us by the customer exceeds our claims by more than 10%, we shall release security pro rata on the customer's demand and at our sole discretion.
- (f) The customer's right to dispose of the products he owns and to call in claims assigned to us (see point VI.3.) shall expire as soon as he ceases payment and/or gets into financial difficulties.
- (g) In case the customer ceases payment all reserved property shall have to immediately be released at our request. A statement of withdrawal from us shall not be necessary. The same shall apply in cases of a major deterioration of the financial situation of the customer. The request for release and the release itself shall not constitute a withdrawal from the contract.
- (h) Insofar as the reservation of title is not effective in the country in which the goods are situated, the customer shall have to render equivalent security on our demand. If he does not fulfil this demand, then we shall be entitled to demand full and immediate payment of all unpaid invoices regardless of any agreed payment periods.

7. DEFECTS

- (a) The customer shall have the duty to check - by taking samples - the goods immediately on receipt.
- (b) Obvious material defects that were recognized or that could have been recognized, incorrect deliveries and deviations in quantity affecting the goods supplied shall have to be notified without delay within one week of receipt at the latest. Hidden defects are to be notified to us without delay and within one week after discovery at the latest. The advice shall have to be in writing and declare the kind and the dimension of the deficiency. The periods before are cut-off periods. For the observance of timeliness of the deadlines the receipt of the notifications by us shall be decisive.
- (c) Deficiency claims of the customer shall be limited to the right of correction of defects. The remedy of a defect shall be done at our discretion by correcting the defects or by delivery of goods free of defects. In the event of the failure of remedial action, the customer shall be entitled, at his discretion, to either a reduction of the purchase price or to withdraw from the contract. Our liability for damages, no matter what legal ground it is based on, shall be limited in accordance with Section VIII. of these Terms and Conditions. Any recourse to us by the customer pursuant to § 478 German Civil Code shall remain unaffected. To the extent we are obliged to pay compensation in accordance with the statutory provisions, such duty shall be limited in the manner set forth in Section VIII. hereof.
- (d) All claims for deficiencies become time-barred within one year after receipt of the goods. This shall not apply (1) in the case of wilful intent or fraudulent concealment of the defect, (2) in the case of non-compliance with any guarantee of quality given by us or (3) in the case of an item which has been used in line with its customary use in a building structure and has caused the building structure to be defective. Nor shall the period of one year apply to claims for defects where the claim is based on gross negligence or on personal damage or injury or where we have liability for tort. This shall be without prejudice to the statutory provisions relating to limitation periods for recourse claims under § 479 German Civil Code or limitation and exclusion periods under the German Product Liability Act.

8. LIABILITY

- (a) For damages that are caused by wilful intent or gross negligence or injuries to life, body and health we take liability to be governed by the statutory regulations.
- (b) In case of negligent breach of an essential duty of the contract (essential for the scope of the contract and of a nature the customer could trust in) we take liability to be governed by the statutory regulations limited to the refund of typical and foreseeable damages.
- (c) For the rest, the customer's claims for compensation of any direct or indirect damages - irrespective of the cause of action upon which such claim is based, including a breach of pre-contractual duties or tortious conduct - shall be excluded. However, any statutory liability, which is based on the absence of a quality guaranteed by us, for maliciously concealed defects or due to the German Products Liability Act, shall remain unaffected thereby.
- (d) The customer's claims to damages due to defects shall become time barred according to Section VII.4. All other claims for damages shall become time barred two years beginning with the time at which the customer became aware or should have become aware of the circumstances on which the claim is based and of the person who caused the damage. But in no case later than five years after the event that triggered the damage. The foregoing sentence shall not apply to cases of premeditation, malicious intent, and gross negligence on our part, to personal injuries and to cases of tort and to liability pursuant to the German Product Liability Act.
- (e) The foregoing limitations of liability shall also apply to any claims for compensation or damages of the customer against our legal representatives, employees and other agents.

9. COMPLIANCE, EXPORT CONTROL AND SANCTIONS

The Buyer undertakes that it is and shall in connection with this Contract, remain in compliance with applicable laws and regulations, including but not limited to those relating to anti-bribery and corruption, UN, US, UK, EU sanctions and export control restrictions. If the Buyer is in breach of this clause, the Seller can choose either to suspend or terminate the Contract at no liability or cost to the Seller.

10. PLACE OF JUDICATURE AND OF PERFORMANCE

- (a) Place of performance for all obligations connected with the commercial relationship or any and all individual contract/s shall be our place of shipment dispatch. Our head office location shall be the place of performance for all payment/s.
- (b) Hamburg shall be the exclusive place of jurisdiction for claims against us. However, we shall be entitled to claim the customer not only in Hamburg but also at his place of business. This shall also apply to disputes in matters concerning legal documents, bills of exchange and cheques. This choice of forum shall apply only to customers, who are business owner, legal entity under public law or special fund under public law.
- (c) The law of the Federal Republic of Germany shall be solely applicable to our contractual relations with our customers. Application of the United Nations Convention on the International Sale of Goods (CISG - "Wiener Kaufrecht") dated 11 April 1980 shall be excluded. Customer's data will be stored and processed by us to the extent that this is required for the proper handling of contractual relationships.