

General Terms and Conditions of Sale and Delivery

§ 1 General information – scope

1. The terms and conditions of sale and delivery shall apply for all current and future business relations.
2. Buyers within the meaning of these terms and conditions of sale and delivery are exclusively entrepreneurs. Entrepreneurs are natural persons or legal entities or partnerships, which have legal capacity to contract, with which a business relationship is entered into and which act while exercising a commercial or independent professional activity.
3. No deviating, opposing or supplementary general business terms and conditions shall, even if we are aware of these, constitute a part of the contract unless their validity is expressly approved in writing.

§ 2 Offers /orders/conclusion of contract

1. Our offers are without obligation. We reserve the right to technical changes and changes in the form, colour and/or weight within the framework of that which is deemed reasonable. Diagrams shall only be deemed a general description of the designs. We are entitled to deliver goods which deviate from our listed details and diagrams whereby in this case the approval of the buyer is required if essential parts are affected.
2. When he orders the goods the customer declares binding in writing that he intends to acquire the ordered goods. We reserve the right to property and copyright of drawings and other documents. They may not be made accessible to third parties. Models and tools for which pro rata costs were agreed shall remain our property. We are entitled to accept the contractual offer in the order within two weeks after receipt by our company. The acceptance can either only be declared in writing or by delivery of the goods to the buyer.
3. The contract is concluded subject to our correct and timely own delivery by our suppliers. This shall only apply for the event that the failure to be delivered the goods is beyond our control, in particular with conclusion of a competing hedging business with our components suppliers. The buyer will be informed about the non-availability of the service immediately. The consideration will be refunded immediately.

§ 3 Delivery time

1. The delivery time shall begin when the order confirmation is sent. The stated delivery dates shall be observed as far as possible. The delivery period is deemed as observed if the object of delivery has left the plant before it expires. If the buyer suffers damages owing to a delay which has occurred as a result of the own fault of the supplier, he shall be entitled under the exclusion of further claims to demand compensation due to default. This shall be for each full week of the delay 0.5%, on the whole however a maximum 5% of the value of the part of the whole delivery which cannot be used in time or not as intended as a result of the delay. The delivery time will be extended by a reasonable period of time with the occurrence of unforeseeable impediments, which are beyond our control – no matter whether these occur in our company or at our sub-supplier – e.g. interferences to operation, delays in the delivery of essential raw materials and supplies, strike or war. The buyer is not entitled to cancel the order in this respect.

§ 4 Price and payment

1. The offered purchase price is binding. The applicable rate of value added tax shall be added to the purchase price. The freight and packaging costs are not included in case of mail order purchase. Simple fittings shall be delivered unpacked, in case not stipulated by the buyer.
2. Payment is to be made after receipt of the goods within 30 days from invoice date net or within 14 days after invoice date /. 2% cash discount. Invoices for repairs and other services are to be paid without any deduction. During the default the buyer shall pay interest for the money debt in the amount of 5% above the base lending rate. We reserve the right towards the buyer to prove and assert higher damages on default.
3. The buyer shall only be entitled to set-off if his counter claims they have been declared final and absolute or were acknowledged by us. The buyer may only exercise a right of retention if his counter claim is based on the same contractual relationship.

§ 5 Passing of risk

1. The risk of accidental loss and accidental deterioration of the goods shall pass to the buyer with hand-over, with mail order sale with the delivery of the object to the carrier, the freight forwarder or any other person or institution determined for executing the despatch, also with postage paid delivery. The means of despatch shall be selected at our best discretion. We reserve the right to choose a type of despatch, if the stipulated one is not possible.
2. It is deemed as equivalent to hand-over if the buyer is in default with acceptance.

§ 6 Reservation of title

1. We reserve the title to the goods with all contracts until full settlement of all claims from a current business relationship.
2. The buyer undertakes to treat the goods with due care and attention. Insofar as service and inspection work is necessary, he shall carry this out regularly at his own costs.
3. The buyer undertakes to inform us immediately of any access of third parties to the goods, for example in the event of an attachment, and possible damages or the destruction of the goods. The buyer shall inform us of a change in the possession of the goods and an own change in the place of residence.
4. In case of conduct on the part of the buyer which is contrary to the contract, in particular in case of default of payment or breach of a duty according to Subclause 3 and 4 of this provision, we are entitled to cancel the contract and demand that the goods be handed over.
5. The buyer is entitled to resell the goods in an ordinary business transaction. He hereby now already assigns us all claims in the amount of the invoice, which he accrues against a third party through the resale. We accept the assignment. After the assignment the buyer is authorized to collect the claim. We reserve the right to personally collect the claim as soon as the buyer does not properly satisfy his payment obligations and is in default of payment.
6. The processing of the goods by the buyer is always carried out in our name and on our behalf. If they are processed with items which do not belong to us, we acquire the co-ownership of the new object in the ratio of the value of the goods delivered by us to the other processed items. The same shall apply if the goods are mixed with other items not belonging to us.

§ 7 Warranty

1. We shall initially assume warranty for defects to the goods at our choice through subsequent improvement or substitute delivery.
2. If the subsequent performance fails, the buyer can principally at his choice demand reduction of the remuneration or cancel the contract. In case of a mere slight breach of contract, in particular with just slight defects, however the buyer is not entitled to cancel the contract.
3. The buyer must inform us in writing of obvious defects within a period of two weeks from receipt of the goods, otherwise the assertion of the warranty claim is excluded. The timely despatch of the notification is sufficient for observing the deadline. The buyer bears the full burden of proof for all pre-requisites for a claim, in particular for the defect itself, for the time of determining the defect and for the timely notification of a defect.
4. If in the event of a defect of title or quality and after failed subsequent performance the buyer chooses to cancel the contract, he is not entitled to any additional claim for damages owing to the defect. If after failed subsequent performance the buyer chooses damages, the goods shall remain at the buyer if this is deemed reasonable for him. The damages shall be limited to the difference between purchase price and value of the fault object. This shall not apply if we maliciously caused the breach of contract.
5. The warranty period for defects of the goods is maximum two years from delivery. This shall not apply if the buyer did not inform us of the defect in time (Subclause 3 of these provisions). We shall not assume warranty for defects which are a result of unsuitable or improper use, faulty assembly or initial operation by the buyer or also third parties, natural wear and tear, faulty or negligent treatment of the goods and therefore does not include consequential damages, in particular damages which arise due to a standstill of the system or failure of the production including personnel costs. This includes also defects which arise through use of unsuitable operating materials, defective construction work, inappropriate building ground or are caused by chemical, electrochemical or electrical influences.
6. Deemed agreed as condition of the goods is principally only the product description of the manufacturer.
7. In the event that the buyer receives faulty operating or assembly instructions, we are merely obliged to deliver faultless operating or assembly instructions and this also only if the defect of the operating or assembly instructions opposes the proper assembly.
8. The customer is not granted any guarantees from us within a legal sense. Manufacturer's guarantees remain unaffected thereby.

§ 8 Liability restrictions

1. In case of slightly negligent breaches of duty our liability is limited to the foreseeable direct average damages which are typical for the contract and the type of the goods. This shall also apply in case of slightly negligent breaches of duty of our legal representatives or vicarious agents. We do not assume liability for slightly negligent breach of non-essential contractual duties.
2. The afore-mentioned liability restrictions do not relate to claims of the buyer from product liability. Further, the liability restrictions do not apply for injuries to the body and health attributable to us or with the loss of the buyer's life.
3. Claims for damages of the buyer owing to a defect shall become statute-barred after one year from delivery of the goods. This shall not apply if we are responsible for gross negligence and in the event of injuries to the body and health attributable to us or with the loss of the buyer's life.

§ 9 Final provisions

1. The law of the Federal Republic of Germany shall apply. The provisions of the UN law on purchase shall not apply.
2. The exclusive place of jurisdiction for all disputes ensuing from this contract is our registered seat if the buyer is a merchant, legal entity under public law or special assets under public law. The same shall apply if the buyer has no general place of jurisdiction in Germany or place of residence or usual place of abode are not known at the time when the action is filed.
3. Should individual provisions of the contract with the buyer including these general terms and conditions of sale and delivery be or become invalid either in part or in whole, this shall have no effect on the validity of the other provisions. The whole or partial invalid regulation is to be replaced by a regulation whose commercial success shall as far as possible satisfy that of the invalid regulation.