

# Sales and delivery conditions

## I. Validity / General

Our Terms and Conditions of Sale and Delivery shall apply exclusively to all contracts with entrepreneurs, legal entities under public law and special funds under public law. Any terms and conditions of the buyer that conflict with, supplement or deviate from our terms and conditions of sale and delivery - in particular the buyer's purchase specifications - shall not be recognised even if we do not expressly object to them again after receipt by us.

## II. Offers

Our offers are subject to change. Orders placed by the buyer shall be deemed to be a binding contractual offer. A contract is only bindingly agreed when we confirm the order in writing or deliver the goods to the buyer.

Order confirmations which are not objected to within 8 days shall be deemed approved and recognised in all parts. The deadline shall be deemed to have been met when the letter of objection is sent.

The information and illustrations contained in brochures, catalogues and other printed matter are approximate values customary in the industrial sector and are not binding on us in this respect.

Declarations concerning the quality of an item do not constitute a guarantee. A reference to standards and other material specifications always includes the more detailed description of the goods and does not constitute a guarantee for the quality or durability of the goods.

## III. Drawings and descriptions

If a contracting party provides the other with drawings or technical documents relating to the goods to be supplied or their manufacture - also in electronic form - the property rights and copyrights of the submitting contracting party shall remain reserved. The aforementioned documents may only be made accessible to third parties with the express consent of the submitting contractual partner and must be returned to the other party without delay in the case of non-conclusion of a contract.

#### IV. Prices and terms of payment

Our prices are quoted in euros exclusive of value added tax, freight, packaging, postage and insurance.

We reserve the right to adjust the prices to be paid on the basis of the respective contract, which are decisive for the price calculation, at our reasonable discretion to the development of the costs until the delivery of the goods. A price increase or reduction shall be considered if the increases or decreases in one type of cost, e. g. energy and logistics costs, cannot be offset by any decreases or increases in other areas, e. g. material costs. When exercising our reasonable discretion, we shall choose the respective points in time of a price change in such a way that cost reductions are not taken into account according to standards that are less favourable for the buyer than cost increases, i. e. that cost reductions have at least the same effect on the price as cost increases.

The purchase price and the charges for additional services shall be paid without deduction within 30 days of delivery, unless otherwise agreed in writing. The receipt of payment is decisive for the timeliness of payment.

An agreed cash discount always relates only to the invoice value excluding freight and presupposes the complete settlement of all due liabilities of the buyer at the time of the cash discount.

Cheques and bills of exchange shall only be deemed to be payment after they have been honoured. The acceptance of bills of exchange always requires a prior written agreement with us. The expenses and costs incurred in accepting bills of exchange and cheques as well as the risk of timely presentation and protesting shall be borne in full by the buyer. The expenses and costs are to be paid immediately in cash by the buyer.

In the event of default in payment and justified doubts about the solvency or creditworthiness of the buyer, we shall be entitled - without prejudice to our other rights - to demand securities or advance payments for outstanding deliveries and to make all claims arising from the business relationship due immediately.

Only claims that are undisputed, ready for decision or legally established entitle the buyer to set-off or retention. This does not apply to claims due to defects in the delivery.

In the case of notices of defects, payments may be withheld to an extent that is in reasonable proportion to the defects that have occurred.

If we have indisputably delivered partially defective goods, the buyer shall nevertheless be obliged to make payment for the defect-free part, unless the partial delivery is of no interest to him.

We reserve the right to adjust the prices to be paid on the basis of the respective contract, which are decisive for the price calculation, at our reasonable discretion to the development of the costs until the delivery of the goods. A price increase or reduction shall be considered,

- a) if, for example, the costs for the procurement of raw materials or input materials increase or decrease, and
- b) if the increases or decreases in one type of cost, e. g. steel costs, are not offset by any decreases or increases in other areas, e. g. energy costs.

When exercising our reasonable discretion, we shall choose the respective points in time of a price change in such a way that cost reductions are not reflected according to standards that are less favourable for the buyer than cost increases, i. e. that cost reductions have at least the same effect on the price as cost increases.

## V. Delivery

Unless otherwise agreed, we deliver "ex works" or warehouse. At the request and expense of the buyer, the goods will be shipped to another destination.

The delivery period shall commence with the dispatch of the order confirmation, but not before the provision of any documents, approvals, releases to be procured by the buyer and before receipt of any agreed down payment or provision of letters of credit and guarantees.

Unless otherwise agreed, we deliver "ex works" or warehouse. At the request and expense of the buyer, the goods will be shipped to another destination.

As long as the buyer is in arrears with an obligation to cooperate, our obligation to deliver shall be suspended.

The delivery period shall be extended in the event of force majeure, measures within the scope of industrial disputes, in particular strikes and lock-outs, as well as the occurrence of unforeseen circumstances beyond our control, e.g. operational disruptions, delays in the delivery of essential materials, insofar as such circumstances verifiably have a considerable influence on the delivery of the goods. This also applies if the impediments occur at our sub-suppliers. The delivery period shall be extended in accordance with the duration of such measures and impediments. We shall not be responsible for the aforementioned circumstances even if they occur during an already existing delay. In important cases, we will inform the buyer of the beginning and end of such impediments as soon as possible.

Partial deliveries are permissible within the delivery periods specified by us, provided that

a) this does not result in any disadvantages for use, i. e. the partial deliveries can be used by the buyer within the scope of the contractual purpose and

b) the delivery of the remaining ordered goods is ensured and the buyer does not incur any significant additional expenses or costs as a result (unless we agree to bear these costs).

In the event that the delivery period is culpably exceeded, liability for delay in delivery shall only be given after a grace period of three weeks has been set, subject to liability in accordance with Section IX, Paragraph 1, Sentence 2.

## VI. Shipment and transfer of risk

The buyer must immediately take over goods that have been notified as ready for dispatch. Otherwise, we are entitled to store them at the buyer's expense. The risk of accidental loss and accidental deterioration shall pass to the buyer upon notification that the goods are ready for dispatch.

In the event of dispatch of the goods, we shall determine the route and means of dispatch as well as the forwarding agent and carrier.

In the case of dispatch of the goods, the risk shall pass to the buyer when the goods are handed over to the railway, the forwarder or the carrier or when storage begins, but at the latest when the goods leave the delivery works or the warehouse, in all transactions, including carriage paid and free domicile deliveries. We shall only provide insurance on the instructions and at the expense of the buyer.

## VII. Retention of title

We retain title to all goods delivered (goods subject to retention of title) until payment of our total claims, in particular also the respective balance claims to which we are entitled within the scope of the business relationship. This shall also apply to claims arising in the future and conditional claims, e. g. from acceptor's bills of exchange, (together the "secured claims") and even if the purchase price for certain deliveries of goods designated by the customer has been paid, as the reserved property serves as security for our balance claim.

The buyer is entitled to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition:

Treatment and processing of the goods subject to retention of title shall be carried out for us as manufacturer without any obligation on our part. The processed goods shall be deemed to

be goods subject to retention of title within the meaning of paragraph 1. If the goods subject to retention of title are processed, combined or mixed with other goods by the buyer, we shall be entitled to co-ownership of the new item in proportion to the invoice value of the goods subject to retention of title to the invoice value of the other goods used. If our ownership lapses as a result of combining or mixing, the buyer shall already now transfer to us the ownership rights to which he is entitled in the new inventory or item to the extent of the invoice value of the reserved goods and shall hold them in safe custody for us free of charge. Our co-ownership rights shall be deemed to be retention goods within the meaning of para. 1.

The buyer may only sell the retention goods in the ordinary course of business, provided that the claims from the resale as per paras. 5 to 7 are transferred to us. He shall not be entitled to dispose of the reserved goods in any other way, in particular by pledging them or assigning them as security. The authorisation to resell shall not apply if the buyer has agreed a prohibition of assignment with his customers.

The claims arising from the resale of the goods subject to retention of title are already assigned to us now together with all securities acquired by the buyer for the claim. They serve as security to the same extent as the reserved goods. If the goods subject to retention of title are sold by the buyer together with other goods not sold by us, the claim from the resale shall be assigned to us in the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other goods sold. In the event of the sale of goods in which we have co-ownership shares as per paragraph 3, a part corresponding to our co-ownership share shall be assigned to us.

The buyer is entitled to collect claims from the resale. This authorisation to collect shall lapse in the event of our revocation, default in payment, dishonour of a cheque or bill of exchange or an application for the opening of insolvency proceedings. We will only exercise our right of revocation if the buyer does not meet his payment obligations. However, if this is the case, we may demand that the buyer discloses the assigned claims and their debtors, provides all information necessary for collection, hands over the associated documents and immediately notifies the debtors (third parties) of the assignment.

An assignment of claims from the resale is not permitted unless it is an assignment by way of genuine factoring which is notified to us and in which the factoring proceeds exceed the value of our secured claim. Upon crediting of the factoring proceeds, our claim shall become due immediately.

The buyer also assigns claims from services or work performances (§§ 611, 631 BGB), through which the retention of title expires as a result of §§ 946 - 950 BGB or which are connected with the object of purchase (esp. repair cost claims), to the amount of the value of the goods subject to retention of title already now.

In the event of conduct by the buyer in contrary to the contract, in particular in the event of default in payment or in the event of dishonour of a cheque or bill of exchange, we shall be

entitled to take back the goods subject to retention of title. We are also entitled to withdraw from the contract in accordance with the legal regulations. Without a separate written declaration, the taking back of the goods shall not be deemed a withdrawal from the contract.

The buyer may neither pledge the goods nor assign them as security before full payment of our secured claims. In the event of seizure or confiscation or other dispositions by third parties, the buyer must notify us immediately by registered letter and provide us with all information and documents required to protect our rights. Enforcement officers or a third party must be informed of our ownership.

If the value of the securities exceeds our secured claims by more than 20 %, we shall release securities of our choice to this extent at the request of the buyer.

### VIII. Liability for defects

If an acceptance of the goods or an initial sample inspection has been agreed, the notification of defects after acceptance or initial sample inspection is excluded, which the buyer could have detected during careful acceptance or initial sample inspection.

If we deliver according to drawings, specifications, samples, etc. of the buyer, the buyer shall assume the risk of suitability for the intended purpose.

The buyer shall immediately inspect the delivered goods for defects with regard to quality, quantity and intended use - also by means of a trial processing, if reasonable. Obvious defects shall only be taken into account if they are reported in writing within eight days of receipt of the goods - in the case of hidden defects, after their discovery - together with supporting documents; otherwise, the goods shall be deemed to have been approved. Timely dispatch shall be sufficient to meet the deadline.

The buyer is obliged to give us the opportunity without delay to determine the defect complained of and, in particular, to make the goods complained of or samples thereof available to us without delay upon request.

Our liability for defects shall be limited, at our discretion, to subsequent performance (repair or replacement), withdrawal or reduction (reduction of the remuneration). As long as we fulfil our obligations to remedy the defects, the buyer does not have the right to demand a reduction of the remuneration or to withdraw from the contract, unless the remedy has failed. A rectification shall be deemed to have failed after the unsuccessful third attempt. Rejected goods may only be returned with our express consent.

Liability for defects in used goods is excluded subject to liability as per Section IX, Paragraph 1, Sentence 2. Public statements, praise or advertising by the manufacturer do not constitute a contractual statement of the quality of the goods if we were not aware of the statement and

did not have to be aware of it, if the statement had been rectified in an equivalent manner at the time the contract was concluded or if it could not influence the decision to purchase.

Natural wear and tear is in any case excluded from liability for defects.

If the goods are moved to another location after delivery, compensation for the costs of subsequent performance (in particular transport, travel, labour and material costs) shall be excluded.

We are entitled to reject the replacement delivery if the buyer has already used the defective item for a long time.

The buyer's claims for damages are conclusively regulated in section IX.

## IX. Claims for damages

Claims of the buyer for damages are excluded. This shall not apply to our liability on the basis of the Product Liability Act, for damages arising from injury to life, limb or health and from the breach of a material contractual obligation (obligation whose fulfilment is essential to the proper performance of the contract and on whose fulfilment the contractual partner regularly relies and may rely) if the seller is responsible for the breach of obligation, for other damages based on an intentional or grossly negligent breach of obligation and in the event that we have fraudulently concealed a defect or assumed a guarantee for the quality of the goods. A breach of duty on the part of the seller is equivalent to a breach of duty on the part of his legal representative or vicarious agent.

If the breach of an essential contractual obligation is based on slight negligence, our liability shall be limited to the foreseeable damage typical for the contract.

The limitations of liability resulting from para. 1 shall also apply to third parties as well as in the case of breaches of duty by persons (also in their favour) whose fault we are responsible for according to statutory provisions.

## X. Limitation

Contrary to § 438 Abs. 1 Nr. 3 BGB, 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.

If the goods are a building or an object which has been used for a building in accordance with its customary use and has caused its defectiveness (building material), the limitation period shall be 5 years from delivery in accordance with the statutory provision (§ 438 Abs. 1 Nr. 2

BGB). Other special statutory provisions on the limitation period (in particular § 438 Abs. 1 Nr. 1, Abs. 3, §§ 444, 445b BGB) shall also remain unaffected.

The above limitation periods of the law on sales also apply to contractual and non-contractual claims for damages of the buyer based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. Claims for damages by the buyer according to Section IX Paragraph 1 Sentence 2 shall become statute-barred exclusively according to the statutory limitation periods.

## **XI. Place of performance, place of jurisdiction and applicable law**

The place of performance for our deliveries shall be the delivery plant in the case of delivery ex works; the warehouse in the case of all other deliveries.

In the event of any disputes arising from the contractual relationship, legal action shall be taken at the court having jurisdiction for our head office (Obere Industriestr. 24 - 26, 57250 Netphen). We are also entitled to take legal action at the buyer's registered office.

In addition to these terms and conditions, German law shall apply exclusively. The provisions of the Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 shall not apply. The conditions and effects of the retention of title pursuant to Clause VII shall be governed by the law of the respective place of storage of the goods, insofar as the choice of law made in favour of German law is inadmissible or ineffective thereafter. If the applicable law does not recognise the institution of retention of title, the legal institution specific to the applicable law shall be deemed agreed which comes closest to its effects according to the retention of title provided for in these General Terms and Conditions of Sale and Delivery.