

Conditions of Sale

I. Validity

Our terms and conditions of sale and delivery are valid for all our deliveries and other performances unless altered or excluded with our express written consent. These terms and conditions shall be deemed agreed at acceptance of our delivery at the latest. Purchaser's terms and conditions are not binding upon us even if not expressly opposed by us again upon receipt.

II. Offers and conclusion of contracts

1. Our offers and price lists are subject to change without notice. Contracts and other agreements concluded are not binding without our written order acknowledgment.
2. Information, drawings and illustrations in brochures, advertisements and price lists or in the offer documents are not binding unless expressly designated as binding in the order acknowledgment.
3. Verbal collateral agreements and representations by our employees are not valid unless confirmed by us in writing.
4. The purchaser's claims based on the contractual relationship shall not be assigned without our consent.

III. Price

Our prices are quoted net cash in Euros, exclusive of VAT at the statutory rate. Free of charge deliveries above an amount of 399.00 Euros. Standard commercial packaging is free of charge for forwarding consignments. Additional packaging shall be to purchaser's account. Where requirements to take back transport packaging apply, we shall fulfil our obligation through a corresponding general agreement.

IV. Payment and application

1. The terms of payment and time limits for payment stated in our order acknowledgments shall be authoritative. In case of doubt, the invoice amount is due immediately, net cash. Cheques will be discounted only on account of payment. Credit notes relating to cheques are issued subject to receipt of the expenses with the value date being the date when the countervalue is at our disposal.
2. Interest at a rate of 8% over the Bundesbank base interest rate is due on amounts outstanding after the time limit.
3. All our accounts receivable, on any legal basis, shall become due immediately if our terms of payment are not met or if we become aware of circumstances likely according to our best commercial judgment to impair the purchaser's credit worthiness. In such cases we are also entitled, without prejudice to other legal rights, to effect deliveries not yet made only against advance payment or to require security or after granting appropriate grace to repudiate the contract or claim damages for non-payment.
4. We are entitled to offset our claims against the purchaser's claims, irrespective of legal basis.
5. Retention of payments or setoff are only permissible in the case of counterclaims that are undisputed or legally enforceable.
6. Customer's diverging terms notwithstanding, we are entitled to apply payments to our older or least secure claim first. If costs and interest charges have already been incurred we are entitled to apply payments to costs first, then to interest and lastly to the principal claim.

V. Delivery dates

1. The scheduled week of production is quoted in our order acknowledgments. This does not constitute a binding delivery date. A binding delivery date (firm date) requires our express written confirmation as a firm date.
2. Call orders must be accepted within 6 months. In case of doubt, order acknowledgments with no production or delivery information shall be deemed call orders. Cash in advance orders will not be scheduled for production until receipt of payment.
3. Occurrences of force majeure shall entitle us to postpone delivery by the duration of the impediment and an appropriate start-up period or wholly or partly to cancel the uncompleted part of the contract. Strike, lockout, mobilisation, war, blockade, export and import prohibitions, raw material and fuel shortages, fire, embargos, plant stoppages or transport disruptions and other circumstances for which we are not responsible that make it unacceptably difficult or impossible for us to deliver shall be treated as force majeure, irrespective of whether they affect us, our suppliers or their suppliers. If the delay in delivery is unreasonable for the purchaser, the purchaser can cancel the contract.
4. The purchaser is only entitled to claim damages for default of delivery in the case of intent or gross negligence on our part. Proven impossibility of performance shall release us from contracts. We reserve the right to make part deliveries. Each part delivery shall be deemed a separate transaction not affecting the uncompleted part of the order.

VI. Liability for defects and compensation

1. Claims for damages by the purchaser, including those outside the contract, shall be excluded in the case of breach of duty due to ordinary negligence on the part of the seller, senior staff and other persons employed by the seller unless such breach concerns a duty of essential importance to the attainment of the purpose of the contract.
2. The seller shall be liable for consequential loss and loss unforeseeable at the time of concluding the contract only in the case of gross negligence on the part of the seller or one of the seller's senior staff.
3. The above limitations do not apply to loss due to injury to life, body or health. Imperative provisions of liability law, such as liability under warranty or in accordance with product liability law, are not affected.
4. The warranty covers replacement of defective parts, exclusive of installation and consequential charges. The warranty claim shall lapse in case of unauthorised alterations by unauthorised or unskilled personnel to parts supplied by us. The respective manufacturer's warranty conditions shall apply to accessories obtained from suppliers, such as electrical appliances, lights, sinks, fittings, waste collectors, etc.

VII. Notification of defects

1. Complaints about defects will only be considered if made in writing without undue delay and not later than seven days after arrival of the goods. Vouchers, samples and packing slips must be sent in, quoting the invoice number, invoice date and initials on the packaging.
2. In the case of latent defects, the written complaint must be made without undue delay upon discovering the defect and not later than five months after arrival of the goods; limitation of actions is not affected. The onus of proof in the case of latent defects lies with the purchaser.
3. Goods that are the subject of complaint shall only be returned with the seller's express agreement.

VIII. Purchaser's rights in case of defects

1. Purchaser's claims based on defects are limited to the right to subsequent performance. If subsequent performance by the seller is unsuccessful, the purchaser can reduce the purchase price or withdraw from the contract, at its option. Claims for damages in accordance with clause VI shall not be affected. Purchaser's claims for expenses necessary for the purpose of subsequent performance, such as transport, travel, labour and materials, are excluded if the expenses are increased by subsequently taking the delivery item to a place other than the purchaser's establishment.

2. If the warranty is purchaser's recourse following a successful claim against the purchaser in accordance with the provisions of the law on purchase of consumer goods, the rights of recourse based on the provisions concerning the purchase of consumer goods shall be unaffected. The claim for compensation shall be subject to clause VI.
3. The purchaser shall inform the seller without undue delay upon becoming aware of any recourse cases arising in the delivery chain. The purchaser shall have legal rights of recourse against the seller only in the absence of any agreements between the purchaser and its customer exceeding statutory claims based on defects.
4. Warranties must be stipulated in writing. A written warranty is valid only if the scope of the warranty, period and geographical area of validity of the warranty are described in sufficient detail.
5. In the case of electrical equipment our warranty obligation shall be limited to assignment of our claims against the equipment supplier, if we are not responsible for the defect. If satisfaction of the claims assigned is unsuccessful, our liability shall be revived.

IX. Limitation of actions

Claims based on defects shall lapse in the case of section 438 subsection 1 paragraph 3 of the German Civil Code one year after commencement of the statutory limitation period. In the case of section 438 subsection 1 paragraph 2 of the German Civil Code they shall lapse two years after commencement of the statutory limitation period. Imperative statutory limitation and liability provisions, such as liability in the case of warranty, liability for intent and gross negligence, liability for injury to life, body or health, breach of essential contractual obligations, liability under product liability law and the provisions concerning the purchase of consumer goods shall not be affected.

X. Nature of goods, use and processing

The nature of the goods shall be deemed in principle to be only that described in the seller's product descriptions, specifications and labelling. Public statements, sales talk or advertising do not constitute a description of the nature of the item sold.

XI. Retention of title

1. We retain title to all goods until satisfaction of all claims, irrespective of legal basis, including future or qualified claims and claims based on simultaneous or subsequent contracts. This also applies if payments are made on the basis of specially designated claims. In the case of an open account, retention of title serves as security for the balance due to us and in the case of payment by cheque, until payment.
2. Instead of transfer of possession, a safekeeping relationship shall be deemed agreed.
3. The purchaser shall only further dispose of the conditional goods in the ordinary course of business on normal business terms, that is, not below the price charged by us and only provided that the purchaser is not in default with respect to us and the claims based on disposal are transferred to us in accordance with the provision below. The purchaser is not authorised otherwise to dispose of the conditional goods.
4. The purchaser's claim based on further disposal of the conditional goods is here and now assigned to us as security for all our claims.
5. The purchaser is entitled to collect claims based on further disposal until revocation by us at any time. We will only exercise our right of revocation if the purchaser fails to comply with the terms of payment or if we become aware of circumstances likely according to our best commercial judgment to impair the purchaser's credit worthiness. On request from us the purchaser shall advise its customers of the assignment to us and supply us with the information and records necessary to enforce the claims. Sums collected by the purchaser shall be kept separately and paid over to us if and as soon as our claims become due.
6. The purchaser shall notify us without undue delay of any attachment or other interference with our rights by third parties and supply us with the information and records necessary to enforce our rights.
7. If the third party makes payments by transfers to the purchaser's bank account or if the purchaser pays cheques given in payment into its bank, the purchaser hereby transfers its credit balance at the bank in question to us up to the amount of the sums transferred or paid into the account by bill or cheque.
8. If the value of the securities held exceeds our claims by more than 20%, we shall release securities to that extent at our option upon request from the purchaser or a third party affected by the excessive collateral.
9. The purchaser here and now assigns all its claims for damages against third parties in case of loss, damage or destruction of our conditional goods to us, in particular its claims based on insurance.

XII. Data protection

We are entitled to store necessary data obtained within the framework of the business relationship and process such data accordingly.

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

The place of performance shall be Stemwede. The place of jurisdiction shall be Stemwede. We are also entitled to sue at the other party's place of general jurisdiction. The law of the Federal Republic of Germany as applicable to nationals shall apply.

Nov. 2004

