
GENERAL TERMS OF SALE AND DELIVERY

I. GENERAL

- (1) Our quotations, orders, sales, deliveries and/or other activities are effected exclusively on the basis of our following General Terms of Sale and Delivery (General Terms).
- (2) Our General Terms shall be deemed accepted at latest by acceptance of delivery.
They shall further be deemed accepted within the scope of continuous business relations.
- (3) The general terms and conditions of the Customer – irrespective of their content or designation – shall only apply insofar as they do not deviate from our General Terms, even if we do not expressly oppose them again.
- (4) Amendments of or supplements to these General Terms and/or the other contractual contents shall only be binding, if made expressly and in writing.
- (5) Should individual provisions in these General Terms or the agreement be or become invalid for any reason, they shall remain applicable to the extent still valid. If this is not possible for any reason, a provision shall be deemed agreed in lieu of the invalid provision which ensures the economic success of the inapplicable provision as far as possible.

II. CONCLUSION

- (1) Our quotations are without engagement, unless a deviating provision is agreed in writing. Subject to prior sale.
- (2) Orders or other agreements made orally, by phone, telegram or telex shall only be binding, if expressly confirmed in writing. The above also applies to agreements made by representatives or sales consultants.
- (3) Our information on dimensions and weights as well as the figures, drawings, dimensions and weights etc. given in catalogues, brochures, price lists etc. are only approximate values and therefore not binding.
- (4) Information on special characteristics and/or the fitness of the goods for a special purpose of use does not present an agreement on the condition; this information shall only be binding if expressly guaranteed in writing.

III. DELIVERY, DELIVERY TIME, TRANSFER OF RISK

- (1) Our calculation is based on the dimensions and weights determined by us.
- (2) We endeavour to meet the delivery times and/or dates indicated by us. Without a corresponding express written confirmation in this respect, the delivery times and/or dates given by us are only approximate and are in particular subject to the timely proper and sufficient delivery by our sub-suppliers. The delivery time shall commence upon sending of the order confirmation. Partial delivery is admissible.
- (3) In case of extraordinary circumstances beyond our control or the control of our sub-suppliers, we are authorized to withdraw from the agreement in whole or in part. Extraordinary circumstances include any event beyond our control which prevents, complicates or delays the production, delivery or transport of the goods continuously or temporarily, i.e. in addition to cases of force majeure in particular war, war-like operations, riots, interventions or orders of higher authorities, changes regarding commercial and energy policy, any kind of interruption of operations, strikes and lock-out, lack or abnormal price increase of raw materials, transportation means or labour, traffic blocks, export, import or transit bans, shipwreck or other damages of the transportation means, irrespective of whether in the country of origin, transit or destination. The above also applies if we are prevented from or limited in shipping or delivering the goods or receiving cash payment (or similar performance) for complete satisfaction of our claim due to legislation or government regulation, decision, order, decree, officially published policy or request (e.g. import and export limitations, imposition of taxes, exchange controls, restriction of goods traffic or movement of capital or request of evidence or information suitable for discrimination regarding race, religion or national origin).
- (4) Furthermore, we are entitled to withdraw from the agreement in whole or in part, if
 - (a) the period of validity of financing through third parties (letters of credit etc.) is not sufficient to allow adequate handling through us or our carrier; or
 - (b) documents regarding financing through third parties (letters of credit etc.) include claims the satisfaction of which might present a violation or infringement of pertinent official acts, regulations or officially published policy through us.
- (5) The Customer is only entitled to withdraw from the agreement in case of nonobservance of a delivery time, if at the agreed delivery date it grants a reasonable grace period of at least four weeks and announces its withdrawal from the agreement, if the goods are not delivered within the granted grace period.
- (6) If the Customer is in default of acceptance, we are entitled to cancel the quantities not called or accepted in time and to withdraw from the agreement in this respect, irrespective of other and further claims. In case of a delay of shipment for which the Customer is responsible, we are entitled to charge storage costs amounting to at least 0.5% of the invoiced amount for each commenced month of storage, irrespective of other and further rights. We are only obliged to prove the actual costs, if we charge more than 0.5% per month or more than 5% of the invoice amount on the whole.
- (7) In case of all deliveries, the transport risk passes to the Customer as soon as the goods leave our factory or warehouse or are handed over to a forwarder or carrier on transportation means, including our own transportation means, and irrespective of who bears the freight costs. If however in an exceptional case claims due to transport damages or losses are made against us, the Customer may only assert them, if it arranged for entering proper comments regarding dama-

ge and loss in the freight documents and invoices and proper recording prior to payment, and if it notifies us of such damages and losses within a preclusive period of five days after receipt of the goods at the place of destination and keeps the goods including packaging ready for inspection by us until final settlement.

- (8) Packaging is free of charge. Any special packaging required by a regulation of the Customer is at the expense of the Customer. If it is agreed that the freight costs are at our expense – in whole or in part – we determine way and mode of dispatch. If the Customer requests another way or mode of dispatch and we fulfil this request, the Customer bears the additional costs compared with the cheapest mode of dispatch as well as the responsibility resulting therefrom regarding risk of transport damages or losses. If at the special request of the Customer we arrange for the transport of the goods separately and determine this in the respective documents, we are only obliged to find cheap freight rates but not to notify the Customer of the amount or increase of the freight costs, unless the Customer expressly requests so in writing. Goods which are delivered in a smaller quantity than the volume of a container are subject to higher prices and freight rates.
- (9) Taking out transport or other insurance policies is up to the Customer.

IV. PAYMENT, FAILURE TO PAY

- (1) Payment shall be effected immediately within the agreed term of payment. Our prices are ex works excluding transport, insurance and VAT. All taxes, duties and other charges are at the expense of the Customer.
- (2) All deliveries are effected at the prices applicable at the respective day of delivery.
- (3) All payments are to be made exclusively to the address or into the account mentioned in the contractual documents. Our sales consultants, business travellers and representatives are only authorized to accept payments, if they have a special written authorization.
- (4) Bills of exchange are only accepted for payment after prior express agreement and excluding our liability for timeliness and appropriateness of presentation and protest, and only if they are eligible for rediscounting and corresponding taxes are duly paid. Bills of exchange and cheques are credited subject to receipt and stating the value date at which the equivalent is available. Discount, collection as well as other fees and charges including stamp duty on bills of exchange are at the expense of the Customer.
- (5) Rights of retention of the Customer are excluded. The Customer is only entitled to set-off, if the counterclaim is recognized by us or by declaratory judgement.
- (6) Notwithstanding further claims we are entitled to charge default interest amounting 8 percentage points above the base lending rate in case of failure to pay.
- (7) All claims, including those claims for which bills of exchange are accepted by us, become due immediately, if the Customer gets into arrears, fails to comply with other essential obligations from the agreement or these General Terms or if we hear circumstances which are suitable to reduce the creditworthiness of the Customer, in particular suspension of payments, composition or insolvency proceedings. In such cases, we are entitled to retain outstanding deliveries or to perform only against advance payment or securities. If applicable, we can further require that goods already delivered are returned to us by the Customer at the expense of the latter.

V. WITHDRAWAL THROUGH THE CUSTOMER

If the Customer cancels a placed order without being authorized to do so, we are entitled to claim damages for the costs incurred due to the execution of the order plus 15% of the order sum as lump sum of lost profit notwithstanding other and further rights.

VI. WARRANTY, LIABILITY AND LIMITATION PERIOD

- (1) The Customer shall thoroughly and completely inspect each delivery immediately upon receipt. Damages and shortages detected in the inspection are to be notified in writing within eight days after receipt of the goods. Otherwise, the entire delivery is deemed approved. If a damage occurs later which has not been detected in the initial inspection, the Customer shall notify this immediately in writing within the same period.
- (2) Our warranty is exclusively limited to the fact that the delivered goods comply with the indicated quality and specification. A warranty obligation only exists, if a damage occurs although the goods have been installed / mounted and serviced / maintained according to the instructions and if the damage is not due to normal wear of the goods or individual parts. A warranty obligation is not accepted due to minor deviations regarding colour, marbling, weight and / or dimensions of the goods. A minor deviation regarding weight or dimensions shall be deemed a deviation of up to 10%.
- (3) In case of justified damages which have been notified properly, we will rework the goods or provide supplementary performance at our own discretion after return of the respective goods.
- (4) The Customer is only entitled to rescind a sale or to reduce the purchase price, if we refuse rework or supplementary performance or do not answer its justified complaint within three weeks or the goods delivered in the scope of rework or subsequent delivery are also faulty and this has been notified according to section (1).
- (5) Irrespective of the legal basis, claims for damages of the Customer only exist in case of gross negligence or intentional violation of the agreement, default and impossibility and if the Customer is no longer interested due to partial delay and partial impossibility of performance.
- (6) Insofar as longer legal limitation periods are not mandatory or the validity of the VOB (German construction contract procedures) is not agreed, warranty and damage claims are subject to a limitation period of six months as from delivery of the goods.

VII. RESERVATION OF TITLE

- (1) The supplied goods remain our property until the Customer satisfies all claims from all business relations. In case of several claims, the reservation of title shall be deemed a security for all claims, irrespective of whether individual deliveries have already been paid. If the value of the supplied goods exceeds the sum of the secured claims by more than 110%, we are obliged to release parts of the securities on a pro-rata basis at the request of the Customer.
- (2) The Customer is authorized to further process and resell the reserved goods in the ordinary course of business. Transfer by way of security, pledging or other extraordinary disposition are however not permitted. The Customer undertakes to secure our rights in case of resale of the reserved goods on credit.
- (3) The Customer assigns its claims from the resale of the reserved goods including any balance claims to us by now. We hereby accept this assignment. Irrespective of the assignment and our right to collection, the Customer is entitled to collect claims as long as it meets its obligations towards us and does not suffer deterioration of assets. On request, the Customer shall give us any information on the assigned claims required for the collection and notify the debtors of the assignment.
- (4) Any further processing or machining of the reserved goods is effected by the Customer for us without any obligations for us resulting therefrom. In case of further processing, union or mingling of reserved goods with other goods not belonging to us, we are entitled to the co-owner's interest in the new item arising therefrom on a prorata basis of the value of the reserved goods to the value of the processed goods. If the Customer acquires the sole property in the new item, the contractual parties agree that the Customer grants the co-ownership in the new item on a prorata basis of the value of the processed, connected or mingled reserved goods and preserves them free of charge. If the reserved goods are resold together with other goods and irrespective of whether without or after processing, union or mingling, the above agreed assignment of future claim only applies up to the value of the reserved goods resold together with other goods.

- (5) The Customer undertakes to take out insurance policies in the usual scope, in particular against risk of fire and house-breaking and to handle the goods with care. At our request, the conclusion of an insurance contract is to be evidenced.
- (6) Under the conditions of section IV. paragraph (7), we may claim return of the reserved goods. Neither the request for return nor the subsequent receipt of the goods shall be deemed withdrawal from the agreement. The Customer is liable for the claim due to loss remaining after utilization of the returned goods.

VIII. LEGAL SYSTEM, PLACE OF PERFORMANCE, PLACE OF JURISDICTION

- (1) This agreement is subject to German law excluding conflict of laws provisions, UN Sales Convention and CISG.
- (2) Place of performance for both parties shall be Wuppertal.
- (3) Place of jurisdiction for all disputes resulting from this agreement shall be Wuppertal.
However, we reserve the right to bring an action against the Customer at the court having jurisdiction over the Customer.



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