

§ 1 General – Area of application

- (1) Our sales and delivery conditions apply. We do not accept conflicting conditions or deviating conditions as stipulated by the buyer, unless we have formally accepted this stipulations in writing. Our delivery conditions apply even when we have knowledge of conflicting conditions or deviating conditions being stipulated by the buyer, including procurement directives of a legal entity as per public law, with unconditional delivery to be concluded.
- (2) Our sales and delivery conditions are also applicable for future deliveries, services and offers, even if they have not been separately agreed upon anew.
- (3) Under § 310 Abs. 1 BGB, our sales conditions are only applicable against companies, legal entities and fund assets as per public law.

§ 2 Offer – Offer documents

- (1) All our offers are subject to change and are non-binding, as long as they have not been specifically designated as binding or are conditioned by statutory terms of acceptance. Orders or contracts are legally binding only fourteen days after receipt with either a written confirmation or execution of the contract
- (2) The privity of contract between us and the buyer is conditional only to the written sales contract between the two parties, inclusive of the general sales and delivery conditions. All understandings between the parties in the subject-matter of the contract have been reflected here in its totality. Verbal confirmations from our side before conclusion of the contract are legally non-binding and verbal understandings between the parties to the contract have to be complemented with a written contract, as long as the terms of the contract do not stipulate that prevailing conditions continue to apply. Amendments and modifications to the contract, including the terms and conditions that have been reached between the parties, need to be made in writing for them to be legally applicable. With the exception of the managing director or an authorised representative, our employees are not authorised to come to a verbal understanding which deviates from the contents of the contract. Individual contractual understandings, particularly those dealing with quality assurance or suggestions for usage of our goods, delivery time specifications, rebates and premiums as well as any goodwill gestures need an explicit written confirmation from our administrative centre to be legally binding; the exception being a direct sale from our warehouse. For adherence to the written form it is enough to convey your message per telefax, other telecommunication transmissions, particularly E-Mail do not fulfill the requirements
- (3) Our specifications vis-à-vis the delivery or service (e.g. weights, dimensions, serviceability, resilience, tolerances and technical specifications) as well as our illustrations (e.g. drawings and figures) are just approximations, so long as it has not been stipulated in the contract that exact details are a prerequisite. They are not a guaranteed characteristic of their state, but a description or designation of the delivery or service. Customary to trade variances and variances that come about because of legal specifications or are representative of technical improvements, as well as the replacement of components with parts which are on par, are allowed, as long as the applicability does not hamper the original purpose as specified in the contract. We reserve the right to make short-term changes and amendments. Specifications to the tightness of a product are to be seen as a non-binding benchmark, the details of which have been achieved through our own in-house trials based on load tests.
- (4) We retain ownership and copyrights for all offers and cost estimates as well as the drawings, figures, literature, catalogues, models, tools and other documentation, and other auxiliary material that have been passed onto the buyer for his use. Without our specific consent, it is not permissible for the buyer to make the aforesaid objects or their contents available to a third person, to advertise; to be used or duplicated by him or a third person. On our demands the aforesaid objects have to be returned and produced copies need to be destroyed when not needed for the normal course of business or if the negotiations do not lead to the fruitful conclusion of a contract.



§ 3 Prices – Terms of payment

(1) As long as the order confirmation doesn't specify otherwise, our prices apply „ ex works “(Incoterms 2000) apply, including packaging. Special packing will be added to the cost price.

(2) All prices are calculated in EURO plus Value Added Tax (VAT), for export deliveries customs as well as fees and other public taxes.

A deduction because of a cash discount entails a written agreement.

(3) In so far as the list prices form the basis for the agreed prices and the delivery takes place four months after conclusion of contract, the valid list prices are applicable.

(4) As long as the order confirmation does not say otherwise, the purchase price is the net price (without deductions) and is to be paid within 30 days from the date of invoice.

Decisive for the date of payment is our receipt of payment.

Drafts and checks are seen as payment only after encashment

The costs of drafts and checks shall be deducted from the customer's account.

In the case of default of payment the appropriate legal regulations apply

(5) On default of payment especially when enforced by a court of law, all unpaid invoices have to be reimbursed immediately

(6) A buyer is only entitled to a right of compensation, when his counterclaim is legally binding, indisputable or duly recognised by us.

Besides his exercising the right of retention is insofar authorised, so long as his counterclaim is within the bounds of the contractual relationship.

(7) We are within our legal rights, to fulfil pending deliveries or services only against an advance payment or security deposit, when on conclusion of a contract, circumstances are made known, that are appropriate in reducing the creditworthiness of the buyer, through which the payment of our outstanding claims by the buyer, within the framework of the existing contractual relationship (including individual orders

§ 4 Delivery and delivery time

(1) Delivery to occur factory (“ex works”, Incoterms 2000)

(2) Our time limits and deadlines for delivery and services are always applicable as approximations, unless a specific time limit or deadline has been mutually agreed upon.

The start of our delivery time is preconditioned by the clarification of all technical details.

The compliance of our delivery obligations is preconditioned by all timely and orderly commitments made by the buyer. With delivery “ex works”, the adherence to the stated delivery time, as per the written communication for the readiness of delivery apply.

Depending on the dispatch details which have been agreed upon, the delivery time and the date of delivery apply to the moment the transfer takes place onto the forwarding agent, shipping agent or any third party that has been assigned with the task.

(3) We can – without damaging the rights of the buyer in case of default- demand an extension period for the delivery and service deadlines or a deferral of the delivery and service deadline from the buyer, when the buyer does not fulfill necessary requirements as stipulated in the contract.

(4) We do not take responsibility for the impossibility of deliverance or delay in delivery, so long as caused by force majeure or others, that these unforeseeable circumstances (e.g. all forms of disruption in operations; difficulties in obtaining material and energy; delays caused by transit problems, strikes or legal lockouts; shortage of labour, energy or raw materials; difficulties in obtaining official authorisations, official provisions or the absence, not orderly or non timely delivery by the suppliers) could not have been predicted during the period of contract signing, and which have not been caused by us.

So long the circumstances make the delivery or service difficult or impossible to fulfil and the period is longer than one month, the customer and we shall be entitled, after a grace period, to rescind the contract with regard to the part not yet performed.

For obstructions which are interim in nature, the delivery or service periods are extended or the delivery or service deadlines are postponed beyond the period of obstruction with an appropriate ramp-up time.

- (5) We are entitled to partial delivery, when the partial delivery as part of the framework of the contract, can be used by the buyer for its intended purpose; the delivery of the remaining parts is assured and no additional work and expenses incur (unless we declare ourselves willing to absorb the costs)
- (6) If we are not in a position to deliver or provide a service in the stipulated time period or cannot deliver or provide the service, independent of the reasons, our liability for compensation is limited to the provisions under § 8 of our General Sales and Delivery conditions.

§ 5 Place of delivery, Dispatch, Packaging, Passing of risk, Acceptance

(1) Except when otherwise stipulated in the order confirmation, delivery is "exworks" (Incoterms 2000).

(2) The dispatch type and the packaging, as part of our obligations is subject to our powers of discretion

(3) The onus of responsibility is transferred onto the buyer as soon as, or latest when, the delivery item or items are handed over (the beginning of the loading procedure is decisive here) onto a forwarding agent, shipping agent or any third party that has been assigned with the task
This is also applicable with partial delivery or when we have decided to take over other services or responsibilities (e.g. dispatch or installation).

If the dispatch or transfer of goods has been delayed because of circumstances caused by the buyer, the onus of responsibility is transferred from the day we are ready to dispatch, onto the buyer, provided we give him due notice.

(4) Storage costs are borne by the buyer after the passing of risk.

If stored by us the weekly storage costs would be 0.25% of the invoice value of the delivery item.
We reserve the rights to enforce and provide proof for further or lesser storage costs.

(5) Only if the buyer expressly wishes it and is willing to bear the expenses, will we insure the consignment against theft, damage in transit, fire damage and damage caused by water or any other risk related insurance.

(6) In so far that an acceptance needs to take place, the delivery item is to be seen as legally accepted, if the delivery has taken place, we have indicated this to the buyer under the provisions of notional acceptance as per §5 (6) and have called upon him to accept, if twelve working days have ensued since delivery or the buyer has started using the delivered item (e.g. the supplied piece of equipment has been transferred to the plant) and in this case since delivery six working days have ensued, and the buyer refuses to take acceptance of delivery within the stipulated time period because of a reason or reasons besides the ones indicated by us, that make the delivered item impossible to use or if the delivered item has been considerably damaged.

§ 6 Liability for defects

(1) The statute of limitation on claims for defects is limited to 12 months, calculated from the day the onus of responsibility has been transferred.

Statutes of limitations apply, for all items that have a lifespan beyond two years and are not contrary to these Sales and Delivery conditions.

(2) Claims for defects from the buyer are pre conditioned by § 377 HGB wherein it states that the buyer has the duty to examine the goods and has the obligation to give notice of defects, as per requirements.

The delivered products are seen as approved, when we are not provided with a "notice of defects" vis-à-vis apparent defects or other defects, which need to be identified following an immediate and thorough inspection, or otherwise within seven working days after the detection of the defects or in the period, the defect was identified by the buyer during normal usage of the delivered items without closer inspection, and has been received in the specific form as stipulated under § 2 (2) S. 5.

On our demand the rejected goods or items have to be returned to us, free of transportation charges. If the „notice of defects“ is justified, costs will be compensated by us for the cheapest possible dispatch route; this does not apply if an increase in costs results because the delivered item is located at a point other than the one stipulated as per the terms of the contract, for its usage.

(3) For orders of custom-made products, product variants and articles that are not stored in our warehouses, a quantity variance of +/- 10 % could result because of production based factors.

(4) In case a defect of a delivered item has been ascertained, we are within our rights to decide if our supplementary performance should take the form of a correction of the determined faults or in the delivery of a new product, free of defects.

For the correction of faults or the replacement of goods we are committed, only for the purpose of supplementary performance, to compensate for accrued expenses, particularly transport costs, labour costs and material costs as long as an increase in costs does not result from the delivered item being located at a point other than the one stipulated as per the terms of the contract, for its usage.

(5) If the supplementary performance has failed in spite of at least two attempts to do so, the reasons being the impossibility, unreasonableness, refusal or undue delay of the rectification or compensation delivery, the buyer is within his rights to withdraw from the contract or ask for a commensurable reduction in price.

(6) If a defect is caused by us, the buyer can make claims for a compensation, as per the conditions under § 8.

(7) In case of defects in components from other manufacturers, and where licensing or any other reasons do not allow us to make the necessary rectifications, we can choose between making a claim for a compensation directly against the manufacturer and supplier for the sum of the buyers invoice or ask the buyer to do so.

If all other conditions and the requirements of this Sales and Delivery conditions are fulfilled, warranty claims against us for such defects are only possible, when the legal enforcement of the aforesaid charges against the manufacturer have been unsuccessful or are futile, e.g. in case of bankruptcy. During the period of litigation, the limitation of all relevant claims of the buyer against us, is to be suspended.

(8) The right to a warranty claim is suspended, when the buyer without our prior consent makes rectifications or gets a third person to make the rectifications to the delivered item, thereby making the removal of the defects impossible or unacceptably difficult. All incremental costs that have come about because of these attempts at rectification, are to be borne by the buyer.

(9) No warranty claims apply for our delivery of used or second hand products to the buyer.

§ 7 Property rights

(1) We abide by the stipulations provided by § 7, whereby the delivery items are free from infringement of industrial and intellectual property rights.

If a contractual partner decides to make claims vis-à-vis an infringement of industrial or intellectual property rights, the signatory to the contract is obliged to inform the other immediately in writing.

(2) In case of an infringement of industrial and intellectual property rights, we will make the necessary amendments at our discretion and bear the costs that may incur, such that an infringement vis-à-vis a third parties industrial or intellectual property rights ceases to exist, and these amendments will be made in accordance with the functionality of the product as stipulated in the contract, or the buyer will be provided the "right of use" come about because of the expiry of the licence agreement.

If we are unable to make the necessary amendments within a provisional time frame, the buyer is within his rights to withdraw from the contract or ask for a commensurable reduction in price

Any claims for damages made by the buyer are subject to the limitations as per § 8 of these Sales and Delivery conditions.

(3) In case of infringement of industrial and intellectual property rights by our subcontractors or other manufacturers for the items we deliver to the buyer, we can choose between making a claim for compensation directly against them for the sum of the buyers invoice or ask the buyer to do so.

As per the provisions provided in § 7, warranty claims against us are only possible, when the legal enforcement of the aforesaid charges against the subcontractor or manufacturer have been unsuccessful or are futile, e.g. in case of bankruptcy.



§ 8 Liability for compensation

- (1) Our liability for compensation, irrespective of the legal basis, particularly impossibility of delivery, delay in delivery, bad or wrong delivery, breach of contract, breach of duty during contract negotiations and liability in tort, is limited to these stipulations under § 8 of the Sales and Delivery conditions.
- (2) We do not take ownership of liability for ordinary negligence by our government bodies, statutory representatives, employees or other auxiliary persons; or liability for gross negligence from our non managerial staff or other auxiliary persons, as long as these violations do not breach an essential contractual obligation. Contractual obligations include the commitment to a timely and flawless delivery, and installation as well as the duty to provide appropriate advise to a client, to protect and to exercise proper care, thereby making it possible for the buyer to use the delivery item as envisaged in the contract, or to protect the life or physical condition of his staff or that of a third party, or to protect his property from substantial damages
- (3) If as per § 8 (2) we are liable for compensation, the compensation for liability is limited to the eventual consequences of a breach of contract, the particulars of which should have been identified when signing the contract or the circumstances that led to a breach of contract were known to us or should have been known to us, when applying due care and attention. Secondary and consequential damage, that come about as a consequence of the defective delivery items, are eligible to be replaced, only if such items are utilised as per the intended use.
- (4) In case of ordinary negligence our liability to pay damages to the buyer for damage to property or personal injury is limited to an amount of EUR 2.500.000,00 (Two and a half million Euros only) pro insurance year 2 times maximised pro claim (as per our present insured sum for product liability insurance or general liability insurance), even if it involves the violation of an essential contractual obligation.
- (5) The aforesaid non-liability and liability limitations also apply to the same extent for our government bodies, statutory representatives, employees or other auxiliary persons
- (6) In so far as we provide technical information or work in an advisory capacity and this information or advice is not owed under contract, this is to be provided free of charge and excluded from all types of liabilities.
- (7) These restrictions as stipulated under § 8 do not apply for our liability against wilful conduct, for guaranteed characteristic of state of the products, for damage to life, body or health or as per the stipulations provided under the Product Liability Act.

§ 9 Joint and several liability

- (1) Additional liability for compensation as envisaged under §§ 6, 7 and 8, without due consideration of the legal nature of the claim, is ruled out. This is particularly relevant for compensation claims come about because of the occurrences of misdemeanours during contract conclusion, or other neglects of duty or tort claims for compensation for material damage as per § 823 BGB.
- (2) The limitations as stipulated under paragraph (1) are also applicable, when the buyer on making a claim for compensation of damages, claims useless expenses instead of a replacement delivery.
- (3) When the liability for compensation claims is ruled out or limited against us, this also applies for personal liability claims against our salaried personnel, employees, staff, representatives and auxiliary persons.

§ 10 Reservation of title

- (1) We shall retain title to the delivered item until receipt of all payments owed by the customer under the contract. In the event that the customer acts in breach of contract, in particular defaults in payment we shall be entitled to take back the items delivered. The taking back of the items delivered by us is to be seen as a cancellation of the contract. After taking back the delivered items, we shall be entitled to realise the same; the realisation proceeds shall be set off against the customer's liabilities, less reasonable costs of the realisation.
- (2) The customer is obliged to handle the delivery item carefully. In particular, he is obliged to insure the same sufficiently at the reinstatement value at his expense against damage caused by fire, water, and theft. If maintenance and inspection work is necessary, the customer shall carry out such work at his expense in good time.



(3) The customer shall inform us in writing without undue delay of attachments and any other interference by third parties, so that we can bring a lawsuit in accordance with § 771 German Code of Civil Procedure (ZPO). As long as the third party is not in a position to pay for any court and out of court costs of any action which may be necessary pursuant to § 771 German Code of Civil Procedure (ZPO), the customer shall be liable to us.

(4) The customer shall be entitled to resell the delivery item in the ordinary course of business; however, he herewith assigns to us all claims to the amount of the invoice sum total (including value-added tax) accruing to him from the resale against his customer or third parties, irrespective of whether the delivery item has been resold without or after having been processed. The customer shall be authorized to collect this claim even after assignment we shall be authorized to collect the claim ourselves. Our authority, to collect the claim ourselves, remains unaffected. We however commit ourselves, not to collect the claim ourselves, if the customer performs his obligations to pay from the collected proceeds, does not default on payments or has not filed a petition for the start of insolvency proceedings or has ceased to make payments. If this is the case, we may demand that the customer state which claims have been assigned and their debtors, furnishes all information necessary for the collection, hands over all relevant documents and notifies the debtor (third party) of the assignation.

(5) Any processing or transformation of the delivered item by the customer shall always be carried out on our behalf. If the delivered item is processed with other items not belonging to us, we shall acquire joint title to the new item in the proportion of the value of the delivered item (Invoice amount plus VAT) to the other processed items at the time of the processing. In all other respects, the provisions applicable to the items delivered with a reservation shall also apply to the item resulting from the processing.

(6) If the items delivered by us are mixed with other items not belonging to us to form an integral part, we shall acquire joint title to the new thing in the proportion of the value of the goods delivered by us (Invoice amount plus VAT) to the other mixed items at the time of the mixing. If the mixing is done in such a way that the customer's thing must be deemed to be the main thing, it is agreed that the customer will have transferred joint title to us proportionally. The customer shall hold the sole or joint title in safekeeping for us.

(7) The customer also assigns to us those claims as security for securing claims by the latter that are accredited to him that have come about by the amalgamation of the delivered item with a property against third parties.

(8) We undertake to release the securities to which we are entitled at the customer's request to the extent that the feasible value of our securities exceeds the claims to be secured by more than 10 %; selection of security shall be incumbent on us.

(9) If the article of sale is to be taken abroad, the following rules apply: if the article of sale is transferred abroad before all due payments, as stipulated in the contract, are made, the title of ownership remains with us till all due payments are made, as long as it is within the applicable legal framework. If the reservation of property rights does not permit this, but still allows reservation of other rights relevant to the article of sale, we reserve the right, to exercise all applicable rights. The buyer is obliged, to give his full cooperation for all measures undertaken by us, that are directly related to the protection of our property rights or in their place other relevant rights of the delivery item.

§ 11 Final clauses

(1) If the customer is a merchant, the place of jurisdiction shall be our registered office; we are also authorised, to sue the buyer in the court of his residence.

(2) The business relationship between us and the buyer is subject to the laws of the Federal Republic of Germany only. The agreement as decided in the United Nations on 11. April 1980, for contracts regulating the international sale of goods (CISG), do not apply

(3) As long as the order confirmation does not say otherwise, our registered office is place of fulfilment.

(4) In the eventuality of the contract or this Sales and Delivery conditions containing regulatory gaps, to fill these gaps those legally effective regulations apply, which the contractual parties would have agreed upon keeping in mind the cost-effective objectives of the contract and the purpose of this Sales and Delivery conditions, i.e. if they had known of these regulatory gaps.

(5) When in doubt, decisive for interpretation of the commercial terms, are the INCOTERMS 2000.

Remark: The buyer should register, that as stipulated under § 28 Data Protection Act, we utilise Data from our contractual relationship to save information for the purpose of data processing and also reserve the right, as long as it is imperative for the execution of the contract, to pass this information onto a third party (e.g. insurances).

