

General supply and payment conditions

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These General Terms and Conditions are part and parcel of all our offers and contracts in terms of deliveries, and shall also apply in present and future business transactions. Our General Terms and Conditions shall apply vis à vis legal entities under public law as well as separate estates created under public law as defined by section 310 of the German Civil Code (BGB).

1. Scope

1.1. The following business conditions are uniquely valid, especially for commercial purchases with business companies. They are valid for all deliveries within the scope of a present as well as a future business relationship.

1.2. We hereby reject the validity of other business conditions. Agreements which deviate from these, in particular conflicting business conditions, are valid only when previously authorized by us in writing. We hereby reject the existence of deviating conditions should any be contained in the letter of confirmation.

2. Offer and conclusion of contracts

2.1. Our offers are always subject to confirmation.

2.2. Contracts materialize or are considered binding, only after our acceptance of the received work/purchase orders, after our confirmation in writing of the declaration of acceptance or after the delivery of the goods ordered by the client. This applies correspondently to addenda or modifications of supply contracts.

2.3. All documents, such as prospects, product descriptions etc. made available to clients, contain only approximate values customary in a trade, as far as they are not explicitly marked as binding. Moreover, such documents do not justify a guarantee liability.

3. Prices

3.1. Lacking an agreement of the contrary, the amount agreed upon at the time of the placement of the order is to be paid by the purchaser/client.

3.2. Unless otherwise specified in the acknowledgment of the order, our prices "ex work" are valid, including packaging. Special packaging ordered by clients or dispatching in different special packaging will be separately calculated in the invoice.

3.3. The goods are dispatched uninsured, unless otherwise explicitly agreed upon. Following the client/purchaser's wishes, insured deliveries can be made in the client/purchaser's name, at extra costs.

4. Supplies/partial performance

4.1. The place of supply, manufacture and performance of services is our home in Mistelbach. The purchaser must pick up the goods from this place. If the goods are dispatched, the purchaser must bear the costs for transportation, as well as those for transportation risks even by transportation with our own vehicles. If the purchaser is a contractor/merchant, we decide on the type of dispatch and the dispatch type sequence unless otherwise agreed upon with the purchaser.

4.2. According to our discretionary authority, we are entitled to partial performances; the purchaser is bound to accept these partial services. In these cases, the purchaser must pay for the partial services which are carried out.

5. Conditions of payment

5.1. Our invoices are, failing prior written agreements, payable netto and immediately. A default is assessed according to the legal requirements in section 286 of the German Civil Code (DGB). In particular, Section 286 point 3 of the German Civil Code is applicable.

5.2. The deduction of other discounts requires a special written agreement.

5.3. The purchaser shall have set-offs rights only with respect to counterclaims which are res judicata, uncontested or acknowledged by us. Moreover, the purchaser is authorized to exercise any right of retention only insofar as his counterclaim is based on the same contractual relationship.

5.4. We accept bills of exchange only with prior agreement assuming that eligibility is met. A credit equal to the amount of the bills is effected only if the counter-value including the ancillary expenses, without any reservation, are at our disposal. Note charges and note taxes as well as similar costs are borne by the client and must be paid immediately.

5.5. We are entitled to charge purchasers an interest amounting to 5% per year above the obtaining valid base lending rate of the ECB from the due date, and other clients from the default date, including any provisions and costs. The assertion of other damages remains reserved. If payment by installments has been agreed upon and if the client defaults totally or partly on two successive installments, the remaining amount is immediately due for payment.

5.6. If after the conclusion of the contract, justified doubts about the financial solvency or the creditworthiness of the client arise or become apparent, we are thereby entitled to require the immediate payment of all open items, as well as deferred invoice amounts and to demand a cash payment or a collateral security from the client. If the client fails to comply, we are entitled to withdraw from the contract. Doubts regarding financial solvency or credit worthiness are deemed to exist even in the case of relevant negative commercial information.

5.7. We are entitled in the case of new clients to carry out the supply per cash on delivery or per prepayment. If the prepayments are not made within the delays specified in the prepayment invoice, we are entitled to withdraw from the contract and to demand compensation for damages according to the requirements of point 12.4.

5.8. If the purchaser/client defaults with still unpaid payments, we are entitled to carry out the other deliveries according to cash on delivery or prepayment. We are entitled, in such cases, to change previous agreed upon payment conditions into „delivery versus cash on delivery“ or „delivery versus prepayment“. If, in the case of delivery versus prepayment, the prepayment duty/payment duty is not met by the client within the delay agreed upon in the prepayment invoice, we are entitled to withdraw from the contract and to demand compensation for damages according to the requirements of point 12.4.

6. Delivery time

6.1. The delivery times specified by us begin with the date of our written declaration of acceptance or confirmation, though not before the payment by the client of, for example, due payments.

6.2. Specifications concerning our delivery times are binding only after our explicit written confirmation of the latter. Work conflicts, mandatory measures, lack of raw materials, traffic disturbances and impairments, inter alia, release us, for the duration of the respective disruption, from our delivery obligations, independent of their occurrence by us or by our suppliers, and in the case of them preventing us from performing the tasks at all, release us definitively from our delivery duty.

6.3. Claims for damages on account of delayed deliveries or of non-deliveries are excluded, unless based on gross fault. In non-commercial dealings, claims for damage, in the case of slight negligence are limited to the foreseeable damages. Compensations for unforeseeable damages presume the proof of deliberate or gross negligence in the violation of the contract. In any case, they are limited to the amount of the basic offer or bill amount in the respective delivery, and in the case of partial deliveries to the partial value.

6.4. If the client defaults on the terms of acceptance or violates other obligations to cooperate, we are entitled to claim compensation for the damages resulting there from, including possible additional expenditures. This case includes also the risk of a random loss or a random deterioration of the goods bought at the point of time at which this default of acceptance occurred.

6.5. We reserve the rights of withdrawal (from the contract) in case of delays in delivery for cause of events of force majeure and for cause of events significantly complicating the delivery and over which we have no control according to point 11. We also reserve the right to extend the delivery time by the duration of the respective hindrance, plus an appropriate start-up time.

7. Acceptance/Reception

7.1. The client must accept/receive the delivery, in any case immediately after the order. This also applies to delivered goods showing only minor defects irrespective of the ordering rights according to point 10.

7.2. If the client does not accept the delivery, we are thereby entitled to withdraw from the contract after fixing a delay of ten days, or to claim compensation for damages. In the latter case, we are entitled to claim either, without proof of damage, 20% of the agreed upon price, or a compensation for the actual loss sustained. The client, however, can make a case that a non-fulfilled claim for damage has not occurred or not at the amount of the flat rate.

7.3. Goods may be returned only if explicitly agreed upon previously. In the case of a return, credits are in effect allowing for deductions on the basis of the state of the goods, the point in time of the return as well as a handling discount of 10% of the agreed upon price.

7.4. In case withdrawal from the contract was agreed upon or return of goods was accepted by the seller the customer shall be issued a credit note. The amount of the credit shall not exceed the actual paid purchase price; if necessary allowance may be considered.

8. Bearing of risk, receiving inspection

8.1. The risks pertaining to each individual delivery are assumed by the client upon availability of the goods in our works. The risks for services are assumed by the client at the time of the acceptance or when already accepted and sent back to us. The transfer of risk occurs also in the case of partial deliveries or if the supplier offered other services, such as, for example, dispatching or delivery costs or installation. In compliance with the client's wishes and at the client's costs, the supplier can ensure the delivery against breakage, transport, fire and water damages as well as against other insurable risks. Transportation, including loading is done at the client's risk. Transport sequence and transport means are to be decided by the supplier unless otherwise agreed upon.

8.2. The client must check the delivery at reception and inform us immediately, in writing, in the case of transport damages or discrepancies with the agreed upon goods. Transport damages must however be claimed from the shipper.

9. Retention of title

9.1. All deliveries shall take place with reservation of title (reserved goods) up to the complete payment of all the claims that arose at the point in time of the conclusion of the contract, or previously, and to which we are entitled based on this contract and on the business relationship with the client at the present and in the future, irrespective of any legal ground.

9.2. A conduct contrary to the contract, on the part of the client, in particular in case of default of payment, entitles us, without further warning, to take possession of our property and to pick it up at the cost of the client, without implying that a withdrawal from the contract thereby occurs. The retraction of the goods is only effected for the protection of our claims. The client is still committed to complying. After the retraction of the delivered goods we are entitled to their utilization. The utilization proceeds are to be calculated according to the client's payable bills, less appropriate utilization costs.

9.3. The client is committed to notifying us immediately of third party accessing the reserved goods (e.g. garnishments) that are under our retention title or to the claims to which we are entitled as well as to notify us of other adverse effects. The client shall also make reference to the third party or the executory officer to our company as the sole owner of the goods. Moreover, the client is committed, in compliance with our wishes, to disclose to us all information and to hand over to us all documents necessary for the protection of our rights. The client is committed to making up for the damages resulting from such an access as well as for all the resulting costs.

9.4. Any reworking or processing of the goods shall always be carried out on behalf of us as manufacturers, but without any obligations on our part. If the goods in our property are combined/commingled with other goods, we then assume joint ownership and the combined object shall pass to us on a pro rata (invoice value) basis of the goods that represent our property.

9.5. As long as the purchaser duly complies with his payment obligations, he is entitled to resell the goods in the ordinary course of business activities. The client is whereupon committed to resell the goods that are in our property only under retention of title. However, the purchaser already now assigns to us, as a cautionary measure, all claims accruing to the purchaser against third parties by resale, irrespective of whether the goods have been resold prior to or after processing or commingling with other objects. The client is entitled to disclose to us the assigned claims, for our invoices, and to demand that the payment be made directly to us. Our power to collect receivables ourselves shall not be affected thereby. The client is bound to immediately disclose to us the name and the address of his debtors as well as the amount of the claims. He is also bound to hand over to us all documents necessary for the confirmation of the claim and to inform the debtors (third parties) of the assignment. In respect to the assignment, the client must issue us a deed.

9.6. The client is not authorized to give in mortgage or to transfer the goods that are in our property.

9.7. In case of insolvency or excessive indebtedness, the contractual partner is committed to separating the goods delivered by us and the receivables assigned to us and to produce to us an exact itemization hereof, stating the receivables and the address of the defaulter.

9.8. If the value of security furnished to us exceeds our receivables by more than 20%, we shall be obliged upon request of the purchaser to release items of security of our choice in the corresponding amount.

10. Guarantee

10.1. The purchaser's warranty claims require that the purchaser has duly fulfilled its inspection and notification duties pursuant to sections 377, 378 of the German Commercial Code (HGB). The notification delay for obvious failings, whereby failing is also understood as lack of an explicit guaranteed quality, is a maximum of two weeks following the acceptance of the goods delivered by us. The warranty claims shall become statute-barred if no notification of defect is made immediately upon examination of the goods or within the agreed upon delay.

10.2. If the client is not a contractor/merchant, the guarantee period is 24 months from the point in time of the acceptance of the delivered object, unless the delivered object is meant to wear out according to the regulations, or wears out through appropriate use. The rights of the client to assert claims for cause of a defect is limited to six months from the point in time of the timely notification, at the earliest with the expiration of the warranty period. The warranty periods are statutory periods of limitation and are also valid for compensation claims for material consequential losses, as long as they are not based on unauthorized actions. If the purchaser is a contractor/merchant, the warranty period is limited to a year from the date of delivery of the goods.

10.3. We assume liability for those defects which have been reported in a timely fashion before the passing of risk and which are verifiable and which defectiveness is due to defects in material produced by us, processing errors, as well as faulty services. The liability will be recognized if the goods are unusable or considerably affected in their usability, according to our terms, in the form of improvements of the defective object or in the form of delivery from our main site in Mistelbach or ex-works. Replaced goods shall be our property.

10.4. No warranty will be granted for damages resulting from modifications, inappropriate reworking and processing of the delivered goods. No warranty will be granted for natural wear, inappropriate or

faulty utilization, exchange of basic material, chemical or electro-chemical or electrical impacts, provided that there is no contributory negligence on our part.

10.5. In order to be able to carry out all necessary improvements and compensatory deliveries, according to our equitable discretion, the client must, in coordination with us, give us the necessary time and possibility. The breach of this obligation to co-operate relieves us of our liability. Only in urgent cases of endangerment to persons or objects or of protection against disproportionately large damages is the client entitled, having notified us without undue delay, to remedying the defect himself or to appointing a third party to that effect and to claim the necessary costs from us.

10.6. The client is entitled to canceling the contract or withdrawing from the contract or to a reduction of the purchase price only if the replacement delivery or the rectification of defects in individual cases is not possible, and despite written request on the part of the client and adequate determination of a date, or if the rectification of defects repeatedly fails to occur.

10.7. Further claims by the client, irrespective of their legal grounds, are excluded. We accept no liability for any damage not caused to the object of delivery itself and we notably not accept liability for lost profits or any other mere pecuniary loss on the part of the purchaser. The above exclusion of liability shall not apply if and to the extent the damage was caused by intent or gross negligence. Moreover, it shall not apply if the purchaser may assert claims for damages for non-performance due to the absence of a guaranteed quality. If we carelessly breach a contractual liability, the indemnifiability is limited to the contract-typical foreseeable damages.

10.8. Where our liability is excluded or limited, the above shall also apply for the personal liability of our employees, staff, co-workers, representatives and vicarious agents. In business dealings, we are liable for our own gross negligence and that of our executive employees.

10.9. In respect of new manufactured goods, we guarantee defect-free purchased goods to the extent that a defect which a customer of the purchaser pointed out was already existent at the time of the passing of risk, thus giving the customer the right to claim damage from the purchaser according to the legal regulations. The liability is however limited to 24 months from the date of the passing of risk to the purchaser. Pursuant to section 478 of the Federation of German trade unions (BGB), we entitle the client to an equivalent compensation (compensatory delivery). Unaffected by the aforesaid regulations, the provision comprised in section 377 of the German commercial code (HGB) remains valid. Excepting our allowed guarantees, namely the condition of goods and durability guarantees, taking measures against us as the manufacturer within the marketing chain directly is excluded. Also excluded are claims for damages, so long as we are not guilty of deliberate acts or gross negligence.

11. Cancellation of the contract

11.1. We are entitled, to the exclusion of claims for damages, to cancel the contract if, after the conclusion of a congruent hedging transaction with our suppliers and after having undertaken all reasonable efforts to acquire the materials which are necessary for us for the execution of our contract, independent of negligence we are let down by our suppliers .

11.2. If after the conclusion of the contract, serious circumstances lead us to doubt the financial solvency or the creditworthiness of the client (e.g. enforcement attempts, suspension of payments, file for insolvency etc.), hence putting our payment claims at risk, we are thereby entitled to cancel the contract. In case of unfavorable credit information or negative information concerning a similar institution, we are entitled to demand a security. If the client, despite our demands, is not ready to provide security, we are thereby entitled to cancel the contract.

11.3. If the purchaser gives wrong information concerning his creditworthiness which are of particular significance, we are in the same way entitled to cancel the contract.

11.4. Delivery and service delays, for which we are not responsible and which make it difficult or impossible for us to perform the delivery, such as events of force majeure, work conflicts, lockouts, official requirements etc. entitle us to cancel the contract.

12. Liability and compensation for damages

12.1. If we are liable on the basis of a breach of duty which does justify a compensation for damage claim, in place of service, according to sections 281, 282, 284 of the Federation of German Trade Unions (BGB) or on the basis of unlawful act of payment of compensation for damage, the compensation is limited to a maximum of the purchase price agreed upon, if caused by simple negligence on the part of our executive employees or our vicarious agents. This liability limitation does not apply in the case of bodily injury.

12.2. If the purchaser is a contractor, our liability is restricted to point 12.1

a) not in case of contractual-untypical damages, upon cause of gross negligence on our part or our executive employees;

b) upon cause of gross negligence on the part of simple vicarious agents, only up to the amount of the purchase price of the relevant goods;

c) not in case of breach of contractual duty upon cause of simple negligence on our part or one of our executive employees or one of our vicarious agents.

12.3. The limitations of liability in points 12.1 and 12.2 are not valid if a cardinal obligation has been breached.

12.4. If we are entitled to claim compensation for damages in place of services, we can demand a flat-rate amounting to 20% of the agreed upon purchase price as compensation for damages, without proof of actual loss. The sum of indemnity can be set higher or lower, if we can account for a higher sum and the purchaser can account for a lower sum.

13. Place of jurisdiction, place of fulfillment

13.1. If the client is a merchant who has been entered as such in the commercial register, our business location (Mistelbach) is the place of fulfillment. The Local Court or the District Court of Bayreuth is thereby competent for all legal disputes. We are also entitled to institute legal proceedings at the client's place of jurisdiction.

13.2. Unless otherwise specified in the confirmation of order, Mistelbach is the place of fulfillment for both contractual parties. This also applies to the purchase price payment commitment.

13.3. These Terms and Conditions shall be governed by German Law. The application of the uniform law in respect of the international purchase of movable property is excluded.

14. Partial ineffectiveness

If individual provisions of these conditions or of the corresponding contracts are or were to become invalid, the effectiveness of the other provisions remain unaffected.

Date: January 2008