

Standard Terms and Conditions

As of January 2003

§1 General - Scope

(1) Our terms and conditions apply exclusively; we do not recognise contrary terms from the buyer, or terms that deviate from our terms and conditions unless we explicitly agreed in writing to their application. Our terms and conditions shall also apply if we carry out the delivery to the buyer without reservation in the knowledge of the buyer's contrary terms and conditions or conditions that deviate from ours.

(2) All agreements that are concluded between us and the buyer for the purpose of carrying out this contract are stipulated in writing in this contract. Our terms and conditions shall apply solely to enterprises as defined in section 310(1) of the German Civil Code (BGB).

§2 Offer – Offer Documents

(1) Our offers are without obligation, in particular with regard to the price, term for delivery and delivery possibilities. All documents enclosed with the offer are non-binding unless they are expressly designated as binding. The documents remain our property and may not be used for purposes other than those assumed in the offer and may not be made accessible to third parties. Drafts, static calculations and drawings will not be carried out until after the contract is awarded. The costs of this work will be invoiced if they are prepared for the offer at the customer's request and the contract is not awarded. Because of the customer's statutory right to revoke, the order and our acceptance lead initially to a provisionally ineffective contract.

§3 Prices - Terms of Payment

(1) Unless otherwise stated in the acceptance of order our prices apply ex works excluding packaging.

(2) Our prices do not include VAT; this will be shown separately in the invoice at the level applying on the date of invoicing.

(3) Unless otherwise agreed, the invoice amount shall be paid net within 30 days of the date of the invoice. Discounts shall only be granted on the basis of a separate agreement. Discounts shall not be granted on invoices for construction work and wage work. Appropriate part invoices can be issued for part deliveries.

(4) The buyer shall only be entitled to any set-off rights if his counterclaims are final and conclusive, not disputed or are recognised by us. In addition, he shall only be authorised to exercise a right of retention if his counterclaim is based on the same contract.

(5) We invoice €15.00 processing costs with a contract value below €100.00.

§4 Delivery Period

(1) The start of the delivery period we indicate presupposes clarification of all technical questions.

(2) Compliance with our duty to deliver also presupposes the punctual and orderly fulfilment of the buyer's duty. We reserve the defence that the contract was not fulfilled.

(3) If the buyer is in default of acceptance or if he culpably infringes other obligations to cooperate, we shall have the right to demand compensation for the loss we suffered, including any extra expenses. We reserve the right to make further claims.

(4) If the preconditions of para. (3) are found, the risk of accidental loss or accidental deterioration of the object of sale passes to the buyer at the moment in which the latter is in default of acceptance or payment.

(5) We shall be liable under the statutory provisions if the underlying sales contract is a firm deal as defined in section 286(2) No. 4 BGB or in section 376 of the German Commercial Code (HGB). We shall also be liable under the statutory provisions if, in consequence of a delay in delivery for which we are responsible, the buyer has the right to claim that he no longer has any interest in the further fulfilment of the contract.

(6) We shall also be liable under the statutory provisions if the delay in delivery is the result of an intentional or grossly negligent breach of contract for which we are responsible; we shall also be responsible for the fault of our representatives or vicarious agents. If the delivery delay is not the result of an intentional or grossly negligent breach of contract for which we are responsible, our liability for damages shall be limited to the foreseeable typical damage.

(7) We shall also be liable under the statutory provisions if the delivery delay is the result of an intentional breach of a material term of the contract; however, in this case the liability for damages shall be limited to the foreseeable typical damage.

(8) Apart from this we shall be liable in the event of delivery delay for each full week of delay in the form of lump-sum compensation for the delay of 3% of the delivery value to a maximum of 15% of the delivery value

(9) Further statutory claims and rights of the buyer are reserved.

§5 Transfer of Risk- Packaging Costs

(1) Unless otherwise stated in the acceptance of order delivery "ex works" is agreed.

(2) We do not take back any transport packaging and any other packaging subject to the Packaging Regulations with the exception of pallets. The buyer undertakes to dispose of packaging at his own expense.

§6 Liability for Defects

(1) Claims by the buyer arising from a defect presuppose that the latter has duly conformed to his obligations under section 377 HGB to inspect and give notice of defects.

(2) If the object of sale has a defect, we shall have the right to choose between subsequent performance in the form of remedy of the defect or delivery of a new item free of defects. In case of remedy of the defect, we undertake to pay all costs necessary for the purposes of remedying the defect, in particular transport, travel, labour and material costs, if these are not increased by the object of sale having been brought to a location other than the place of performance.

(3) If subsequent performance is unsuccessful, the buyer shall have the right to choose between withdrawing from the contract or a price reduction.

(4) We shall be liable under the statutory provisions if the buyer claims damages that are based on intention or gross negligence, including intention or gross negligence of our representatives or vicarious agents. Unless we are accused of an intentional breach of contract, liability for damages shall be limited to the foreseeable typical damage.

(5) We shall be liable under the statutory provisions if we intentionally breach a material contractual obligation; in this case liability for damages shall be limited to the foreseeable typical damage.

(6) If the buyer is entitled to a claim to compensation for damages instead of performance, our liability, including in the framework of para. (3), shall be limited to compensation for foreseeable typical damage.

(7) This shall not affect liability for culpable injury to life and limb or health; this shall also apply to mandatory liability under the Product Liability Act.

(8) Unless otherwise stipulated above, liability is excluded.

(9) The limitation period for claims arising from a defect is 12 months, calculated from the date of the transfer of risk.

(10) The limitation period in case of a right of recourse under a delivery under sections 478, 479 BGB is not affected; this is five years calculated from the date of delivery of the defective item.

§7 Joint Liability

(1) Further liability for damages than that provided in No. 6 is excluded, irrespective of the legal nature of the claim submitted. This applies in particular to claims for damages for negligence in contracting, for other breaches of obligations or in tort under section 823 BGB.

(2) Insofar as our liability for damages is excluded or limited, this shall also apply with regard to the personal liability for damages of our employees, workers, associates, representatives and vicarious agents.

§8 Securing Reservation of Title

(1) We reserve title to the object of sale pending receipt of all payments under the delivery contract. In the event of behaviour by the buyer in breach of the contract, in particular in case of default of payment, we shall have the right to take the object of sale back. If we take the object of sale back this, shall not be deemed to be a withdrawal from the contract unless we expressly declared this in writing. If we seize the object of sale, this shall always be deemed to be withdrawal from the contract. After taking the object of sale back we shall be authorised to realise it; the proceeds of the realisation shall be set off against the buyer's liabilities, less adequate realisation costs.

(2) The buyer undertakes to handle the object of sale with care; he undertakes in particular to insure it adequately at replacement value at his own expense against damage by fire, water and theft. If maintenance and inspection work is necessary, the buyer shall carry this out in good time at his own expense.

(3) In case of seizures or other actions by third parties the buyer shall inform us in writing without delay so that we can institute legal proceedings under section 771 of the German Civil Procedure Rules (ZPO). If the third party is unable to reimburse us the judicial and extra-judicial costs of proceedings under section 771 ZPO, the buyer shall be liable to us for the losses we suffer.

(4) The buyer is entitled to sell the object of sale in the ordinary course of business; however, he hereby assigns all claims in the amount of the end amount of the invoice (incl. VAT) of our claim that accrue to him against his buyers or third parties under the resale, irrespective of whether the object of sale was resold with or without processing. The buyer remains authorised to collect this debt even after the assignment. Our authority to collect the debt ourselves shall not be affected by this. However, we agree not to collect the debt as long as the buyer conforms with this payment obligations from the sums collected, is not in default of payment and in particular a petition for bankruptcy proceedings has not been submitted or payments have been suspended. If this is the case, we can demand that the buyer informs us of the assigned debts and their debtors, provides all information necessary for collection, hands over the appropriate documentation and notifies the assignment to the debtors (third parties).

(5) The processing or transformation of the object of the sale by the buyer is always carried out for us. If the object of the sale is processed with other objects that do not belong to us, we shall acquire co-ownership in the new object in the ratio of the value of the object of the sale (final invoice amount incl. VAT) to the other processed objects at the time of processing. The same conditions shall apply to the object that is created by processing that apply to the object of sale supplied subject to reservation of title.

(6) If the object of the sale is mixed with other objects that do not belong to us, we shall acquire co-ownership in the new object in the ratio of the value of the object of the sale (final invoice amount incl. VAT) to the other mixed objects at the time of mixing. If the mixing is done in such a way that the buyer's object is to be regarded as the main object, it is deemed to be agreed that the buyer assigns pro rate co-ownership to us. The buyer shall safeguard for us the sole ownership or co-ownership that is created in this way.

(7) To secure our claims against him the buyer shall also assign to us the claims against third parties that accrue to him through the connection of the object of sale with land.

(8) We agree to release security to which we are entitled on demand by the buyer insofar as the realisable value of our security exceeds the claims to be secured by more than 10%; we shall have the right to select the security for release.

§9 Legal Venue - Place of Performance

(1) If the buyer is a merchant, our place of business shall be the legal venue; however, we shall have the right to sue the buyer at his place of residence as well.

(2) The laws of the Federal Republic of Germany shall apply; application of the UN Sales Convention is excluded.

(3) Unless otherwise shown in the confirmation of order our place of business shall be the place of performance.