

Terms and Conditions of Sale and Delivery

(Stand 08.01.2010)



Preamble

We deliver exclusively in accordance with the following terms and conditions of sale and delivery. Other conditions shall only apply in exceptional cases and require our express written confirmation, particularly for our purchaser's own terms and conditions of purchase. Our terms and conditions of delivery shall also apply even in the event that we implicitly perform deliveries in the knowledge of deviating terms and conditions of the orderer. Our sales personnel have no negotiation or collection powers. Agreements with these persons are only effective following our written confirmation. Our terms and conditions of sale and delivery shall only apply to companies pursuant to Art. 14, section 1 German Civil Code, legal persons under public law and special funds under public law. They also apply to all future transactions with the orderer in the scope of the current terms and conditions of business.

Article 1 Offer and acceptance

1. Our offers are subject to confirmation. Orders only become binding if and insofar we issue confirmation or commence with their processing. Written confirmation is also required for amendments, supplements and oral side agreements.
2. All quantities provided are approximate. Deviations of up to 10% below or above the given amount for safety or filling reasons are in accordance with the contract. Such quantity deviations shall be fully incorporated in the invoiced amount.
3. Partial deliveries are treated as separate transactions.
4. The method of goods transportation is at our discretion.
5. Property and copyright is reserved on images, sales brochures, quotes and other documents, and may not be made accessible to third parties. This particularly applies to such written documents marked "confidential"; the forwarding of these documents to a third party requires our express written permission. For the rest Art. 8 shall apply.

Article 2 Purchase price and payment

1. All prices are excluding statutory VAT. Invoicing is based on the quantity or weight determined by us or our suppliers. Increased transport costs subsequent to the conclusion of the contract shall be assumed by the purchaser.
2. Insofar as not otherwise provided in the order confirmation, our prices apply ex works, (Incoterms in the current version) excluding packaging, freight, postage and the currently applicable VAT rate. Insofar as not otherwise provided in writing our prices apply in Euros.
3. The purchase price is payable strictly net cash on delivery of the goods unless otherwise agreed.
4. Delayed payments are subject to interest at 8 percent above the discount rate of the Bundesbank or its successor, for the duration of the delay calculated from the date payment is due. Counter-demands shall only be set off when undisputed or legally established.
5. We are entitled to set off customer payments only against the oldest payable invoice in the sequence of costs, interest and lastly the principal service.
6. In event of delay, we may assert further damages for delay.
7. Drafts and cheques shall only be accepted on account of performance; these only apply as payment when they have been redeemed. Normal bank charges shall be assumed by the purchaser.
8. The purchaser may only offset undisputed or legally established claims. The purchaser may withhold the purchase price on grounds of material defect until we have decided on the validity of the notice of defect; otherwise only when the purchaser provides sufficient collateral.
9. If the purchaser should delay payment of our invoices at a not insignificant amount in proportion to the business relationship, all claims arising from the business relationship shall become due immediately irrespective of any acceptance of any bills of exchange. We are further entitled to demand cash payment on any subsequent delivery. If the delayed payment is not settled within a reasonable subsequent deadline, we have the right to withdraw from the contract or to claim damages for non-fulfilment. This shall particularly apply to confirmed but not yet executed subsequent transactions. If facts should become known to us that the purchaser is no longer creditworthy, we have the right to demand cash prior to the delivery of goods, even if an alternative agreement was previously concluded, or to demand immediate payment.

Article 3 Delivery

1. Agreed delivery terms and dates always apply as approximate, if no definite date is expressly agreed.
2. For deliveries which do not originate from our company (transfer orders), delivery terms and dates are deemed adhered to when the goods leave the supplier in sufficient time that in the usual transport time the goods would reach the recipient punctually.
3. Force majeure events, which include public restrictions as well as strikes and lockouts, provide grounds for us to withdraw from the contract. Damages on grounds of nonfulfilment or delay are hereby excluded. This shall also apply to delayed supply to ourselves on the part of our suppliers for which we are not responsible. We are obligated to inform the purchaser of such events without delay. The purchaser is also entitled to cancel the contract.
4. If we should delay delivery, the purchaser is obligated to set a reasonable subsequent deadline of at least two weeks. Following the unsatisfactory expiration of this additional deadline, the orderer has the right to withdraw from the contract. The orderer is only entitled to damages in place of performance, when the delay occurs on grounds of malice or gross negligence or a negligent serious violation of obligations on our part. In cases of negligence on our part, our liability is restricted to foreseeable damage.
5. We are entitled to perform partial deliveries and deliveries prior to expiry of the term of delivery, insofar as no recognisable interests of the orderer should conflict with this.

Article 4 Shipping and acceptance

1. The latest version of the Incoterms shall apply
2. On collection from the point of delivery, the purchaser or his agents are responsible for the loading of the vehicles and compliance with statutory regulations pertaining to the transport of hazardous goods.
3. The unloading and storage of the goods is always the responsibility of purchaser.
4. For deliveries in tankers or tanks the recipient is responsible for ensuring the defect free technical condition of its tanks or other storage containers and for connecting the filling pipes to its intake systems at his own risk. Our duty is restricted to the operation to the equipment located on the supply vehicle.
5. The aforementioned provisions shall apply to delivery by third party transportation companies correspondingly, insofar as from their behaviour a liability on the part of the seller could be deduced. Third party liability hereby remains unaffected.
6. Deliveries shall only be covered by transport insurance on the express request of the orderer; any incurred costs shall be assumed by the orderer.
7. Disposable packaging will not be taken back.

Article 5 Serial deliveries, long term and call-off purchase contracts

1. Open-ended contracts may be terminated upon six months notice to the end of the month, unless otherwise agreed.
2. Our prices are calculated based on the agreed quantity ordered. If no binding order quantity is agreed, our calculations are based on the agreed target quantity. If the order quantities fall short of the target quantity by more than 20%, we have the right to increase the price per unit accordingly. If the orderer should upon our approval exceed the amount by more than 20%, he may request a reasonable price reduction, insofar as he does so in writing at least two months prior to the agreed delivery date. The size of the reduction or increase shall be determined on the basis of our calculations.
3. In the case of call-off contracts, obligatory quantities are to be communicated at least three months prior to the delivery date unless otherwise agreed. Receipt of this order must be confirmed by us in writing in order to be valid. In this case we are released from our delivery conditions, if the order is not received punctually on grounds for which the orderer is responsible. If we nevertheless deliver, any additional costs incurred through the late order or subsequent amendment concerning the date or amount for which the orderer is responsible, these costs shall be assumed by the orderer.

Article 6 Retention of title

1. The title of the goods is only transferred to the purchaser upon full payment of the purchase price and all other outstanding payments including all future demands arising through the business relationship with us. This shall also apply when payments for specially defined demands are executed. On running accounts, the retention of title shall serve as collateral for any balance claim. The title is transferred to the purchaser at the point that we undisputedly have no claims against the purchaser at the latest.
2. Insofar as the purchaser has correctly fulfilled his obligations towards us, he is entitled to further use the goods subject to a retention of title in the normal course of business.
3. If the purchaser should fail to meet the payment obligations even following a subsequent deadline, we have the right to exercise proprietary rights over the goods without setting a further deadline and without notice of withdrawal from the contract. In taking back the goods, a withdrawal from the contract is only exercised if we should state this in writing. Processing or manufacturing the goods subject to retention of title occurs on our behalf without subjecting us to obligations. We are a manufacturer under the terms of Art. 950 German Commercial Code and acquire proprietary rights to the semi-finished or finished goods at the invoiced amount of our goods subject to retention of title in proportion to the invoice value of third party goods. The purchaser stores the goods for us on trust and without charge. The same shall apply to the combination or mixing of the goods subject to retention of title with third party goods under the terms of Art. 947 German Civil Code.
4. On selling the goods subject to proprietary rights, the purchaser hereby assigns us all claims vis-à-vis third parties as collateral for our claims. If the purchaser should sell the goods to which we only have partial ownership pursuant to letter (b), he cedes us the claims against third parties to the value of the corresponding proportional amount. If the purchaser uses the goods subject to retention of title in the scope of a service contract or similar, he shall assign us the claims to (wage) payment to the invoice amount of our goods used.
5. The purchaser is authorised to collect the demands from a further sale of the goods subject to retention of title in the course of normal business. If we have justified grounds for concern that the purchaser shall not or will not fully fulfil his obligations towards us, the purchaser shall on our request inform his purchasers of the assignment of the claims, shall refrain from disposing of these claims and to provide us with all requisite information of the inventory of the goods that are our property as well as the assigned claims in addition to all documents required to assert the assigned claims. Third party access to goods subject to retention of title and assigned claims are to be reported to us without delay.
6. If the value of the collateral to which we are entitled should exceed the value of the goods by more than 10%, we are required to release the security of our choice upon the request of the purchaser.

Article 7 Warranty rights, due diligence and requirement to report defects immediately

1. For defects which include a lack of guaranteed quality, we are liable to commercial customers and legal persons under public law in accordance with the statutory provisions to either rescind, provide a discount or a replacement delivery, if the following conditions are fulfilled in addition to the statutory requirements:
 - a) The purchaser shall inspect the goods and its packaging within 14 days of delivery according to normal business conventions. If the goods are sent in separate packages, the recipient is also to ensure that the labels of each package correspond with the order. If the goods are delivered in a tanker or tanks, which do not remain with the purchaser, the purchaser is to inspect the transport papers for correspondence with the order. The purchaser shall also inspect the contractual properties of a sample prior to emptying the tank.
 - b) Any defect discovered in the scope of an inspection pursuant to a) is to be reported immediately.
 - c) If the purchaser should neglect to perform an inspection or fails to report a defect immediately, the warranty rights are negated in regard to the ascertained defect or the defect that could have been ascertained. This shall also apply in the event of a wrong delivery even if this deviates so significantly that the acceptance of the goods by the purchaser would be deemed as excluded.
 - d) In the event of a hidden defect, the purchaser is to report the defect immediately it is ascertained. Otherwise, goods shall be deemed accepted. The claiming of a hidden defect is equally excluded after 8 weeks following delivery of the goods. A claim to a replacement delivery on the grounds of a wrong delivery hereby remains unaffected.

Article 8 Liability for damages caused by defects and other damage

1. Before the orderer asserts claims or statutory rights (withdrawal, reduction in payment, damages) we are to be provided with an opportunity to provide supplementary performance within a reasonable term.
2. For damage that arises through defective goods, wrong delivery or defective packaging to the legal property of the purchaser including his assets, we are liable as follows:
 - a) For commercial customers and legal persons under public law it applies that if damage could have been avoided through the purchaser fulfilling his inspection obligations, all liability on our part shall be excluded, unless the damage was caused through the malicious act by our agents.
 - b) Insofar as damage arises despite the inspection obligations of the purchaser being adhered to, we are liable to the purchaser for malicious or grossly negligent breaches of contract up to the value of the goods. Any liability for direct and indirect damage is hereby excluded.
 - c) For damage other than that stipulated here, we shall only be liable, if this damage arises through malicious or grossly negligent action on our part or that of our agents.
 1. We are not liable for the suitability of the goods for the purpose intended by the purchaser. Insofar as we provide advice for use, provide information or recommendations, we are not liable for the contents of this advice.
 2. All claims under the terms of this Article 7 expire half a year following the occurrence of damage, excluding illegal acts.
 3. The purchaser is obligated to inspect the goods on receipt. Complaints are to be communicated to us within 2 weeks of delivery. If complaints are made outside this term we are not under an obligation to acknowledge these or to assume liability.
 4. Claims to damages against the seller due to violation of patents or other violations of protected rights are the responsibility of the seller.
 5. The provisions of the German Product Liability Act are not prejudiced by the aforementioned provisions.
 6. Claims based on defects do not apply insofar as only an insignificant deviation from the properties or only an insignificant limitation of their usage is evident, e.g. slight deviation in colour. Technical or standard tolerances do not constitute defects. We advise that our products have a limited shelf life that is dependent on the correct storage.
 7. All our specifications are purely technical specifications and are only approximate. They are not a guarantee insofar as not otherwise expressly agreed.
 8. Insofar as a defect should occur for which we are responsible, we have the right to select repair or replacement delivery.
 9. Payments from the purchaser may only be withheld to an amount in reasonable proportion to the defect.
 10. If the orderer makes a complaint for a defect on grounds for which we are not responsible, we are entitled to charge the orderer for the costs for correcting the defect and/or its ascertainment.
 11. We may charge the orderer for additionally incurred costs for supplementary performance, particularly transport, labour and material costs insofar as the expenses are incurred through delivering the product to a location other than the place of performance.

Article 9 Confidentiality

All contracting parties shall only use all documents (including samples, models and designs) and information received through the business relationship for the mutually followed purpose and shall not disclose these to a third party. This particularly applies, if the other party describes these as confidential or has an obvious interest in keeping these secret.

Article 10 Final provisions

- a) The legal relationships between the parties are exclusively subject to German law under the exclusion of the UN Convention on the International Sale of Goods (UNCITRAL/CISG). Legal venue is the headquarters of the seller.
- b) If individual provisions of the above conditions should be or become invalid, these are to be replaced by provisions most closely achieving the economic purpose of the contract while reasonably protecting the interests of both parties.