



General Terms and Conditions

01.09.2015

Terms and conditions of sale and delivery

1. General

The following terms and conditions of sale and delivery apply to all deliveries and performances carried out by us. We shall not accept the terms and conditions of the customer that are contrary to or differing from our terms and conditions of sale and delivery unless we give our express consent to the differing provisions of the customer in writing.

Our terms and conditions of sale and delivery shall apply even if we – knowing the contrary and differing terms and conditions of the customer - carry out the delivery without reservation.

All agreements made between us and the customer regarding the delivery - thus including any possible side agreements – require our written confirmation.

Our terms and conditions of sale and delivery shall also apply to all future business transactions with the customer. Incidentally, the terms and conditions of sale and delivery apply only to traders as defined by § 310 Section 1 BGB (German Civil Code).

2. Quotations and orders

Our quotations are non-binding and without obligation unless they have expressly been specified as binding or include a certain term of acceptance.

An order shall be deemed accepted only if we have confirmed the placing of the order as well as the conditions of the order in writing. Any orders, sales and promises made by our staff as well as any oral agreements or agreements made by phone shall become binding only if the buyer has received an order confirmation in writing or by fax.

Errors in quotations, order confirmations, invoices etc. as well as calculation and spelling errors shall not be binding.



The documents included in the quotation such as illustrations, drawings, weight and dimensional specifications shall only be approximations unless they are expressly described as binding.

3. Prices

Our prices shall be free on truck from our company, warehouse or transfer site unless agreed otherwise. Transport, shipping as well as other costs for delivery and pick-up shall be at the expense of our buyer.

Unless specified otherwise the prices included in our quotations are binding for 30 days from their date. The prices are based on the material prices, wages, shipping costs and fees applicable on the date of the quotation and/or order confirmation.

In case of repeat orders the prices for earlier or current orders are not binding. Our prices are net prices and do not include the sales tax (value added tax) in the amount applicable at the respective time of delivery; the VAT will be added and is to be paid in addition to the net price.

4. Terms of payment

Our invoices are to be paid within the agreed period – unless otherwise agreed no later than the 15th of the month following the delivery – without deduction in cash, by cheque or by money transfer to our accounts, regardless of the receipt of the goods and notwithstanding the right of complaint and excluding setoff against disputed or not legally binding receivables. If the buyer is entitled to claims against us, our receivables shall then become due when our liabilities are due. In this case they are accounted for on the value date.

In case of a delayed payment by the buyer we will apply the statutory interests for delay. We shall be permitted to provide proof of a higher damage.

The payment has to be made even if the delivery of the goods is impossible within a period of 8 days after we informed the customer that the goods are ready for shipment and if the customer has not requested the corresponding goods within the previously mentioned period.

Non-compliance with the terms of payment or any circumstances we learned about after the respective completion and which would reduce the creditworthiness of the buyer shall give us the right to carry out any outstanding deliveries only against



advance payment or collateral security as well as to withdraw from the completion after a reasonable period of grace or to demand compensation due to non-compliance notwithstanding the right of return of the goods delivered under reservation of title at the expense of the buyer.

5. Delivery time and time of performance

Delivery times or periods which can be agreed on as binding or non-binding require the written form.

Unless agreed otherwise our delivery period shall begin with the date of the final order confirmation but not before the final determination of all the details and before the customer has provided the necessary documents, permits and approvals as well as before the receipt of the agreed down payment in case a down payment had been agreed on.

The delivery period shall be extended appropriately if the buyer wants to make subsequent changes and/or amendments to his contract. We also shall not be responsible for delayed deliveries and performances due to force major and events that will make it considerably more difficult or impossible to deliver – this includes, in particular, strikes, lock-outs, official decrees etc. even if they occur at the place of our suppliers or their subcontractors - even in case of a binding agreement on dates and deadlines.

These events shall entitle us to postpone the delivery and/or the performance for the duration of the impediment plus a reasonable starting time or because of the non-completed part to withdraw in part or fully from the contract.

In case the impediment lasts for more than three months the buyer shall have the right to withdraw from the not yet completed part of the contract after setting a reasonable grace period. Should the delivery time be extended or should we be released from our obligation the buyer shall then not be able to derive claims for compensation. We shall invoke the mentioned circumstances only if we immediately informed the buyer. Any claims to subsequent deliveries are excluded.

The agreed delivery period is considered as complied with if – in case of an agreed shipping of the delivery item - the delivery item has left our factory before expiry of the period and/or - in case of an agreed pick-up by the buyer – the readiness for shipment has been communicated before the expiry of the period.

If the agreed delivery period is not adhered to because the client has not complied with his contractual obligations the buyer shall then not be able to assert any claims



due to exceeding the delivery date; the agreed delivery date will be extended – regardless of our right resulting from the delay of the buyer – by the time that the buyer is delayed with his obligations from the contract.

If we are responsible for not complying with the promised deadlines and dates or if we are in delay, the buyer shall be entitled to a compensation for the delay in the amount of 0.5% of the invoice value for each completed week of the delay but no more than up to 5% of the invoice value of the deliveries and performances affected by the delay.

Our liability in regard to possible further claims for damages is limited according to section 11 Limitation of liability of these terms and conditions of sale and delivery.

The compliance with the delivery and performance obligations assumes the timely and proper fulfilment of the obligations on the part of the buyer. In case the buyer is in default of acceptance we shall be entitled to demand compensation for the resulting damage; in case of a default of acceptance the buyer shall have to assume the risk for the accidental degradation or accidental loss.

We shall have the right to partial deliveries or performances at all times unless the partial delivery or partial performance is unacceptable to the buyer considering his interests.

6. Acceptance

If a special quality has not been agreed on the ordered material shall be delivered in ordinary commercial quality. If goods with special quality requirements and those to be sent directly to third parties, are to be inspected or viewed then this has to be explicitly specified in the order.

The substantive inspection and acceptance costs are charged separately if they are not explicitly included in the price. The buyer shall bear the personal acceptance costs.

7. Billing and deviations

Any deviations from the dimensions, weight and quality are permissible according to general practice.

The calculation is based on the total net weight determined by us. The individual weights used in our delivery notes and/or invoices are for information only.



8. Shipping and transfer of risk

In all cases the shipping is at the expense and risk of the buyer.

We provide the packaging as well as the protection means and transport means at the expense of the buyer. The type of the packaging will be selected according to our experience. In regard to the choice of the transport means and the transport routes our liability is limited to the selection of a suitable firm; in this case and if we should carry out the transport ourselves our liability is limited according to section 11 of these terms and conditions of sale and delivery. If so far as we use package items such as support timber, racks, blankets etc. this shall be at our discretion at the risk of the buyer for a special rental fee or compensation of costs incurred to us; in case of a rental the package items have to be returned at the expense and risk of the buyer. Also in case of a delivery free to destination by our truck, the risk shall be passed on to the buyer when the goods are sent, e.g. when the goods are handed over to the carrier and forwarding agent, but no later than when it leaves our plant, warehouse or transfer point even if it involves partial deliveries.

Should the shipment be delayed as the result of circumstances for which the buyer is responsible then the risk shall be passed to the buyer on the date of the readiness for dispatch.

Delivered goods have to be accepted by the buyer even if they show considerable defects; the rights of the buyer in regard to his warranty claims as they have been stipulated in these terms and conditions of sale and payments remain unaffected.

Goods reported ready for shipment have to be called up immediately; otherwise or in case of impossibility to ship for which we are not responsible we shall have the right to store the goods at the expense and risk of the buyer at our own discretion and to invoice the goods that are ready for shipment. In particular, we shall have the right to invoice the buyer for the costs of the storage starting 1 month after the readiness for shipment had been announced. For the storage, we shall charge at least 0.5% of the invoice total for each month but no more than 15% of the invoice total. If the buyer proves that minor costs have incurred then he shall not be denied of this proof. Insofar as we are obligated according to the packaging ordinance to take back the used packaging the buyer shall bear the costs of the return transport of the used packaging.

A transport insurance will be taken out only if explicitly requested by the buyer and at his expense.



9. Retention of title

Our deliveries remain our property until all our – also all future - receivables, regardless of the legal grounds, have been paid even if payments for especially specified claims are made. In case of an outstanding account the retained title shall be considered collateral for the outstanding balance claim.

Processing and handling is carried out for us without the possibility of the acquisition of ownership in accordance with § 950 BGB (German Civil Code). The processed goods are used to protect the amount of the invoice value of the goods that are subject to retention of title.

In case the buyer processes and/or combines or mixes them with other goods not belonging to us we shall be entitled to the co-ownership in the new object in proportion of the value of the goods under retention to the other processed and/or blended or mixed goods at the time of the processing. For the new object resulting from the processing and/or combination or mixing the same applies as with the goods under retention.

The new objects are considered goods under retention as defined in these conditions.

The buyer may sell our property only in the normal course of business under his normal terms and conditions and as long as he is not in default. He shall have the right to resell the goods under retention providing that the receivables from the resale will pass over to us. He is not entitled to other dispositions over the goods under retention.

The receivables of the buyer resulting from the resale of the goods under retention shall be assigned to us already regardless of whether the goods under retention are resold with or after processing and regardless of whether they are resold to one or several purchasers. The assigned receivables serve as collateral in the amount of the value of the corresponding goods under retention.

If the buyer sells the goods under retention alone or together with other goods not belonging to us, without or after treatment, then the assignment of the accounts receivable resulting from the resale only applies to the value of the goods.

The buyer shall have the right to collect the receivables resulting from the resale until we revoke this right, which we shall be able to do at any time. However, he shall not have the right to dispose over such receivables as a result of assignment. On request, he shall be obligated to inform his buyer about the assignment to us and to



provide us with the required information and documents. Should the value of the collaterals in our favour exceed our claims by more than 20% then we shall be obligated, on request of the buyer, to release the collaterals of our choice to the extent of the excess.

The buyer shall be obligated to notify us immediately of any seizure or any other interference by a third party. He shall bear all costs required for the annulment insofar as they cannot be collected by a third party.

Rights from the retention of title and all special forms specified in these terms and conditions shall apply until the complete release from contingent liabilities which the supplier has entered in the interest of the buyer.

As the owner and indirect holder of the goods under retention we shall have the right to enter the premises of the buyer during his regular business hours. For the duration of the reservation of title the buyer has to take out a comprehensive insurance for the goods under retention providing that we are entitled to the rights resulting from this comprehensive insurance. However, we shall also be entitled to take out the insurance at the expense of the buyer.

In case of a breach of contract by the buyer – especially in case of a delayed payment – we shall have the right to take back the goods under retention or, where applicable, to demand a transfer of the buyer's right to recover possession against third parties. The return as well as the seizure of the goods under retention does not represent a withdrawal from the contract. All costs of the return are at the expense of the buyer. A return of the goods is always only a precautionary measure.

Upon suspension of payment by the buyer or filing for insolvency proceedings but no later than the opening or rejection of the insolvency application for lack of assets the right for resale and the authorization to collect the assigned claims shall expire. In case of a

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disputed cheque or bill the direct debit authorization will expire as well. After revocation of the direct debit authorization, any incoming receivables assigned to us shall be collected on a special account.

After payment is suspended or an application is filed for the insolvency proceeding the buyer shall be obligated to immediately submit a list of the available goods under retention, even if the goods have been combined, blended or mixed with other goods as well as a list of the accounts receivable from the third party debtors accompanied by invoice copies.



Insofar as for legal reasons the retention of title is not fully effective in the form intended, e.g. abroad, the buyer shall be obligated to ensure the protection of our rights appropriately and to co-operate in the necessary actions required for such.

10. Notice of defects

The warranty period is one year from the delivery.

Our deliveries have to be carefully inspected immediately after the delivery to the contractor or third party specified by the same. They are considered to be approved if we have not received within ten days of the delivery a written notice of defects regarding obvious defects or other complaints about quality, wrong delivery, faults, weight or charges. We have to be immediately informed about defects, which can even after a careful inspection not be discovered within that period, but not later than four days after the discovery.

In case of quality defects we shall first be obligated and entitled to a remedy and replacement delivery within a reasonable period of time specified by us. If the rework or replacement delivery fails, i.e. in case of impossibility, unreasonableness, refusal or unacceptable delay, the customer may withdraw from the contract or demand a reasonable reduction of the purchasing price.

In case we should be responsible for a defect the customer may claim damages in accordance with section 11 of these terms and conditions of sale and delivery. Further claims and claims other than those stipulated in section 11 against us and/or our auxiliary persons due to quality defects are excluded.

11. Limitation of liability

Our liability for damages - regardless of the legal grounds resulting, in particular, from impossibility, delay, defective or wrong delivery, breach of contract, breach of duties in case of contract negotiations and an unlawful act - is limited insofar as there is a question of fault in accordance with this section 11.

We shall not be liable in case of ordinary negligence of our bodies, legal representatives, employees or other auxiliary persons unless it involves a violation of essential contractual obligations. Essential obligations include the obligation to a timely delivery as well as deliveries that are intended to allow the customer the contractual use of the delivery item or to protect life and limb of personnel of the customers or to protect his property from considerable damage. Insofar as we are



liable for compensation on its merits, our liability is limited to the damage, which we have foreseen at the time of conclusion of the contract as a possible consequence of a breach of contract or which we should have foreseen due to due diligence.

Indirect damage and consequential damage due to defective delivery items can only be replaced insofar as such damage can typically be expected with the intended use of the delivery item.

The aforementioned liability exemptions and limitations apply to the same extent in favour of our bodies, legal representatives, employees and other auxiliary persons.

The limitations of this section 11 shall not apply to our liability due to wilful behaviour, for guaranteed quality characteristics, due to injury of life, body or health or according to the Product Liability Act.

Insofar as the customer is entitled to claims for damages, they shall lapse upon expiry of the period of one year applicable to claims for material defects.

12. Place of performance and place of jurisdiction

For all contracts entered with us, the place of performance, especially for the duty of payment of the buyer shall be the registered office of our company. Insofar as the buyer is a registered trader as defined by the German Commercial Code, a legal person of public law or a special public fund, Duisburg shall be the exclusive place of jurisdiction for all disputes resulting directly or indirectly from the contractual relationship. However, we shall have the right to sue the buyer at his place of general jurisdiction.

All of these terms and conditions of sale and delivery as well as the entire legal relationship between us and the buyer are exclusively subject to the law of the Federal Republic of Germany without the application of the CISG.

Insofar as the law of the Federal Republic of Germany refers to the law of another country or to international law on the international purchase of goods, for example, the previously mentioned CISG, such reference is then expressly waived.

Insofar as these terms and conditions of sale and delivery contain any loopholes, then in order to fill those loopholes the legally effective regulation shall apply, which we and the customer would have agreed on based on the economic objectives of the contract and the purpose of these terms and conditions of sale and delivery if we had been aware of the loophole.