

General Terms and Conditions of Business

1. General

All business, including future business, shall be based on these General Terms and Conditions of Business. Subsidiary agreements and changes to these conditions require written confirmation by the seller. The same applies for undertakings as to quality. Any contractual conditions which are included on forms or printed matter submitted by the seller are not accepted.

2. Conclusion of contract

Offers on the part of the seller are always without obligation and are not legally binding, unless they are designated as "binding" in writing. The seller shall adhere to such "binding" offers for a period of 20 working days. The contract must be in writing.

If the contract is not concluded in the form of a uniform document which is signed by both the buyer and seller, it only comes into existence by means of written order placement on the part of the buyer (to which he is bound for 6 weeks) and by written order confirmation on the part of the seller.

The buyer can only assign rights and obligations from the contract to third parties with the written agreement of the seller.

The seller retains all rights of ownership and copyright in estimates, drawings and other documents without limitation. They may not be made accessible to third parties without the agreement of the seller.

Drawings and other documents belonging to offers must be returned immediately on request, if the seller does not receive the relevant order.

3. Prices

The prices are given in EURO and no not include VAT. VAT is invoiced separately in the amount corresponding to the delivery.

Prices are ex dock or store and do not include packaging, freight, postage and insurance costs. Price changes are permissible if the period between conclusion of the contract and the agreed time of delivery exceeds four months. In such cases the price valid on the day of delivery is deemed to be agreed.

There is no right to withdraw from the contract as a result of price rises.

4. Payment

In so far as no other conditions of payment are agreed, invoices are due immediately and without deduction of any kind. The buyer is also considered to be in arrears of payment without the need for a reminder on the part of the seller if he does not pay within 30 days of the due date and receipt of the invoice or a request for payment of equal status. If the buyer is in arrears with the payment, the seller shall be entitled to demand interest of 5% above the base rate of the European Central Bank from the relevant point in time.

The right of the seller to prove greater damages caused by the delay in payment shall remain unaffected.

Payment must be in cash, by bank, giro or postal transfer or by cheque.

Bills of exchange are only accepted as payment by express written permission.

A payment is only considered completed if the seller can dispose of the relevant sum, i.e. when the sum is credited to his account, and in case of payment by cheque, when the cheque is cashed.

If a bill of exchange or a cheque is not honoured, or if the buyer is in arrears with payment or suffers deterioration of assets, all claims of the seller against the buyer become due with immediate effect.

If payment is delayed, the seller shall be entitled to withdraw from all contracts currently with the buyer either in part or as a whole, even if partial payments have already been effected.

In so far as permitted by law, the buyer is not entitled to offset or withhold payments against counterclaims, if such counterclaims have not been legally established or recognised by the seller in writing. The right to withhold payment is excluded.

5. Delivery

Delivery times are non-binding and without obligation, in so far as not otherwise expressly agreed. The seller is entitled to effect partial deliveries. Circumstances and events which are not the responsibility of the seller, such as all cases of Act of God, including but not limited to war, strikes, lockouts, lack of raw materials or energy, operational and transport disturbances etc. as well as disturbances and limitations on the side of the buyer's suppliers, free the seller from the obligation to deliver for the period of their influence. In such cases the seller shall be entitled to deliver with corresponding delay or to withdraw from the contract completely or in part. The buyer shall only be entitled to withdraw if, on request of the buyer, the seller does not declare within an appropriate time if he intends to withdraw or effect delivery within a reasonable period.

If a delivery is delayed by more than four weeks through the fault of the seller, the buyer has to set a subsequent period of grace of at least eight days.

If on the other hand the seller does not deliver through his own fault, the buyer shall be entitled to withdraw from the contract with regard to the portion of the delivery which is delayed. The seller can free himself from the duty to deliver if he sets the buyer a period of at least ten days, when the buyer can confirm whether or not he intends to insist on fulfilment of the contract. If the buyer does not submit a statement within this period, the seller is considered to be freed of the obligation to deliver. No further claims are possible.

The delivery period starts with the day when the written order is received by the seller, or if a deposit has been agreed, on the day when the deposit is received; however not before complete clarification of all portions of the contract. The period of delivery is considered to be fulfilled as soon as readiness for despatch has been confirmed or if despatch has been effected.

In the case of orders whose fulfilment consists of several portions, non-fulfilment, defective or late fulfilment of a delivery is without influence on other deliveries within the same order. If the goods available are not sufficient for the fulfilment of all deliveries, the seller is entitled to undertake evenly-spaced reductions. In addition the seller is freed from the obligation to deliver.

Claims for damages due to delay or non-delivery are excluded in so far as this is permitted by law. Claims for damages are limited to the value of the order.

6. Risk

Delivery is basically ex "Port BBG". The deliveries are always carried out to the account of and at the risk of the buyer, even if delivery is carriage paid or uses transport provided by the seller. Risk is transferred to buyer when the goods are passed to the primary road haulage contractor.

Any goods not accepted immediately are stored at the risk and expense of the buyer. Transport specifications must be stated in the order, otherwise the seller is free to select the fastest and cheapest means of transport without liability. If the buyer does not make any express stipulations, transport is carried out without insurance at the cost and risk of the buyer. The seller only has to initiate despatch when the agreed price and costs for despatch and packaging have been completely paid.

7. Warranty period and complaints

The warranty period is one year as from delivery. Information regarding the item to be supplied or the relevant service are only descriptions or identifiers and do not represent warranted characteristics. Deviations as regards quality, colour, dimensions, weight, equipment or design which are slight but unavoidable from the technical point of view and usual in the sector shall not be considered as defects. The seller also reserves the right to make changes and improvements within the framework of further technical development.

The buyer must check the goods immediately after receipt. Complaints as regards quality, colour, dimensions, weight, equipment or design as well as recognisable defects have to be reported within a week of receipt, hidden defects immediately after their discovery, but at the latest three months after receipt, and must be reported in such complete form that the seller can check the justification of the complaint as completely as possible. The time when the complaint is received is decisive as regards observance of deadlines. In the case of justified and timely complaint the seller has the right to correct the defects or to supply defect-free replacement goods at his discretion. For this, the seller shall be granted an appropriate period of grace, at the least however ten days. If the seller chooses to supply defect-free replacement goods, this shall only be carried out after the defective goods have been returned, followed by an appropriate period of grace.

The buyer shall first accept the attempt to correct the defect. The buyer may only made use of his right to a reduction in price or withdrawal from the contract after correction has failed.

If the seller makes use of his right to correct defects he can correct them himself or have them corrected by a third party commissioned by himself. Correction is carried out either by the seller in his factory or at a third location determined by him after due consideration and consideration of the significance of the defect.

If the buyer does not give notice of the defect within the specified time or if the goods are used or sold by him, this is considered to constitute unconditional acceptance of the goods.

The warranty claims of the buyer lapse if the buyer or third parties carry out interventions with regard to the goods, change the goods in any way or do not handle them in a fashion which accords with the advice of the seller. They also lapse if the buyer does not make the defective items accessible to the seller for examination purposes in the state in which they were at the time when the defects were discovered. They also lapse if the defect regards a part manufactured by a specified third party and the buyer refuses to agree to replacement of this part by a part of equal value manufactured by a third party.

In particular, the seller does not accept any liability for damage which has occurred for the following reasons:

- unsuitable or improper use;
- improper assembly or commissioning by the buyer or a third party;
- natural wear and tear;
- incorrect or negligent handling, in particular excessive stress or loading;
- use of operating or replacement materials which do not correspond with the operating instructions;
- chemical, electrochemical and/or electrical influences for which the seller is not responsible.

Warranty claims are excluded in so far as the seller has fulfilled a particular instruction of the buyer with regard to the construction or the material to be used or in so far as the buyer has drawn attention to the warranty exclusion in writing when the instruction was given.

8. Damages

Claims for damages are excluded, no matter for what legal cause, including negligence or fault when the contract is concluded, positive contractual infringement and impermissible actions taken against the seller, his legal representatives, his vicarious representatives and members of his staff, in so far as such exclusion is legally permissible.

In the case of warranted characteristics, liability for damages for the seller is restricted to the value of the order, excluding all indirect or subsequent damages.

9. Retention of title

The goods shall remain the full and unlimited property of the seller until all payments resulting from the business relationship with the seller have been settled. It is not permitted to pledge the goods or offer them as security. The buyer must inform the seller immediately of any seizure or threatened seizure of the goods.

However, the buyer can sell the goods subject to retention of title in the normal course of business if he is not in arrears with payment. In the case of justified or unjustified further sale of the goods subject to retention of title, the buyer herewith assigns any future claims against third parties resulting from the sale to the seller. The buyer has the duty to inform the third party buyer of the assignment on request and to supply the seller with the information and documents needed to assert his rights against said third party buyer. The buyer shall be entitled to call in the assigned claims as long as he has fulfilled his obligations to pay with respect to the seller.

If goods have been transferred to the buyer on a trial or approval basis, the silence of the buyer after expiration of the trial period shall be taken as confirmation of purchase on fixed invoice at the conditions of sale and payment of the seller.

If the buyer infringes the provisions of this Agreement, particularly with reference to arrears of payment, the seller shall be entitled to reclaim the goods subject to retention of title at the cost of the buyer. Reclamation of the goods does not free the buyer from his obligation to pay. Export or other further sale abroad, including free port zones, requires the former express permission of the seller.

10. Place of performance and legal venue

The place of performance of all goods and services and in particular for payment by the buyer is shall be Berlin.

As far as legally permissible, Berlin, or the general legal venue of the buyer is laid down at the seller's discretion. The law of the Federal Republic of Germany shall exclusively apply with regard to the contractual relationship between the parties.

11. Data protection

Attention is drawn to the fact that the customer data shall be stored in accordance with § 33 BDSG (German Data Protection Law).

12. Validity of Agreement

If individual provisions of these conditions of business should be or become invalid, this shall not effect the validity of the remaining provisions. If the provisions should prove ineffective in law, the parties shall conclude a new agreement which legally fulfils the economic intention of the original as nearly as possible.