

# General Terms and Conditions of Business



## 1. General

(1) The following terms and conditions shall govern all supplies of goods and services provided that the Purchaser is acting in the course of his business, is a public legal entity or is a public fund. Any general terms of the Purchaser which contradict, supplement or diverge from the terms below shall not apply except where we have expressly consented to the same in writing. The same shall apply where we render performance without reservation despite having received notice of the Purchaser's terms and conditions.

(2) Material declarations and notifications to be submitted by the Purchaser after the contract has been concluded (e.g. the setting of deadlines, notification of defects, notices of rescission or deductions) shall only be valid when submitted in text form.

(3) Insofar as is necessary for the handling of our business we are entitled to store and process the Purchaser's data in electronic form to the extent permitted by data protection laws (in particular §28 of the German Data Protection Act).

## 2. Contractual Declarations

(1) Our quotations are subject to change as regards price, quantity, term of delivery and availability. We reserve the right to modify our products and services at any time with future effect.

(2) The purchase order placed by the Purchaser shall be deemed a binding offer. Except where otherwise provided in the purchase order the order shall be capable of acceptance for a 2 week period beginning on the date of receipt of order.

(3) Acceptance will be communicated in text form (e.g. the order acknowledgement) or will be deemed on supply of the Goods to the Purchaser.

(4) We reserve title and copyright to all quotations, drawings, electronic data records, software and other documents and the Purchaser shall not make the same available to third parties without having obtained our previous written consent.

## 3. Prices, Delivery Times

(1) Except where otherwise agreed our prices are subject to the conditions set out in the price list which is current at the date the contract of sale is concluded. They are „Ex Works“ (EXW Incoterms 2010), i.e. excluding freight, customs and import duties, insurance, VAT and packing. We shall charge VAT at the rate applicable on the date of performance. We shall invoice installation, assembly and commissioning works on a time and material basis.

(2) Where the delivery or performance date is more than 3 months after the contract date we are entitled upon timely notification to the Purchaser and prior to delivery or performance to adjust the price in such a manner as is necessitated by any general price development beyond our control (e.g. exchange rate fluctuations, currency regulations, customs duties changes, increases in material and production costs) or by changes of suppliers. For supplies of goods or services within three months from the contract date the contract price shall apply in any event.

(3) In relation to framework agreements with a price clause the three month period shall begin to run upon the effective date of the agreement.

(4) The commencement of the delivery term quoted shall be subject to clarification of all technical matters and proper and timely performance by the Purchaser of his obligations.

(5) Where we fail to deliver upon an agreed delivery date and such failure is caused by an act or omission on our part the Purchaser shall grant us an extension in writing of not less than 3 weeks. Where upon the expiry of the grace period, delivery is still not forthcoming and the Purchaser desires to rescind the contract or demand damages in lieu of performance, the Purchaser shall prior thereto set a final and reasonable deadline in writing expressly indicating his intention.

(6) Where an agreed delivery date is delayed without our default due to a failure of a supplier to supply us with the goods ordered on time despite having duly placed an order for the same, the delivery term shall be extended by a reasonable period. Where we have duly informed the Purchaser of the hindrance of performance and such hindrance is not just of a temporary nature we shall be entitled to rescind the contract either in whole or in part.

(7) Where there is a delay in the assembly, installation and commissioning of the goods without our default the Purchaser shall bear the cost of waiting time and any additional travel expenses incurred by our assembly staff.

(8) The delivery times refer to the territory of the Federal Republic of Germany excluding its islands.

## 4. Act of God, Frustration of Contract, Reservation of Performance

In the event of an act of god which affects either ourselves or our suppliers, we are entitled to suspend performance of our obligation to deliver for the duration thereof. The same shall apply in the event of a shortage of energy, raw materials, strikes, enactments passed by the authorities or interruptions of operations or transit. Where there is a considerable change in the circumstances prevalent at the formation of the contract which renders performance unreasonable, we reserve the right to rescind the contract. The performance of our obligations is subject to their compliance with national and international trade legislation, sanctions and embargos.

## 5. Delivery Terms, Place of Performance, Passing of Risk

(1) The goods will be supplied Ex Works (EXW Incoterms 2010) which is also the place of performance for delivery of the goods and for any supplementary performance. At the request and the expense of the Purchaser the goods will be shipped to another destination (sale by delivery to a place other than the place of performance). Except where otherwise agreed we shall be entitled to determine the method of shipment (in particular the shipping company, shipping route and packing).

(2) We supply the goods packed where customary in the trade. We provide packaging together with means of protection and transportation on the basis of our experience and for the account of the Purchaser. Except where otherwise agreed in writing packing and any protection or transportation means are non-returnable except where mandatory by law. Additional costs incurred due to specific shipment requirements of the Purchaser will be borne by the Purchaser. The same shall apply in relation to any increase in the cost of shipment or additional costs for redirected shipment, storage etc. unless carriage paid has been agreed.

(3) The risk of destruction, loss or damage to the goods shall pass to the Purchaser on shipment or in the event of collection by the Purchaser when the goods are made available for collection. Where delivery is delayed due to the Purchaser's default risk shall pass on notification of readiness for shipment.

(4) Supply of goods or services by installment is permitted except where unreasonable for the Purchaser.

(5) Where the goods have been visibly damaged during shipment the Purchaser shall note the same in the shipping documents, arrange for a report to be compiled by the competent authorities without delay and notify us.

## 6. Retention of Title

(1) Goods sold shall remain our property until payment of all claims under the business relationship has been received from the Purchaser.

(2) The Purchaser may resell goods subject to reservation of ownership in the framework of due business activities. If the Purchaser sells these goods without receiving the full purchase price in advance or contemporaneously with the surrender of the item purchased, he shall agree a reservation of title with his Purchasers in accordance with these conditions. The Purchaser hereby assigns to us his claims under this resale and the rights under the reservation of title agreed. He agrees at our request to notify the assignment to Purchasers and to provide us with the information required to claim our rights against the Purchasers and to hand over documents. Irrespective of the assignment the Purchaser shall only be authorised to collect payments under the resale as long as he complies duly with his obligations to us.

(3) If the Purchaser works or processes the goods our reservation of title shall be extended to cover the whole of the new article. In the case of processing, combining or mixing with external goods by the Purchaser we shall acquire title in the fraction that corresponds to the invoice value of our goods to that of the other objects used by the Purchaser at the time the processing, combining or mixing took place.

(4) If the goods subject to reservation of ownership are combined or mixed with a principle good belonging to the Purchaser, the latter hereby assigns in addition his rights in the new good to us. If the Purchaser combines or mixes the goods subject to reservation of title with a principle good belonging to a third party against payment, he hereby assigns his claims for payment against the third party to us.

(5) If the value of the securities provided to us exceeds our claims by more than 10 percent, we undertake to release securities of our choice on demand by the Purchaser.

(6) In the event that the above retention of title clauses are void or unenforceable according to the law of the state/country in which the goods are situated, the collateral security which corresponds to the retention of title in that state/country is deemed to be agreed

## 7. Payment Terms, Set Off, Right of Retention

(1) Except where otherwise agreed, the Purchaser shall remit payment of the purchase price 30 days after delivery or acceptance of the goods and the issue of the invoice.

(2) Cheques and bills of exchange shall only be accepted as conditional payment, bills of exchange by separate agreement only. Exchange fees and other payment charges are for the account of the Purchaser and are immediately due for payment.

(3) Upon expiry of the payment term the Purchaser shall be deemed in default of payment. Interest shall accrue on the price during default at the statutory rate. We reserve the right to claim additional compensation for payment default. Interest claims against persons acting in the course of their business in accordance with § 353 of the German Commercial Code (HGB) shall remain unaffected by the aforesaid.

(4) The Purchaser may only set off or exercise rights of retention in relation to undisputed counterclaims or counterclaims against which we have no further recourse to appeal. Where the goods supplied are defective Purchaser's rights in the case of defects shall remain unaffected.

## 8. Quality of the Goods, Guarantee

(1) The quality of the goods supplied is determined by our product descriptions, specifications and labels. Irrespective of the aforesaid however the Purchaser is under an obligation to verify itself the suitability of the goods and services for the purpose required.

(2) We assume no guarantee for our product and service descriptions within the meaning of §443 of the German Civil Code (BGB).

(3) We reserve the right to make technical modifications in the course of the development of our products.

## 9. Purchaser's Rights in the case of Defects

(1) The goods supplied by us correspond to the European regulations and standards currently in force. We give no guarantee that the goods comply with other national regulations. Where the goods are to be put into operation overseas it is the responsibility of the Purchaser to ensure that the goods are in conformity with the relevant legal requirements and standards and where required to make appropriate adaptations.

(2) The Purchaser shall not be entitled to make a claim based on defective delivery or performance where the reduced value or merchantability of the goods delivered or services supplied is nominal.

(3) Where the goods delivered by us are defective and the Purchaser has notified us of the same in writing not later than 28 days after the delivery date we shall at our option deliver a replacement or remedy the defect. The Purchaser shall grant us a reasonable period of not less than 10 working days to carry out the same.

(4) The Purchaser is entitled to demand reimbursement of the costs incurred by reason of the replacement delivery or remedying of the defect insofar as such costs are not increased due to the subsequent transportation of the goods delivered to a location other than the original shipment location unless the purpose for which the goods are intended requires the same.

(5) In the event that we are not in a position to remedy the defect or deliver a replacement the Purchaser is entitled to rescind the contract or to demand a reasonable reduction in the

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purchase price. Rescission of the contract is only permissible where the Purchaser prior thereto sets a final and reasonable deadline in writing expressly indicating his intention.

(6) The Purchaser shall retain a right of recourse against us within the meaning of §478 of the German Civil Code (BGB) insofar as the Purchaser has not agreed terms with its Purchaser which exceed the statutory liability for defects.

## 10. Damages

(1) Except where otherwise provided in these terms including the following provisions we are liable for contractual and non-contractual breaches in accordance with the applicable statutory provisions.

(2) We are liable in damages for any claim irrespective of its legal basis where we have acted with willful default or in a gross negligent manner. For claims based on negligence we are liable in accordance with the statutory provisions as follows:

(a) Liability for damages based on personal injury are not subject to any limitation of liability,

(b) Liability for damages based on breach of a material term of the contract are limited to compensation for damages which were foreseeable and are ordinarily incurred; a material term of the contract is any term which is characteristic of performance of the contract and upon which the Purchaser could normally rely.

(c) Liability for any other damages, other than those incurred by the Goods themselves, to include without limitation loss of profit or any other pecuniary loss incurred by the Purchaser, is excluded.

(3) The limitations of liability set out in sub-paragraph (2) aforesaid shall apply to breaches of all persons for whom we are legally responsible. They do not apply where we have given a guarantee as to the quality of the goods and in relation to claims of the Purchaser made under the Product Liability Act .

(4) In the event of a breach which does not render the goods defective the Purchaser shall only be entitled to terminate or rescind the contract where we are responsible for the breach. Notice of termination or rescission must be in writing. Notice by email or facsimile does not suffice the written form requirement. Otherwise the statutory provisions shall apply.

(5) Any claim made by the Purchaser for reimbursement of wasted expenditure shall be subject to the aforesaid.

## 11. Limitation

The limitation period for claims based on the supply of defective goods and services as well as for claims for damages is one year. The limitation period aforesaid shall not apply where longer limitation periods are prescribed by law (e.g. for structures §§ 438 s.1. No. 2 of the German Civil Code (BGB), rights of recourse § 479 German Civil Code (BGB) and building defects § 634a s.1 No.2 German Civil Code (BGB) as well as to claims based on willful default, gross recklessness, or to personal injury claims and to claims under the Product Liability Act (Produkthaftungsgesetz).

## 12. Subcontractors

Where we provide assembly works we are entitled to employ subcontractors.

## 13. Security

Where after conclusion of the contract we become aware that the Purchaser is in an adverse financial position we can render our performance conditional upon the provision of a security which is customary in commercial dealings. Such security is to be provided by the Purchaser within a reasonable deadline. Where the security requested is not provided within the deadline set we shall be entitled to rescind the contract.

## 14. Non Disclosure

(1) During the term and after termination of this contract the parties shall not disclose to third parties or use for their own business aims without authorisation any confidential information (to include without limitation quotations, documents, samples, sketches, business intentions, personal data, problems, data and/or problem solutions, or any other know-how of any kind

as well as information visually gained by the inspection of plants or facilities) received from the other party or of which the parties became aware by reason of their collaboration. The aforesaid non-disclosure obligation shall also apply in relation to the existence and content of this contract. The parties shall also impose this obligation upon their employees.

(2) This non-disclosure obligation shall not apply to information which

- was already known to the other party prior to the contract,
- was independently developed or lawfully acquired from third parties,
- is or comes into the public domain or is the state of the art or
- cleared for disclosure by the disclosing party.

(3) Upon termination of the contract the parties shall return unrequested all confidential documents and information of the other party in tangible or non-tangible form or at the request of the other party destroy the same or insofar as technically reasonable irrevocably delete the same.

(4) The parties shall comply with data protection law requirements, in particular where access is granted to the premises or hardware or software of the other party. They shall undertake suitable measures to ensure that vicarious agents and third parties acting on their behalf shall also comply with the same.

## 15. Jurisdiction, Choice of Law, Severability

(1) For Purchasers whose principle place of business is situated in the European Union all disputes arising out of these terms and conditions shall be resolved before the courts in Arnberg, Germany. We reserve the right to sue the Customer at its principle place of business.

For Purchasers whose principle place of business is situated outside the European Union all disputes arising out of these terms and conditions shall be finally settled in accordance with the Rules of the German Institution of Arbitration e.V. (DIS) without recourse to the ordinary courts of law. The place of arbitration shall be Frankfurt am Main, Germany. The arbitral tribunal shall consist of three arbitrators. The arbitration shall be English.

(2) These terms and all legal relations between us and the Purchaser shall be governed by the laws of Germany excluding the United Nations Convention on the International Sales of Goods (CISG).

(3) Where a provision of these general terms and conditions is invalid in whole or in part, the validity of the other provisions shall remain unaffected. The parties shall replace the invalid provision with a provision which corresponds as near as possible to the commercial aim of the original invalid provision.

## 16. Right of Access for MPA Inspectors

The Purchaser and user of quality assured storage shelving and racking installations declares its willingness to grant inspectors of the Material Testing Institute (Materialprüfungsamt) in North Rhine Westphalia access to the installation sites at all times and to permit quality and implementation testing. Such testing is part of a certification procedure and is at no charge to the Purchaser or user.

**All prices are listed in Euro per item, or as otherwise described, plus statutory VAT, ex works, unassembled. Irrespective of catalogue content delivery times are those confirmed by the production plant. All illustrations are without decoration.**

**Minimum purchase order amount: 50,00 Euro  
Surcharge for insufficient order quantity: 15,00 Euro**

**Prices are valid from 1st April 2016. All other prices are no longer valid after this date.**