

# General terms and conditions of sales and delivery

## I. Conclusion of contract

1. For all our offers, deliveries and services, including information and consultation, the following general terms and conditions of sales and delivery are valid. Only the following general terms and conditions of sales and delivery are valid. Other terms and conditions are not valid, even if we do not expressly contradict them.
2. The general terms and conditions of sales and delivery according to section 1. are also valid for all future commercial relations between our customers and ourselves, irregardless of whether these are expressly referred to when a contract of sales is concluded. In each case the most recent version is valid, of which we will send a copy to the purchaser upon request.
3. All our offers are non binding. A contract does not come into existence until we have acknowledged the customers order in writing, or have carried out the delivery or service without separate acknowledgement. Supplements by telegraph, by phone or otherwise, changes or separate agreements in addition to these general terms must be in writing in order to be valid. This is also valid in the case that the requirement for the written form is rescinded. Remarks made by our employees must be acknowledged in writing so far these remarks are not made by authorised representatives of the corporation or those having a valid power of attorney to act on the behalf of the corporation. With the exception of the above mentioned, our employees are not entitled to conclude contracts and are only entitled to accept written declarations.
4. Our specifications in offers and other supporting documents, like illustrations, drawings, descriptions of measures, services and such like are only binding for our performance, when confirmed by us in writing. We reserve the right to make technically necessary and purposeful modification as well as to accept deviations and DIN tolerances usual in commercial practise after taking suitable account of the purchasers interests. To all documents like pictures, drawings, scatches and other planes we delivered or released to our purchaser we reserve all property rights, copy rights and all other protective rights. They must not be made available to any third party or commercially exploited in any way. On our demand they have to be returned immediately together with all copies made. The same is valid in the case of non conclusion of the contract or non performance of an order. In so far the purchaser instruct us on the basis of construction and documenting drawings, he is liable for that this drawings are not infringing upon the protective rights of any third party. We are not obligated to the purchaser to control his orders and transport constructions in so far that they will not infringe upon the protective rights of any third party when released. In the case of the infringement of a third party right due to lapse of communication the purchaser has to reimburse us for the damages resulting out of these infringement and to protect us from claims of third parties.

## II. Delivery dates and periods

1. Dates and periods for our deliveries are only binding on us when we have confirmed them in writing as being binding. For deliveries requesting a special permission the purchaser has to seek our acknowledgement of the binding delivery date at least twenty one days before the delivery date except there is a contract conclusion to the contrary. Dates and periods for deliveries start to run as soon as an agreement is reached on all details necessary for executing the order and the purchaser has made the documents, details, permits and releases, to be procured by him, available to us.  
Forbearing an obligation to act and demands for changes in specifications result in an appropriate extention of the dates and periods deadlines. A business on fixed terms is only agreed upon if it is designated as one.
2. Unforseeable or unavoidable events like war, military actions, energy or raw material shortages, sanctions, currency and trade restrictions pandemics, strikes, close outs and other interactions of production which are beyond of our control releases us for the period they occur from our duty to deliver and render services, even so these events occur during a delay in delivery already in existents. In so far the agreed on delivery is delayed by circumstances not caused by us, dates and periods deadlines will be extended within an reasonable range. This is also in existence for delivery made and services rendered by our suppliers which are either delayed or unproperly carried out due to circumstance beyond our control. Should the delay be unreasonable for our purchaser he is entitled, within suitable consideration for our needs, to withdraw from the contract. A delay of four weeks has to be accepted and is just reasonable. The same is valid for a cancellation by us. Declarations have to be in writing.
3. As soon as a delivery or service deadline is delayed due to circumstances caused by us and a period of grace of at least four weeks has passed, our purchaser is entitled to withdraw from the contract. In the case the delay is related to a partial delivery or service a withdraw is only valid when the demanding part is no longer of any interests to our purchaser.
4. We are entitled to make partial deliveries or partial services.

### III. Prices and payment

1. Our prices are in EURO and are valid ex works. They are net prices and do not include VAT, duties, exercises, transport, packaging or insurance costs except expressly and in writing agreed upon to the contrary. These costs are to add. The place of fulfilment of all payments is our place of business.
2. Our prices are firm for a period of three month after the date of acknowledgement according to I. section 3., except we agreed upon to the contrary. After that period we are entitled to charge to our purchaser within a reasonable extend the changes due to the rising of the price basis.
3. Payments are payable as follows: 35% downpayment with the order and 65% within thirty days from date of invoice. The payment conditions are valid except nothing in written has been agreed upon to the contrary. For payments with a payment agreement of 30 days after invoice date and which are made within eight days after invoice date our purchaser is entitled to deduct 2 percent of the net price, except nothing has been agreed upon to the contrary. We will accept drafts and checks only on the basis of an special agreement and on account of performance; costs and fees are payable by our purchaser. We are not liable for a past due protest of a draft.
4. For delays in payment of the purchaser and in the case of demanding due date interests (Fälligkeitssinsen, § 353 German Commercial Code, HGB) we are entitled to demand interest of 8 % above the current base rate according to § 1 Discount Rate Transition Law or reimbursement for the precisely calculated damages due to the delay in payment.
5. Our purchaser has the right to set off amounts against or to withhold payment of the invoice only when his counterclaim is undisputed or has become legally binding on us. We are entitled to set off with one's own and affiliated companies outstanding debts against the purchasers outstanding debts. Any delayed payment, any suspension of payment or any protest against a check or a draft will result in that any future payment irregardless of whether these have been agreed upon expressly or apparently through acceptance of a check or draft, is immediately payable.
7. When after the conclusion of the contract the financial status of the purchaser will deteriorate significantly or a before occurred deterioration of the purchaser is first noticed after the contract conclusion or does he not maintain dates of payment by the same legal relation (also all claims within the same permanent business relationship) we will be entitled to deliver or rend services only for payment in advance or other security offered.
8. When the purchaser is delayed in payment of any and all, and a reasonably set deadline has past without payment, as well as in the case of purchaser refuses to fulfil his contractual duties, we are - of our own choice - entitled either to withdraw form the contract, to demand damages in the amount of 30 % of the agreed upon value of the contract or reimbursements of exactly calculated damages incurred for us by nonfulfilment of the contract. In the case we will claim the damages in the amount of 30 % the purchaser is free to prove that a smaller amount of damages has occurred.
9. If, after the conclusion of the contract, the net purchase prices to be paid by us for the materials required under the contract should increase by more than 20% percent at the time of their delivery, each of the contracting parties shall have the right to demand that the other contracting party enter into supplementary negotiations with the aim of bringing about, by agreement, an appropriate adjustment of the contractually agreed prices for the contractual materials concerned to the current delivery prices. Alternatively, we reserve the right to withdraw from the contract. The right of withdrawal must be exercised within two weeks of becoming aware of the price increase.
10. Represents are not entitled to receive payment on the behalf of the company.

### IV. Delivery and transfer of risks

1. The place of fulfilment is our plant in Hilden. As soon as the goods have left our plant the risk is transferred to the purchaser. This is true even so partial deliveries are made or we have accepted to take care for additional services like shipment or to pay shipping costs. Should shipment be delayed due to circumstances for which the purchaser is responsible or does the purchaser not accept delivery without adequate cause, risks will be transferred to the purchaser on the date readiness of shipment is reported or the day of non-acceptance. In this case the purchaser is responsible for the costs of the unsuccessful offer as well as for storage (also in the form of warehousing) and maintenance of the objects to be delivered. This is also true for delays in delivery. For warehouse and delivery costs as well as other expenses we are entitled to a lump sum of 0,5 % of the invoice value for each month, unless the purchaser is able to prove that less damages have occurred.
2. In the case of default of acceptance, default of payment or default of fulfilment of a duty under the contract we are entitled, after a period of grace set by us had past, to withdraw from the contract or to claim damages for non performance, without prejudice to our other rights. Numeral III. 8. applies accordingly.
3. The purchaser is required to accept deliveries even when they display insignificant faults. Warranty rights of the purchaser are not effected by this as far he objects by a complaint in time.

4. Regarding amounts, weights and measurements of the delivered goods our calculation before shipment is valid, as long as no other calculation is proved by the purchaser to be true. Deviations caused by production or by shipment (increases or decreases) in number of items and/or weight up to 10 % - in case of speciality up to 20 % - concerning the agreed total quantity or concerning individual partial deliveries are permissible.
5. Recyclable packaging is available on loan. We are entitled to charge a deposit fee. In any case such packaging remains our property and is to return to us within sixty days after delivery free of freight charges. Otherwise we are entitled to charge the price new. The same is valid when packaging is returned unusable or damaged, except the purchaser is able to prove that the packaging was already unusable or damaged at the time of delivery.
6. The purchaser has to dispose one way packaging to his own account. In so far he is not disposing it by himself he has to return the packaging sorted and bounded and with a notice of return seven days prior delivery. The costs of returning transportation packaging are to be born by the purchaser, otherwise we are entitled to refuse acceptance of the packaging.
7. For deliveries within the states of the European Union the purchaser is obligated to make his VAT identification number available in writing. The purchaser alone is responsible for the correctness of his information. The purchaser has to reimburse us for damages and releases us from any third party claim when the purchaser should not inform us of his VAT number correctly.
8. For delivery ex works the purchaser is obligated to give us due information of the transport and the final destination of the goods. In the case he is infringing this obligation he is liable for our damages and has to release us from the claim of any third party.

#### **V. Warranty and examination of received goods**

1. We are only liable for defective construction or insufficient performance that abolishes or debases more than negligibly the value or capability for accepted or contractual assumed usage and any warranted characteristics exist. For faulty materials we are only liable when the materials are ordered by us and only in so far as we should have been able to recognise the fault of the materials by due cause. In the case of an argument the purchaser has to prove that a construction material or performance default has occurred. For wear and tear and fault caused by unreasonable usage or processing under disregarding of the producers, construction or usage instructions we are not liable. A right to warranty ends when intervention is taken or a manipulation is carried out by the purchaser himself or a third party doing so on the behalf of the purchaser as well as if foreign-related spare parts or accessories are used.
2. In the case of producing on the basis of purchaser drawings or purchaser instructions we are only liable for the performance according to these drawings and instructions.
3. Information regarding our products in particular illustrations within our offers and printed matters, drawings, details and weights, measurements and performances are not warranted characteristics but only descriptions or labelling. The same is valid for delivery of samples or test samples. Warranted characteristics of a product in the sense of § 463 German Civil Code (Bürgerliches Gesetzbuch) are only such which are confirmed in writing. The utilization of the delivered items is in the purchasers sole responsibility. Advices, remarks and consultations are without obligation, unless otherwise expressly agreed.
4. When we have to perform construction services a liability for defects can only be claimed when the purchaser proves that our performance is not state of the art and that we are responsible for the defect.
5. The warranty obligation or the liability for expressly warranted characteristics for service and performance data are excluded, in the case the purchaser uses different materials as the tools are made for or when the purchaser do not follow our rules or performance advises to obey special materials or data. In the case of a doubt the purchaser has to prove that he has followed our rules or advises.
6. The purchaser has to inspect the goods immediately after delivery, even when samples or test samples have already been made available to him, and inform us immediately in writing of any faults or deviations in amounts which may become apparent to him. Faults and deviations in amounts which cannot be revealed due to an exact inspection must be reported within one week after discovery to us in writing and in the form of a short summary.
7. Otherwise the goods are considered to be accepted. Faults discovered within the delivery period are to be reported to the person delivering the goods and must be noted exactly on the freight documents.
8. The time period starts at the moment of the transfer of risks. As far as services are agreed, time period starts with acceptance according to § 640 German Civil Code. The time period is 12 months. The time period belonging to premises workings is 1 year and belonging to buildings 5 years.
9. We warrant at our option that we will either repair the faulty objects or make replacement delivery for such at our costs (transport-, road-, work- and material costs). As far as the costs increase by a delivery to a different place other than the locality of the business premises the purchaser is obligated to cover the higher expenses except the transportation is agreed upon within the contractual relationship.

10. In the course of repairing the faulty goods the purchaser must make the immediate repair of the faulty goods possible and has to make these goods accessible to us for inspection and for our work. The purchaser has to bear all arising costs based on unreasonable claims.
11. The purchaser is entitled either to reduce the purchase price or demand a termination of the contract when the repair will be unsuccessful or replacement will be impossible. In the case that several objects are to be delivered a termination of the contract can only be demanded for the faulty objects.
12. Claims beyond and above this are, if not agreed upon to the contrary, excluded.
13. The same rules of warranty are applicable to delivered replacements and to the repaired faulty goods as to the originally delivered goods.

#### **VI. Performance according to purchaser instruction**

1. We do not warrant or are liable for the functionality of manufactured goods which were produced on the basis of purchaser drawings, samples or any other instructions. The same is true for faults based on these purchaser instructions. The produced forms, tools and design worksheets for the execution of an order by us or by a third party on our behalf are exclusively our property. Referring to this no claims are entitled to the purchaser, even if he is participated in the costs of the produced forms, tools and design worksheets. We are entitled to destroy the forms, tools and design worksheets, latest 2 years after the last execute of a purchaser order.
2. The purchaser has to release us from any third party claim against us arising from damages caused by our manufacturing, in so far these damages are caused by the purchaser instruction. The purchaser warrants that manufacturing and delivery of manufactured goods basing on his own instructions infringe no protective rights of a third part. In the case of a third party demands protective rights against us, we are entitled to withdraw from the contract after hearing the purchaser without legal check of any claims of a third part, unless the third part retracts the demanding of protective rights within 8 days by written declaration or the purchaser deposes security within this time period by absolute unlimited irrevocable written suretyship by a German bank in the amount of the anticipated claims of a third part based on the alleged infringement of protective rights. The purchaser is obligated to substitute all damages incurred by demanding of protective rights. In case of withdraw from the contract all achieved workings hitherto are to pay according to our invoice.

#### **VII. Liability**

1. We are only liable for damages to our purchaser in so far that he can prove that we and any person working on our behalf have acted with intent or gross negligence. In the case of intent and gross negligence of such persons working on our behalf which are no managing employees of our firm we are only liable to the typical amount of damages under consideration of all significant and recognisable circumstances to be anticipatable. This limitation of our liability is valid to our employees, too.
2. This limitation of liability includes all claims of damages, independently on which cause in law they due to. This limitation of liability does not include damages arising from properties which have been promised but are found to be missing nor for damages arising from those faults a missing property was supposed to protect the purchaser from.

#### **VIII. Reservation of title**

1. We reserve the title to the goods delivered as well as to the objects processed or made from them until all claims we have or may have in the future on the purchaser are fulfilled, even in so far they have become due after conclusion of the contract. In current account the reservation of title is for secure the balance claim belonging to us.
2. We allow a processing or manufacturing of the delivered goods within the normal course of the customers business. The processing or manufacturing by the purchaser will be carry out for us, without any obligation to us arising from such activities. In the case that there is a processing with other delivered goods, whose title has been reserved, we acquire property rights to the new objects in the proportion of the gross purchase price agreed upon between the purchaser and ourselves corresponding to the purchase price of the other product. The purchaser transfers title of his title to the objects arising from a mixture composition and integration of our products with others to us at the time he starts processing.
3. The purchaser will possess the delivered goods to which we have reserved the title in full or in part as a warehouse for us and store them with due care. The purchaser will, in so far he signs an insurance covered for the delivered goods, transfer the proportion of his claim arising from the insurance coverage of these goods to which we reserve the complete or partial title to us in the proportion of our rights to them. The purchaser is not entitled to transfer title to the delivered goods, to pledge them or to dispose them, when we have reserved the title in whole or in part. We authorise the purchaser to sale the delivered goods only in writing and only in the ordinary course of his business and when we are guaranteed that the claims arising from such contract are trans-

ferred to us. The purchaser transfers to us any claim arising from contracts which result of the sale of the delivered products or for any other legal reason connected to the delivery. In so far the purchaser sales and deliveries goods after processing or after connecting, mixture, integration with other goods, or together with other products, he transfers the title only valid to the amount corresponding to the gross purchase price agreed upon between the customers and us with the addition of a 40 % security margin on this price. If the assigned claim is accounted to current account, the purchaser assigns by now the part of his particular balance claim inclusive the end balance amounting to the claim.

4. We authorise the purchaser to collect the claims arising from contracts which have been transferred to us. This authorisation and the authorisation to sale the goods to which we reserved the title in full or in part will be revoked, when the purchaser will not fulfil his obligation.
5. The purchaser is obligated to provide us at any time with any information regarding our delivered goods to which we have reserved the title in full or in part and the claims transferred to us. On our demand the purchaser has to inform the third party of the assignment of the claims to us. When there will be a claim by a third party to our goods to which we reserved title in full or in part or to us transferred claims, the purchaser has to inform us immediately including all necessary details. The purchaser bears any costs arising from a defence against such claims. On demand of the purchaser and at our discretion we will release the security when the value of the collateral security exceeds our demands according to section 1. by more than 40 %.
6. We are entitled without prejudice to our other rights to take back the goods we have reserved the title in full or in part and exploit them as well as any transferred claims in order to satisfy our demands due on the purchaser. The purchaser is obligated to give us free access to the delivered goods to which we have reserved the title and make them available to us or the persons acting on our behalf. Our demand for availability of the delivered goods or our pledging of them is not deemed to be rescission from the contract.
7. We are entitled to insure the delivered goods until the transfer of the titled to the purchaser or a third party at the costs of the purchaser except the purchaser proves that he has insured the goods by himself.
8. In the case we deliver into countries within the reservation of title has not the same collateral security effect as it has under German law in Germany, the purchaser is obligated to place at our disposal immediately a collateral security right which has the same economic impact there. Having the same economic impact is such a collateral security, which grantees under an economic view the same standard of security against the loss of title to the goods and claims arising from the contract.

#### **IX. Place of fulfilment**

The place of fulfilment of all contractual commitments is our place of business in Hilden.

#### **X. Prohibition of transfer**

Any transfer of purchaser claims against us to a third party must have our approval in writing to be effective. As far this approval is not duely given the transfers are void.

#### **XI. Salvatorian Clause**

A void individual clause of these general terms and conditions of sales and delivery has no impact on the effectiveness of the other clauses. Any inoperative clause will be replaced by the parties with another clause which fulfils the economic purpose of the original ineffective clauses as closely as possible. This also applies for closing a gap in this contract.

#### **XII. Legal choice and jurisdiction**

1. The contractual relationship between the purchaser and us is governed by German law under exclusion of the international commercial law (CISG).
2. Exclusive jurisdiction for all disputes arising from the contractual relationship between the purchaser and us is Düsseldorf. We are, however entitled to start an action against the purchaser at his residence.

#### **XII. Dataprocessing**

The purchaser accepts the processing and maintenance of all data on the basis of our business relationship.