



## **Terms and Conditions of Sale and Delivery**

### **§ 1 General - Field of application**

1. Our sales, deliveries and payments are exclusively subject to the terms and conditions set forth herein. Any contrary terms and conditions proposed by the purchaser or conditions which deviate in any way from our terms and conditions of sale, delivery and payment will not be recognised unless their acceptance has been explicitly confirmed in writing by us. Our terms and conditions of sale, delivery and payment shall also apply when we make deliveries to our customers without any reservation although we are aware of the fact that their terms and conditions are contrary to or deviate from ours.
2. All agreements made between us and the purchaser for entering into a contract must be laid down in writing in this contract.
3. Our terms and conditions of sale, delivery and payment exclusively apply to companies in the sense of § 310, paragraph 1 BGB (German Civil Code).
4. Our terms and conditions of sale, delivery and payment also apply to any future business with the purchaser.

### **§ 2 Quotation and contract conclusion**

1. Our quotations are submitted without commitment. Acceptance of our quotations as well as orders require our confirmation in writing or via e-mail or fax to become legally binding. The same applies to amendments, modifications or additional agreements.
2. Drawings, pictures, dimensions, weights or other performance data are only binding upon us when they have been expressly confirmed by us in writing as being binding.
3. Our sales personnel are not authorized to make additional oral agreements or to give oral warranties beyond the content of the written contract.

### **§ 3 Prices**

1. Unless otherwise stated, quoted prices will be binding upon us for 30 days from the date of the quotation. The prices stated in our written order confirmation plus VAT at the current rate are definitive. Additional supplies and services will be invoiced separately.
2. The prices include the cost of carrying out acceptance tests in our premises. Any costs incurred for acceptance in the purchaser's premises are to be borne by the customer. Our prices are understood to be net, on the basis of delivery ex works. They do not include packing, loading, freight charges, customs duties, insurance or installation.
3. The prices invoiced will be those agreed at the time of signing the contract and are based on the cost factors applicable at that time. If these cost factors (e.g. for raw material, labour and energy) change in the period between signing of the contract and delivery of the goods which are the subject of the contract, we are entitled to adjust our prices accordingly.

### **§ 4 Delivery and service times**

1. Terms and periods quoted by us are not binding upon us unless expressly stated otherwise in writing.
2. Delivery and service times which are binding upon us commence upon receipt of our order confirmation by the purchaser but not before full clarification of all details of the order, provision of all documents or materials to be provided by the purchaser, official permits and release and/or receipt of any down payments agreed. In the case of non-observance of the above or other pertinent obligations by the purchaser, any delivery and service times agreed will no longer be binding upon us.



3. Delivery and service times agreed refer to the time of completion in our works and they are considered as having been achieved when notification of readiness for despatch is given.
4. Delays in delivering materials or providing services due to Acts of God or due to events which make delivery much more difficult or even impossible, which include shortage of material, interruption of operations, strikes, lock-outs, lack of personnel, lack of means of transport, government action etc., including when such events occur with our subcontractors or their subcontractors, are beyond our responsibility even though delivery and service times have been agreed in a binding manner. Such circumstances entitle us to postpone delivery by the length of duration of such events and by a reasonable lead time after such events or to withdraw from the contract in whole or in part with respect to that part not yet fulfilled.
5. If the adverse condition lasts for more than three months, the purchaser may withdraw from that part of the contract not yet fulfilled after an adequate period of grace has been granted, unless the product to be manufactured under the contract has been completed, and the purchaser has received notice of its readiness for despatch. If the time for delivery or service is delayed, or if we have been released from our obligations, the purchaser shall not be entitled to make any claims for damages. The above circumstances can only be asserted if we inform the purchaser immediately on their occurrence.
6. If we fail to adhere to binding delivery and service times deliberately or with gross negligence, the purchaser is entitled to compensation for damages which he has demonstrably incurred as a result of our default. For every full week of delay this compensation shall amount to 0.5% of the value of the goods delayed, although this shall not total more than 5% of the value invoiced for deliveries and services affected by the delay. Any further claims, especially claims for damages, will not be considered unless we have been guilty of gross negligence.
7. We are at any time entitled to make partial deliveries and services.

#### **§ 5 Passing of risk and acceptance**

1. All risks shall pass to the purchaser when the goods have left our premises. This also applies when deliveries are made in instalments or when we have undertaken to carry out other services, e.g., shipment, delivery to the point of destination or installation.
2. If despatch becomes impossible or is delayed for reasons not attributable to us, the risk shall pass to the purchaser at the time of reporting readiness for despatch.
3. At the purchaser's request, we undertake in the circumstances described in 1 and 2, to take out on his behalf and for his account an insurance for the goods which are ready for despatch covering theft, breakage, transport damage and damage by fire and water as well as any other insurable risks.
4. When readiness for despatch has been reported to the purchaser, he shall call for or collect the goods without delay, otherwise we are entitled to store them on his behalf and for his account. Additional expenses incurred for such storage shall be borne by the purchaser. Any goods delivered must be accepted by the purchaser without prejudice to the rights he is entitled to under the following § 6, even if the goods have minor faults.

#### **§ 6 Liability for defects**

1. The quality of the goods depends exclusively on the technical delivery specifications agreed. If we are to supply according to the purchaser's drawings, specifications, samples etc., the risk of suitability for the intended purpose lies with him.
2. The rights the purchaser is entitled to in the event of defects presuppose that he has duly complied with his obligations to check the goods and to give due notice of defects, in accordance with § 377 HGB (German Commercial Code).
3. Justified claims for material defects will be fully satisfied by subsequent fulfilment which will be performed at our discretion either by elimination of the defects or by the supply of goods with-



out any defect. In the case of fault elimination, we will only pay costs up to the amount of our invoice.

4. If subsequent fulfillment demonstrably fails, the purchaser may at his option either request withdrawal from the contract or demand a price reduction.
5. If the purchaser puts forward claims for damages on the basis of deliberate acts or gross negligence, including deliberate acts or gross negligence by our representatives or vicarious agents, we are liable as provided for in the legal provisions. Insofar as we cannot be accused of deliberate breach of the contract, our liability for compensation of damages is limited to the foreseeable typical damage.
6. If we culpably commit an infringement of an essential contractual obligation, our liability is limited to legal provisions in law. In such a case, however, our liability for compensation for damages is limited to damages that are typical and reasonably foreseeable for this type of contract.
7. The liability for culpable causing death or injury is unaffected. This also applies to liability under the compulsory legal provisions with respect to product liability. It does not apply when properties which have been explicitly assured are absent if the assurance had the immediate purpose of protecting the purchaser from damage.
8. Except for the provisions of the above clauses, liability is excluded.
9. The statute of limitation for claims for defects is 12 months from the date of delivery, especially for defects in structures or in goods which are usually used for structures and which have caused the structure to be defective.
10. The statute of limitation in the case of a claim for recourse as per §§ 478, 479 BGB (German Civil Code) is unaffected. It is 5 years from the time of delivery of the defective goods.

## **§ 7 Reservation of proprietary rights**

1. Until full payment of all claims (and of the balance of any payments due) which we or an affiliated company may have now or in the future against the purchaser or an affiliated company for any legal reason, the following securities will be granted to us. We agree to release at the purchaser's request any such securities if their value exceeds the secured claims by more than 20%.
2. All goods supplied remain our property. Any processing or transforming is carried out on our behalf as the manufacturer but shall not place us under any obligation. If our ownership or co-ownership ceases to exist as a result of combining or mixing our goods with others, it is understood that the purchaser transfers to us any claims he may have in the new items according to the proportion of the value of the goods (invoice amount). The purchaser shall keep our ownership or co-ownership in custody for us. Goods in which we have ownership or co-ownership are hereinafter referred to as goods subject to proprietary rights.
3. The purchaser is entitled to process and sell the goods subject to proprietary rights in the course of ordinary business dealings, provided he is not in default with payment. Pledging or transfer by way of security is not permitted. It is understood that the purchaser transfers to us, in full, any claims he may have from the sale of goods subject to proprietary rights or for any other legal reason (insurance, illegal action). Until revoked, we authorize the purchaser to collect payment for claims transferred to us for his account and on his behalf. At our request, the purchaser shall advise his customers of the transfer of claims to us and supply us with any information and documents that may be required for assertion of our right.
4. In the case of seizure of goods subject to proprietary rights by third parties, the purchaser shall advise them of our ownership or co-ownership and inform us immediately in order to allow us to assert our proprietary rights. Should the third party not be in a position to reimburse us for any judicial and extrajudicial costs incurred, the purchaser shall be held liable.



5. If the purchaser behaves in a manner which is a breach of the terms of the contract, especially if he is in default of payment, we are entitled to recover the goods subject to proprietary rights from the purchaser or to request goods from the purchaser. Pleading for goods subject to proprietary rights does not constitute withdrawal from the contract.

## **§ 8 Payment**

1. Unless otherwise agreed, our invoices are payable within 14 days of the date of invoice with a 3% cash discount or within 30 days of the date of invoice net cash. These periods for payment, in the course of which the invoiced amount must have been credited to one of our accounts, commence on the date of the invoice. We are entitled to use payments made by the purchaser firstly for settling overdue invoices still unpaid, even though the purchaser's conditions may state the contrary to this. If we have already incurred costs and interest, we are entitled to use the purchaser's payment firstly to cover the costs, then the interest and then the principal claim.
2. Payment is only considered as having satisfied the obligation to make payment when the invoiced amount is available to us. In the case of payment by cheques, payment is considered as having been made when the invoiced amount has been credited to one of our accounts.
3. Any discounts which we may have granted will be withdrawn if the invoiced amount has not been credited to one of our accounts, at the latest, 30 days after the date of invoice.
4. If the purchaser is in default of payment, we are entitled to charge, from the due date, interest at the rate charged by commercial banks for current account credits, but at least 4% above the rate of interest charged by the German Bundesbank as compensation for damages. The rate of interest will be reduced if the purchaser can furnish proof that the related damage to us is lower. We may furnish proof of higher damage.
5. If the purchaser does not fulfil his payment obligations, does not honour a cheque or ceases his payments, or if we learn of circumstances, which create doubts as to his credit worthiness, all our claims will immediately become due for payment net cash, without taking account of any cheques that may have been accepted. In such cases, we are entitled to make further deliveries against cash in advance or against the provision of a form of security.
6. Even in the case of notice of defects or counterclaims, the purchaser is not entitled to withhold or to offset payments or to reduce invoiced amounts unless we have expressly agreed in writing or unless the counterclaims are uncontested or confirmed as being legally valid.
7. The purchaser agrees that his claims and liabilities may be offset by us and affiliated companies. The same applies to claims and liabilities of the purchaser and affiliated companies.

## **§ 9 General limitation of liability**

1. Liability for damages beyond the limits of § 6 shall be excluded irrespective of the legal nature of the asserted claim. This applies in particular to claims for damages for default at contract signing, claims due to other breaches of duty or claims for compensation of material damage resulting from a culpable action, as per § 823 BGB (German Civil Code).
2. Insofar as liability for damages is excluded or limited, this also applies to the liability for damages of our representatives, employees and vicarious agents.

## **§ 10 Place of jurisdiction, place of performance**

1. If the purchaser is a registered trader, our headquarters shall be the place of performance. However, we are also entitled to sue the purchaser at his place of jurisdiction.
2. This contract is subject to the law of the Federal Republic of Germany. The applicability of UN commercial law is precluded.
3. Save as otherwise provided for in the order confirmation, our headquarters are the place of performance.

April 2003