

General Sales Terms and Conditions

Version: Last updated in March 2011

Scope of application

1. These General Sales Terms and Conditions are applicable for contractors, corporate bodies under public law and public separate estates. We are providing deliverables and performances based on the terms and conditions hereunder exclusively. General terms and conditions of the other party not expressly accepted by us shall not apply.

General provisions

2. The parties will immediately confirm verbal agreements in writing in the individual case.
3. Purchase orders become binding by our confirmation of the order only.
4. Unless we have expressly indicated them to be binding, the information and graphics included in brochures and catalogues are only approximations in line with the industry standard.

Long-term and call-off purchasing agreements, price adjustment

5. Permanent agreements may be terminated observing a period of notice of 3 months.
6. If a significant change in payroll expenses, material or energy costs occurs for long-term agreements (agreements with a term of more than 12 months and permanent agreements), both parties are entitled to demand appropriate adjustment of the price in consideration of these factors.
7. If no binding order quantity was agreed, we are basing our calculation on the non-binding order quantity to be expected from the other party for a certain period of time (target quantity).
8. For call-off supply agreements, the other party shall notify us of the binding quantities at least 5 months before the date of delivery unless agreed otherwise.

Confidentiality

9. Both parties will use all documents (which also includes prototypes, models and data) and know-how they acquire through the business relationship only for the mutually pursued objectives and keep them secret from third parties with the same diligence they would employ for their own documents and know-how if the respective other party has identified them as confidential or has an obvious interest in their confidentiality. This obligation takes effect as of initial receipt of the documents or know-how and will end after 36 months as of the end of the business relationship.
10. The obligation does not apply for documents and know-how that are in the public domain or that had already been known to the party upon receipt without them being sworn to secrecy or that are subsequently passed on by a third party entitled to pass on such information or that are developed by the receiving party without the use of documents or know-how of the other party subject to confidentiality.

Drawings and specifications

11. If one party provides the other party with drawings or technical documentation for the goods to be delivered or their manufacture, they are subject to reservation of title by the party providing such documents.

Prototypes and manufacturing equipment

12. Unless agreed otherwise, the manufacturing costs for prototypes and manufacturing equipment (tools, moulds, master plates, etc.) are invoiced separately from the goods to be delivered. The same also applies to manufacturing equipment that needs to be replaced due to wear and tear.
13. We will bear the costs for maintenance and proper storage and the risk of damage or destruction of the manufacturing equipment.
14. If the other party suspends or terminates the co-operation during the time required for manufacturing the prototypes or manufacturing equipment, they will bear all manufacturing costs incurred until that time.
15. Even if it was paid by the other party, title to the manufacturing equipment is reserved at least until the supply agreement has been executed. Subsequently, the other party is entitled to demand surrender of the manufacturing equipment if a mutual agreement was reached on the time of surrender and the other party has fulfilled their contractual obligations to their full extent.
16. We will store the manufacturing equipment free of charge for one year after our last delivery to the other party. After that, we will ask the other party in writing to make a statement on its further use within 6 weeks. Our safekeeping obligation ends if the other party does not make any statement within these 6 weeks, nor do they issue another purchase order.
17. We require the other party's prior written approval for the use of buyer-specific manufacturing equipment for deliveries to third parties.

Prices

18. Our prices are in Euro and do not include value-added tax, packaging, freight charges, postage and insurance fees.

Payment terms and conditions

19. All invoices are due according to a separate agreement.
20. If it is indisputable that we have delivered partially defective goods, the other party is nevertheless obligated to pay the part free of defects unless the partial delivery is of no interest to them. Otherwise, the other party may only set off invoices against counterclaims that are established as final and absolute or undisputed. In any case, the other party must fulfil their duty to avert, minimise or mitigate loss and are not entitled to suspend their payments on outstanding invoices.
21. In the event of the terms of payment being exceeded, we are entitled to charge default interest at the rate we are charged with for overdrafts by the bank but at the least at 8 percent above the respective base interest rate of the European Central Bank.
22. If the other party falls into arrears, we can suspend the fulfilment of our obligations until receipt of the payments after written notice to the other party.
23. Bills of exchange and cheques are only accepted after previous agreement and only on account of performance subject to them being discountable. Discount fees are charged as of the due date of the invoiced amount. A guarantee for timely submission of the bill of exchange and cheque and for raising an act of protest is excluded.

24. If it becomes clear after conclusion of a contract that our claim to payment is at risk due to lack of capability on the other party's part, we may refuse the performance and set a reasonable term for the other party during which it has to make concurrent payments for performances or provide collaterals. If the other party refuses or if the term expires without results, we are entitled to withdraw from the agreement and to demand compensation.

Delivery

25. Unless agreed otherwise, we are delivering "ex work". Notification of readiness for dispatch or collection on our part is crucial for meeting the delivery date or term of delivery.
26. The term of delivery commences upon our sending of the order confirmation and is extended appropriately if the conditions of no. 55 hereunder are at hand.
27. Within reason, partial deliveries are acceptable. They are invoiced separately.
28. Excess or short deliveries for production-related reasons are acceptable within a tolerance of 10%.

Shipping and transfer of risks

29. Goods indicated to be ready for dispatch must be collected by the other party immediately. Otherwise, we are entitled to ship them at our discretion or to store them at the other party's expense and risk.
30. In the absence of specific agreements, we will select the means and route of transport.
31. The risk is transferred to the other party upon handover to the railway, the forwarding agent or carrier or at the start of storage but the latest upon leaving the plant or storage facility; this also applies if we have undertaken delivery.

Delay in delivery

32. If we are able to anticipate that the goods cannot be delivered within the term of delivery, we will immediately make the other party aware of this fact, advise them of the reasons for it and give notice of the estimated date of delivery if possible.
33. If the delivery is delayed due to circumstances indicated in no. 55 hereunder or due to an act or failure to act on the other party's part, we will be granted an extension of the term of delivery appropriate for those circumstances.
34. The other party is entitled to withdraw from the agreement only if we may be held responsible for not meeting the delivery date and they have unsuccessfully fixed an appropriate respite for us.

Reservation of title

35. We reserve title to the delivered goods until all accounts receivable incurred by way of the business relationship with the other party have been paid.
36. The other party is entitled to sell these goods in the ordinary course of business if they fulfil their obligations arising from the business relationship with us in due time. However, they may neither pledge nor assign the goods subject to reservation of title as a security. They are obligated to protect our rights if reselling the goods subject to reservation of title for credit.
37. In the event of a breach of obligation by the other party, including but not limited to default on payment, we are entitled to withdraw

from the agreement and to take back the goods after unsuccessful expiration of an appropriate respite we have fixed for the other party; the legal provisions on fixing a respite being unnecessary shall remain unaffected. The other party is obligated to surrender the goods. We are entitled to withdraw from the agreement if an application on opening insolvency proceedings on the other party's assets is submitted.

38. The other party will hereby cede all accounts receivable and rights arising from the sale or leasing of goods subject to our reservation of title the other party is possibly permitted to do, and we hereby accept it.
39. The other party will perform possible processing or working of the goods subject to reservation of title on our account at all times. If the goods subject to reservation of title are processed or inextricably combined with other goods not belonging to us, we will obtain joint title to the new goods in line with the ratio of the invoiced value of the goods subject to reservation of title to the other processed or combined goods at the time of processing or combining. If our goods are joined with other mobile objects into a uniform item or inextricably combined and the other item is to be deemed the principal thing, the other party will transfer to us proportional joint title if it holds the title to the principal thing. The other party will store the goods subject to reservation of title or joint title for us. Otherwise, the provisions for goods subject to reservation of title also apply to goods created by their processing, joining or combining with other items.
40. The other party must immediately advise us of any execution measures of third parties on the goods subject to reservation of title, the accounts receivable ceded to us or any other collaterals, providing us with the documents required for intervention. This also applies for interferences of any other kind.
41. If the value of the existing collaterals exceeds the secured accounts receivable by more than 20% in total, we are obligated to release collaterals to this extent at our option upon the other party's request.

Material defects

42. The properties and condition of the goods conforms to the agreed technical delivery specifications exclusively. If we have to deliver goods according to drawings, specifications, prototypes, etc., of the other party, it bears the risk of fitness for the intended purpose. The time of transfer of risk according to no. 31 hereunder is crucial for the contractual properties and condition of the goods. Goods are deemed free of defects if defects advised by the customer do not exceed a value of fifty euros per delivery.
43. We do not accept any liability for material defects caused by inappropriate or improper use, incorrect installation or commissioning by the other party or third parties, usual wear and tear, incorrect or negligent handling, nor for the consequences of improper changes or repairs by the other party or third parties made without our consent. The same applies for defects impairing the value or fitness of the goods to an insignificant extent only.
44. Unless agreed otherwise, contractual claims towards us which the buyer has accrued on the occasion of or in connection with delivery of the goods shall fall under the statute of limitations after one year after delivery of the goods unless they cover bodily harm and damage to someone's health or a typically foreseeable damage or were caused by wilful intent or gross negligence by the seller. In the event of supplementary

performance, the statute of limitation is not renewed.

45. If acceptance of the goods or initial sample inspection was agreed, notice of defects the other party could have identified during a diligent acceptance or initial sample inspection is excluded.
46. We have to be provided with an opportunity to identify the defect notified to us. Rejected goods are to be returned to us immediately at our request; if the notice of defects was justified, we will bear the transport costs. If the other party does not fulfil these obligations or makes changes to the rejected goods without our consent, they will lose possible claims for material defects.
47. In the event of justified, timely notification of defects, we will perform subsequent improvement of the rejected goods or deliver a replacement free of defects at our option. We will only bear expenses associated with the supplementary performance insofar as they are reasonable in the individual case, including but not limited to the proportion to the purchase price of the goods and not exceeding 150% of the value of the goods in any case. This does not include costs associated with installing and removing the defective goods and costs incurred by the buyer due to independent repair of a defect unless legally provided for.
48. If we do not fulfil these obligations or do not do so as provided for in the agreement within a reasonable period of time, the other party may fix us a last respite in writing in which we have to fulfil our obligation. Upon unsuccessful expiration of such respite, the other party may demand a reduction of the price, withdraw from the agreement, perform the required subsequent improvement themselves or have it performed by a third party at our expense and risk. Reimbursement of costs is excluded if the expenses are increased due to the goods being brought to another place after our delivery unless this is in line with the intended use of the goods.
49. Legal rights of recourse of the other party towards us only apply insofar as the other party has not made any agreements exceeding the legal claims for defects with their customer. Furthermore, no. 48 hereunder, last sentence, applies accordingly regarding the extent of the rights of recourse.

Other claims, liability

50. Unless agreed otherwise in the following, further and more extensive claims of the other party towards us are excluded. This includes but is not limited to claims for damages due to breach of obligations arising from the debt obligation and tortious acts. Therefore, we are not liable for damages not suffered by the delivered goods themselves. In particular, we are not liable for loss of profit, spent processing costs, loss of production, loss of revenue and/or other direct or indirect losses of the customer or third parties.
51. The above limitations of liability do not apply in case of wilful intent, gross negligence of our legal representatives or executive staff and in the event of culpable breach of material contractual obligations. In the event of culpable breach of material contractual obligations, we are liable for the reasonably foreseeable damage usual for this type of contract, except in the case of wilful intent or gross negligence of our legal representatives or executive staff. For goods sold as declassified material, e.g. so-called II a material, the buyer is not entitled to claims for defects with regard to the stated reasons for declassification and reasons they would usually have to expect. Our liability for claims for defects is excluded for sales of II a material. Lump sums for complaints or defects or contractual penalties are not accepted.
52. Furthermore, the limitation of liability does not apply in cases in which we are liable for personal injuries or material damage to privately used items due to defects of the delivered goods pursuant to German product liability law. It also does not apply in the event of injury to life, limb or health and in the event of a lack of guaranteed features if and insofar as the guarantee was intended to safeguard the other party from damages not suffered by the delivered goods themselves.
53. If our liability is excluded or limited, this also applies to the personal liability of our staff, employees, workers, legal representatives and vicarious agents.
54. The legal rules on the burden of proof remain unaffected by these provisions.

Force Majeure

55. Force Majeure, labour conflicts, unrest, official measures, missing deliveries of our suppliers and other unforeseeable, inevitable and major events release the parties from their contractual obligations for the duration of the disturbance and to the extent of its effect. This also applies if the events occur at a time in which the affected party is in default unless the default was caused by wilful intent or gross negligence. The parties are obligated to provide the required information within a reasonable scope immediately and to adjust their obligations to the changed conditions in good faith.

Place of performance, place of jurisdiction and applicable law

56. Unless agreed otherwise in the order confirmation, the place of performance is our place of business.
57. Our place of business is the place of jurisdiction for all legal conflicts, including those within a scope of proceedings regarding claims for payment of a bill of exchange or cheque. We are also entitled to file a suit at the other party's domicile.
58. The contractual relationship is subject to German law exclusively. Application of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG – "Vienna Convention") is excluded.