

DELIVERY AND PAYMENT TERMS

1. General Provisions - Scope

- Our Terms and Conditions of Delivery and Payment shall have exclusive validity; we shall not recognize any terms and conditions of the Orderer which conflict with, or deviate from, our Terms and Conditions unless we have expressly consented to their validity in writing. Our Terms and Conditions shall apply even if we perform the delivery to the Orderer without reservation although we are aware of terms and conditions of the Orderer which conflict with, or deviate from, our Terms and Conditions.
- All agreements made between us and the Orderer for the purpose of performing this Contract shall be laid down in writing in this Contract. Any changes or additions to this Contract must be in writing.
- Our Terms and Conditions shall apply only in relation to businessmen within the meaning of Art. 14, Subarticle 1, of the German Civil Code (BGB) and to entities of public law and special funds of public law within the meaning of Art. 310 of the BGB.
- Our Terms and Conditions shall also apply to all future transactions made with the Orderer as part of the current business relationship.

2. Offer, Conclusion of a Contract, Offer Documents

- Our offer shall not be binding unless it is stipulated otherwise in the order confirmation or we have expressly declared otherwise in writing.
- We reserve property rights and copyrights to any illustrations, brochures, drawings, calculations and other documents; they may not be made accessible to third parties. In particular, this shall apply to such documents as are designated as "confidential"; prior to passing them on to third parties, the Orderer requires our express written consent.
- The Orderer shall be bound by any offers made by him for a period of 2 weeks from the receipt of the offer by us. We may accept offers within the above period by means of an order confirmation or by delivering the goods.

3. Pricing - Terms of Payment

- Unless otherwise stipulated in the order confirmation, our prices shall be "ex works" (Incoterms 2000), excluding packing, transport, transport insurance and value-added tax.
- All prices shall be in euro unless otherwise agreed.
- Unless otherwise indicated on our invoices, all invoices shall be payable within 30 days after the receipt of the invoice; in the case of payment (value date) within 14 days after the date of the invoice, we shall grant a discount of 2%. If the Orderer's payment is delayed, we shall be entitled to charge a default interest of 8 per cent above the applicable base lending rate of the European Central Bank p.a.. If the Orderer is a merchant, we shall be entitled to charge an interest of 3 per cent above the applicable base lending rate of the European Central Bank p.a. from the due date already. If the Orderer is in default, we may invoice an administrative charge of EUR 10,00 for each reminder.
- The Orderer may make claims for offsetting only if his counterclaims have been determined in a legally valid manner or are undisputed or have been recognized by us. The Orderer shall be entitled to exercise any withholding right or right to refuse performance only if the same prerequisites are fulfilled and, in addition, his counterclaim is based on the same contractual relationship.
- Drafts and cheques shall - at best - be accepted only on account of performance. The costs of drafts and cheques shall be borne by the Orderer.
- If we are obliged to make advance performance and, if after the conclusion of the Contract, circumstances become known to us which give rise to the assumption that the Orderer's assets will worsen considerably, we may, at our choice, require either the provision of securities within an adequate period or payment as delivered. If the Orderer does not fulfil said request, we shall, subject to any other statutory right, be entitled to withdraw from the Contract.
- Unless it has been declared otherwise expressly in writing or the Orderer is a consumer, our prices shall not be fixed prices. In particular, we shall, in the case of agreed delivery periods of over 4 weeks, be entitled to invoice the price valid at the time of delivery. If an agreement on pricing has not been made, the price valid on the day of delivery according to our price list shall apply.

4. Delivery Period

- Prerequisites for the commencement of the delivery period specified by us shall be the settlement of all relevant questions and the compliance with all obligations of the Orderer (including the payment obligations). Unless it is agreed otherwise or anything else results from the contractual relationship, the specified delivery periods shall always be without obligation.
- Delays in delivery due to force majeure or due to unpredictable circumstances for which we are not responsible such as malfunction, strikes, lockout, lacking means of transport, difficulties procuring raw materials, orders of public authorities or late deliveries by our suppliers shall not lead to us being in default. Any agreed delivery period shall be extended by the duration of the obstruction. If the obstruction lasts more than two months, we and the Orderer may, after the expiry of an adequate subsequent period which has been determined, withdraw from the Contract with regard to the portion which has not been fulfilled. Any claims for damages shall be excluded in that case. However, a relevant obstruction shall be reported in writing immediately. However, the right to claim damages resulting from any culpable violation of said obligation shall continue to be reserved.
- If the Orderer determines an adequate subsequent period for us after our default, he shall be entitled to withdraw from the Contract after the fruitless expiration of said subsequent period; the Orderer shall be entitled to make claims for damages resulting from non-compliance at the amount of the foreseeable damage only if the default resulted from wrongful intent or gross negligence or from the violation of major contractual obligations or of cardinal obligations.
- The limitation of liability under Subsection 4.3 shall not apply if a commercial transaction for delivery by a fixed date has been agreed; the same shall apply if, due to the default for which we are responsible, the Orderer may claim that his interest in the compliance with the Contract has ceased to exist. In those cases, the liability shall be limited to the damage which is typical of such contracts and foreseeable.
- If the acceptance by the Orderer is delayed or if the Orderer violates other duties to co-operate, we shall be entitled to require compensation for the damage suffered by us, including any additional expenses. In such case, the risk of an accidental loss or an accidental worsening of the purchased object shall, in addition, pass to the Orderer at the time at which acceptance is delayed by him. The Orderer shall be obliged to accept the delivery (main obligation).
- We shall be entitled to make partial deliveries if no recognizable interest of the Orderer is opposed to this.

5. Passing of Risk, Transport

- Unless otherwise agreed in writing, the delivery clause for contracts with businessmen shall be "ex works" (Incoterms 2000).
- We shall determine the route of transport at our equitable discretion if no particular transport mode is agreed. Upon the Orderer's express request, we shall obtain transport insurance cover for the delivery; the costs incurred in relation thereto shall be borne by the Orderer.
- Visible damage in transit shall be complained about immediately during the handing-over of the goods by the carrier or forwarder, and a note of this shall be made on the waybill.

6. Warranty for Defects

- Prerequisites for the ordering merchant's rights under the warranty (claims for defects) are that he inspects the goods immediately after their receipt and complains to us about any visible defects immediately after the inspection and about any invisible defects immediately after their discovery, in each case in writing and with the defect being specified in detail (Art. 377 of the German Commercial Code (HGB)). Orderers who are not merchants shall forfeit all claims for defects if they do not complain about obvious defects in writing within 3 weeks. We shall be given the opportunity to inspect the defects complained about on the spot. Such inspection shall be performed by us immediately if the Orderer sets forth an interest in the immediate handling of the matter.
- If the Orderer is a businessman, claims for defects shall not exist if only insignificant deviations from the quality or only insignificant restrictions to the usability exist.
- Minor optical deviations, which may, for example, result from the chosen material (e.g. in the colour or grain of natural products) or due to the production process, shall not be defects if they restrict the usability for the purpose assumed under the Contract only insignificantly. The same shall apply to any improvements in construction or quality.
- All our specifications, especially those contained in brochures, advertising material and the like, shall only be service descriptions and shall not constitute any warranties or assured properties unless expressly agreed otherwise.
- If, for reasons for which we are not responsible, the Orderer wrongly complains about the existence of a defect for which we are responsible, we shall be entitled to invoice the Orderer the appropriate costs of the elimination and/or determination of the defect which are incurred by us.

- We may invoice the Orderer the additional costs necessary for the subsequent fulfilment, particularly any costs of transport, travel, work and materials, insofar as such costs result from the fact that the delivered product has been taken to a location other than the delivery address.

- The Orderer shall not be entitled to eliminate defects himself without our consent unless the statutory prerequisites for this exist.

- Claims for defects, particularly claims for material defects, shall become statute-barred 12 months after delivery unless we have caused such defects grossly negligently or with wrongful intent or concealed them maliciously. This shall also apply to any guarantees which we have given and by which we are bound unless anything to the contrary is contained in them. In the case of limitation periods which are longer than 2 years under the law (e.g. for buildings or for parts which have been used for a building and have caused its defectiveness (Art. 438, Subarticle 1, number 2 b) of the BGB)), the statutory periods shall apply. Likewise, the statutory periods shall apply to any claim under a right of recourse pursuant to Art. 478 of the BGB. Said periods of limitation shall also apply to consequential damage resulting from defects. If subsequent fulfilment is necessary as a result of any faulty performance, the subsequent fulfilment shall only be suspended from the complaint till the subsequent fulfilment and shall not recommence.

- Before the Orderer may make further claims or assert further rights (withdrawal from the Contract, reduction of the purchase price, right to eliminate the defect himself, compensation for damage or for expenses), we shall be given the opportunity for subsequent fulfilment consisting at our choice, in the elimination of the defect or in subsequent delivery within an adequate period unless warranties to the contrary have been given. If the subsequent fulfilment fails although claims for subsequent delivery have been made twice, if it is impossible, if it is unacceptable to the Orderer or if we refuse subsequent fulfilment, the Orderer may withdraw from the Contract or reduce the payment. For the assertion of claims for the compensation for damage or expenses, Section 7 of these Terms and Conditions shall apply.

- For claims due to defective titles, the following shall apply in addition:

- Unless otherwise agreed, we shall only be obliged to make our performances free from third-party rights in the country of the delivery address.
- In the case of any infringement of third-party patents for which we are responsible, we may, at our choice, either obtain a right of utilization sufficient for the agreed and assumed purpose and transfer it to the Orderer or to change or newly make our performance so that the patent is not infringed, provided that this does not restrict the agreed and assumed purpose of our performance. If it is impossible for us to do so or if we refuse subsequent fulfilment, the Orderer may assert the statutory claims and rights. With regard to the assertion of claims for compensation for damage or expenses, Section 7 shall apply.

7. Compensation for Damage

- Any claims for compensation for damage or consequential damage caused by a defect which are based on a faulty performance from our part shall be excluded if we are not responsible for the defect.
- Claims for compensation for damage or expenses (hereinafter called "damage claims") of the Orderer, regardless of the legal cause, particularly those resulting from the violation of duties under or in connection with the obligation, from culpable acts before or at the time of the conclusion of the Contract or from civil wrongs shall be excluded.
- The above shall not apply to claims under Art. 1 and 4 of the German Product Liability Act, in cases of wrongful intent or gross negligence, in cases of injury to life, body or health, in connection with the assumption of a guarantee for the existence of a particular quality (quality guarantee) or a negligent considerable breach of duty. In cases of negligence from our part, our liability shall be limited to the foreseeable and typical damage in any case. In no case shall our liability exceed the statutory claims. A change of the burden of proof shall not be connected with the present provisions contained in Section 7.
- The limitation of the claims between the Supplier and the Orderer shall be governed by Subsection 6.8 unless claims under the German Product Liability Act are concerned.
- If our liability is excluded or limited, this shall also apply to the personal liability of our employees, agents of vicarious liability, representatives and assignees.

8. Reservation of Ownership

- We reserve the ownership of the delivered objects until the receipt of all payments in connection with the business relationship with the Orderer. In the case of any behaviour of the Orderer which is contrary to the Contract, particularly in the case of any delay in payment despite a reminder, we shall be entitled to withdraw from the Contract and to take back the delivered object. This shall not apply if the Orderer has already applied for insolvency proceedings or insolvency proceedings have been opened due to which we are not allowed to take back the delivered objects immediately. After taking back the delivered object, we shall be authorized to exploit it; the yield of the exploitation - minus adequate utilization costs - shall be set off against any liabilities of the Orderer. The exploitation regulations contained in the German Insolvency Ordinance (InsO) shall remain unaffected.
- The Orderer shall be obliged to handle the delivered object with care; in particular, he shall be obliged to insure it sufficiently against damage caused by fire, water or theft for its original value at his own expense. If maintenance work or inspections are necessary, the Orderer shall perform them on a timely basis at his own expense.
- In the case of any distraint or other third-party intervention, the Orderer shall inform us in writing without delay. The Orderer shall be liable to us for the court and out-of-court costs of any necessary lawsuit under Art. 771 of the German Code of Civil Procedure (ZPO) (third-party action against execution).
- The Orderer shall be entitled to resell the delivered object in normal business transactions; however, he hereby assigns to us all claims which he will have against his customers or third parties as a result of the resale at the amount of the invoice total (including value-added tax), regardless if the delivered object was sold without being processed or after processing. The Orderer shall remain authorized to collect the amounts of such claims even after the assignment. However, we shall be authorized to collect the claims ourselves if the Orderer no longer complies with his payment obligations related to his proceeds, if his payments are late, if an application for the opening of insolvency proceedings has been filed by or for him or if his payments have been suspended. In such cases, we may require the Orderer to disclose the assigned claims and the corresponding debtors, to provide all information necessary for the collection of the amounts, to hand over the relevant documents and to name the debtors (third parties) of the assignment. However, a collection of the amount of the claims by us shall not be possible if the Insolvency Ordinance is opposed.
- Any processing of, or changes to, the delivered object shall always be performed on our behalf. If the delivered object is processed together with other items which are not our property, we shall acquire co-ownership of the new object according to the ratio of the value of the delivered object to that of the other processed items at the time of processing. In addition, the object created by the processing shall be governed by the same regulations as the objects delivered subject to reservation of ownership.
- The Orderer shall also assign to us the claims for securing the claims against himself which a third party obtains as a result of the connection of the delivered object to a plot of land.
- We undertake to release the securities to which we are entitled on the Orderer's request also insofar as the value of our securities exceeds the claims to be secured by more than 20%; we shall be responsible for choosing the securities to be released.

If we make deliveries abroad, the following shall apply:

- If the delivered object is outside Germany, the following shall apply: If the delivered object has been delivered prior to the payment of all amounts owed by the Orderer under the Contract, it shall remain our property until fully paid for insofar as this is permitted under the law whose territory the delivered object is located in. If said law does not permit the reservation of ownership but permits us to reserve other rights to the delivered object, we may exercise all such rights. The Orderer shall be obliged to participate in the measures which we will take in order to protect our right of ownership or the right to the delivered object which replaces said right.

9. Place of Jurisdiction - Place of Performance

- If the Orderer is a businessman, the place of jurisdiction shall be Nuremberg. However, we shall also be entitled to sue the Orderer at the courts of his place of business.
- Unless otherwise stipulated in the order confirmation, the place of performance for merchants shall be Westheim.

10. Applicable Law, Saving Clause

- The legal relationships between the Parties shall be governed only by German law, with the United Nations Convention on Contracts for the International Sale of Goods (UNCITRAL/CISG) being excluded.
- Should individual provisions of this Contract or these Terms and Conditions be ineffective, the effectiveness of the other provisions shall be unaffected.