

TERMS AND CONDITIONS OF SALE for companies in accordance with § 310 (1) German Civil Code (BGB)

I. AREA OF APPLICATION

1. The following terms and conditions of sale apply exclusively. Deviating customer terms and conditions shall remain invalid unless their application is expressly agreed in writing.
2. Our terms and conditions shall also apply exclusively, if we execute orders or services (hereinafter: deliveries) without reservation being aware of the terms and conditions of the customer. For future business with the customer, the terms and conditions shall apply without renewed integration.

II. GENERAL TERMS, CONCLUSION OF CONTRACT

1. Our offers are subject to confirmation. Technical changes, as well as changes in form, colour or weight are reserved to a reasonable scope.
2. We reserve our ownership rights and copyright to illustrations, drawings, calculations and other documents; these shall not be made accessible to third parties without our prior express written consent. The customer has a non-exclusive right to use software in unmodified form on the agreed devices. All use beyond this scope, reproduction, provision to third parties or similar activities requires our express written consent.
3. The offer to conclude a contract under the terms of sect. 145 BGB (German Civil Code) shall be accepted within four weeks of receipt by written order confirmation. Such written order confirmation is decisive for contractual obligations.
4. The contract is concluded on the provision of a correct and timely delivery on the part of our suppliers.

III. PRICES AND PAYMENT TERMS

1. Unless otherwise stated in the order confirmation, our stipulated prices are ex works, excluding packaging and VAT. The packaging shall be invoiced separately. Statutory VAT will be indicated separately on the invoice at the amount applicable on the date of invoice issue.
2. Deductions for rapid payment shall require a separate written agreement.
3. Unless otherwise stated in the order confirmation, the invoice account is due for payment without any deduction within ten days of the invoice date.
4. If we undertake assembly and installation and no deviating agreement has been concluded, all such services including all additional expenses (travel expenses and transport and release costs, etc.) shall be invoiced separately.
5. The customer is only entitled to offset if his counterclaims are legally established, undisputed or acknowledged on our part. The customer may exercise a right of retention only if his counterclaim is based on the same contractual relationship.
6. In case of risk to our claims for payment, we are entitled to refuse all further deliveries to the customer until all liabilities resulting from the business relationship independent of their due-date are fulfilled or secured.

IV. DELIVERY TERMS, DISRUPTIONS

1. The delivery period as stated in our order confirmation shall commence following full clarification of the order (Clarification of all technical issues, required cooperation of the customer including the provision of documents, authorisations, releases) and receipt of an agreed advance payment. If these conditions should not be fulfilled upon the sending of the order confirmation, the delivery period shall be extended accordingly. Compliance with our delivery obligation requires the punctual and correct fulfilment of the obligations on the part of the customer. The delivery term is deemed observed, when the preparation for shipment of materially defect-free goods is achieved and the customer notified.
2. Agreed delivery periods shall be extended by the duration of disruptions on the grounds unforeseeable events that are beyond our influence and for which we are therefore not responsible (particularly strike and lockout, official orders, disruption of operations in our facilities or in those of our suppliers). If delivery is substantially delayed or should be impossible for an incalculable period, either party has the right to cancel the contract. The customer's right to cancel the contract shall only apply if his interest in fulfilling the contract ceases to exist due to the delay in delivery and a reasonable deadline for subsequent performance issued in writing should expire unsuccessfully.
3. In the event that we are responsible for a delivery delay, the customer's claims to compensation on the grounds of delivery delay are limited to 0.5 %, to a maximum of 5% of the value of the delayed partial delivery of the goods for each full week of the delay. We are also liable for delays incurred through our representatives and vicarious agents.
4. In the event that we are responsible for a delivery delay, the customer may set a reasonable extended delivery term in writing. Following the unsuccessful expiry of this term, the customer is entitled to withdraw from the contract. Insofar as we are not deemed to have acted culpably in delaying the delivery, compensation is limited to the amount of the foreseeable damage and is subject to the delay being incurred through gross negligence or the breach of a material contractual duty.
5. If the customer is in default of acceptance or breaches any obligation to cooperate, we may claim compensation for any incurred losses including additional costs. Upon the beginning of the default of acceptance the passing of the risk for accidental loss or deterioration of the goods shall be transferred to the customer. In the event of refusal of acceptance by the customer following an extended acceptance term, we may assert damages to a minimum of 15 % of the gross contract value, this does not prejudice claims for higher damages. The customer has the right to prove that lower losses were incurred.

V. TRANSFER OF RISK

1. Unless otherwise stipulated in our order confirmation, delivery is agreed ex works. The risk shall be transferred to the customer even if we assume the costs of transportation, execute partial deliveries, or assumed assembly and installation services.
2. Upon request and at the cost of the customer we will insure the delivery against transport and other risks.

VI. LIABILITY FOR DEFECTS, BREACH OF DUTY

1. Technical information and performance in tenders and order confirmations are conditional specifications. We shall assume warranties only upon express written agreement in writing and subject to the warranty conditions agreed in individual cases.

2. Customer's claims for defects are subject to the fulfilment on the part of the customer of his duty to inspect the goods and to report defects under the terms of § 377 HGB (German Commercial Code).

3. In the event that a delivery should be defective, we are obliged to provide subsequent performance or a replacement delivery at our discretion. If subsequent performance should be unsuccessful, the customer shall grant us with a second opportunity to either provide subsequent performance or through delivery of a defect-free product. In the event that this subsequent term should expire unsuccessfully, the customer may, upon a written declaration, either reduce the purchase price or withdraw from the contract. The right to withdraw is excluded if our breach is unsubstantial or the grounds for withdrawal should mainly lie in the scope of the customer's responsibility.

4. Insofar as we are not responsible for a culpable act, claims to compensation on the grounds of delivery defects are limited to typical, foreseeable incurred damage and the customer shall only be entitled, subject to the limitation of liability in no. 5, if the defect arises on the grounds of gross negligence including gross negligence on the part of our representatives or vicarious agents.

5. Our liability for material defects and further negligent breaches of duty (clarification, consulting or inspection duties) is restricted to the scope of liability and the maximum indemnity amount of our public liability insurance with extended product liability insurance (€ 5 million per insured event for personal injury and property damage, product liability of €3 million).

6. The limitation period for our liability for defective products is twelve months from transfer of risk.

7. In case of an unjustified notification of defect, we are entitled to compensation for expenses incurred.

VII. GENERAL LIMITATION OF LIABILITY

1. Further compensation for damage and expenses (hereinafter compensation) beyond those stipulated in nos. IV and VI. is hereby excluded irrespective of the grounds. We are particularly not liable for soft negligent breaches of immaterial contractual breaches insofar as no insurance coverage applies under the terms of Clause VI. 5. The exclusions of liability and restrictions do not apply to claims on the grounds of Sects. 1 and 4 Product Liability Act, and for damage incurred through personal injury, loss of life or endangerment of health.

2. Insurance under the terms of Clause VI. 5. covers foreseeable damage typically arising on the grounds of defects or breach of duty. Upon request, the customer may inspect the insurance policies and shall be informed in detail of the form and scope of the insurance coverage. Upon the customer's request we shall extend insurance coverage against reimbursement of the increased premium costs or reasonable consideration by price agreement.

3. Insofar as our liability is excluded or limited, the exclusion or limitation shall also apply to the personal liability of our employees, workers, representatives and vicarious agents.

4. With the exception of claims in accordance with the Product Liability Act and claims to defects regulated in Clauses VI. 6., claims to damages shall expire within 12 months of arising.

VIII. RETENTION OF TITLE

1. We shall retain ownership to the delivered goods until all receivables resulting from the current business relationship are entirely fulfilled.

2. The customer is obliged to handle the delivered goods with care. The customer shall, at his own cost, undertake the requisite servicing and inspection work and insure the delivered goods to their new value. The customer shall confirm sufficient insurance coverage at our request; any arising indemnity payments are hereby transferred to us.

3. The customer is obligated to notify us immediately of any third party access to the delivered goods as well as of any damage or loss. This shall also apply in the event of a change of ownership or the relocation of the customer's business address.

4. In the event that the customer should breach this contract, in particular delayed payment, we are entitled to demand the return of the delivered goods. The reclaiming of the goods is not a deemed a withdrawal from the contract, unless we issue an express declaration of withdrawal in writing.

5. The customer is entitled to resell the delivered goods in the regular course of business. He hereby assigns us all receivables obtained by the resale to third parties to the amount of the final invoice amount including statutory V.A.T. Following assignment, the customer remains authorised to collect receivables. This shall not prejudice our authorisation to collect such receivables.

6. The processing or modification of delivered goods is undertaken on our behalf. If a processing is executed with items that are not our property, we shall acquire joint ownership to the new item in proportion of the objective value of the delivered item to the other processed items. The same shall apply in case of an integration of our goods.

7. We are obliged to release securities upon the request of the customer subject to the realisable value of the securities exceeding our account receivable by more than 10 % on a non-temporary basis. Selection of the security to be released is at our discretion.

IX. LEGAL VENUE, APPLICABLE LAW, FORM

1. Unless otherwise agreed, the legal venue for all disputes arising out of or in conjunction with this agreement is Hanau/Germany. We are, however, entitled, to assert claims against the customer at his own legal venue. Unless not otherwise stated in the order confirmation, the place of fulfilment is our place business.

2. German law shall apply. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) is hereby excluded.

3. All contractual provisions pertaining to the delivery are stipulated in writing in the order confirmation and these terms and conditions of sale. Contract and terms and conditions of sale shall retain their validity also in the event that individual provisions should be invalid.

Notice:

Data regarding the contractual relationship shall be stored on our part for the purpose of data processing (Sect. 26 Federal Data Protection Act).