

1. Offers and conclusion of the contract

1.1 These Conditions of Sale shall apply exclusively for our offers, deliveries and services. Conflicting customer purchasing terms and conditions are hereby opposed. Such terms and conditions are not recognised even if we do not oppose them again on receipt thereof at our premises.

1.2 Contracts are to be concluded in writing. All agreements which are reached between us and the purchaser for the purpose of performance of this contract are recorded in writing in this contract. Except as otherwise expressly provided, or referred to, in this contract we have made no commitments to the purchaser.

1.3 The law of the Federal Republic of Germany shall apply to all legal relations with the purchaser; the application of the UN Sales Convention is excluded.

2. Prices

Our prices are given in euro (EUR), ex-factory, excluding VAT. Prices do not include packaging or transport. Discounts must be agreed separately for each individual order and shall only apply if payment is made within the specified time.

3. Conditions of payment, offsetting and right of retention

3.1 Our invoices are to be paid free of charges within 30 days from the date of invoice without any deduction. We grant a 2% discount if payment is made within 10 days from the date of invoice provided that all due accounts have been settled or are settled at the same time.

3.2 In the event of the customer's failure to pay on the due date, we are entitled to charge default interest in the amount of 8% above the base interest rate as per § 247 of the German Civil Code (BGB). We reserve the right to claim further compensation for loss caused by default. Furthermore, in the event of default all discounts, sales and carriage allowances and other reductions in price which have been granted are no longer applicable. § 321 BGB applies.

3.3 We are not obliged to accept bills of exchange. Bills and cheques shall only be deemed as payment following nonrecourse payment. Discounting and bill charges shall be borne by the customer. We are not liable for the timely protesting of bills and cheques drawn on locations other than Bielefeld.

3.4 The customer is only entitled to set-off if his counterclaims are recognised by declaratory judgement, are uncontested or are recognised by us. He is only authorised to exercise a right of retention provided that his counterclaim is based on the same contractual relationship.

4. Delivery times and default in delivery

4.1 Delivery times are always subject to correct and timely delivery by our suppliers.

4.2 Delivery times are subject to change. Transactions for delivery by a fixed date must be expressly confirmed as such by us. Should we fail to deliver on the due date the customer is entitled, if he has incurred a loss, to claim lump sum compensation for default. Compensation is 0.5% for each full week of the delay, in total, however, a maximum of 5% of the value of the part of the total delivery which, as a result of the delay, cannot be used on time or in accordance with the contract.

4.3 In the event of force majeure or unforeseeable exceptional events which we were unable to prevent, despite taking due care as demanded by the circumstances of the particular case (even if these events occurred at suppliers), e.g. strikes, lock-outs, operational breakdowns, material procurement problems which have occurred subsequently, an important work piece being defective, official requirements etc., the period of delivery shall be extended by the duration of the hindrance and by a reasonable start-up time which takes account of our operational requirements. Should the hindrance last longer than 2 months or should delivery or performance become impossible for us through no fault of our own, both parties are entitled to withdraw from the contract.

4.4 Should we, by way of exception, default in delivery, the customer is only authorised to withdraw from the contract if he has previously granted us a reasonable additional period of time of at least 2 weeks which we have failed to meet.

5. Dispatch

5.1 Dispatch is carried out at the expense and risk of the customer.

5.2 We are entitled to make partial deliveries of an acceptable quantity. This applies when the delivery of the outstanding goods is secured.

6. Warranty rights

6.1 The customer is obliged to conscientiously examine the goods delivered for defects and to give us written notice of obvious or detected defects within 10 working days of delivery. Should defects only become obvious subsequently, we must be given written notice of the defects immediately or at the latest within 10 working days of their detection.

6.2 In cases where the goods supplied are produced according to customer designs, especially when according to customer drawings or technical specifications, the customer specifications shall apply as the contractually agreed to target condition of the goods. Thus the goods shall be considered free from defects as long as they are conform with the customer specification.

6.3 A slight divergence between the goods delivered and the agreed or usual nature of the goods does not justify customer claims based on defects. If the delivered goods are defective, we have the option of either remedying the fault or delivering faultless goods (subsequent performance).

6.4 We shall only bear the reasonable expense of subsequent performance, at the most to the value of the purchase price. Expense from subsequent performance which is incurred as a result of the delivered goods being brought to a location other than the customer's place of business shall be borne by the customer.

6.5 If we are either not prepared or not in a position to remedy defects or deliver substitute goods, or if such remedy or substitute delivery is delayed beyond a reasonable deadline of at least 2 weeks set by the customer, or if the remedying of the defects or delivery of substitute goods fails in another way, or if it is unreasonable for us, the customer is entitled, at his option, to withdraw from the contract or to make a corresponding reduction in the purchase price. Paragraph 7.1 of these Terms and Conditions of Sale shall apply to claims for damages.

6.6 If the customer asserts claims based on defects against us on the strength of public statements we, our suppliers or his agents have made regarding specific properties, particularly in advertising or in the labelling (§ 434 Para. 1 Sentence 3 BGB), the customer shall bear the burden of proof that his decision to purchase the goods was based on these statements. We are not liable for statements and advertising statements made by third parties.

6.7 Claims based on defects become statute-barred one year after the delivery of the goods. The statutory limitation period shall apply to claims for damages which are not excluded as per paragraph 7.1 of these Terms and Conditions of Sale. Furthermore, the statutory limitation period shall apply to defects to a structure or to goods which were used in compliance with their normal structural application and which caused the defectiveness of the structure.

7. Damages, withdrawal, limitation of actions, refusal of performance

7.1 Claims for damages against us and our employees, staff, representatives and vicarious agents are excluded regardless of legal ground. This shall apply in particular to claims on the basis of impossibility, defective performance, breach of contractual collateral duties, other duties resulting from the obligation and tort. This shall not apply to damage resulting from injury to life, body or health. This exclusion of liability shall not apply to other damage which is caused by a wilful or grossly negligent breach of duty on our part or on the part of our managerial staff, or if an essential contractual obligation (cardinal obligation - in particular a main contractual obligation of performance) has been breached or another contractual obligation, which is not to be deemed as an essential obligation, has been breached wilfully or via gross negligence by simple vicarious agents. In the event of a breach of an essential contractual obligation and wilful or grossly negligent breaching of another obligation by simple vicarious agents, liability is limited to typical foreseeable damages. Equally the exclusion of liability shall not apply in the event of claims under the Product Liability Act, this also includes claims which are covered by a guarantee on our part. This does not affect paragraph 4.2 of these Terms and Conditions of Sale.

7.2 We assume in no case liability for claims or damages that were caused by a fault in the specifications of the customer, especially in the drawings or other design specifications. In the case, that a third party should make a claim on us for damage that was caused by such a fault in the specifications of the customer, the customer will exempt us from these claims.

7.3 In the event of breach of duty which does not comprise defective performance on our part, the customer is only entitled to withdraw from the contract if there is fault on our part.

7.4 The limitation period for claims against us which are not based on wilful conduct on our part is 1 year.

8. Retention of title

8.1 We retain title to the goods delivered by us until payment in full of the purchase price including all incidental claims. In the case of ongoing business relations the goods remain our property until full payment of all existing and future claims against the customer, in particular until settlement in full of a recognised current account balance with the customer. On payment with cheque, the retention of title shall exist until the amount has been credited to us and the customer has paid all incidental expenses. The taking back of the purchased object by us does not amount to a withdrawal from the contract. We are entitled to resell the purchased object after taking it back. The proceeds are to be settled against the customer's liabilities, deducting appropriate costs for the resale.

8.2 The customer is obliged to handle the purchased object with care, he is in particular obliged to adequately insure the object at replacement value at his own expense against damage caused by fire and water and theft. If maintenance and inspection work is necessary, the customer must carry out such work at his own expense and in due time.

8.3 The customer is to inform us immediately in writing should the purchased object be damaged, become lost, be seized or be subject to other third party interventions. If the third party is not in a position to reimburse the judicial and extra-judicial costs of the assertion of our title, the customer is liable for the loss incurred by us.

8.4 The customer is entitled to sell the purchased object in the ordinary course of business; he hereby, however, assigns to us all claims in the amount of the final invoice (including VAT), which arise as a result of the resale to his purchasers or third parties, regardless of whether the purchased object was resold without or following processing. If the customer integrates a purchase claim in a current account relationship with his customer, he also assigns to us the resulting balance claim from the current account. We hereby accept the assignments. Following assignment, the customer remains authorised to collect the assigned claim. This does not affect our authority to collect the claim ourselves. We undertake, however, not to collect the claim provided that the customer uses the collected proceeds to meet his financial obligations, does not fail to pay on the due date, and in particular that no petition for insolvency proceedings has been filed and there is no cessation of payments. If, however, this is the case we have the right to inspect all invoices and other documentation and to be provided with all relevant information to enable us to immediately collect the assigned claims.

8.5 The processing or transformation of the purchased object by the customer is always carried out for us. If the purchased object is processed with other objects which do not belong to us we acquire joint ownership of the new object in the proportion of the value of the purchased object (final invoice amount including VAT) to the other processed objects at the time of processing. Furthermore, the same applies to the object created via processing as for purchased objects delivered under retention of title.

8.6 If the purchased object is mixed with objects which do not belong to us so that they are inseparable, we acquire joint ownership of the new object in the proportion of the value of the purchased object (final invoice amount including VAT) to the other mixed objects at the time of mixing. If mixing occurs in such a manner that the customer's object is to be regarded as the main object, it is agreed, that the customer shall transfer proportionate joint ownership to us. The customer is responsible for the safekeeping of the sole ownership or joint ownership which has occurred in this way on our behalf. The above provisions shall apply correspondingly to the union of the purchased object with other objects which do not belong to us.

8.7 As security for our claims, the customer also assigns to us the claims which accrue to him against a third party from the union of the purchased object with real estate.

8.8 We undertake on request, to release the securities due to us as per the above provisions if their value exceeds the value of the claims to be secured by more than 20%; we are responsible for choosing the securities to be released.

9. Health and Safety

It is not our responsibility, that the machines in which our goods are integrated, or the objects which are fitted on our goods, are operationally safe; this applies especially to the accordance with the rules and regulations of Health and Safety. It is the responsibility and duty of the customer, to establish appropriate protection measures to ensure the operational safety of the machines and devices distributed by him. In the case, that a third party should make a claim on us for damage that was caused by the insufficient operational safety of the machines and devices distributed by the customer, the customer will exempt us from these claims.

10. Place of performance, jurisdiction

The place of performance and jurisdiction for both contractual parties is Bielefeld / Germany.