

## General Terms and Conditions

As of: 10.11.2017

### **I. General Provisions**

1. All our deliveries and services, including future ones, are made exclusively on the basis of the following General Terms and Conditions of Sale provided that the buyer is a merchant or otherwise enters into a business relationship with us in the course of commercial activities. We do not recognise any terms and conditions of the buyer to the contrary or terms and conditions deviating from our General Terms and Conditions of Sale unless we expressly agreed to their applicability in writing. Our General Terms and Conditions of Sale also apply if we, despite being aware of terms and conditions of the buyer that are contrary to or deviating from our General Terms and Conditions of Sale, carry out delivery to the buyer without reservation.
2. Any deviating agreements and commercial practices must be in writing.
3. Our Terms and Conditions also apply to any future transactions with the buyer. The INCOTERMS of the International Chamber of Commerce as amended shall apply additionally.

### **II. Quotations and Orders**

1. Our quotations are non-binding.
2. Orders made by our customers are considered accepted upon order confirmation or – if such confirmation is not given - upon delivery and billing.
3. The acceptance and forwarding of orders transmitted by means of telecommunication or by phone shall be at the expense and risk of the ordering party. Orders transmitted by means of telecommunication or by phone should, whenever possible, be immediately confirmed in writing in order to allow the correction of any errors in transmission. If such a written confirmation is not received, this shall not affect the effectiveness of the order; however, no guarantee can be assumed in such cases for correct delivery.
4. The documents pertaining to a quotation, such as illustrations, drawings, weight, quantity and measurement information, are to be considered only as approximations unless expressly stated as binding.

### **III. Prices**

1. Unless the order confirmation contains any other information, our prices are ex works including carton packaging, transport costs and VAT.
2. Our list prices valid on the day of contract conclusion shall apply for any orders without price agreement.
3. Price changes are admissible if the period between contract conclusion and agreed delivery date exceeds six weeks. If after that, wages, material costs or market cost prices increase until completion of the delivery, we reserve the right to reasonably increase the price in line with cost increases.
4. The buyer shall only be entitled to rescind if the price increase more than significantly exceeds the increase of the general cost of living.
5. We reserve the right to change our prices within reasonable limits if after contract conclusion, cost decreases or cost increases occur, particularly regarding wage agreements or material price increases. The ordering party shall not be entitled to hold off or set off payments unless there are any undisputed or legally established counterclaims.

### **IV. Delivery Terms**

1. The delivery period begins on the date the order confirmation is sent. Compliance with the delivery period presupposes the timely receipt of all documents to be supplied by the buyer, the compliance with the agreed payment terms and other obligations. If these conditions are not complied with on time, the period shall be extended accordingly.
2. If the goods cannot be dispatched on time through no fault of ours or are not timely requested by the buyer, the periods and dates shall be considered met as soon as readiness for dispatch has been reported.
3. Specifications regarding delivery periods are approximate. Also when it comes to delivery agreements, we must receive a reminder to fall into default.
4. If we fall into default for reasons within our control, the buyer is obligated to grant us a reasonable extension period. The buyer shall only be entitled to damages if the default is caused by intent or gross negligence.
5. Events of force majeure shall entitle us to delay delivery by the duration of the hindrance plus a reasonable
6. lead time. Any conditions which significantly complicate delivery or make it impossible, such as e.g. monetary and commercial or other sovereign measures, strikes, lock-outs, interruptions of operation (e.g. fires, machine breakdown or roller breakage, material and energy shortage) as well as the obstruction of transport routes, regardless whether these conditions occur in our facilities, the delivery works or at one of the pre-suppliers', shall be considered as events of force majeure. If such an event delays delivery or acceptance by more than one month, either contracting party shall be entitled – to the exclusion of any further claims – to rescind the contract regarding the quantity affected by the hindrance to delivery or acceptance.
7. If the agreed delivery deadline is exceeded, the buyer may grant a reasonable extension period. If delivery is still not made even after expiry of this extension period, the buyer shall be entitled to rescind the contract by a written declaration. Any further rights of the buyer, in particular damages on grounds of non-compliance, shall be excluded in any case.

**V. Delivery and Shipping**

1. The choice of shipping route und mode as well as freight forwarder and carrier shall be at our discretion.
2. Decisive for our calculations are the dimensions and weights determined by us.
3. We shall be entitled to make partial deliveries. Transport risk for all deliveries shall pass to the buyer as soon as the goods have left our works or distribution centre or have been handed over to a transport vehicle, including our own transport vehicles, freight forwarder or carrier, regardless of who shall bear the transport costs.
4. First deliveries require advance payments. All deliveries shall be made ex works Neustadt/Orla.
5. Unless expressly otherwise agreed in writing, the place of delivery shall exclusively be our works in Neustadt/Orla (place of performance) even if we are organising shipment of the goods on behalf of the buyer or hand over the goods to a freight forwarder and carrier and the buyer receives the goods at another place.
6. Goods reported as ready for shipping in accordance with contract provisions must immediately be requested; otherwise, we shall be entitled, at our discretion, to either ship such goods following reminder at the buyer's cost and risk or to store and immediately charge such goods.
7. If the buyer falls into default of acceptance or breaches any other obligation to co-operate, we shall be entitled to request compensation for damages incurred, including any additional expenses.
8. If shipping is delayed as a result of circumstances within the buyer's control, the risk shall pass to the buyer on the date the goods are ready for shipping.
9. If transport becomes impossible on the intended route or to the intended place within the scheduled time through no fault of ours, we shall be entitled to deliver on another route or to another place and the buyer shall bear the additional expenses incurred. Before that, the buyer shall get the opportunity to state his position. Prerequisite for delivery to site by truck are roads on which truck-trailer combinations with a total weight of up to 38 t are allowed. Delivery to site or warehouse shall mean delivery without offloading.
10. If it is agreed that – all or part of - the transport costs shall be borne by us, the choice of shipping route and mode shall be at our discretion.
11. If the buyer requests another shipping route or mode to be used and if we meet this request, the buyer shall bear both the transport costs that exceed the lowest priced transport option as well as the resulting responsibility.
12. Unless expressly otherwise agreed it is up to the buyer to decide whether to take out any transport or other insurances. In the event of transport damage or loss during transport, the buyer has to ensure, before payment of transport costs, both that the damage or loss is properly recorded on the freight documents and invoices and proper logging of the procedure. All notifications and claims due to transport damage and loss must be made within a limitation period of 5 days following receipt of the delivery goods at the destination.

**VI. Payment**

1. Decisive for the settlement of the invoice shall be our applicable payment terms or the individually agreed payment terms.
2. Credit sale requires an agreement. As a rule, invoices shall be due without any deduction 30 days after the date of invoice if credit is granted; 2% discount can be applied to payments within 8 days.
3. Granting a discount presupposes that the buyer's account does not show any other pending invoice amounts. Discounts shall apply to the value of goods only, excluding transport costs.
4. Settlement of invoice with bill of exchange requires our consent; discount, bill of exchange expenses and costs shall be borne by the buyer.
5. If the payment term is exceeded, we shall charge default interest in the amount of 10 percentage points above the base rate of the European Central Bank plus VAT; we reserve the right to assert further claims.
6. If the buyer is in financial difficulties, particularly if he is in arrears, and in the event of protest of a cheque or bill, we shall be entitled to effect any further deliveries subject to advance payment only, to demand immediate payment of any pending invoice amounts including such amounts for which a respite has been granted and to request cash payment or security in exchange for the return of bills of exchanges accepted for payment as well as to rescind the contract without granting a grace period.
7. Our invoices shall be deemed as accepted unless rejected in writing within 30 days after invoice date.
8. The buyer shall waive the enforcement of any lien from past or any other transactions of the current business relationship. The ordering party shall not be entitled to hold off or set off payments unless there are any undisputed or legally established counterclaims.
9. All payment charges shall be borne by the buyer.
10. The buyer falls into arrears at the latest 10 days after the due date of our receivables without the need for a reminder.

**VII. Warranty**

1. The buyer's warranty rights presuppose that the buyer has met his duties of inspection and notification pursuant to §§ 377, 378 of the German Commercial Code [HGB].
2. The buyer undertakes to inspect the goods immediately after their receipt. Any complaints regarding the quantity of the delivered goods and visible faults or damages cannot be taken into account by us unless they are reported to us in writing within 7 days after arrival at their destination.
3. All complaints and objections must be made on time in order to be effective; freight forwarders and carriers are not authorised by us to accept such complaints and objections. This shall also apply if we have organised or carried out the shipment of the goods on account of the buyer or at our own expense. For the protection of third party rights, however, the buyer also undertakes to immediately report any complaints regarding the quantity of the delivered goods and visible faults or damages to the freight forwarder or carrier if the reason for the complaint is already obvious to the buyer when receiving the goods.
4. Our goods are end products the intended use of which is limited to the unmodified assembly or installation unless otherwise agreed in writing. The suitability of our goods for their intended use results from the agreed product specifications or – if there is no such agreement – our product descriptions as well as any assembly instructions included in the delivery. If the buyer assembles or installs our goods by himself, he has to meet in particular his obligations pursuant to clause VII. 1. and check whether our goods are intended and suitable for his intended use. If our goods are used by the buyer or by a third party commissioned by the buyer contrary to their intended use or contrary to the assembly instructions included in their delivery, in particular in case of any substantial interventions or changes in our goods beyond assembly, the warranty right for material defects becomes void unless we are demonstrably responsible for the reason for such defect.
5. Our warranty shall be exclusively limited to the compliance of the delivered goods with the stated quality and specifications and shall be valid for 6 months as of the day of delivery if the goods are installed and maintained in accordance with our processing instructions and subject to normal use.
6. In the event of any properly reported and legitimate defects we shall be entitled to choose between either rectifying the defect or delivering a replacement. If we chose to rectify the defect we shall bear all expenses incurred for this purpose to the extent that these are not increased by the fact that the purchased goods have been brought to another place than the place of performance.
7. If we are not prepared or unable to rectify the defect or deliver a replacement or if such rectification or delivery is delayed beyond a reasonable period of time for reasons outside our control or if the rectification of the defect or the replacement delivery fails, the

- buyer shall be entitled to, at his discretion, annul the contract or request an appropriate reduction of the purchase price.
8. Any further claims of the ordering party against us and our staff, employees, collaborators, representatives and agents shall be excluded, in particular any claims for damages that have not occurred on the delivery item itself. This shall not apply if liability on our part is mandatory in cases of wilful intent, gross negligence, injury of life, body or health or as a result of a quality or durability warranty assumed by us or as per the provisions of the product liability act.
  9. Minor deviations in colour do not justify a complaint. The same shall apply to insignificant deviations in the size and thickness as well as regarding the length of the delivered material, particularly in the case of additional deliveries and repeat orders. Surfaces in aluminium or steel sheet in galvanized execution, which are uncoated or will be coated transparent, are imperfections, like little pimples, different structure of the surface, dark points, marks in strips and little spots of passivation permissible. It could occur stretch levelling breaks and zinc runoffs. ( according to EN 10142: 1990 + A1: 1995 )
  10. Our liability for defects includes natural wear, but not any damages as a result of faulty or negligent treatment, excessive use, unsuitable operating materials, unsuitable foundations as well as chemical, electronic and electrical influences that occur through no fault of ours.
  11. Any modifications and repair works made by the buyer or any third party without our prior consent shall result in the exclusion of our liability for the subsequent consequences; such measures shall in any case be at the cost and risk of the ordering party. We do not assume any warranty for our construction unless the complete system has demonstrably been purchased from us. We shall not accept any liability for the whole system if any third party products are processed. Reworks at the place of the ordering party require the prior agreement of the supplier, as otherwise costs cannot be reimbursed.
  12. We shall not accept any responsibility for the suitability of the quoted material for any prospective purposes that have not expressly been agreed.
  13. If the items or sets of items supplied by us contain any third party products, our warranty shall not exceed the liability of the pre-supplier towards us.
  14. We provide consultancy on applications to the best of our knowledge. Any details and information regarding the suitability and use of our goods shall not release the buyer from his duty to carry out his own inspections regarding the suitability of the products for the uses intended by the buyer. Also regarding consultancy on applications we shall be liable for wilful intent and gross negligence only. In any other cases, all limitations contained in clause VII. shall apply.
  15. Meeting our warranty obligations presupposes that also the buyer meets his obligations, particularly his payment obligations.
  16. If we do not accept a complaint of the ordering party, regardless of the reasons, the ordering party's warranty right shall become time-barred within 6 months after the complaint was made.

#### **VIII. Reservation of Title**

1. All delivered goods shall remain our property (reserved goods) until all claims including future and conditional claims against the buyer have been settled. This includes balance claims also when the buyer has made payments in respect of specially designated claims. The reservation of title shall also apply until complete release from all contingent liabilities, particularly securities or notes payable that we have assumed in the interest of the buyer in connection with a cheque/bill of exchange hedging transaction.
2. Processing and manufacturing of the reserved goods is made on behalf of us as manufacturer as defined by § 950 of the German Civil Code [BGB] without resulting in any obligations for us. If our reserved goods are processed, combined or mixed with other items that are not our property, we shall acquire joint ownership of the new item in that proportion which the invoice value of the reserved goods bears to the invoice value of the other goods. If, by such combining, mixing or processing, our ownership expires, the buyer shall transfer to us already now the property or expectant rights in the new item or new objects in the proportion of the invoice value of our reserved goods and shall store them on our behalf at no cost for us. The resulting property rights shall be deemed as reserved goods as defined by this clause.
3. If the buyer does not resell the goods delivered by us with reservation of title before passage of title within the normal course of business neither before nor after processing or manufacturing, the claim resulting herefrom towards third parties is herewith assigned in the amount corresponding to the value of the reserved goods that is determined according to the invoice amount. The buyer shall be entitled to collect this claim on our account provided he duly meets his payment obligations towards us in accordance with above conditions. We shall, however, be entitled, to inform the third party that is to be named to us on request regarding the assignment of the claim and to request payment to us.
4. The buyer shall not be entitled to pledge the goods to third parties or to assign them as security. The buyer shall immediately inform us in respect of any attachment by third parties. The goods subject to reservation of title must be treated with care and insured against fire and water damage. Insurance claims resulting from damage must be assigned to us.
5. If the buyer defaults in payment or should he fail to honour a bill of exchange when it becomes due, we shall be entitled to take back the reserved goods and to enter the buyer's facilities for this purpose, if necessary. The same shall apply if after contract conclusion it becomes evident that our payment claim from this or any other contracts with the buyer is put at risk through a lack of efficiency on his part. The retraction of the goods does not constitute a withdrawal from the contract. The provisions of the Insolvency Statute [Insolvenzordnung] remain unaffected.

#### **IX. Termination of Delivery**

Non-compliance with the payment obligations or inadmissible disposal of the supplied goods by the buyer shall entitle us to terminate further delivery to the buyer, subject to any further claims. We shall be entitled to cancel any quantities of goods not requested or not purchased until expiry of an agreed acquisition period without prejudice to any further claims and without serving notice of default or granting an extension period.

#### **X. Cancellation Costs**

If the buyer effectively rescinds an order given he undertakes to pay to us the costs we incurred as a result of the processing of the order plus a reasonable compensation for lost profit.

#### **XI. Packaging**

Carton packaging is free of charge. The type, extent and quality of packaging shall be at our discretion. Any expenses for special packaging requirements of the buyer shall be borne by the buyer; such expenses shall be charged at cost.

**XII. Intellectual Property Rights**

1. We reserve all property rights and copyrights for illustrations, drawings, calculations and other documents provided in the context of an offer. They must not be made accessible to third parties without our express written consent and immediately returned to us if the contract is not awarded.
2. Our brands must not be used in connection with the item purchased without express written consent of the trademark proprietor.

**XIII. Jurisdiction and Applicable Law**

The exclusive place of jurisdiction for any disputes directly or indirectly arising from or in connection with the contractual relationship as well as for lawsuits in connection with cheques or bills of exchange shall be Pößneck, Germany. We shall, however, also be entitled to sue the buyer at his exclusive place of jurisdiction. German law shall apply in all cases.

**XIV. Miscellaneous**

1. The buyer's data is saved and processed by us to the extent required for proper management of the contractual relationship and used by us exclusively for this purpose. The conclusion of the contract constitutes the buyer's consent to this. The rights of the buyer under the applicable provisions of data protection law shall remain unaffected.
2. If individual provisions of these General Terms and Conditions of Sale should become ineffective as a whole or in part, the remaining provisions shall remain in full force and effect.
3. The parties undertake to agree a replacement provision that comes as close as possible to the legal and commercial meaning and purpose of the ineffective provision.
4. In case of discrepancies between the German and the English version, the German version shall prevail.

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