

General Terms and Conditions of Business and Sale

Definitions

The "Goods" – All articles and services sold and subsequently supplied to the Buyer by the Seller including replacements for defective Goods.

The "Contract" – The contract between the Buyer and the Seller for the sale of the Goods

I. General Conditions

These General *Terms and Conditions of Business and Sale* (the "Terms and Conditions") apply in preference to and supersede any terms and conditions referred to, offered or relied on by the Buyer and apply exclusively to merchants and businesses as defined by Article 14 of the German Civil Code. The Terms and Conditions remain effective for any and all future transactions between the Parties irrespective of any repeated reference thereto. They remain also effective and authoritative for all future contracts without explicit reference thereto irrespective of any unconditional acceptance of the Buyer's order. The Seller will in no way be bound by or accept any deviating standard or printed terms furnished by the Buyer in any of the Buyer's documents, correspondence or order forms. The Terms and Conditions have been duly made available to the Buyer by way of Seller's forms, electronic mails and Internet publications. The purview of the present Terms and Conditions applies to those supplier countries in which German law is applicable. The Parties hereby agree on the applicability thereof (cf. III. 2 herein).

II. Offers, Contract, Services

- Offers submitted to the Buyer are without commitment on the part of the Seller. Orders submitted by the Buyer are binding. The acceptance of the Buyer's order acknowledged by way of order confirmation within four weeks or the unconditional delivery of the ordered Goods or Services.
- All technical data and descriptions contained in the respective product information or advertising material are intended merely to present a general idea of the goods but are no guarantee for composition or shelf-life and will not form part of the Contract.
- The specimens pertaining to orders from samples merely represent the appropriate conformity of the goods but are no guarantee for composition or shelf-life and will not form part of the Contract.

III. Prices, Payment Terms, Arrears

- The prices stipulated in the respective Sales Contract, in particular in the order form or order confirmation, are effective for the term thereof. If a price has not been explicitly stipulated, the Seller's pricelist effective on the day of the conclusion of the Contract prevails. The weights and volumes, packing drum and two-component goods determined by the Seller are weighed net, other Goods weighing more than ten (10) kg gross = net authoritative if the Buyer fails to submit immediately upon receipt of the Goods. All prices and charges are exclusive of Value Added Tax which will be added in accordance with the prevailing legislation on the day of dispatch as well as the costs for appropriate packaging, transport costs Ex Works or Ex Warehouse, freight charges/cartage and, inasmuch as applicable, transport insurance premiums. For orders to foreign destinations (i.e. beyond the frontiers of the Federal Republic of Germany) all bank and custom charges as well as any necessary documents will be charged forward.
- The Seller retains the right to pass on any price increase to the Buyer should any unforeseeable exceptional price increases be imported by the supplier to the Seller or caused by exchange rate fluctuations.
- Unless otherwise agreed in writing, all invoices are due within 30 days net (deductions not permitted) or within ten (10) days less two (2) percent cash discount. Payments may be made in cash or by banker's transfer to the Seller's bank account. In accordance with Article 286 II, No. 2 of the German Civil Code the Buyer is immediately in arrears if he fails to observe the aforesaid thirty-day term.
- The Buyer may only set-off counter claims or exercise a right of retention if such claims or rights are undisputed or have been acknowledged by the Seller within two weeks upon receipt of notice. The Buyer may only exercise a right of retention if the counter-claim is based on the same contractual relationship.
- Should the Buyer fail to settle an invoice by its due date, fail to observe a payment period or should the Buyer's financial circumstances worsen or after the conclusion of the Contract the Seller receive unfavourable information about the Buyer that questions the latter's solvency or creditworthiness, the Seller is entitled to deem due any and all outstanding receivables and in derogation of any effective agreements demand Cash with Order (CWO) or the provision of security or demand immediate payment and settlement of all claims based on the same contractual relationship with delivery. Without prejudice to other circumstances the Seller may exercise the aforesaid right if the Buyer suspends payments, a Buyer's check is not honoured, the Buyer fails or refuses to honour an issued bill of exchange, insolvency proceedings against the Buyer are filed or opened or insolvency proceedings cannot be opened due to the insufficiency of assets.

IV. Delivery Time, Performance Time, Delay

- The delivery dates agreed merely represent approximations unless otherwise explicitly agreed in a firm bargain. Should for reasons the Seller is responsible delivery exceed the stipulated date, the Buyer is entitled to withdraw from the Contract after giving the Seller a reasonable period of respite. Any withdrawal must be made in writing.
- The Seller is only in default if he fails to deliver the Buyer's goods within the period of respite. The Seller cannot be made liable for delays in deliveries or services for which the Seller is not responsible, e. g. interruption of operations due to fire, flood or similar circumstance, breakdowns in production plants and machines, delays or backlogs in deliveries involving the Seller's suppliers as well as interruptions of business due to a lack in raw materials, energy or personnel, strike, walkouts, shortages in transport, traffic disruption, official orders. The occurrence of such circumstances entitles the Seller to postpone the fulfillment of his contractual obligations for the term of the impediment plus a reasonable preparation period. Should the impediment persist for a period longer than one month, both the Buyer and the Seller are entitled to withdraw from the Contract without legal recourse or compensation and in accordance with the conditions stipulated in VIII. 1 through 6 herein with regard to the quantities affected by the impediment. Any withdrawal must be made in writing.
- In the event of a delay in delivery the Seller's liability for compensation is limited to and by the conditions stipulated in VIII. 1 through 6.
- If reasonable for the Buyer, the Seller is entitled to partial delivery and partial performance within the delivery or performance time.

- The observance of the Seller's delivery and performance obligations requires the punctual and due fulfillment of the Buyer's contractual obligations. The Seller retains the right to object to an unfulfilled Contract.

V. Transfer of Risk, Transport and Packaging Costs

- Unless otherwise explicitly agreed in writing delivery is understood Ex Works or Warehouse and must be collected from there by the Buyer at his own cost and risk. Under such circumstances the risk of accidental destruction and deterioration of the subject matter of the Contract passes on to the Buyer with the latter's receipt of the Seller's advice of readiness for shipment. Otherwise the risk of accidental destruction and deterioration of the subject matter of the Contract passes on to the Buyer no later than at the moment the consignment has been entrusted upon the haulier (also applicable to carriage paid delivery or to insurance paid delivery)
- Returnable containers and packaging must be returned to the Seller fully emptied and carriage paid within sixty (60) days upon receipt; the Buyer will be liable for the costs of the loss of or damage to returnable containers and packaging for which the Buyer is responsible. Returnable containers and packaging may only be used for the transport and storage of the designated product as supplied by the Seller. Labels, legends, inscriptions must not be removed. The Seller will not accept non-returnable packaging. Upon request the Seller will name a third party who will accept and dispose of such packaging in accordance with the local packaging ordinances.

VI. Obligations of the Buyer, Reservation of Ownership

- The property of the Goods shall not pass on to the Buyer until all sums due or owing to the Seller by the Buyer on any account have been fully paid and settled (the "privileged property"). Any acceptance of a purchase-money claim against the Buyer in a current invoice or any recognition of a balance shall have no prejudice to the Seller's reservation of ownership.
- The Buyer undertakes to handle all privileged property with care; he undertakes especially to sufficient insure the original value thereof against loss, damage and destruction by fire, water and theft. The Buyer hereby cedes all rights and claims in conjunction with and arising from the insurance policies to the Seller. The Seller hereby accepts said transfer.
- The Buyer undertakes not to pledge or encumber the privileged property. He is however entitled to properly sell said property in accordance with the following terms. The aforesaid right is inapplicable inasmuch as the Buyer has ceded or encumbered the claims arising from the sale of the privileged property in favour of a third party or has agreed on a covenant of non-assignment with said third party.
- The Buyer hereby cedes any and all claims – future or conditional – resulting from the sale of the privileged property as security and collateral for the Seller's claims pursuant to VI. 1. This transfer includes but is not limited to any and all accessory rights at the rate of one hundred and ten (110) percent of the gross value of the Goods with priority over any of the Buyer's remaining claims. The Seller hereby accepts said transfer.
- Inasmuch as and so long as the Buyer duly fulfils his payment obligations, he is authorised to collect the ceded claims against his customers in the context of due and proper business operations. With regard to said claims he is however not entitled to enter into a current account relationship or a covenant of non-assignment with his customers or to cede or encumber them in favour of a third party. If contrary to Clause 2 herein a current account relationship between the Buyer and the purchaser of the privileged property, the previously ceded claim includes any recognised balance or in the event of the purchaser's insolvency any existing balance.
- At the Seller's request the Buyer shall provide the former with itemised evidence of the ceded claims and inform his debtors of the transfer together with request to render the outstanding payments to the Seller until the Seller's claims have been satisfied. The Seller reserves the right to inform said debtors of the transfer and collect the outstanding claims. The Seller undertakes not to exercise the aforesaid authority as long as the Buyer duly and without delay fulfils his payment obligations, the opening of insolvency proceedings against the Buyer has not been filed and the Buyer does not cease payments. In the event that any one of the aforesaid circumstances arises, the Seller is entitled to have the Buyer inform him of all ceded claims and the names of the respective debtors, provide him with all the information required to collect said claims and to surrender any and all necessary documents.
- In the event of a seizure or any other form of intervention, the Buyer undertakes to immediately inform the Seller in writing so that the Seller can file suit in accordance with Article 771 of the German Code of Civil Procedure.
- Any processing, redesigning or application of the privileged property is performed on behalf of the Seller without obligation or cost on the part of the Seller. Should the Buyer process, combine or in any way mix the privileged property with third party goods, the Seller acquires at the moment of processing, combining or mixing co-ownership of the resulting products proportionate to the value of the object of sale (invoice value plus VAT). The object arising from the aforesaid processing is subject to the same reservations as the original object of sale. Should the processing, combining or mixing be conducted in such a manner that the resulting object is regarded as the principle object, the Buyer hereby cedes co-ownership of said object (the "privileged product") proportionate to the value of the privileged property. The Buyer is entitled to dispose of products arising from the aforesaid processing, combining or mixing in the context of due and proper business operations with the exception of pledging or encumbering, insofar as he duly and punctually fulfils his contractual and business obligations towards the Seller. The Buyer hereby cedes to the Seller any and all claims that arise from the sale of the privileged products proportionate to value of the object of sale as a security. Should the Buyer combine or mix the supplied Goods with a principle object, he hereby cedes his claims against the third party proportionate to the value of the object of sale. The Seller hereby accepts said transfer.
- The Buyer hereby cedes those claims against third parties arising from the combination of the privileged property with any plot of real land and structures proportionate to the value of the object of sale as security for the Seller's claims.
- Upon the request of the Buyer and at the discretion of the Seller, the latter undertakes to release selected securities inasmuch as the realisable value of the securities exceeds the Seller's claims against the Buyer by more than twenty (20) percent.
- In the event of any breach of contract, in particular delay in payment of more than ten (10) percent of the invoice value for a considerable period of time, the Seller is entitled to withdraw from the Contract and demand the immediate return of the privileged property. Such a withdrawal is without prejudice to other legal entitlements (e. g. compensatory damages). The Seller is entitled to exploit the returned Goods at his discretion. The exploitation proceeds less realisation costs will be deducted from the Buyer's liabilities towards the Seller.

VII. Warranty

1. The Buyer undertakes to inform the Seller in writing of any obvious defects, misdeliveries and short- or over shipments immediately and in no event later than seven (7) days after receipt of the Goods. Concealed defects must be reported in writing immediately and in no event later than eight (8) days after discovery. The Buyer is obliged to verify that the Goods are free of defects and are suited for the intended purpose. This includes but is not limited to the intention to mix the Seller's Goods with third party products. The verification of the Goods' faultlessness and suitability may require trial applications. In the event that the defects are discovered during normal working procedures, the Buyer must stop all work and put all unused, unopened original containers in safe custody. Upon due request said containers must be returned to the Seller for examination. After three (3) months subsequent to the transfer of risk pursuant to V. 1 herein complaints regarding concealed defects will be void of any legal effectiveness insofar as it was reasonable to assume that the defects must have been recognizable within that period of time. In the event of a late or improperly lodged complaint in accordance with VII. 1, Clauses 1 through 7 herein, the Buyer loses his right to complaint under the conditions of VIII. 1 through 6, unless the Seller maliciously deceived the Buyer about the defects.
2. Inasmuch as the Seller is obliged to remedy the Buyer's warranty claim, the former is entitled at his sole discretion to replace or repair the defective product (the "subsequent performance"). If the Seller is not prepared or in the position to remedy the complaint, or the subsequent performance is postponed for a prolonged, unreasonable period of time or the attempt to remedy the complaint proves ineffective, the Buyer is entitled at his sole discretion to withdraw from the Contract or request a reduction of the purchase price. Subsequent performance is deemed ineffective after the third unsuccessful attempt inasmuch as the nature of the object or other circumstances do not stipulate other action. Inasmuch as the Buyer suffers damage caused by the defective Goods or has futile expenditures, the Seller's liability is limited to the provisions under VII. 1, VIII. 1 through 6 and IX. of the present Terms and Conditions.

VIII. Rights and Obligations of the Seller

1. Irrespective of whatever cause the Seller is solely liable for damages or futile expenditures if the damage or futile expenditure
 - a) was caused by the Seller or his employee through culpable breach of an essential contractual obligation or
 - b) can be contributed to a grossly negligent or wilful breach of duty through the Seller or his employees.Pursuant to VIII. 1 a) and b) the Seller is liable for damages or futile expenditures caused by a consultation or information not subject to separate remuneration only if such consultation or information represents a grossly negligent or wilful breach of the duty insofar as said breach of duty does not represent a defect of quality pursuant to Article 434 of the German Civil Code (the "Defect of Quality").
2. Inasmuch as the Seller is liable for the breach of an essential contractual obligation pursuant to VIII. 1 a) without gross negligence or wilful breach of duty, the Seller's liability is limited to the foreseeable, typically incident damage. Under such circumstances the Seller is explicitly excluded from the liability for the Buyer's lost profits and for unforeseeable indirect consequential damage. The aforesaid limitation of the Seller's liability pursuant to Clauses 1 and 2 are equally applicable to damages caused by the gross negligence and wilful breach of duty of our employees or representatives. The Seller cannot be made liable for indirect damages to the Buyer arising from third-party assertion of contractual penalty claims.
3. Inasmuch as the Seller is liable for the breach of an essential contractual obligation pursuant to VIII. 1 a) without gross negligence or wilful breach of duty, the Seller's liability per case of damage is limited as follows: two (2) million euros for physical injury, one and one-half (1.5) million euros for material damages as well as 1.0 million euros for extended product liability. The Seller undertakes to take out and maintain an insurance policy with such coverage.
4. The liability limitation stipulated in VIII. 1 through 3 are not effective insofar as the Seller's liability is regulated by German product liability regulations or if the claims are assured against the Seller on the grounds of death, personal injury or detrimental health effects. Should the Goods lack a guaranteed property or characteristic, the Seller is solely liable for those damages the absence of which were the subject of the guarantee.
5. A more far-reaching compensation liability than designated in the provisions of VIII. 1 through 4, irrespective of the legal nature of the asserted claim, is hereby explicitly excluded. This applies in particular but not exclusively to compensation claims arising from negligence in the conclusion of the Contract pursuant to Article 311, Paragraph 3 of the German Civil Code, enacted breach of contract pursuant to Article 280 of the German Civil Code or due to tortious claims pursuant to Article 823 of the German Civil Code.
6. Inasmuch as the compensation liability is excluded or limited in accordance with VIII. 1 through 5, these provisions apply to the personal compensation liability of our employees, workers, representatives and subcontractors as well as vicarious agents.

IX. Statutory Limitation of Claims

1. The Buyer's warranty claims in conjunction with the Goods or unduly performed services, including any and all compensation claims and recovery claims for futile expenditures, come under the statute of limitations one (1) year after the commencement of the German period of limitation unless otherwise stipulated in IX. 2 through 5 in the present Terms and Conditions.
2. If the Buyer is a company and he or another company in the supply chain has satisfied consumer warranty claims in conjunction with newly manufactured Goods which were sold to a consumer as such newly manufactured Goods, in accordance with Articles 437 and 478, Paragraph 2 of the German Civil Code the Buyer's warranty claims against the Seller become ineffective no earlier than 2 months after the Buyer or the other company in the supply chain has duly satisfied the consumer's claims, unless the Buyer had successfully convinced his customer/contractual party of that their claims were statute-barred. The Buyer's limitation of actions against the Seller in conjunction with defective Goods immediately becomes effective no later than the moment when the consumer's claims against the Buyer for defects in the Goods become statute-barred, however no later than 5 years after the Seller handed over the respective Goods to the Buyer.

3. Should newly manufactured Goods be properly used and applied to a building and be the cause of the building's imperfection, the Buyer's warranty claims become statute-barred five (5) years after the commencement of the statutory period of limitation. Notwithstanding Clause 1 the period of limitation is two (2) years inasmuch as the Buyer has used the Goods to fulfil his contractual obligations in conjunction with Section B of the German Contract Regulations for Construction Work or the Goods were used as building repair materials. Claims arising in conjunction with Clause 2 become statute-barred no earlier than two (2) months after the Buyer has remedied his customer's/contractual party's warranty claims for the building as caused by the Goods unless the Buyer had successfully convinced his customer/contractual party of that their claims were statute-barred. The Buyer's limitation of actions against the Seller in conjunction with defective Goods immediately becomes effective no later than the moment when the consumer's claims against the Buyer for defects in the Goods become statute-barred, however no later than 5 years after the Seller handed over the respective Goods to the Buyer.
4. If the Seller unduly provides non-remunerated consultation or information without having sold goods in conjunction with such consultation or information or the unduly consultation or information does not represent a Defect of Quality, the warranty claims in conjunction with such circumstances become statute-barred within one year after the statutory period of limitation begins to run. Buyer/customer claims arising from a breach of contract, of provisional agreement or of statutory obligations, which does not represent a Defect of Quality becomes statute-barred within one year after the statutory period of limitation begins to run. Inasmuch as the aforesaid breaches of duty represent a Defect of Quality in the Goods sold in conjunction with a consultation or information, IX. 1 through 3 stipulates and settles such the limitation of action for such claims.
5. The provisions stipulated in IX. 1 through 4 are not applicable to the limitation of actions for claims related to death, personal injury or detrimental health effects. Nor are said provisions applicable to limitations of actions in conjunction with German product liability laws or due to a lack of a legal basis for Goods arising from property interest of a third party on the basis of which said third party can demand the surrendering of the Goods. Said provisions are not applicable to the Seller's customer's/the Buyer's limitation of action based on wilful withholding of information about defects in the Goods or the Seller is in wilful or grossly negligent breach of duty. Under the circumstance specified in IX. 5 the limitation of action is regulated by the statutory period of limitation in the Federal Republic of Germany.

X. Repurchases

The Seller is under no circumstance obliged to repurchase flawless Goods. In the event that as a special exception the Seller agree to repurchase any Goods, the Buyer will receive a credit note provided that the Seller's laboratory certifies without reservations the resalability and reusability of such Goods. The Buyer will be charged the actual costs for examining, processing, reworking and repackaging, at least twenty (20) percent of the invoice value or no less than thirty (30) euros. The Seller will pay cash against this type of credit note; he will however credit the balance to the Buyer's next purchase.

XI. Covenant of Non-Assignment

Without the Seller's expressed written consent, the Buyer may not under any circumstances pledge or encumber in any way claims against the Seller, in particular but not limited to such claims arising from defective Goods or from a breach of duty, in favour of a third party. The aforesaid provision is without prejudice to Article 354a of the German Commercial Code.

XII. Place of Fulfilment, Place of Jurisdiction, Applicable Law, Trade Terms

1. Unless otherwise stipulated by superior legislation the place of fulfilment and the exclusive place of jurisdiction for all claims between the Seller and merchants or juristic persons under public law or under public separate assets are Vechta, Federal Republic of Germany. The Seller retains the right to file suit against the Buyer at the latter's legal venue.
2. Sole applicable law for the legal relationship between the Seller and the Buyer is the laws of the Federal Republic of Germany as is effective for German merchants and can be operative in the respective supplier countries (cf. I. of the present Terms and Conditions) without recourse to the Regulations on the International Sale of Goods and the German Private International Law.
3. Inasmuch as trade terms have been agreed in accordance with International Commercial Terms (CSIG), the Parties agree on the exclusiveness of the latest version thereof.

XIII. Concluding Provisions

1. Should any provision herein or in the business relationship between the Seller and the Buyer prove or become ineffective, the remaining provisions remain unaffected.
2. The Buyer agrees to allow the Seller to electronically store personal and company data required for the administration of the business relationship pursuant to the data and privacy protection laws of the Federal Republic of Germany.

Effective date: April 22nd, 2003