

General Terms and Conditions of Business, Delivery and Payment (as at 01 January 2006)



§ 1 Scope of Application

(1) These standard sales terms shall apply exclusively and only to businesspersons, legal persons governed by public law and to special funds governed by public law as defined in Section 310 (1) German Civil Code (BGB). We only recognize the customer's terms and conditions of purchase contradicting or deviating from our standard sales terms if we explicitly consent to the application thereof in writing.

(2) These standard sales terms shall also apply to all future transactions with the customer insofar as such transactions are legal transactions of a similar nature.¹

§ 2 Offer and Entering into a Contract

Insofar as an order is to be regarded as an offer pursuant to Section 145 BGB, we may accept it within a period of two weeks.

§ 3 Documentation Provided

We retain the ownership rights and copyright in and to all of the documentation provided to the customer in connection with placing the order such as cost estimates, drawings etc. This documentation may not be made available to third parties unless we give the customer our explicit written consent hereto. If we do not accept the customer's offer within the deadline set forth in § 2, this documentation must be returned to us immediately.

§ 4 Prices and Payment

(1) Save as otherwise agreed in writing, our prices are ex works excluding packaging plus Value Added Tax in the respective amount applying. Packaging costs shall be invoiced separately.

(2) The purchase price must be paid only to the account indicated overleaf. A discount may only be deducted if separately agreed in writing.

(3) Save as otherwise agreed, the purchase price is payable within 10 days of delivery.² Default interest shall be charged at a rate 8% over and above the respective base interest rate p.a. (see Enclosure 1). We reserve the right to charge higher default interest.

(4) If no agreement has been reached on fixed prices, we reserve the right to reasonably adjust prices on account of changes in the costs of wages, materials and sales, for deliveries which are effected three months or longer after the contract is entered into.

§ 5 Set-Off and Rights of Retention

The customer only has a set-off right if its counterclaims are declared final and absolute or if they are undisputed. The customer only has the right to assert a right of retention to the extent that the customer's counterclaim is based on the same contractual relationship.

§ 6. Delivery Period

(1) The precondition for commencement of the delivery period indicated by us is the punctual and proper performance by the customer of its obligations. We reserve the right to the defense of non-performance of the contract.

(2) If the customer is in default in accepting delivery or if it culpably infringes any other collaboration duties, we have the right to demand compensation of the damage incurred by us to this extent, including any additional expenses. We reserve the right to assert any further claims. Insofar as the aforementioned preconditions have been met, the risk of accidental loss or of accidental deterioration of the goods sold shall pass to the customer at the time when the customer becomes in default in accepting delivery or in default of the debtor.

(3) We shall be liable in the event of delayed delivery not caused by a deliberate act or gross negligence on our part, for each complete week of the delay within the framework of flat rate compensation for delay in the amount of 3% of the value of the goods delivered, but not exceeding a maximum amount of 15% of the goods delivered.

§ 7 Passing of Risk on Delivery

If the goods are dispatched to the customer at the customer's request, the risk of accidental loss or accidental deterioration shall pass to the customer when the goods are dispatched to the customer, no later than when they leave

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the plant/warehouse. This shall apply irrespective of whether the dispatch of the goods is effected from the place of performance and irrespective of who is paying for the costs of carriage.

§ 8 Reservation of Title

(1) We reserve title to the goods delivered pending payment in full of all claims under the delivery contract. This shall also apply to all future deliveries, even if not always expressly invoked by us. We have the right to recover the goods sold if the customer acts in breach of contract.

(2) The customer has the duty to treat the goods sold with care until such time as ownership therein passes to the customer. In particular, the customer has the obligation to have the goods adequately insured at their replacement value against theft, fire and water damage at the customer's expense.³ If maintenance and service work has to be performed, the customer shall conduct such work in good time at its own expense. Until such time as the ownership in the goods sold has passed to the customer, the customer shall inform us immediately in writing if the goods delivered are attached or subjected to other intervention by third parties. Insofar as the third party is not in a position to refund to us the out of court and court costs of a law suit pursuant to Section 771 German Code of Civil Procedure (ZPO), the customer shall be liable for the loss sustained by us.

(3) The customer has the right to resell the goods with reserved title during the normal course of its business. The customer assigns to us now already the claims from its customer from the resale of the goods with reserved title, in the amount of the final invoice value agreed with us (including Value Added Tax). Such assignment shall apply irrespective of whether the goods are resold with or without any further processing. The customer remains entitled to collect the claim even after the assignment thereof. Our authority to collect the claim ourselves remains unaffected thereby. We shall not, however, collect the claim ourselves as long as the customer complies with its payment obligations from the proceeds

received, as long as the customer is not in default in payment and, in particular, as long as no application has been filed to initiate insolvency proceedings, and provided that the customer has not suspended payments.⁴

(4) Any processing, re-working or transformation by the customer of the goods sold is always effected in our name and on our behalf. In such case the customer's vested right to the goods sold shall continue to exist with respect to the transformed product. Insofar as the goods sold are processed together with other products not belonging to us, we acquire joint title to the new product in the same proportion as the ratio between the objective value of the goods sold by us and that of the other products processed at the time of such processing. This shall also apply in the event of any mixing. Insofar as the mixing is effected so that the customer's product is to be held to be the principal product, it shall be deemed agreed that the customer transfers to us proportionate joint title and holds for us the sole title or joint title thus accruing. In order to secure our claims against the customer, the customer shall also assign to us now already such claims accruing to the customer with respect to a third party as a result of connecting the goods with reserved title with real property; we accept this assignment now already.

(5) At the customer's request, we undertake to release the security to which we are entitled, to the extent that the value thereof exceeds the claims secured by more than 20%.

§ 9 Warranty and Complaints as to Defects, Recourse/Recourse against the Manufacturer

(1) The precondition for warranty rights of the customer is that the customer duly complied with the duty to examine the goods and complain as owed by the customer pursuant to Section 377 German Commercial Code (HGB).

(2) Claims in respect of defects become time-barred 12 months after delivery of the goods supplied by us is effected to our customer. Warranty is completely excluded in the event

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of the sale of used goods. The foregoing provisions do not apply insofar as longer limitation periods are compulsory in accordance with the statutory provisions of Section 438 (1) no. 2 BGB (Buildings and Things for Buildings), Section 479 (1) BGB (Recourse Claim) and Section 634a (1) BGB (Construction Defects). Our consent is to be obtained before any goods are returned to us.

(3) If, despite all the care applied, the goods delivered should have a defect which already existed at the time of the passing of risk, we shall, at our discretion and provided that the complaint in respect of a defect is made punctually, either repair the goods or supply replacement goods. We must always be given the opportunity to effect supplementary performance within a reasonable deadline. Claims to recourse shall remain unaffected by the foregoing provision without qualification.

¹ As a precautionary measure the standard sales terms should, however, be enclosed with the order confirmation at any event.

² Alternatives: "The purchase price is payable 21 days after the invoice date" or "the purchase price is payable by ...(specific date)".

³ N.B. Only admissible for the sale of high value products.

⁴ N.B. This clause is deleted if no extended reservation of title is desired.

⁵ Statement by the seller to the effect that the product sold has a certain quality at the time of the passing of risk and that the seller will be subject to no-fault liability with regard to all the consequences resulting from the absence of such quality.

⁶ A so-called "Severability Clause" ("The parties undertake to reach a legally admissible ruling to replace any ineffective provision, which shall approximate most closely the economic purpose of the ineffective provision or complete the lacuna") should not be included in the standard terms but negotiated as an individual agreement.

(4) If the supplementary performance should fail, the customer may, notwithstanding any claims to compensation, terminate the contract or reduce the amount of remuneration.

(5) No claims in respect of defects may be asserted in the event of an only minor deviation from the quality agreed, in case of an only minor impairment in usability, in case of natural wear and tear or in the event of damage caused after the passing of risk due to faulty or negligent treatment, undue strain, unsuitable operating resources, defective construction work, unsuitable building land or to special external influences which are not assumed in the contract. Nor may any claims be asserted in respect of defects with regard to repair work or alterations carried out unprofessionally by the customer or third parties.

(6) Claims by the customer on account of expenses necessary for the purpose of supplementary performance, in particular transport, transportation, labor and material costs, are excluded insofar as such expenses are increased because the goods delivered by us are subsequently transported to a place other than that of the principal place of business of the customer, unless such moving thereof is in accordance with their designated use.

(7) Claims for recourse against us by the customer only exist insofar as the customer has not reached any agreements with its customers exceeding the compulsory statutory claims in respect of defects. Furthermore, the terms of paragraph (6) shall apply accordingly to the scope of the customer's right of recourse against the supplier.

(8) In the event of the fraudulent concealing of a defect or if the quality of the goods is guaranteed within the meaning of Section 444 BGB⁵ at the time of the passing of risk, the customer's rights shall be exclusively determined by the provisions of statute.

§ 10 Miscellaneous Provisions

(1) This Agreement and the entire legal relationships between the parties shall be governed by the laws of the Federal Republic of Germany excluding the UN law on the international sale of goods (CISG).

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(2) The place of performance is at the registered office of our company, and the courts with jurisdiction and venue at the registered office of our company shall have exclusive jurisdiction in the event of any and all disputes arising from this Agreement, except as otherwise indicated in the order confirmation.

(3) All agreements reached by the parties for the purpose of executing this Agreement have been set forth in writing in this Agreement.

(4) If any individual provisions of this Agreement should be or become ineffective or contain a lacuna, the remaining provisions hereof shall remain unaffected hereby.