

General Terms and Conditions of Sale

I. Validity / Offers

- These terms and conditions shall apply for all – including future – contracts with businesses, legal entities established under public law, public law special funds, for goods and other services, including contracts for services and supply of things for which there is no responsibility on our part. Contracts shall only be entered into on the basis of our terms and conditions of sale. Other contract systems shall not apply, even if our terms and conditions should completely lack individual provisions.
- Our offers are non-binding. Agreements and assurances furnished by our employees shall only apply if they have been confirmed in writing.
- The latest version of *Incoterms* shall apply when interpreting international commercial terms.

II. Payment and Offsetting

- The invoiced purchase price shall become payable in full immediately after delivery. No discounts are offered for prompt payment, unless agreed otherwise or stated in our invoices. The sum payable is to be paid in good time so that we are able to dispose of the payment on the date payment is due. The Buyer shall bear any costs which may be incurred for conducting the payment transaction. Offsetting or rights of retention are only possible if the counter claims are either uncontested or have been adjudicated.
- The default interest we charge for overdue payments or in the event of default shall be based upon the statutory rates of interest. We shall however, reserve the right to assert more extensive claims for default damages.
- The Buyer shall be in default no later than 7 days after payment is due. Given this we shall not have to send out a payment reminder for the Buyer to be in default.
- Insofar as, after entering into a contract, we realise that our claim to the purchase price appears to be at risk due to the Buyer's lack of solvency, or the Buyer falls into arrears with a noteworthy sum of money or other circumstances arise which would lead us to conclude that there has been a significant deterioration in the Buyer's ability to pay the purchase price, our rights under Section 321 of the German Civil Code [BGB] shall apply. In such a case we may make all accounts not yet actually payable under the entire business relationship due for payment immediately.
- A discount for prompt payment may only be made by the Buyer subject to our express agreement thereto and on the other hand, it shall be subject to all other accounts due for payment having been settled in full. Periods of time qualifying for a prompt payment discount payable shall run from the date of invoice and not the receipt of the goods.

III. Carrying out deliveries, Delivery periods and Delivery dates

- Our delivery obligation shall be subject to us having been supplied with the correct goods on time, unless we are responsible for the wrong goods being supplied to us by our supplier or for goods being supplied to us by our supplier late.
- Our quoted delivery times are only approximations. Periods of time shall commence on the date of our order confirmation, and only in those cases in which all order details have been clarified by the Buyer, and he has fulfilled all his obligations in full, such as furnishing official certificates, guarantees, down payments or similar.
- It shall be the point in time at which the goods are dispatched from our works or stores which shall determine compliance with the delivery dates or periods. The same shall apply if the Buyer has been notified that the goods are ready for dispatch and cannot be dispatched on time for reasons for which we are not responsible.
- Insofar as we are unable to deliver on time, the Buyer shall be entitled to set us a reasonable subsequent period of time. After this period of time has expired unsuccessfully, he may withdraw from the contract if it has not yet been fulfilled completely. Any compensation claims there may possibly be are regulated in Paragraph X.
- The Buyer shall not be obliged to draw our attention to the fact that the consignment, or a part thereof, is to be used as a construction product within the meaning of the German Construction Products Regulations [BauPVO].

IV. Reservation of title

- Until our accounts – including those created in the course of our wider business relationship (Balance reservation) – have been settled in full, all goods supplied shall remain our property (simple reservation of title). This shall also apply even in such cases in which payments / transfers are expressly made in settlement of specific accounts.
- Insofar as our goods subject to reservation of title have been processed, connected to, or combined with other materials, we shall be entitled to a co-share to the new thing in proportion to the ratio of our invoiced sum to the value of the other products used (extended reservation of title). If our title should in fact legally lapse as a result of our goods subject to reservation of title being joined, or combined with other goods, the Buyer shall assign to us here and now the title rights to the new thing to which he is (actually) entitled up to the value of our invoiced sum (extended reservation of title).
- The Buyer may only sell on our goods subject to reservation of title goods in a normal commercial transaction subject to the condition that he is not in default to us.
- The Buyer may collect the purchase price / wages for work done in his own name upon resale. This permission shall expire as soon as we revoke his entitlement thereto, and no later than when he falls into default with his payments to us or if he submits an application to open insolvency proceedings. Under such conditions we shall only revoke our consent, if it appears after entering into the contract that our claim to payment under the business relationship is at risk due to the Buyer's insolvency (cf. also 11.4.). In this case the Buyer shall be obliged to inform his customers immediately of this assignment and furnish us with all the documents we need to collect monies owed ourselves.
- Our Buyer shall likewise have to inform us if someone has levied execution or similar against him. The Buyer shall bear all the costs necessarily incurred by us in such proceedings to transport our goods subject to reservation of title back to us or have the levy of execution cancelled, if no other party has to vouch for him.
- If the Buyer falls into default with payment, we may collect the goods subject to reservation of title and enter his business premises in order to do so. The right to take back our goods shall also be extant in the event that after entering into the contract it turns out that the Buyer is unable to render his performance in accordance with Number 4 above. Under no circumstances shall collection constitute withdrawal from the contract. The regulations of the German Insolvency Code shall not be affected as a result.
- If the securities furnished to us by the Buyer including the securities furnished under this clause plus interest and costs exceed the value of our invoice by more than 50%, the Buyer may demand that we release securities having the appropriate value.

V. Quality, Dimensions and Weights

- The most senior regulations to apply shall be the DIN / EN standards or material specifications, or alternatively trade practice, in force at the point in time at which the contract is signed. If we refer to them, or to test, as well as quality, dimensions, weight and usability, these shall not constitute assurances or even guarantees, they shall simply be product descriptions.
- Weights shall be worked out theoretically by the length or surface of the respective product in accordance with usual and recognised methods, whereby we shall reserve the right to add on a mark-up normal in the trade (avoidupois weight), in order to compensate for roller and thickness tolerances. By way of exception the weight may also be proven by means of weight notes. In doing so, the measurement of our supplier (the Buyer's sub-supplier) shall be definitive. We invoice by weight, and any quantities which may have been quoted in the shipping advice note shall not be binding. If the goods are not weighed individually, an overall weight will be calculated. Individual weights will be worked out and rounded up to full kgs.

VI. Acceptance

- In the event that it has been agreed that an acceptance test is to be conducted, it must take place in the supplier's works or in our stores, as soon as we have notified the Buyer that the goods are ready for the

acceptance test. The Buyer shall bear his personal costs of attending the acceptance test; the actual costs of the acceptance test will be invoiced by us to him by agreement.

- If the acceptance test is not conducted on time or in full, and if we are not responsible for this, we may also dispatch the goods without them having the acceptance test successfully or put them into store at the Buyer's expense and risk and invoice him.

VII. Dispatch, Passing of risk, Packing and Partial delivery

- The dispatch route and means as well as the haulier or freight forwarder are to be selected by us.
- Goods notified to the Buyer as being ready for dispatch must be called off by him straight away. Otherwise we shall either dispatch them following a reminder sent to the Buyer at his expense and risk or put them into store. In either case we shall raise an invoice immediately.
- Should, without our involvement, it become impossible to deliver the goods via the scheduled dispatch route or to the agreed destination or at the agreed time, we shall be entitled to choose an alternative dispatch route or to deliver to another destination (at a later time). The Buyer may express his opinion prior to bearing the costs arising as a result thereof.
- The risk shall pass over to the Buyer as soon as our goods have been handed over to the haulier or freight forwarder, but no later than when they leave our store or supplier. The same arrangement shall apply for deliveries which are either postage paid or franco domicile. We shall take out a suitable insurance policy at the Buyer's express instruction and cost. The Buyer alone shall be responsible for unloading the goods at the point of delivery.
- Unless agreed otherwise, or if it is common commercial practice anyway, we shall generally supply the goods unpacked and not protected from the weather. If packing, special protection or even transport aids have been agreed, we shall choose them in the light of our experience and at the Buyer's expense. We shall take back packing at our respective store. We shall not bear transport costs for the return of packing, or the costs incurred by the Buyer for disposing of packing at his own discretion.
- For logistics reasons in particular, we shall be entitled to supply part orders, provided that it is reasonable for the Buyer to accept them. We may supply excess or shortfalls in quantities within the tolerances normal within the trade.

VIII. Call-off orders / regular deliveries

- For contracts entailing successive deliveries the Buyer must notify us of his call-offs and the allocation desired in equal weekly or monthly amounts if at all possible, otherwise we shall decide the quantities to be supplied for call-offs at our equitable discretion.
- If the individual call-offs exceed the total quantity owed by contract, we shall be entitled, but not obliged, to supply an excess quantity. The excess quantity shall however be invoiced at our prices valid when the call-off was made or when the goods were delivered.

IX. Liability for quality defects

- Quality defects are to be notified immediately in writing (an e-mail is also acceptable) and within 5 days at the latest from the receipt of goods. Defects which cannot be identified within this period of time, even with a proper commercial inspection, are to be notified immediately upon discovery – likewise in writing -. In any case, processing or subsequent processing must be stopped straight away, otherwise the goods shall be regarded as being in compliance with the contract in spite of any defects there may possibly be.
- Regardless of this, the Buyer shall be obliged to notify us of any accompanying documentation which may be missing, in particular test reports, immediately when taking receipt of the goods.
- If a complaint is made on time and is justified, it shall be up to us to either rectify the defect or to supply fault-free goods (Cure). If the cure is unsuccessful, or if we refuse it, the Buyer may, after setting us a reasonable period of time, and the fault has still not been rectified, withdraw from the contract or reduce the purchase price. If the defect is not serious, he shall only be entitled to reduce the purchase price.
- Expenditure incurred in connection with the cure shall only be borne by us if it is in reasonable proportion to the purchase price of the goods – and in no circumstances will be pay more than 150% of the value of the goods. Costs for installation and dismantling the defective thing shall not be included. Expenditure incurred as a result of the goods supplied by us having been transported to a site other than that agreed shall only be accepted by us if this is in accordance with use in accordance with the contract.
- Insofar as acceptance of the goods has been agreed, (VI.), defects notified by the Buyer shall not be accepted if they were identifiable at acceptance. If the Buyer failed to note a defect through his own negligence, he may only claim (default) rights if we have maliciously concealed the defect or else we have furnished a guarantee for the condition of the thing.
- If the Buyer does not allow us an opportunity straight away to convince ourselves that there is a defect and in spite of being asked to do so, fails to let us have any photographs of the defect or let us have the goods about which he has made a complaint, or at least samples thereof, allowing us to conduct a test, he shall forfeit all warranty rights.
- Additional claims shall be determined by Paragraph X., whereby rights of recourse under Sections 478 and 479 of the German Civil Code [BGB] shall not be affected.

X. General, Limitation of liability and Statutory limitation

- We can only be held liable for a breach of contractual and pre-contractual duties, in particular on account of impossibility, default, and fault in setting up the contract as well as unlawful act, if we have acted with fraudulent intent and gross negligence. Our liability shall be limited to the damages typical for the contract foreseeable when it was signed. We cannot be held liable for direct loss and consequential loss caused by a defect.
- This limitation shall not apply for culpable breaches
 - Against cardinal contractual duties if, as a result thereof the contractual objective is jeopardised,
 - If death, personal injury or physical harm have resulted,
 - Insofar as we have furnished a guarantee of quality or
 - If the German Product Liability Act provides that liability is compulsory.
- All contractual claims accruing to the Buyer against us from the delivery shall become time-barred one year after delivery of the goods, provided that we have not agreed otherwise in a given instance. This period of time shall also apply for those products which, given their type, are normally used for construction purposes and in doing so have caused the defectiveness. This shall only not apply if the type of use has been agreed in writing.
- Our liability resulting from an intentional or grossly negligent breach, death, personal injury or physical harm shall likewise be excluded from the limitation of liability as is the (statutory) period of limitation for rights of recourse.

XI. Place of fulfilment, Place of jurisdiction, and applicable law

- The place of fulfilment for our goods shall primarily be our stores. If the terms of delivery "Delivery ex Works" have been agreed, the place of delivery shall be the main business premises of the supplying works.
- The place of jurisdiction shall, as we choose, be our principal place of business or the Buyer's principal place of business.
- All legal relationships and disputes shall also be subject to German law, in particular the regulations of the German Civil Code [BGB] and German Commercial Code [HGB]. On the other hand, the provisions of the UN Law governing sales [CISG] shall not apply. In cases of doubt the German version of these T&Cs shall prevail. These T&Cs are available for business partner upon request.