

Terms and Conditions of Delivery

§ 1 General Provisions

- a) Our offers are made without obligation. Orders are only binding on us if and insofar as we have confirmed them in writing or their execution has been commenced.
- b) Agreed delivery times and delivery dates shall be considered only as an approximate indication and not as a binding commitment, unless agreed otherwise. In the event of a delay in delivery, the Purchaser is entitled to set an additional period after whose unsuccessful expiry it may withdraw from the contract. The Purchaser may only demand damages for non-performance after the expiry of the period if the delay in delivery has occurred due to intentional or grossly negligent conduct by us.
- c) We reserve the right to make partial deliveries and deliveries of additional or short volumes of up to 10 %. If greater tolerances are customary in the trade or have been agreed, deliveries in this scope shall be considered as in accordance with the terms of the contract.
- d) Increases in customs duties, taxes and/or other charges after the conclusion of the contract may not be recalculated at the expense of the Purchaser.
- e) Occurrences of force majeure, including restrictions under public law and strike and lockout, entitle us to defer the delivery by the duration of the hindrance or withdraw from the contract in whole or in part without being obliged to pay damages. This shall also apply in the event of any other unforeseen circumstances that prevent, delay or render unreasonably difficult the manufacture or the forwarding of the goods. This shall apply in particular in cases of a shortage of energy or raw materials.

§ 2 Payments

- a) Our prices are quoted as net prices plus VAT at the statutory rate and if necessary any accruing customs duties and charges.
- b) Our invoices are payable net immediately, unless agreed otherwise. In the event of exceeding the period allowed for payment, we are entitled, from the due date on, to claim 4 % interest above the basic interest rate announced by the German Federal Bank [*Deutsche Bundesbank*] in the Federal Gazette [*Bundesanzeiger*] prevailing at the given time. If the Purchaser is in default, we reserve the right to assert claims for further damages.
- c) The Purchaser may only set off against our purchase price claims if its counterclaims are undisputed or have been declared final and absolute. The assertion of notice of defects shall not exempt businessmen from the obligation to pay the purchase price, unless the notice of defects is acknowledged by us.

§ 3 Forwarding and Packaging

- a) In the event collecting the goods from the place of delivery by itself, the Purchaser and its authorized representative respectively shall be responsible for the loading of the transport vehicle and the observance of the statutory regulations for the transport of dangerous goods. We are not obliged to check containers or transport vehicles made available for their fitness, cleanliness etc. We are not liable for damage or defects arising as a result of damaged or otherwise inadequate containers.
- b) In the event of delivery in road tankers and set-down tanks, the recipient must ensure a perfect technical condition of its tanks or other storage containers and arrange for the connection of the filling lines to its reception systems on its own responsibility. Our obligations shall be restricted to the operation of the vehicle-side equipment.
- c) If our employees in cases in which the Purchaser collects the goods by itself are helpful in the loading and in cases of delivery in the unloading and refuelling respectively, they shall act at the own risk of the Purchaser and not as our vicarious agents.
- d) If our deliveries are made in hired packing drums, these must be sent back by the Purchaser in an perfect emptied condition for its account and at its risk to us no later than within 4 weeks after their arrival at the place of business of the Purchaser or if applicable returned free our vehicle against an acknowledgement of receipt. Marking or labelling located on packing drums may not be removed.

§ 4 Transport Insurance

We are entitled to take out adequate transport insurance, at least in the amount of the invoiced value of the goods, by order and at the expense of the Purchaser.

§ 5 Passing of the Risk

Unless agreed otherwise, the risk shall pass to the Purchaser upon the surrender of the goods to the first driver of the transport or upon the making available of the goods in the case of the goods being collected by the Purchaser itself. This shall also apply if the Purchaser refuses to accept the delivery.

§ 6 Product Information

- a) Our information about products and devices and about our facilities/systems and processes are based on considerable research work and experience in applications technology and conform to the current state of our knowledge. We impart these findings, with which we assume no liability beyond the respective individual contract, verbally and in writing to the best of our knowledge; however, we reserve the right to carry out technical changes in the course of the product development. No undertaking as to the correctness of our information may be inferred.
- b) Our production specifications and product information describe only the products and our services and constitute no warranty of quality or durability within the meaning of sec. 443 of the German Civil Code [*Bürgerliches Gesetzbuch (BGB)*], unless we have expressly confirmed this to the Purchaser in writing beforehand. This shall not discharge the user from the obligation to check our products and our processes themselves for their application for the own use and carry out entry controls. This shall also apply with regard to the safeguarding of the patent rights of third parties and to the application of processes.

§ 7 Warranty

- a) We are liable to businessmen and legal entities under public law in accordance with the statutory provisions for material damage, including the absence of warranted qualities, at our choice, to cancel the contract, reduce the purchase price or make a replacement delivery, provided that the following preconditions have been observed.
 - The Purchaser has inspected the goods and their packaging in accordance with the practice customary in the trade for their type, volume and quality without undue delay at the time of delivery and given written notice of the objection without undue delay, however no later than within 10 days after the receipt of the goods.
 - If a defect emerges at a later date, which, despite a careful inspection, was not detectable (hidden defects), notice of this defect must be given without undue delay after its discovery as set out above.
 - If the customer fails to make it possible for us to verify its objections or fails to the goods or test samples objected to available to us without undue delay upon request, we cannot take into consideration the asserted warranty claims.
- b) We are liable to non-businessmen for material damage, including the absence of warranted qualities, optionally, to cancel the contract, reduce the purchase price or make a replacement delivery.

§ 8 Damages

We are only liable to pay damages, irrespective of legal reason, in particular for the breach of duties arising out of the contractual obligation out of a tortious act if we or our legal representatives and vicarious agents have acted intentionally or with gross negligence or if the breached duty is of fundamental importance for the achievement of the purpose of the contract (cardinal duties). In the event of a slight breach of cardinal duties, our liability is limited to damages for foreseeable damage typically occurring under a contract. The exclusion or restriction of liability shall not apply if we, in the event of liability for tortious injury to life, limb or health or for damage to private items under the Product Liability Act [*Produkthaftungsgesetz*] limitation of liability is prohibited by statute for other reasons.

§ 9 Reservations of Title

- a) Sold goods shall remain our property until such time as all debt claims under the business relationship have been settled. If the goods is processed or handled by the Purchaser, our reservation of title shall cover the entire new thing.
- b) In the event of the processing, combining or mixing with alien items by the Purchaser, we shall acquire the co-ownership in the fraction that corresponds to the proportion of the invoiced value of our goods to the other items used by the Purchaser at the time of the processing, combining or mixing.
- c) If the reserved goods are combined or mixed with the main item of the Purchaser or a third party, the Purchaser shall hereby transfer to us in advance its interests in the new item. If the Purchaser combines or mixes the reserved goods definitively with a main item of third parties, it hereby assigns to us in advance its claims for remuneration against the third party.
- d) The Purchaser is entitled to resell goods held subject to a reservation of title in connection with an ordered business operation. If the Purchaser sells these goods for its part without the complete purchase price in advance or to obtain this concurrently against the transfer of the goods, it must reach an agreement with its customer on a reservation of title in compliance with these conditions. The Purchaser hereby assigns to us in advance its debt claims arising out of the resale and the rights arising out of the reservation of title agreed by it.
- e) The Purchaser is authorized to collect the debt claim arising out of the resale despite the assignment as long as it fulfils its liabilities to us in due form.
- f) If the value of the securities transferred to us exceeds our debt claims, at the request of the Purchaser, we are obliged to release the securities, at our choice. An assertion of the reservation of title by us shall only be seen as a withdrawal from the contract if we have expressly declared this in writing beforehand.

§ 10 Place of Performance

The place of performance for the delivery shall be the place of our works. We shall forward the goods at the risk of the Purchaser, unless agreed to the contrary. The agreement to delivery the goods "free domicile" shall not entail an agreement to deliver the goods at a different place of performance.

§ 11 Final Provisions

- a) If the Purchaser is a businessman, the place of jurisdiction for all disputes shall be the registered office of our enterprise. If we take legal action, in addition, the standard place of jurisdiction of the Purchaser shall also apply.
- b) If trade terms are used, the International Commercial Terms (Incoterms) 2010 shall be considered as agreed.
- c) The law of the Federal Republic of Germany shall apply. The provisions of the UN Sales Convention shall not apply.
- d) Should individual provisions of the contract, including these terms and conditions of sale and delivery, be or become ineffective in whole or in part, this shall not affect the validity of the remaining provisions. The wholly or partly ineffective regulation shall be replaced by a regulation whose economic content most closely approximates to that of the ineffective regulation.