

## General terms and conditions of sale (GTCS)

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### I. Applicability

1. Our general terms and conditions of sale apply to all, including future legal relations of the contracting parties. Variations to agreements are valid only if they are confirmed by us in writing.
2. Our GTCS apply exclusively. The purchaser's differing, contrary or supplementary general terms and trading conditions become part of contract terms but only to the extent of their validity and applicability when we expressly agree. This agreement condition applies in each case, even for example where we make unreserved delivery to the purchaser in knowledge of his General Terms and Conditions of Business (GTCS).
3. Contrary or opposing General Terms and Conditions of Business of the contracting party- hereinafter called the purchaser - are considered not binding, even when not expressly contradicted by us.
4. In case of a condition of our general terms and conditions of sale being inoperative or becoming inoperative, the validity of all other conditions from then on remains unaffected.

### II. Tender/tender documents

1. Our tenders are obligation free and nonbinding. This also applies when we supply the purchaser with catalogues, technical documentation (e.g. drawings, plans, computations, calculations, references on DIN standards), other product descriptions or documents – including in electronic form - for which we reserve proprietary rights and copyright.
2. We can accept orders within 6 weeks. The period begins with receipt of the order.
3. As regards delivery and performance, our written order confirmation is the determining factor. Agreements on specifications, supplementary or subsidiary agreements must be in written form to have effect.
4. Our sales staff are not authorized to enter into verbal subsidiary agreements or agreements that exceed conditions of the written contract.
5. We assert property rights and copyright for illustrations, drawings and designs, calculations and other documents. Distribution of these by the purchaser to third parties requires our prior express written consent.
6. We are entitled to partial deliveries, if these are reasonable for the purchaser.

### III. Prices/terms of payment

1. If after the confirmation of the order nothing changes, our prices are „ex store “or „ex factory “, excluding forwarding expenses, customs duties, packing and in addition always the applicable value added tax.
2. We reserve the right to change our prices when after signing of the contract cost reductions or cost increases arise, particularly because of collective wage agreements, materials price changes or currency fluctuations. We will substantiate these to the purchaser on demand.
3. Changes to discounts require a special written agreement. If from the confirmation of order nothing changes, the purchaser is entitled to a 2% discount for payment within 10 days. For partial deliveries, partial invoices are issued. A separate payment period applies for each partial invoice. Payments in arrears are subject to legal regulations.
4. The purchaser's offset of payment claim must be based on an undisputed or legally enforceable demand. His can exercise his right to a payment retention only to the extent of his counterclaim based on the same contractual obligation.

### IV. Information of product/modifications

1. The purchaser is obliged to describe to us in every respect and comprehensively the conditions under which the supplied goods are to be installed.
2. We reserve the right to make construction modifications in the interest of technical progress as long as such modifications do not result in changes of performance.

### V. Delivery period

1. The delivery period commences on the day of order confirmation but not before presentation of purchaser procured documents, authorisations, releases, supply of materials as well receipt of an agreed upon payment, the opening of a line of credit or proof that agreed upon collateral has been secured.
2. Delivery is met when goods have left the Waldstetten store within the delivery period.
3. Should impediments arise that are beyond our control and which we could not prevent despite the requisite precautions of the case in point- irrespective of whether they arise with us or delivery subcontractors – or for instance higher force (e.g. war or natural catastrophes), delays in the delivery of substantial raw materials or circumstances not attributable to us - we are entitled to withdraw from the delivery contract entirely or partially or to extend the delivery time for the duration of the delay. We maintain the same rights in case of strike and lockouts concerning us or subcontracting suppliers. We will advise our customers immediately of such circumstances.

4. In the case of delayed delivery, the purchaser may withdraw from the contract after the fruitless expiration of a reasonable period of grace; in case of unfeasibility of performance on our part, he is also entitled to this right without a period of grace. A reasonable period of grace is at least 14 days and for special orders at least 1 month. Delayed delivery equates with unfeasibility of delivery where delivery is delayed more than 1 month and 6 weeks in the case of special orders and does not eventuate. We reject claims for compensation (including possible consequential damage) irrespective of paragraph 6. The same applies to claims for reimbursement of expenses.
5. Where a commercial fixed order was agreed upon, limits of liability in paragraph 3 and 4 do not apply; this also applies where the purchaser can plead non-interest in the fulfilment of the contract because the delay was attributable to us.
6. If the purchaser is in default of acceptance or derelict in his duties to cooperate, we are entitled to claim consequential damage including additional expenses. In that case, the purchaser also assumes the risks of accidental destruction or accidental degradation of the goods at the moment of acceptance default.

#### **VI. Transfer of risk/packing costs/insurance**

1. Supply takes place ex store which is also the place of delivery. On demand and at the purchaser's expense, goods are dispatched to another place of destination (dispatching purchase). Unless otherwise agreed, we are entitled to determine the kind of dispatch (including the carrier, route, packing).
2. On acceptance of the goods at the latest, the purchaser assumes the risk of accidental destruction and accidental deterioration of the commodity. With destination sales however, the risk of the accidental destruction and accidental degradation of the commodity as well as the risk of delivery delays is assumed by the freight forwarder, the carrier or otherwise the person or organisation assigned delivery. Any agreed upon acceptance determines the transfer of risk. The Incoterms 2000 - clause „ex works/ab work “(German version) applies in this regard.
3. If delivery is delayed due to a circumstance attributable to the purchaser or his instructions, then the purchaser assumes such risks from the day of notification of despatch readiness. We are bound by the purchaser's express written request to insure, at his expense, goods stored with us. This also applies in cases where a delivery date is not expressly agreed upon, with the proviso that the risk transfers to the purchaser 7 calendar days after notification of despatch readiness.
4. If the purchaser does not countermand insurance expressly in writing, we will cover delivery by transport insurance; the purchaser bears cost arising.

5. Transportation and all other packaging materials specified in the packaging order will not be taken back. Euro-pallets and wire mesh crates are exempt. The purchaser is responsible for disposal of packaging materials at his own expense.
6. The purchaser shall accept delivered goods, even if they exhibit negligible defects, without prejudice to his rights as per §§ 433 FF BGB.

#### **VII. Retention of title**

1. Until complete payment is received for all our present and future demands as per the sales contract and a current business relationship (secured claim), we reserve the property rights of the goods sold.
2. Goods under retention of title may not be pledged or assigned as security to a third party before complete payment of the secured claims. The purchaser is required to inform us immediately in writing, if and to what extent seizure by a third party of goods belonging to us occurs. The purchaser stores such reserved goods free of charge to us.
3. Upon the purchaser contravening the terms of the agreement, in particular non-payment of the due purchase price, we are entitled according to legal provisions to rescind the contract and based on the retention of title and rescission, to demand return of the goods. If the purchaser does not pay the due purchase price, we may exercise these rights only if a prior reasonable period of grace for payment is unsuccessful or such a deadline is superfluous according to law.
4. The purchaser is authorized to dispose and/or work up the goods under retention of title in the normal course of business. In this case the following supplementary conditions apply.
  - a) The retention of title extends to the products resulting from processing, mixing or connecting of our goods. We consider ourselves their manufacturer and claim their full value. If a third party, in the act of processing, mixing or connecting of our goods establishes a vested interest, then we attain co-ownership, proportionate to the invoiced amounts of the finished, mixed or connected goods. In all other respects for the resulting product, the same conditions apply as for goods delivered under retention of title.
  - b) In claims arising from resale of the goods or products thereof against a third party, the purchaser assigns to us for security then and there the total or as the case may be, the amount proportionate to our co-ownership in accordance with abovementioned paragraph. We accept such assignment. The purchaser's obligations in paragraph 2 apply also in regard to assigned claims.
  - c) The purchaser, besides us, is authorized to collect claims. We pledge not to collect the claim as long as the purchaser meets his liabilities to us, does not fall into payment arrears, does not commence insolvency proceedings and as long as no other shortcomings in his capacity to meet his obligations towards us occur. If this is however the case, then we can require that the purchaser re-

veal to us the assigned claim and his debtor, all information necessary for collection of the claim, makes available relevant documents and advises the debtor (third party) of the assignment.

5. The purchaser declares here and now his agreement that persons charged by us with the transfer of goods subject to retention of title, are for this purpose authorised to enter and are granted vehicular access to the property and/or the building on or in which such goods are located so as to take possession of goods under security title.
6. The purchaser is required to inform us immediately of every seizure, foreclosure or other impairing intervention by a third party into our vested titles rights. The purchaser has to meet the costs of the measures necessary for the removal of the intrusion by a third party and in particular any intervention proceedings.

### VIII. Guarantees and liability

1. If a defect attributable to us is found, we are entitled to the option of rework or replacement with the precondition that such a defect is not insignificant. In the case of rework, we are obligated to meet cost of transportation, labour and materials as long as these do not increase because the delivered goods are located in a place other than the original delivery destination. We are entitled to refuse one of these two or both types of such supplementary work if it is impossible or disproportionate.  
We can refuse rework for as long as the purchaser fails to meet his payment obligations to us for an amount corresponding to the faultless part of the goods.
2. If rework or replacement delivery does not take place within a reasonable time period with due regard to our delivery capacity - or in the case of failure of rework and/or replacement, then the purchaser can demand a reduced payment (decrease) or withdraw from the contract altogether.
3. Claims for defect by the purchaser presuppose that he has observed his legal investigation and reproach obligations (§§ 377, 381 HGB). If a defect becomes evident during the investigation or later, written notification thereof is to be given immediately. Notification is considered immediate, if given within two weeks. Punctual despatch of the notification satisfies the time frame. Independent of these inspection and defect notification obligations, the purchaser has to give written notification of obvious defects (including wrong and short delivery) within two weeks of delivery where here also, punctual despatch of the notification satisfies the time frame. Should the purchaser fail to properly inspect the goods or give notice of defects, then we deny liability for defects not notified.
4. Insofar as nothing else applies in paragraph 6 following, we deny liability for further claims by the purchaser for whatever legal reasons (in particular

claims for breach of contractual main and secondary obligations, reimbursement of expenses excepting those in § 439 II BGB, unauthorised action as well as other tort liability). This applies especially to damage not caused by the delivered goods as well as claims for loss of profit, including also claims which do not result from defective purchased goods.

5. The aforementioned conditions apply also to supply of another item or a smaller quantity.
6. The liability disclaimer set out in paragraph 4 does not apply insofar an exclusion or a limitation of liability is agreed upon for damages from injury to life, body or health which arises from a wilful or negligent breach of duty by the user or a wilful or negligent breach of duty of care by a legal representative or the user's vicarious servants or agents; non-applicable likewise is an exclusion or a limitation of liability for other damage agreed upon, which is based on a wilful or grossly negligent breach of duty of care by a legal representative or the user's vicarious servants or agents. If we contravene a substantial contract obligation or a „cardinal obligation“, then liability is not denied but limited to contract-typical, foreseeable damage. Liability is denied in all other respects in accordance with paragraph 4.  
Furthermore, liability exclusion does not apply to cases where according to product liability laws, liability is accepted for defective delivered goods causing personal injury or damage to privately used objects.  
Also, it does not apply to acceptance of a guarantee and to warranty of a characteristic, if clearly a defect covered therein releases us from our liability.
7. In questions of reimbursement of expenditure, foregoing paragraphs apply.
7. We deny liability for damage which can be ascribed to unsuitable or inappropriate use, incorrect assembly by the purchaser or a third party, natural wear and tear, incorrect or careless treatment, improper modifications and modifications to our maintenance undertaken by the purchaser or a third party without our prior consent.
8. Claims for rework, payment of damages and reimbursement of assignment expenses expire under the statute of limitations one year after delivery of the goods.  
This does not apply to a construction component, which was used in compliance with its usual purpose, for a building and caused its defectiveness; in this case the statute of limitations expires after 5 years. Claims for reduction and the right to withdraw from the contract are denied when claims for rework have lapsed by statute of limitations. The purchaser can refuse payment of the purchase price in the case of VIII.3 insofar as he would be entitled to, based on withdrawal or a reduction; in case of the denial of withdrawal and a consequent refusal to pay, we are entitled to withdraw from the contract.

9. Claims of manufacturer recourse remain unaffected by this section.

#### **IX. Other liabilities**

1. Provided that no other matters arise from the GTCS including the following conditions, we accept liability for damages of contractual and non-contractual obligations in accordance with applicable laws.
2. We accept liability for compensation for whatever legal reason for malice and gross negligence. In the case of simple negligence we are liable only for
  - a) damages for injury to life, body or health,
  - b) damages for breach of substantial contract obligation (obligation whose fulfilment above all enables the proper completion of the contract and on whose orderly compliance the contract partner relies and is entitled to rely); in this case our liability is however limited to compensation for the foreseeable, typically arising damage.
3. The limitations of liability arising from paragraph 2 do not apply where we have fraudulently concealed a defect or have accepted a guarantee for the condition of the commodity. The same applies to the purchaser's claims under the product liability law.
4. Where breach of duty is not based on a defect, the purchaser can only withdraw or cancel when we are to defend such breach. The purchaser's free right of termination (in particular reference to §§ 651, 649 BGB) is ruled out. In all other respects, legal conditions and legal consequences apply.
5. Further claims by purchaser for whatever legal reason (in particular claims of indebtedness on contract conclusion, claims for contractual main and secondary obligations, reimbursement of expenses, unauthorised action as well as other tort liability) are excluded; this applies especially to damage not caused by the delivered goods as well as claims for loss of profit, including also claims which do not result from defective purchased goods.

#### **X. Withdrawal by the purchaser**

1. The purchaser can withdraw from the contract if the entire performance becomes ultimately impossible and similarly, for inability to perform. The purchaser can withdraw also from the whole contract if with an order of similar articles, the execution of a part of the supply, as regards the amount after due representation by us, is still impossible and he has no interest in partial delivery; if this is not the case, the purchaser may reduce payment commensurately. The right to withdraw does not apply to negligible duty of care matters.
2. Where a delay in performance exists and the purchaser grants us, after an explanation for the delay, a reasonable extension of time to perform and if this period of grace is not met, then the purchaser is entitled to withdraw. With partial per-

formance delay I.2. applies accordingly. If before delivery the purchaser at any point orders a different method of delivery for goods, then the time allowed for delivery is suspended until the day of the agreement on the altered method and if necessary, the time needed for the delivery change is extended.

3. Withdrawal is ruled out when the purchaser is solely, widely and predominantly responsible for the circumstance which entitles him to withdraw or when the circumstance we represent arises at the point in time of the purchaser's acceptance default. In case of the default, we maintain in the aforementioned cases, our claim for payment in accordance with condition § 326.2 BGB.

#### **XI. Place of performance and area of jurisdiction**

1. Place of performance for liabilities of both parties arising from all legal relations is Waldstetten.
2. For this GTCS and all legal relations between us and the purchaser, the laws of the Federal Republic of Germany under exclusion of all international and supranational (contract) legal orders, in particular the UN-sale of goods law, apply. Conditions and effects of the retention of title in accordance with § 6 are subject however to the law at the respective place of the case, insofar as thereafter the opted for choice of law is inadmissible or ineffective in favour of German law.
3. If the purchaser is manager (Kaufmann) in the sense of the commercial code (Handelgesetzbuch), legal entity in public law or a public legal investment fund, exclusively - also internationally - the area of jurisdiction for disputes arising from contractual relations- directly or indirectly- is our registered place of business in Waldstetten. We are however also entitled to initiate lawsuits in the purchaser's general area of jurisdiction.

**July 2010**