

# Standard Terms and Conditions for Sale and Supply

## I. General

1. Our terms of sale and supply apply exclusively. Terms of the Purchaser which contradict or deviate from our terms of sale and supply are hereby rejected, unless we have expressly accepted them in writing. Our terms of sale and supply will apply even if we know of terms of the Purchaser contradicting or deviating from our terms of sale and supply and nevertheless supply the Purchaser without reservation.
2. All agreements reached between us and the Purchaser for the purpose of implementing this contract are formulated in writing in this contract.
3. Our terms of sale only apply to transactions with entrepreneurs as defined in § 310 Paragraph 1 German Civil Code.
4. Our terms of sale apply to all future transactions with the Purchaser as well.

## II. Quotations

1. Our quotations are not binding and are without obligation. A contract is not concluded until we accept the order in writing or by telefax. The same applies to additions, amendments and subsidiary agreements.
2. Drawings, illustrations, dimensions, weights and other supply specifications are only binding if this is expressly agreed in writing. Drawings and documents enclosed with a quotation are only for the personal use of the recipient and may neither be duplicated nor made accessible to third parties without our express consent.
3. The prices on our price lists are subject to change at any time without prior notice if economic changes make this necessary. The prices which apply are those specified in our order acknowledgement, which are subject to statutory turnover tax at the current rate. Additional goods and services will be invoiced separately. Unless otherwise agreed, prices are ex works Osterholz-Scharmbeck and do not include packing.
4. Quotations containing obvious errors in content, printing, calculation, arithmetic or spelling are not binding on us and will give rise to no claim either to performance or damages.

## III. Terms of payment

1. Unless otherwise agreed, payment is due in cash to our payment department within 30 days of the invoice date without any deduction and free of any costs. If payment is made within ten days of the invoice date we will grant a 2% discount.
2. Payment will not be regarded as having been made until we are able to dispose of the sum. In the case of cheques, payment will not be regarded as having been made until the cheque is cleared.
3. The Purchaser is only entitled to withhold payments or offset counterclaims against payments to the extent that his counterclaims are undisputed or legally final and binding.
4. All prices are subject to the addition of value added tax.

## IV. Delivery times

1. The delivery time is as specified in the agreements reached between the contracting parties. Our adherence to them is conditional on all commercial and technical issues arising between the contracting parties having been settled and on the Purchaser having fulfilled all of his obligations, e.g. to supply any necessary official certificates or approvals or to pay a deposit. If this is not the case, the delivery time will be extended accordingly. This does not apply to the extent that we are responsible for the delivery.
2. Adherence to delivery times is conditional on our receiving correct and punctual delivery from our own suppliers.
3. A delivery deadline will be held to have been met if the item concerned leaves our factory or notice of readiness for dispatch is given by the time it expires. If a formal acceptance procedure has been agreed, the acceptance date, or alternatively the date of notification that goods are ready for formal acceptance, will apply except in cases of justified refusal to accept.
4. If the dispatch / the formal acceptance of a consignment is delayed for reasons for which the Purchaser is responsible, the latter will be charged the costs incurred as a result of the delay from a date one month after notification of readiness for dispatch/ formal acceptance.
5. If a failure to adhere to a delivery time is due to force majeure, to a labour dispute or to another event beyond our control, the delivery time will be extended accordingly. We will inform the Purchaser when circumstances of this type arise and cease to apply as soon as possible.
6. The Purchaser may withdraw from the contract without notice/setting a deadline if it becomes finally impossible for us to make the entire delivery before the passing of risk. The Purchaser may also withdraw from the contract if it becomes impossible to supply a part of a consignment and he has

good reason for refusing to accept a part delivery. If this is not the case, the Purchaser must pay the proportion of the contract price attributable to the part delivery. The same applies in the case of our inability to perform. If impossibility/inability become applicable during a delay in acceptance or if the Purchaser is solely or mostly responsible for the circumstances concerned, he will remain liable to pay consideration.

7. Otherwise we are liable as prescribed by law. If a delay in delivery is not caused by a deliberate breach of contract for which we are responsible, our liability to pay damages is limited to foreseeable losses typical of the type of contract concerned. Further claims on the basis of a delay in delivery are only permissible as specified in Section VII of these terms.

## V. Passing of risk

1. The risk will pass to the Purchaser as soon as the consignment has been handed over to the carrier or has left our store for the purpose of dispatch. If dispatch becomes impossible through no fault of ours, the risk will pass when the Purchaser is notified of readiness for dispatch.
2. Unless otherwise expressly agreed in writing we are entitled, but under no obligation, to insure consignments to the extent usual in the industry and to charge the costs thereby incurred to the Purchaser.

## VI. Liability for defects

1. The Purchaser's rights in the case of a defect are conditional on the latter having properly fulfilled his obligations to inspect and make complaint imposed by § 377 German Commercial Code. If our operating or maintenance instructions are not adhered to or if replacement parts or operating materials are used which do not meet original specifications, there will be no liability whatsoever.
2. If an item supplied is defective, we are entitled to remedy by either repairing the defect or supplying a new, perfect item, at our discretion. We shall bear the cost of repairing defects only up to the amount of the original sales price.
3. If an attempt to remedy fails, the Purchaser may choose either to withdraw from the contract or to demand a reduction in the purchase price. If the defect concerned is insignificant, the Purchaser is only entitled to a reduction in the purchase price.
4. We are liable as prescribed by law if the Purchaser claims damages on the basis of deliberately caused loss or gross negligence, including such loss or negligence by our representatives or vicarious agents. Unless we are charged with a deliberate breach of contract our liability to pay damages is limited to foreseeable losses typical of the type of contract concerned.
5. We are also liable as prescribed by law if we culpably breach a substantial contractual obligation. In this case, however, our liability to pay damages is limited to foreseeable losses typical of the type of contract concerned.
6. The above does not affect our liability for culpable injury to life, limb or health. This also applies to obligatory liability under the German Product Liability Act. Liability is limited to the conditions of our Product Liability Insurance (copy can be provided on request).
7. Except in the cases specified above, liability is excluded.
8. The period of limitation for claims based on defects is 12 months, commencing on the passing of risk.

## VII. Overall liability

1. Any liability to pay damages over and above that specified in Section VI is excluded, whatever the legal nature of the claim made. This applies in particular to claims for damages based on culpability at the time the contract was concluded or on other breaches of obligation and to claims in tort to compensation for material damage pursuant to § 823 German Civil Code.
2. Where our liability to pay damages is excluded or limited, the same applies to the personal liability to pay damages of our employees, representatives and vicarious agents.

## VIII. Design changes

We reserve the right to change designs and dimensions at any time. We are, however, under no obligation to make the same changes of this type to items already supplied.

## IX. Reservation of title

1. We reserve title to items supplied until all payments due under the terms of the business relationship with the Purchaser have been received. In the case of a breach of contract by the Purchaser, in particular in the case of arrears with payment, we will be entitled, after setting a reasonable extended deadline, to take back the item supplied. The taking back of items supplied by us

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- does not represent withdrawal from the contract. After taking back items supplied we are entitled to sell them. The proceeds of such sale must be offset against the Purchaser's liabilities, subject to the deduction of reasonable costs of sale.
2. The Purchaser is under an obligation to take good care of items supplied. He is in particular under an obligation to insure them adequately at his own expense at their replacement value against fire, water damage and theft.
  3. In the case of attachments or other interventions by third parties the Purchaser must inform us immediately in writing so that we can bring action pursuant to § 771 German Code of Civil Procedure.
  4. The Purchaser is entitled to sell on items supplied in the normal course of business. He however assigns to us with immediate effect all claims accruing to him against his customers or third parties out of the sale on up to the final amount (including value added tax) of our invoice, regardless of whether the item concerned was sold on following further processing or not. The Purchaser remains entitled to collect on this claim after assignment. This does not affect our authority to collect on the claim ourselves, but we undertake not to collect on the claim as long as the Purchaser meets his payment obligations from the proceeds obtained, does not fall into arrears with payment and, in particular, as long as no application for the initiation of insolvency proceedings is made and payments are not stopped. If this does happen to be the case we are, however, entitled to demand that the Purchaser provide us with details of the claims assigned and of the debtors concerned, to supply us with all the information required for collection, to hand over the relevant documents and to inform the debtors (third parties) of the assignment.
  5. Any processing or transformation of items supplied by the Purchaser is always done on our behalf. If an item supplied is processed together with other items not belonging to us, we will acquire joint title to the new item in proportion to the ratio of the value of the item supplied by us (final invoice amount including value added tax) to that of the other items processed at the time of processing. In addition, the same applies to the item created by processing as to the item supplied subject to reservation of title.
  6. We undertake to release securities provided to us at the Purchaser's request to the extent that the realisable value of our securities exceeds the claims to be secured by more than 10%. The choice of the securities to be released is ours.

### X. Miscellaneous

1. Claims to supply against us cannot be assigned either in whole or in part without our written consent.
2. Our terms of business and the entire business relationship between us and the Purchaser are subject to the laws of the Federal Republic of Germany.
3. If the Purchaser is a full merchant as defined in the German Commercial Code, a public institution or a public law special fund, the exclusive legal venue for all disputes arising directly or indirectly out of the contractual relationship is Osterholz-Scharmbeck.
4. Should any provision of these terms of sale and supply or of another agreement be or become invalid, this does not affect the validity of any of the remaining terms or agreements. In place of the invalid provision a term will be held to have been agreed that comes as close as possible to fulfilling the economic purpose of the invalid one.