

General Terms and Conditions of Sale and Delivery (Issue: 01.04.2019)

1. General

1.1 Our terms and conditions of sale and delivery apply exclusively; we do not accept any terms and conditions of the purchaser which conflict with or deviate from our terms and conditions of sale and delivery unless we have expressly agreed to their applicability in writing. Our terms and conditions of sale and delivery also apply if we make delivery to the purchaser without reservation although being aware of terms and conditions of the purchaser which conflict with or deviate from our terms and conditions of sale and delivery.

1.2 Our terms and conditions of sale and delivery shall only apply to entrepreneurs within the meaning of sec. 310 para. 1 German Civil Code (BGB).

2. Offers

2.1 Our offers are without engagement, subject to confirmation and non-binding. The contract is not concluded until the acceptance of the order has been confirmed by us in writing, in electronic form or in text form. The same applies to supplements, amendments or subsidiary agreements.

2.2 The prices listed in price lists are subject to change at any time without prior notice if economic changes so require. Subject to paragraph 3 below, the prices stated in our order confirmation in addition to the respective statutory value added tax are decisive. Additional deliveries and services are invoiced separately. Unless otherwise agreed, prices are ex warehouse Osterholz-Scharmbeck excluding packaging.

2.3 If there are more than 4 months between the time of the conclusion of the contract and the delivery date, we are entitled to change the agreed price in the same proportion as the actual production or procurement price increased compared to the price we would have had to pay at the time of the conclusion of the contract due to changes in the production or procurement costs which occurred after the conclusion of the contract and which were not yet known to us at the time of the conclusion of the contract. This shall not apply if we are responsible for the change or if we are in default of performance. The purchaser has the right to withdraw from the contract if the price increase leads to an increase of more than 5 percent of the originally agreed contract price.

3. Terms of Payment

3.1 Unless otherwise agreed, payment must be made to our payment office free of charge within 30 days of the invoice date in cash without any deduction. If payment is made within 10 days of the invoice date, we grant a discount of 2%.

3.2 A payment shall only be deemed to have been made when we can dispose of the amount. In the case of cheques, payment shall not be deemed to have been made until the cheque has been encashed.

3.3 The purchaser shall only have the right to withhold payments or offset them against counterclaims to the extent that his counterclaims are undisputed or have become legally enforceable or arise from the same order under which the relevant delivery was made.

4. Time of Delivery

4.1 Periods and dates for deliveries and services announced by us are always only approximate, unless a fixed period or date has been expressly approved or agreed. If shipment has been agreed, delivery periods and delivery dates refer to the time of handover to the for-

warding agent, carrier or other third party commissioned with the transport.

4.2 We are not liable for the impossibility of delivery or for delays in delivery, if these are caused by force majeure or other events not foreseeable at the time of conclusion of the contract (e.g. operational disruptions of any kind, difficulties in procuring materials or energy, transport delays, strikes, lawful lockouts, shortages of labour, energy or raw materials, difficulties in procuring necessary official permits, official measures or the failure to deliver, incorrectly delivering or not delivering on time by suppliers) for which we are not responsible. Insofar as such events substantially impede or make impossible our delivery or performance and the impediment is not only of a temporary nature, we are entitled to withdraw from the contract. In the event of impediments of a temporary nature, the delivery or performance periods shall be extended or the delivery or performance dates shall be postponed by the period of the impediment plus a reasonable start-up period. Insofar as the purchaser cannot reasonably be expected to accept the delivery or service as a result of the delay, he may withdraw from the contract by immediate written declaration to us.

4.3 We shall only be entitled to make partial deliveries if

a) the partial delivery can be used by the purchaser within the scope of the contractual purpose,

b) the delivery of the remaining ordered goods is ensured; and

c) the purchaser does not incur any significant additional expense or costs (unless purchaser agrees to pay such costs).

4.4 If we are in default with a delivery or service or if a delivery or service becomes impossible for us for whatever reason, our liability is limited to damages in accordance with Section 7 of these terms and conditions of sale and delivery.

4.5 If dispatch or acceptance of the delivery item is delayed for reasons for which the purchaser is responsible, the costs incurred as a result of the delay shall be charged to the purchaser, commencing one month after notification of readiness for dispatch or acceptance. Notwithstanding our rights arising from the purchaser's default, we may demand from the purchaser an extension of delivery and performance periods or a postponement of delivery and performance dates by the period in which the purchaser fails to meet his contractual obligations towards us.

5. Transfer of Risk

5.1 The risk passes to the purchaser as soon as the delivery item has been handed over to the person carrying out the transport or has left our warehouse for the purpose of shipment. If dispatch or delivery is delayed due to circumstances for which the purchaser is responsible, the risk shall pass to the purchaser from the day on which the delivery item is ready for dispatch and we have notified the purchaser accordingly.

5.2 Unless expressly agreed otherwise in writing, we are entitled, but not obliged, to insure the shipments to the extent customary in the trade and to charge the purchaser with the costs incurred thereby.

6. Warranty, Material Defects

6.1 The warranty period is one year from delivery or, if acceptance is required, from acceptance. This period does not apply to claims for damages by the purchaser arising from injury to life, body or health or from intentional breaches of duty or from gross negligence committed

by us or our vicarious agents. These claims become time-barred in accordance with the statutory provisions.

- 6.2 The delivery item must be diligently inspected immediately after delivery to the purchaser or to the third party designated by the purchaser. With regard to obvious defects or other defects which would have been recognizable in an immediate, careful inspection, it shall be deemed to have been approved by the purchaser if we do not receive a written notice of defect within 7 (seven) working days from delivery. With respect to other defects, the delivery item shall be deemed to have been approved by the purchaser if we do not receive the notice of defect within 7 (seven) working days after the time at which the defect became apparent; if the defect would have been recognizable at an earlier point in time under normal use, this earlier point in time shall, however, be decisive for the commencement of the notice period. At our request, a rejected delivery item shall be returned to us carriage paid. In the event of a justified defect-related complaint, we reimburse the costs of the most inexpensive shipping route from the agreed place of delivery.
- 6.3 In the event of material defects of the delivered goods, we are entitled and obliged, at our option within a reasonable period of time, to rectify the defect or deliver a replacement. In the event of failure, i.e. impossibility, unreasonability, refusal or unreasonable delay of the rectification or replacement delivery, the purchaser may withdraw from the contract or reduce the purchase price accordingly.
- 6.4 If a defect is based on our culpable fault, the purchaser may claim damages under the conditions specified in Section 7.
- 6.5 In the event of defects in components of other manufacturers which we cannot remedy for licensing or actual reasons, we shall, at our discretion, assert our warranty claims against the manufacturers and suppliers for the account of the purchaser or assign them to the purchaser. Warranty claims against us for such defects attributable to manufacturers and/or suppliers only exist under the further prerequisites of and in accordance with these general terms and conditions of sale and delivery and on condition that the judicial enforcement of the aforementioned claims against the manufacturer or supplier was unsuccessful or is futile, e.g. due to insolvency. For the duration of a legal dispute, the statute of limitations of the relevant warranty claims of the purchaser against us is suspended.
- 6.6 The warranty does not apply if the purchaser changes, modifies or alters the delivery item or has it changed, modified or altered by third parties without our consent and the rectification of the defect is thereby made impossible or unreasonably difficult. In any case, the purchaser bears the additional costs of remedying the defect incurred as a result of the change, modification or alteration. If our operating or maintenance instructions are not followed, parts are replaced or expendable materials are used which do not correspond to the original specifications, no warranty or liability is accepted. Any warranty or liability for normal wear and tear shall be excluded.
- 7. Liability for Damages due to Fault**
- 7.1 Our liability for damages, for whatever legal reason or nature, in particular impossibility of performance, delay, defective or incorrect delivery, breach of contract, breach of duties in contract negotiations and tort, is limited in accordance with the provisions of this Section 7.
- 7.2 We are not liable in the event of slight negligence on the part of our executive bodies, legal representatives, employees or other vicarious agents, insofar as this is not a breach of essential contractual obligations. Essential contractual obligations are the obligation to deliver and
- install the delivery item on time, its freedom from defects of title and material defects which more than insignificantly impair its functionality or usability, as well as obligations to provide advice, protection and care (insofar as the purchaser is threatened with considerable damage, against which the purchaser cannot protect himself with reasonable care, and therefore could rely on the care of the seller), which are intended to enable the purchaser to use the delivery item in accordance with the contract or which are intended to protect the life or body of the purchaser's personnel or to protect the purchaser's property from considerable damage.
- 7.3 Insofar as we are liable for damages in accordance with Section 7.2 above, this liability is limited to damages which we foresaw at the time of conclusion of the contract as a possible consequence of a breach of contract or which we should have foreseen if we had exercised due care. Indirect damages and consequential damages resulting from defects of the delivery item are also only subject to compensation if such damages are typically to be expected when the delivery item is used as intended.
- 7.4 Insofar as the purchaser directly resells the delivery items or integrates them into his products and then delivers them to third parties, any damage caused by delay which may result from agreements between the purchaser and the third parties ("third party agreements") with regard to deliveries to such third parties (e.g. the agreement of contractual penalties or lump-sum compensation/liquidated damages for delay) shall be unforeseeable damage for us, unless we have expressly agreed to assume liability with knowledge of such third party agreements.
- 7.5 The above exclusions and limitations of liability apply to the same extent in favour of our executive bodies, legal representatives, employees and other vicarious agents.
- 7.6 Insofar as we provide technical information or act in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by us and the provision of information or advice does not constitute an essential contractual obligation within the meaning of Section 7.2 above, this is done free of charge and excluding any liability.
- 7.7 The limitations of this section 7 do not apply to our liability for willful misconduct, for guaranteed specifications, for injury to life, body or health or liability under the Product Liability Act.
- 8. Specifications**
- 8.1 It is the purchaser's responsibility to ascertain the suitability of the delivery item for the intended use. We shall only be bound by declarations concerning the scope of delivery, performance or quality of the delivery item if these have been expressly included in the contract or the offer, whereby, however, no provision of these terms and conditions of sale and delivery may be interpreted as an attempt to limit the liability of the parties for fraud or fraudulent misrepresentation.
- 8.2 All specifications, drawings, dimensions and weights as well as other information about the delivery item provided by us in our offer are only approximate values. The descriptions and illustrations contained in our catalogues, price lists and other advertising materials are only intended as a general description of the goods described therein and are not part of the contract.
- 8.3 Drawings and documents attached to the offer are for the personal use of the recipient only and may not be reproduced or made accessible to third parties without our express permission.

- 8.4 We reserve the right to make changes to the specifications of the delivery item if (i) this is necessary and reasonable in order to comply with the relevant legal provisions, or (ii) we replace materials or components by at least equivalent or higher-quality materials or components on the basis of availability or production requirements, and in both cases, in particular, the quality of the delivery item is not significantly impaired thereby.
- 9. Retention of Title**
- 9.1 The delivery item remains our property until full payment has been made.
- 9.2 The purchaser is obliged to treat the delivery item with care, in particular he is obliged to sufficiently insure it at his own expense at replacement value against fire, water and theft damage. Insofar as maintenance and inspection work becomes necessary, the purchaser must carry it out at his own expense and in a timely manner.
- 9.3 The purchaser is entitled to resell the delivery item in the ordinary course of business as long as he is not in default of payment. However, he may not pledge the delivery item or assign it by way of security. The purchaser's claims for payment against its customers arising from the resale of the delivery item as well as the purchaser's claims with regard to the delivery item arising from any other legal grounds against its customers or third parties (in particular claims arising from unlawful acts and claims for insurance benefits), including all balance claims from current accounts, are hereby assigned to us in full by way of security, irrespective of whether the delivery item has been resold without or after processing. We accept this assignment.
- 9.4 The purchaser may assert the claims assigned to us on his own account in his own name for us as long as we do not revoke this authorization. Our right to assert these claims ourselves shall not be affected thereby; however, we shall not assert the claims ourselves and shall not revoke the authorization as long as the purchaser duly meets his payment obligations. If, however, the purchaser is in breach of contract - in particular if he is in default of payment - we can demand that the purchaser informs us of the assigned claims and the respective debtors, notifies the respective debtors of the assignment and hands over all documents to us as well as provides all information which we require to assert the claims.
- 9.5 The processing or modification of the delivery item by the purchaser is at all times carried out on our behalf. If the delivery item is processed with other items not belonging to us, we acquire joint ownership and property of the new item in the ratio of the value of the delivery item (final invoice amount, including VAT) to the other processed items at the time of processing. The same principle as to the delivery item delivered subject to reservation of title shall apply to any item created by processing.
- 9.6 In the event of pledging of the delivery item by third parties or other interventions by third parties, the purchaser must point out our title and must inform us immediately in writing so that we can enforce our title rights. If the third party is unable to reimburse the court or out-of-court costs incurred by us in this context, the purchaser is liable for these costs.
- 9.7 We undertake to release the securities to which we are entitled at the purchaser's request to the extent that the realizable value of our securities exceeds the claims to be secured by more than 10%; the choice of the securities to be released is incumbent on us.
- 10. Miscellaneous**
- 10.1 Delivery claims against us may not be assigned in whole or in part without our written consent.
- 10.2 Our terms and conditions of sale and delivery and all business relations between us and the purchaser are governed by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- 10.3 If the purchaser is a registered trader within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, or if he does not have a general place of jurisdiction in the Federal Republic of Germany, Osterholz-Scharmbeck is an additional place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship, which is exclusive for actions against us. Deviating mandatory legal provisions on exclusive places of jurisdiction remain unaffected by this provision.
- 10.4 Should any provision of these terms and conditions of sale and delivery or any provision within the scope of other agreements be or become invalid, this does not affect the validity of all other provisions or agreements. Instead of the invalid provision, a provision shall be deemed agreed which comes as close as possible to the meaning and economic significance of the invalid provision.