

Terms of sale and delivery

Valid from 11/2011



- 1. General:** These terms and conditions, with which the Purchaser agrees when placing the order, even if not expressly referred to them, but which the Purchaser received with a confirmed order from us, apply exclusively to all - including future - offers, supplies and Performances. Any and every terms and conditions of the Purchaser's that depart from these terms and conditions are hereby strictly opposed. Deviations from these terms and conditions shall be effective only, if accepted by us in writing. In the case that purchaser should not agree with the foregoing approach, the purchaser shall be bound to voice an objection immediately in writing. We reserve the right to withdraw from the order in this instance and no claims of any kind shall be allowed then. If the order is placed differently from our terms and conditions, also only our delivery and payment conditions shall apply, even if we not contradict. The following terms and conditions shall apply as prio-ranking Supplements for other Performances to the extent that they enter to content of this contract:
 - Special conditions for installations;
 - Special conditions regarding development and transfer of individual customized products.
- 2. Our offers:** are at all times subject to change without notice and without Obligation. Contracts will take effect only on grounds of our written acknowledgement of an order. Agreements made with our agents shall be effective only, if confirmed by us in writing. Any subsequent changes shall also require written form. All sales documents, such as brochures, drawings and material specifications shall remain our property. They fall under Copyright protection and are solely subject to our power of disposal.
- 3. Purchase Order:** Purchase Orders shall become binding with regard to their scope and content only on grounds of our written acknowledgement of order. This applies likewise to any potential verbal agreements, changes and other agreements arrived at with us and our agents. Reserve is made for correcting errors in our quotations, order acknowledgement and invoices. All dimensions, weights and any specified Performance data indicated are binding only by way of approximate values. To the extent that such changes be reasonable, all data specified expressly as binding are subject to changes by us (particularly, if required by technical modifications). Moreover, always provided that the price be the same, or - if in the case of goods of a superior specification - the price is only slightly higher, we are entitled to supply other than the makes ordered, if the technical specification is the same and/or only deviates slightly from the purchase order.
- 4. Prices:** The prices quoted are valid for delivery ex/factory, exclusive of packing and freightage, plus the value-added tax as valid from time to time. In the case that considerable price increases bearing on the pricing factors (customs duties, wages, raw material costs, exchange rate movements, etc.) shall occur with regard to purchase Orders involving a delivery time exceeding four (4) months, or with regard to successive delivery agreements (not involving a delivery time) after the acknowledgement of order and prior to delivery, we shall be permitted to adapt the price accordingly, whereas customer shall be allowed to withdraw from contract at the exclusion of any further Claims. Increases of five (5) percent relative to the net price rank as considerable increases. Fixed prices shall be expressly agreed as such in writing. In this case, also, they will not apply to follow-up Orders and with (any and every) subsequent change of quantities to be supplied and dates of delivery specified by Purchaser. When agreeing prices in a foreign currency, Purchaser shall be bound to refund us for any disadvantages arising from changes of the exchange rate by way of a surcharge raised on the agreed price.
- 5. Terms of payment:** Unless agreed to the contrary in writing, our invoices shall be due net cash within thirty (30) days of the date of the invoice irrespective of the date of receipt of the goods. Unless we have not contested a counter-claim and/or a counterclaim be adjudicated in favour of Purchaser by decree of court, Purchaser shall not be allowed to offset against counterclaims we have not acknowledged. Purchaser shall have no right of retention, unless such retention be based on the same contract relationship. Existing warranty Claims shall have no bearing on the maturity of our invoices. Even though payments may be made for certain goods as indicated (sec. 367, 366 German Civil Code) all payments received will be set off against the most long-standing account receivable at a time. Cheques and other instruments of payment are acceptable for payment only on grounds of an express agreement, and in fact, without guarantee for protest and only under the condition of eligibility for discount. All costs of redemption, bank interest and changes shall be borne by Purchaser. If circumstances should transpire that allow for assuming the Purchaser's credit rating to be low, then, even after the contract has been made and over and above sec. 321 German Civil Code, we shall have the right to demand immediate and adequate security or immediate payment. This shall apply, in particular, when in the existence of a trade credit insurance, the insured total receivables will be reduced. We shall be entitled to accelerate the due date of the total of our receivables and to claim ownership of the goods supplied by way of security, if Purchaser is defaulting in regard to a part of the accounts payable. In the case of default, we shall be entitled to Charge interest on arrears at a rate of eight (8) percent (five (5) per cent for Consumers) above prime rate without prejudice to the enforcement of further rights. If the Purchaser is towards us in delay with any payment obligations, all existing receivables become due immediately. Credit notes for goods repurchased and credit notes granted as agreed can be squared only by the purchase of goods. We are entitled to assign claims arising from our business relationships.
- 6. Deliveries:** The terms and dates of delivery are proximate only: we shall make every effort to adhere to them. The agreed terms of delivery counts as of the date on which the written agreement between Purchaser and ourselves regarding the purchase order is on hand. The term counts as complied with on notification of the readiness for despatch. The term may be extended (without prejudice to our rights resulting from default on the part of Purchaser) by the period during which Customer is defaulting with regard to any accounts payable under this present or any other contract. We shall be allowed to make part deliveries of reasonable extent and issue part invoices. We shall be dispensed from our obligations to fulfil the contract in the event that we be prevented from delivering by Force Majeure, labour dispute, riot, lack of energy, restriction of labour, failure of vehicles and means of transport, obstruction of the work cycles in our, or our subcontractors facilities, or by similar circumstances which were unavoidable in spite of reasonable diligence on our part. In the event that delivery becomes impossible on this account, then our Obligation to perform shall lapse. We shall in particular be exempted from our obligations in as much as our suppliers be admissibly dispensed from supplying under their Standard terms of delivery and payment. We shall not be responsible either for obstructions that arise in the course of a default that already exists. We are, however, entitled to carry out the delivery on termination of the obstruction and expiration of a fair start-up time. Purchaser is entitled to demand a Statement as to whether we shall be supplying within an appropriate period of time. Our failure to respond shall be deemed to be a refusal. Without any restraint to the right of withdrawal according to sec. 437 Nr. 2 of the German Civil Code (BGB) the Purchaser is entitled to cancel a contract due to not complying to delivery times or Services to render agreed upon in contract only in case that we can be held responsible for not rendering the Services or not complying to delivery times agreed upon in contract and the Purchaser has given us a moderate period of grace before, provided that granting an extension time according to legal regulations is not superfluous. The period of grace shall be four (4) weeks at least. The risk shall pass to the consignee with the despatch of the goods and shall do so even if the place of despatch is not the place of Performance according to these provisions. Losses and damage in transfer shall be at consignee's expense. Transport insurances will be taken out only on Purchaser express demand and only if agreed upon. If the goods are ready for despatch whereas, acceptance and/or delivery are delayed for reasons beyond our influence, then the risk shall pass to Purchaser on the latter's receipt of our notification of readiness for despatch. Such notification may be made by fax transmission. Delivery of consignments on hold shall be taken on/or before eight (8) days of the date of notification of readiness for despatch. In the event that - after elapse of this term - Purchaser should not take delivery within a stipulated follow-up term of another eight (8) days, or if Purchaser seriously refuses to take delivery, then we shall be entitled to claim an indemnification for non-compliance, or withdrawal from the contract in whole or in part. Apart here from, we shall be entitled to Charge storage costs. In the event that - for reason beyond our control - we shall exceed the agreed non-committal date of delivery by fourteen (14) days and always provided our suppliers shall have supplied correctly and on time, then we may be served formal notice of default. If we fail to deliver within a given and appropriate term after having received a further warning, then, provided Purchaser shall in its notice of warning declare that it intends to refuse to take delivery after elapse of the term and confirms such refusal on expiration of the term, Purchaser shall be free to withdraw from the contract, or to claim an indemnification according to item 9. hereinafter. If part deliveries shall have been made at this time, then such Claims raised by Purchaser shall only apply to the goods that have not yet been delivered unless a partial contract fulfillment is objectively acceptable for the Purchaser.
- 7. Notices of defect:** Unless notices of defects are not governed by a Special agreement and, in particular, are not excluded for the reason that Purchaser be bound to check and accept the goods prior to despatch, the following shall apply: Defects may be notified only inasmuch as the reason for the objection already existed at transfer of the risks. This also applies for potential Special warranties assumed in writing. Slight variations in shade do not constitute a defect. In the case of apparent defects, objections must be raised immediately in writing, or within a week of receipt; in the case of latent faults, objections must be raised in writing immediately on their detection at the latent, however, within twelve (12) months (twenty-four (24) months for Consumers) after receipt. Any and every warranty shall be excluded, if the objection is not raised within the stipulated period of time. The assertion of an objection shall also be excluded, if after transfer of the risks, the State of the goods has changed. This exclusion also applies in the case that the goods were installed, or that modifications of whatever kind were made, or that the goods were applied in a manner contrary to the technical labeling, or were returned in an adequate packing to the extend that the defect underlying the warranty claim may have been caused by such inadequate packing. In the case that we shall have accepted objections we shall replace the goods, or remedy the defects free of Charge, or pay the counter value of the goods at our choice provided the goods were returned to us freight-paid. If any remedying of a defect shall miscarry more than once, then Purchaser's right to claim redhibition and conversion under the German Civil Code will be revived. Purchaser's claim for damages and right to withdraw from contract shall be excluded unless the remedy of defects or supply of replacements shall miscarry. In the case of subsequent deliveries, objections on grounds of slight variations in shade will be excluded if we fail to react on time in spite of having been warned and allowed a deadline, then Purchaser shall have the right to demand recession of the contract. This applies also in the case that, in spite of our having been warned and allowed a period of grace, the remedy of defects shall be delayed, or not be undertaken for reasons of inability and/or shall miscarry for reasons beyond our control. If remedy of defects fails or we fail to declare to choose a suitable warranty Option in good time the legal warranty rights of the Purchaser shall revive. Claims for indemnity are only applicable if according to item 9. Hereinafter unless an appearance guarantee has been given or deficiencies have been maliciously concealed. In the case that Purchaser refuses a possible and appropriate remedy of defects, then any and every warranty claim shall lapse. Performance of the warranty shall not establish any independent warranty claims or terms. No warranty for the fitness of the goods for the purpose intended by Purchaser will be assumed unless such fitness as desired by Purchaser shall have constituted the expressly acknowledged object of the contract. In particular, no warranty as regards disposition and utilization of the goods is assumed for the case that such disposition and utilization be or become obstructed in any way by official regulations (e.g. an embargo or export permits). Information, advice and/or recommendations regarding the application, compatibility and other Performance characteristics shall be binding on us only if same were expressly confirmed in writing to Purchaser and/or interested parties.
- 8. Reservation of title:** Our deliveries are made exclusively under reservation of title. Even if payment be made for certain goods as identified the title to the goods shall pass to Purchaser only after all accounts receivable resulting from the commercial relations have been settled. In the existence of a current account, the reserved property shall apply as security for the credit balance. Any working or processing of reserved goods by the Purchaser on our behalf will be done without incurring any obligation for us. In processing, combining or mixing the goods with other goods not owned by us, we will get the resulting co-ownership right to the new object in proportion to the value of the goods to the other processed goods at the time of processing, combining, mixing or blending. If the buyer acquires sole ownership of the new object, then the parties agree that the Purchaser in relation to the value of the processed, combined, mixed or blended reserved goods confers ownership of the new thing to us and secures it for us without cost. The Purchaser has the right to resell the reserved goods in the ordinary course of business only in that case, if he hereby cedes already now all account receivables accruing to him out of the resale to customers or third parties. Purchaser shall inform us immediately of any attachment of the goods and/or of any other legal or actual impact exercised on the goods by third parties and shall transmit to us any documents that may be necessary for defending our rights. In the event the reserved goods - in unprocessed state or after processing or in connection with items which are exclusively the property of the buyer - are sold, the Purchaser herewith assigns already at this time the accounts receivables out of the resale in full amount to us. If reserved goods of the Purchaser - after processing / combining - are sold together with goods not owned by him, the Purchaser herewith assigns already now the account receivables out of the resale amounting to the value of the goods with all ancillary rights and priority over the rest to us. We will accept this assignment. Subject to revocation, Purchaser shall be authorized to collect such receivables and be bound to hold the sums collected separately for our account and to transfer them immediately to us. Our authority to collect the receivables ourselves remains unaffected, but we will undertake not action to collect the receivables as long as the customer meets his payment and other obligations properly. We may require that the customer discloses the assigned receivables and their debtors, provide all information necessary for collection, hand over the relevant documents and inform the debtors about the assignment. In case that an over-securing exceeding twenty (20) percent of our accounts receivable shall occur, then we shall be bound to transfer accordingly at our choice on Purchaser's request. In the case that Purchaser's credit standing and/or solvency be restricted, we shall moreover be entitled to demand immediate Separation of the reserved property and the institution of measures for safeguarding and realizing our charging lien in an unlimited manner. This includes, in particular, recovery of the reserved goods and the right for our representatives to take access to Purchaser's premises for this purpose. Claims for restitution, taking possession of reserved property and assertion of assigned receivables and any other rights shall be allowed without necessitating withdrawal from contract.
- 9. Liability:** If not explicitly declared otherwise by these conditions indemnity Claims, no matter what legal cause off, against us can only be raised in case of intent, gross negligence, harm to life, body or health of the Purchaser and/or breach of essential contract duties. Except for cases of intent our liability shall always be limited to damage that is foreseeable at conclusion of contract. In no respect can any warranty be extended to Purchaser for a punctual and confirming delivery of goods by our suppliers and/or sub-suppliers.
- 10. Export control:** Even without Special notice, in case of doubt, all our goods shall be subject to an export permit Purchaser recognizes German and also foreign export control regulations and restrictions and, in case that such transaction shall violate German or foreign laws or regulations, Purchaser undertakes to refrain from selling or exporting, or re-exporting, or supplying, or transmitting in any other manner such products or technical information either directly or indirectly to persons, companies or countries, and Purchaser engages to obtain all necessary export licenses or other documents prior to the export of products and technical information procured from us. Purchaser furthermore engages to commit all consignees of such products or technical information in the same manner and to inform them on their Obligation to comply with the said rules and regulations. Purchaser shall procure and bear the costs of all licenses and export and import documents required for the purchase and potential resale of our products.
- 11. Contracts with Consumers:** the foregoing terms and conditions shall, in principle apply to contracts with non-traders with the following definitions: In absence of a continuous obligation, the price indicated in the acknowledgement of order will be charged for deliveries made during the four (4) months following conclusion of contract unless the price increase be based on a change of the taxes or customs duties burdening the item supplied or a change in the exchange rates. Deliveries made after the aforementioned period of time will be charged at the price as valid on the date of delivery. A potential right to refuse Performance or a right of retention may be asserted only inasmuch as this right shall be based on the same contract relationship. In the event that a potential rectification of a defect or a replacement shall miscarry, then the Purchaser will be entitled to claim a reduction of the payment, or recession of the contract at his choice. Notice of objection regarding a latent fault must be lodged in writing inside the statutory terms.
- 12. Place of Performance, Jurisdiction:** The place of Performance is the place of our supply plant. The contractual relationship is exclusively subject to German law, in particular the Civil Code and the Commercial Code, at the exclusion of the international on sale of goods. For traders (who are not small traders as defined in sec. 4 (German) Commercial Code) and for legal entities under public law or public separate estate and all other respects, jurisdiction will be at the place of our head office.
- 13. Final Clause:** Purchaser may assign rights accruing under this contract to third parties only after having obtained our prior written consent. Should any one Provision of these Standard conditions of sale be or fall void, then the other provisions shall nonetheless remain effective. The Provision so voided in whole or in part shall in that case be replaced by a relevant admissible agreement that reflects the economic content of the inoperative Provision (and/ or the part there of that is inoperative) as dose as possible.
- 14. Wage work:** the foregoing standard conditions of sale analogously apply to wage work. The following additionally applies to wage work: We warrant perfect workmanship according to DIN for iron and steel. We engage to rework any products free of Charge in case of deviation in dimensions exceeding DIN tolerances and in case of rejects we are verifiably accountable for. We will not indemnify for direct or indirect damages. Our liability for defects will not cover defects resulting from latent defects in the material supplied to us.
- 15. Electronic Data:** Our data will be stored in our EDP System, (sec. 28 Federal Data Protection Act.)