

General terms and conditions of delivery and payment



I. Scope

1. For our services and purchases, only our following general terms and conditions are valid. Save where expressly accepted in written form or otherwise agreed, deviating conditions from suppliers and purchasers do not apply for us. If we do not comment on deviating conditions, this does not mean that we agree with the conditions of the user. We hereby expressly contradict any deviating conditions of the respective supplier and customer. By accepting or sending the goods, the customer / supplier acknowledges our general terms and conditions, even if the customer / supplier contradicted them before.

2. For commercial transactions, these general terms and conditions of delivery and payment are valid for all business relations in the future. Part of the commercial business are also our business relations to merchants within the meaning of the commercial law who act within the frame of their commercial operations, corporate bodies under public law, and special funds under public law.

II. Terms and conditions of delivery and payment

1. Conclusion of contract, delivery and liability

1.1. Our offers are subject to change; they only become binding if they are confirmed by us in written form (letter, fax, e-mail). Deliveries and invoices are equal to the confirmation in written form. Amendments, deviations or subsidiary agreements are subject to our written confirmation as well; otherwise they will not be effective.

1.2. By ordering a product, the customer bindingly declares to be willing to purchase the ordered product. We are authorised to accept the contract offer contained in the order within 2 weeks after receipt. We can accept the order in written form (letter, fax, e-mail), or by delivering the product to the customer.

1.3. Dimensions, weights, illustrations and drawings are only binding for the implementation, if we expressly confirm this in written form (letter, fax, e-mail). Gross weights and box dimensions are approximate values and are not legally binding. Particularly the explanations and descriptions contained in advertising material, manuals and/or price lists do not represent agreements relating to a specific condition.

1.4. Technical modifications, as well as modifications in form, colour, and/or weight remain reserved within the bounds of what is reasonable. Deviations in the course of technical progress remain reserved without the customer being able to derive any rights against us thereby.

1.5. In case of delayed delivery, impossibility of service, or other breaches of duty, our liability in the field of intent and gross negligence is limited, except if damages to life, body and health occur, or if the contractual cardinal obligations have been neglected. The compensation to be paid by us due to aforementioned breach of duty amounts to at most 5 % of the invoice value of the respective performance.

1.6. Cases of impairment of service due to force majeure at our site or at the sites of our subcontractors release us from our liability for the duration of the impairment and to the extent of their consequences. Events of this kind entitle us and our customers to partially or completely withdraw from the contract. In this case, neither the customer nor we can make any liability claims.

1.7. We are always entitled to partial service or partial delivery.

2. Risk assumption on delivery

All consignments are routed for account of and at the risk of the commercial customer. With regard to the transfer of risks, this is also valid, if carriage free delivery has been arranged. By handing the goods over to the freight forwarder or to the company entrusted with the delivery, the risk of accidental perishing or accidental deterioration is transferred to the commercial customer.

3. Payments, title retention

3.1. For our terms of payment, see our offers or invoices. In case of delay, default interest amounting to 8 % above the respective base rate of the European Central Bank is stipulated.

3.2. We reserve the right of property concerning the delivery item, until all payments from the business relationship with the customer have been received. The title retention also extends to the accepted balance, as far as we book accounts receivables from the customer in the current account.

3.3. The customer is entitled to resell and process the delivery item in the proper course of business; however, the customer is assigning to us all claims amounting to the final invoice amount (VAT included) which arise from the processing or the resale against his purchaser or against third parties, regardless of whether the delivery item has been resold without or after processing. The customer is also entitled to collect this claim after it has been assigned. Our authorisation to assign the claim will remain unaffected by this; however, we commit ourselves not to assign the claim, as long as the customer duly meets the payment obligations and is not in default of payment. In this case, we can demand that the customer announces the assigned claim and its debtor and gives full particulars which are necessary for the collection. In particular we can demand that the customer notifies us, if the assigned claim is contested, and we can demand that the customer hands the corresponding documents over to us and informs the debtor (third party) of the assignment.

3.4. If the delivered item is inseparably mixed with other items not belonging to us, we gain co-ownership of the new item at the ratio of the value of the delivered item to the other intermixed items at the point of time of the intermixing. If the items are mixed in such a way that the item of the customer is to be considered the main item, it is deemed to be stipulated that the customer transfers partial co-ownership to us. The customer keeps the sole ownership or the co-ownership on our behalf safely and handles it with care.

3.5. By taking back the delivered item, we do not withdraw from the contract, unless we have expressly declared this in written form. The garnishment of the delivered item at the customer's site always represents a withdrawal from the contract. In case of garnishment or other interventions/accesses by third parties on or to the delivered item, the customer immediately has to inform us in written form, so that we can take action according to § 771 ZPO (civil process order). As far as the third party is not able to pay us the judicial and extrajudicial expenses according to § 771 ZPO (civil process order), the customer will be liable for damage or loss incurred by us.

3.6. When required by the customer, we commit ourselves to release securities which we are entitled to insofar, as their value exceeds the claims to be secured by more than 20 %, if the claims have not been paid yet.

4. Warranty and liability

4.1. The period of warranty is 24 months. If the customer is a merchant, complaints about the delivery due to a material defect or a wrong delivery are to be communicated to us in written form within one week after the goods have been received. In case of a concealed defect, the defect has to be communicated to us in written form within one week after it has been discovered. If the customer refrains from reporting the defect, or if the item is processed and resold by the customer, the item is considered to be approved as flawless.

4.2. The processing of our products always happens at the risk of the customer. Our application-technological advice, also with regard to possible property rights of third parties, is not binding and does not liberate the customer from the examination of the products concerning their aptitude for the customer's purposes. If the customer gives us a particular processing instruction, we are liable for the observance of this instruction only. Advanced claims are hereby excluded.

4.3. Deviations within the customary tolerances from the dimensions and weights which have become the subject matter of the contract are not considered defects.

4.4. If third parties want to claim compensation from us for damages which do not originate from our production area, but from an area to be attributed to the customer, the customer is obliged to release us from such claims.

4.5. In the first instance we will pay damages or carry out remediation work for a duly reported essential defect which arose by a breach of duty on our part and demonstrably not after delivery. If an indemnification or remediation work is not possible, if it should fail twice, or if we do not perform those services within a reasonable period of time, the customer is entitled to reduce the purchasing price or to withdraw from the underlying contract. Advanced claims are, as far as permitted by law, excluded. However, the customer is only entitled to reduce the purchasing price or to withdraw from the contract, if the customer has fixed a deadline of at least 10 work days for indemnification or the performance of remediation work under penalty of price-reduction or withdrawal. The withdrawal has to be announced in written form. If the customer chooses to withdraw from the contract because of a deficien-

cy in title or a material defect after failed supplementary performance, the customer is in addition not entitled to damages because of the defect. In all cases of a justified notice of defects, claims that exceed the claim for the remediation of defects or the replacement delivery due to a breach of duty on our part with regard to merchants are limited to intent and negligence, excepting damages to life, body, and health. However, we can refuse to remedy justified defects, as long as the customer does not meet the payment obligations amounting to the value of the work already performed, taking the defect into account.

4.6. The assertion of warranty claims does not influence the terms of payment.

4.7. As far as permitted by law, claims for damages due to culpa in contrahendo, claims due to infringement of the duty to take care, tort claims, and claims for damages due to subcontractual breaches of duty (e.g. duty to advise) are excluded. In particular, we are liable for advice, only if a particular recompense has been stipulated for this in written form.

4.8. Moreover, the warranty expires, if defects on the delivered items are due to improper handling, to a violation of the application instructions, to a violation of the generally acknowledged rules of technology, to wear and tear, to neglected maintenance, to unfavourable operating conditions, or to interventions or modifications of the products which the customer or a third party has carried out without our prior approval. The customer has to provide proof that the defect is not due to the reasons mentioned before.

4.9. A liability for warranted characteristics can only be assumed, if we expressly declare this in written form. For the liability because of the absence of the warranted characteristics, the preceding paragraph is correspondingly valid for commercial transactions.

III. Terms and conditions of purchase and payment

1. Ordering, delivery, quality and environment

1.1. Our orders are only binding, if we have placed them in written form. If orders are placed without quotation of prices, the lowest current price is to be calculated. We reserve the right of subsequent price criticism. Every order has to be confirmed within 10 work days under specification of a particular delivery date. Our order number has to be attached to all order acceptances, dispatch notes, delivery notes and invoices. Individually written terms and conditions have priority over the printed terms and conditions.

1.2. The stipulated delivery dates of the supplier are binding. If circumstances become known to the supplier which could result in a delay of the delivery, the supplier is obliged to immediately inform us about this. In this case we are entitled to set the supplier a new reasonable deadline. If this deadline expires without any results, we are again entitled to withdraw from the contract and to claim damages.

1.3. All deliveries shall be made exempt from charges for us and at the risk of the supplier. Deliveries shall be made to the stipulated address for shipment. A packing slip with precise index has to be enclosed with every delivery. The receipt of goods which is documented by us in written form does under no circumstances equal the immediate goods inwards inspection of the incoming delivery.

1.4. Transport insurance is to be effected only, if our order contains an accordant instruction.

1.5. All orders have to be processed in consideration of the current guidelines according to DIN EN ISO 9001 (quality) and DIN EN ISO 14001 (environment).

2. Payment

Our payments will be made according to the agreements concluded with the supplier.

3. Engineering data and manufacturing equipment

3.1. We reserve the absolute right of ownership and copyright for all engineering data and all information, documents and data contained therein, as well as for all other objects which we handed over to the supplier, such as tools or devices. Without being asked, the supplier has to return all objects, including possible copies manufactured by him, upon completion of his task, or upon our request, earlier; this also applies to inspection and manufacturing records. The supplier has to store all objects handed over to him with commercial due diligence exempt from charges; he also has to have the objects insured at his own expenses and has to be able to give proof of this, if we demand such proof.

3.2. The supplier is sworn to secrecy with regard to data and information about our customers, to documents, business data and business process information made accessible to him by us. These are only to be used exclusively for us within the scope of the respective order.

4. Warranty

4.1. We reserve the right to make the notice of defects with respect to obvious defects, when the goods inwards inspection is carried out. This inspection can be carried out time-delayed as well, until the goods are taken from the stock to the manufacture.

4.2. We can correct defects ourselves at the expense of the supplier in order to prevent major damages in urgent cases, or if the supplier is in default.

4.3. The period of warranty is 24 months. If the work of the supplier is used by us in connection with one of our products, and the defectiveness emerges only during the operation of this product, the supplier is liable for a period of 24 months from transfer of risks of his work to us.

4.4. The supplier has to assume the product liability in so far, as it is conditioned by his work. He has to have this risk sufficiently insured and has to be able to give proof of this, if we demand such proof.

4.5. The supplier is also liable under exclusion of § 442 BGB (German civil code) for possible violations of property rights of third parties by his delivery or work.

IV. Final provisions

1. Place of performance, conflict resolution, contract amendment

1.1. The place of performance for all services and payments is our head office in Aalen.

1.2. For commercial transactions, Aalen is stipulated as venue for all claims resulting from the business relation.

1.3. For the contractual relationship, the German law applies. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

1.4. Subsidiary agreements, changes and/or additions to these general terms and conditions are to be made in written form in order to become effective. The requirement of the written form also applies to modifications or additions to the written form requirement at hand.

1.5. If one of the preceding terms should be or become partially or completely ineffective, this does not affect the validity of the remaining terms. In this case, the parties will make legally effective arrangements, which are closest to the ineffective term according to its spirit and purpose.