

Sales and delivery terms valid as of 01.05.2002

Scope of the terms

1. These terms of sale apply to companies, corporate bodies governed by public law and special funds governed by public law.

All services and goods are exclusively subject to the terms and conditions stated here.

A partner's terms of business have no validity unless we have explicitly accepted them.

General regulations

2. The contract partners will confirm verbal agreements in writing without delay.
3. Offers are subject to change. Orders are not binding until we have issued an order confirmation. Our written order confirmation constitutes a binding contract, for goods that are to be specially manufactured. This shall also apply in the case of orders where clarification is still required that could have an effect on delivery times and prices.
4. The information and visual depictions in brochures and catalogues are customary approximations, unless we explicitly state otherwise and confirm they are binding.

Long-term contracts, call-off purchase agreements, and price adjustments

5. Unlimited contracts are subject to six month's notice.
6. Should there be substantial changes to labour, material or energy costs, in cases of long-term contracts (contracts with a term of more than six months, or unlimited contracts), then each contractual partner is entitled to demand an appropriate price adjustment that takes the factors listed above into consideration.
7. Unless a binding order quantity has been agreed upon, our calculation will be based on the non-binding order quantity (target quantity) expected by our partner within a certain timeframe.

If the partner does not take delivery of the target quantity, we are entitled to increase the price per piece appropriately. Should the partner take delivery of more than the target quantity, then the price per piece will be reduced accordingly as appropriate, provided that the partner has declared the increase in demand at least 3 months prior to delivery.

8. In the case of call-off purchase agreements, binding quantities are to be disclosed at least 2 months prior to delivery date unless agreed otherwise.

Extra costs incurred by the partner because of a delayed on call order or subsequent changes to the on call order with regard to time and quantity must be carried by the partner; our calculation is decisive.

Confidentiality

9. Both parties to the contract will treat confidentially all documents (these also include samples, models and data) and information that have come into their possession in the course of their business relationship. Each party will use the other party's documents and information only for matters of joint or mutual interest and treat them with the same care and level of confidentiality as their own documents. This applies to documents that the other partner refers to as confidential, or where it is obvious that their non-disclosure is in the other partner's interest.

This obligation begins as soon as any document has been handed out or information has been disclosed, and ends 36 months after the business relationship has come to an end.

10. This obligation does not extend to (or apply to) the following documents and information: those already in the public domain, or those already known to the contractual partner at the time of transmission, but not subject to any previous confidentiality agreement or obligation; or those that were subsequently transmitted by a third party authorised to do so, or were created by the recipient party without recourse to or use of confidential documents or information in the possession of the other contractual party.

Technical drawings and descriptions

11. Should a contractual party put drawings, or other technical documents relating to the delivered goods or the way they are manufactured, at the partner's disposal, then these remain the property of the partner that has provided them.

Samples and tools

12. The costs incurred for manufacturing samples and production material (tools, forms, templates etc.) will, if not otherwise stipulated, be invoiced separately. This also applies to production material that must be replaced due to wear and tear.
13. The costs for servicing and correct storage, as well as the risk of damage to or destruction of the production materials, will be borne by us.
14. Should the partner discontinue or terminate the cooperation while samples and production materials are being produced, he is liable to pay for all the accrued manufacturing costs to date.
15. The production materials will remain in our possession until the delivery contract has been fulfilled; this also applies if the partner has paid for the materials. Thereafter the partner may request the production materials if a mutual and amicable agreement as to the time point for the handover has been reached, and the partner has fulfilled his contractual obligations in full.
16. We will store the production material free of charge for a period of three years after the last delivery to our partner. Thereafter we will ask the partner, in writing, to express his intentions regarding the future use of the materials within six weeks. Our obligation to store these materials ends after this period of six weeks should the partner not have expressed his intentions or placed a subsequent order.

17. Production materials that we have made for a particular partner may only be used for supplying third parties if previously agreed upon in writing by the original partner.

Prices

18. Our prices are quoted in euros exclusive of VAT, packaging, freight, postal charges and insurance fees.

Payment conditions

19. Invoices must be paid within 30 days from the date stated on the invoice.

20. Should we deliver part of an order containing indisputably faulty goods, the partner is still obliged to pay for the remaining goods in the order, unless the partial delivery is to no further avail to him. Incidentally, the partner may only offset claims when these are legally determined and undisputed.

21. In the case of overdue payments, we are authorised to charge interest according to the rate that the bank charges for the overdraft on our current account. This is at least 8 percentage points above the respective current base rate at the European Central Bank.

22. In case of late payments we are, after notice in writing to our partner, entitled to withhold our obligations until acquittance of all debts.

23. Bills of exchange and cheques will only be accepted on agreement and on account of payment and under the premise that they are eligible. Discount charges will be calculated from the date the payment is due. A guarantee for the timely submission of the B/E and cheques and for the charge on bill protest is excluded.

24. If, after the conclusion of the contract, we determine that our payment claims are at risk because of performance ambiguity on the part of the partner, we shall be entitled to withhold delivery; we shall also have the right to determine an appropriate time limit during which the partner partakes in delivery versus payment or can provide security. Should the partner disclaim or not meet the time limit, we shall be entitled to withdraw from the contract and claim for damages.

Delivery conditions

25. Unless agreed otherwise, our delivery terms are ex works. Decisive for adherence to the delivery date or deadline is the confirmation of dispatch and/or availability for collection from our side.

26. The period of delivery begins when our order confirmation has been sent out and can be extended accordingly if and when the conditions in clause 55 should arise.

27. Partial deliveries are acceptable to a reasonable extent. These will be billed separately.
28. Excess or short deliveries are permitted within a 10 percent tolerance of the total order quantity if the difference results from technical or production causes. The total price will therefore also change accordingly.

Dispatch and transfer of risk

29. The partner is obliged to immediately take delivery of goods that are confirmed as ready for dispatch. Otherwise we are entitled to either dispatch these goods at our own discretion or store them at our partner's expense and risk.
30. Delivery free site always means delivered by lorry at ground level on streets accessible for lorries. The buyer is responsible for the unloading and the transport to the application site or the loading point. In case of delay in this respect, the buyer bears the costs and risk for unloading, stacking, storing and return transport. The consignee, who at the unloading point acts on behalf of the buyer, is held authorised to take binding receipt of the delivery.
31. In the absence of special agreement, we shall choose the means and route of transportation. As soon as the goods are transferred to the railway or the forwarder or at the beginning of the storage period, but at the latest when the goods leave the plant or the place of storage, the risk is transferred to the partner. This applies even if we have undertaken the delivery ourselves.

Default in delivery

32. If we can foresee that the goods cannot be delivered in due time, we will notify the partner in writing without delay, explain to him the reasons for the delay as well as state the estimated delivery date if possible.
33. If the delay results from one of the circumstances under clause 55 or from an action or an omission on the part of the partner, an adequate extension of the delivery period will be allowed for.
34. The partner is only entitled to withdraw from the contract if we are to be held liable for the failure to deliver in due time and the partner has, without success, given us an adequate extension of time.

Retention of title

35. The retention of title of the delivered goods remains with us until all receivables from the business relationship with our partner have been fulfilled.
36. The partner is entitled to sell these goods in the ordinary course of business as long as he fulfils his obligations from our business relationship in due time. However, the partner must not use the products delivered under the retention of title as a pledge or as security.

The partner is obliged to ensure our rights when reselling on credit the products delivered under the retention of title.

37. In case of breach of duty on part of our partner, especially if payment is delayed, and provided that an appropriate deadline set by us has been passed without success, we are entitled to withdraw from the contract and to repossess the products delivered under the retention of title.. Statutory requirements regarding the dispensability of the setting of a deadline remain unaffected. The partner is obliged to surrender the goods.

We are entitled to withdraw from the contract if a request to open insolvency or bankruptcy proceedings against the partner's assets is issued.

38. All the claims and rights resulting from the sale or possible permitted hiring out of goods, under our retention of title are assigned to us for security with immediate effect. We hereby accept the assignment.

39. A possible further treatment or processing of the products delivered under the retention of title will be performed for us by the partner. In cases where the products delivered under the retention of title are being processed with items not owned by us or inseparably mixed with such items, we acquire co-ownership of the resulting items. The level and value of co-ownership will be determined by the proportion of the invoice value of the products delivered under the retention of title to the value of the other processed or mixed items at the time of the processing or mixing.

In case our goods are combined with other movable items into a unitary item or inseparably mixed and the other item is considered to be the main item, our partner transfers to us proportional co-ownership, in as far as the main item is in his possession. He keeps the ownership or the co-ownership for us. In all other respects, the provisions applying to the products delivered under the retention of title also apply to the item resulting from the treatment, processing or mixing.

40. The partner is obliged to inform us immediately if there are third party enforcements upon the products delivered under the retention of title, claims ceded to us or other securities. He is obliged to hand over all documents necessary to enable us to intervene. This also applies to all other impairments.

41. If the value of existing securities exceeds the secured receivables by more than 20 percent in total, we are insofar obliged to release securities of our choice following a request by our partner.

Defect of quality

42. The condition of the product is based exclusively on the technical delivery specifications agreed upon. If we are obliged to deliver according to drawings, specifications, samples etc. provided by our partner, he takes the risk for the product's suitability to fulfil the intended use. Decisive for the product's contractual condition is the moment of transfer of risk as stated in clause 31.

43. We are not responsible for defects caused by improper or incorrect use, faulty assembly or start-up by the partner or a third party, common wear and tear and faulty or careless handling. Furthermore we are not responsible for the consequences of incorrect changes or repairs that are carried out without our prior consent by our partner or a third party. These provisions also apply to defects that only reduce the value or suitability of the product insignificantly.
44. Rights to claim damages from defects lapse after 24 months. This does not apply insofar as there are longer binding statutory periods, especially regarding defects on a building or a product which is commonly used for a building and causes defects in this building.
45. If the product or an initial sample has officially passed inspection, then any faults the partner might have detected, if final inspection or the initial sample's inspection had been diligently conducted, are excluded.
46. We must be allowed to inspect the notified defect. Upon request, queried goods must immediately be sent to us; we will bear the costs for the transport if the notice of defect is justified. If the partner does not comply with these obligations or if he makes modifications to the already queried goods without our approval, he will forfeit his claims from defects.
47. If the notice of defect is justified and has been made in due time, we will either repair the queried product or deliver proper replacement.
48. If we do not comply with these obligations, or do not comply according to our contractual obligations and within an adequate time, the partner can set us a final deadline in writing. If we do not fulfil our obligations during the last deadline, the partner is entitled to either demand price reduction or he can withdraw from the contract or arrange for the necessary repairs to be made by him or a third party. We will bear the costs and risk for those repairs. A refund for costs resulting from relocation of the product after delivery is excluded, unless this conforms to the product's intended use.
49. Our partner's statutory contribution claims exist only insofar as he has not agreed with his purchaser upon provisions exceeding statutory claims for defects. In addition, the last sentence in clause 48 applies accordingly.

Other claims, liabilities

50. As far as the following provisions do not state otherwise, any additional claims made by the partner are excluded. This applies particularly to claims for damages resulting from the breach of contractual duty and from tort. Therefore we cannot be held liable for damages other than damages in the product itself. Under no circumstances can we be held liable for loss of profit or any other financial loss incurred by the partner.

51. Aforesaid limitations of liability do not apply in the case of intent, gross negligence committed by our legal representatives and executive employees, or culpable violation of essential contractual duties. In the case of culpable violation of essential contractual duties, the liability is limited to damages reasonably foreseeable and typical for this type of contract except in the cases of intent and gross negligence committed by our legal representatives and executive employees
52. The limitation of liability is also inapplicable in cases governed by Product Liability Acts, i.e. when a defect in the product causes injury to person or property damage in privately used items. Neither does it apply in case of injuries to life, body and health, or in the case of missing express or implied characteristics if and insofar as the purpose of the representation of express or implied characteristics was to protect the partner against damages that do not affect the delivered product itself.
53. Insofar as our liability is excluded or limited, the exclusion or limitation also applies to the personal liability of our employees, workers, members of staff, legal representatives and vicarious agents.
54. Statutory regulations regarding the onus of proof remain unaffected.

Force majeure

55. Force majeure, industrial dispute, riots, regulatory actions, the absence of supplies from our suppliers and miscellaneous unforeseeable, inevitable and dire events free the contractual partners from their contractual duties for the duration of the disturbance and according to the volume of its effect. This provision applies even if the events occur in a moment when the affected partner is in default, unless he caused the default intentionally or was grossly negligent. The contractual partners are obliged to immediately disclose all necessary information within reasonable limits and to adapt their duties to the best of their knowledge and ability according to the varied circumstances.

Place of fulfilment, court of jurisdiction, and applicable law

56. Notwithstanding differing provisions in the order confirmation, our business location is the place of fulfilment
57. Our business location is court of jurisdiction for all legal disputes including B/E and cheque disputes. However, we are also entitled to file a suit at our partner's business location.
58. The contractual relationship is governed exclusively by the laws of the Federal Republic of Germany.

The implementation of the United Nations Convention on Contracts for the International Sale of Goods (CISG - 04/11/1980) is excluded.

59. The German language version of all documents is binding.