

1. General Conditions

- 1.1 These General Terms of Sale are to be used by all persons, who, when closing this contract, act in pursuance of their commercial or independent vocation (contractor) and all juridical persons of public law or of publicly legal separate property and are valid for all our deliveries and services – now and in future – in the frame of sales agreements, contracts of manufacture and cost-plus contracts. Business Terms of the buyer are herewith expressly contradicted. They do not bind us even if we do not contradict them expressly after receipt.
- 1.2 Our offers are without engagement. Contracts and other agreements especially verbal supplementary agreements and promises by employees or representatives, will only become valid by our official written confirmation by letter, fax or e-mail.
- 1.3 Trade stipulations agreed upon are valid in the version of the INCOTERMS of the International Chamber of Commerce edited when the contract is concluded. If a material is to be delivered “carriage paid to”, the respective INCOTERMS will be valid subject to the proviso that the buyer will also pay the insurance until the material will arrive at its destination.
- 1.4 Warranties and guaranties have to be confirmed as such. Details given by us concerning the subject of supply or the performance (e.g. weight, measurements, value in use, capacity, tolerance, and technical data) as well as our description of those (e.g. drawings, pictures, samples) are only roughly applicable unless the usability requires an exact conformance for the contractually intended use. In no event they are warranted characteristics of state, but descriptions or identifications of supply or performance.
- 1.5 Technical data, analysis or quality description issued by us are based on our present knowledge. They will only become part of the contract after having been included in our order confirmation.
- 1.6 The buyer is advised that goods or delivery items (possibly know-how contained in them) may be subject to an export- or import control. Each contract party is responsible itself to comply with the relevant export- and import control regulations. Furthermore the buyer is advised that possibly the U.S. export control law may be valid if goods or delivery item are concerned that may totally or partly origin from the USA. That may even be the case if the contract does not have any further reference to the USA.

2. Call Orders

A maximum term of 12 months is valid for call orders starting with the day of order confirmation, unless nothing else has been agreed upon and confirmed by us in writing. After expiration of the maximum term the buyer has to pay damages for quantities not yet taken over, for advance performances that have already been effected, and/or for the procurement of raw materials and materials.

3. Prices

- 3.1 Unless agreed upon differently, our prices are to be understood ex works or warehouses. All other expenses, as e.g. packaging, freight costs, customs charges, assembly costs, insurance rate etc. as well as value added tax are invoiced additionally.
- 3.2 We reserve the right to adequately change prices if cost reductions or increases especially caused by tariff agreements or changes of the material costs occur after the conclusion of this contract. These will be verified to the buyer on demand.
- 3.3 We principally sell in EURO. When selling in foreign currency we are entitled to charge the buyer with an eventual currency loss that may arise between the adoption of the contract and the receipt of payment.

4. Payment and Settlement

- 4.1 The purchase price is payable net cash upon delivery of the goods as far as no other agreement exists. In case the due date of payment is exceeded, we are entitled to charge as per day of payment the rate 8% per annum above the Base Rate of the European Central Bank (Europäische Zentralbank) valid at the time and to refuse further fulfillment of the contract. Collection and reminder costs are to be borne by the buyer. Enforcement of a further delay damage remains reserved.
§ 353 HGB (Uniform Commercial Code) does not fall within the purview. Payment by draft is excluded.
The purchaser is only insofar entitled to an equitable lien up to an acceptable amount in case it responds to the same contract. The summation with counter claims by the purchaser is only insofar acceptable if those have been accepted by us as existing and due or have been legally determined.
- 4.2 In case the buyer does not discharge liabilities – totally or partly – at the payment date agreed upon, we are entitled to recall discount agreements as well as agreed terms of payment for all claims being open at the time and immediately make those payable
- 4.3 If the buyer fails to meet his payment obligations, does not redeem a cheque, cancels his payments or if other circumstances become known which cause doubt in the buyer's creditworthiness we shall be entitled to make the whole remaining debt due. In

this case we shall also be entitled to demand advances payments or collaterals and to withdraw from any current contract (frame contracts as well as individual contracts).

- 4.4 The same is valid for overdue, open claims that had already been reminded twice in writing.

5. Term of Delivery / Consequences of Delay in Delivery

- 5.1 Scheduled delivery dates and terms of delivery stated in our order confirmation are only binding if they are expressly confirmed as such by us in writing.
- 5.2 Confirmed terms of delivery shall apply as of the day of approval of order, however, not prior to clarification of all and any technical and business (commercial) matters related to the delivery as well as the documentation of the required official authorization. The delivery term shall be considered as complied with if the object of delivery left the factory/location or readiness for delivery was communicated before expiring of delivery term.

6. Shipment, Packaging, Passing of Risk

- 6.1 As far as nothing else had been agreed upon, all our supplies will be executed ex works or warehouse. Freight, insurance costs and customs are on buyer's account whereupon the buyer has to take care of the compliance with the foreign customs and import regulations.
As far as nothing else had explicitly been agreed upon, we can define the way of consignment as well as the packaging. Transport insurances will only be concluded to the buyer's expressed wish in his name and to his account.
The dispatch of the delivery item is executed in buyer's name and on his account.
- 6.2 The shipment of the delivery item is executed on buyer's account and risk. By commissioning a forwarding agent or carrier, at the latest, however, when leaving our warehouse or works, the risk is being transferred to the buyer, even if supply is stated free delivery. If the buyer is responsible for delayed shipment, the risk is already being transferred to the buyer with the information of dispatch.
- 6.3 Material ready for shipment has to be collected immediately. Otherwise we are entitled to dispatch the material at our option or to store it on buyer's risk and expense and immediately bill it to the buyer. If the buyer does not take over the delivery item at the date agreed upon, he will nevertheless be obliged to pay the purchase price.

7. Reservation of Property

- 7.1 The goods delivered remain our property (proviso goods) until all claims of the mutual total business relationship have been fulfilled, irrespective of which legal reason, even if payments have been made for especially indicated claims. In case of unsettled invoices the proviso property remains as a security for our balance claim. If the cheque-draft-procedure is carried out between us and the buyer, the retention of title remains as long as we are no longer legally bound by the draft. The same is valid for other contingency obligations, which we enter into for the buyer.
- 7.2 Processing and mixing of the proviso goods occur for us as producer in the sense of § 950 BGB (Civil Code) without obligating us. The processed and mixed material is considered as proviso goods in the sense of 4.1
- 7.3 If the material delivered by us is mixed or combined with other products thus extinguishing our ownership of the proviso goods, then the buyer will transfer to us co-ownership of the proviso goods, to the total value of the goods processed and keep these processed goods for us, free of charge. The goods originating from processing or combining or mixing are considered as proviso goods in the sense of 4.1
- 7.4 The buyer is only allowed to sell the proviso goods according to regular course of business at his usual sales conditions and as long as he is not in default provided that the claim, resulting from resale plus additional rights thereof, is passed into our possession to such an extent as described in the following paragraphs. The buyer has no right to dispose of the proviso goods otherwise. The use of the pro proviso goods to fulfil contracts to manufacture and cost-plus contracts is also regarded as resale.
- 7.5 The buyer's claims resulting from resale or any other title (insurance, actionable tort) concerning the proviso goods will be assigned to us forthwith, and that in the full amount. They serve to the same extent for security as the proviso goods in the sense of 4.1.
- 7.6 If the buyer resells the proviso goods together with other goods, the claim from the resale will be assigned to us to the amount of our invoice value. When reselling the goods, of which according to 4.3 we have a co-ownership, we will be assigned part of the claim according to the ratio of our co-ownership.
- 7.7 The buyer has the right to collect claims from the resale unless we abrogate this right of collection. We are entitled to do so in case of buyer's arrears as well as a substantial deterioration of his financial status. Upon our request the buyer is obliged to immediately inform his clientele about his assignment in our favour - insofar it is not done by us – and to provide us with all information and files necessary for collection of claims. In case of arrears or substantial deterioration of assets we can further demand revesting of the proviso goods or the assignment of the constructive posses-

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- sion at buyer's expenses; in these cases we are also entitled, with previous notice, to visit buyer's offices and to secure the proviso goods. Such measures can only then be regarded as withdrawal from the contract if explicitly declared by us.
- 7.8 The buyer has to inform us immediately about seizure or other damnification of the proviso goods by third parties.
- 7.9 Should the value of the for us existing securities exceed our claims by more than 20%, we are insofar obliged upon buyer's request to release securities of our choice.
- 7.10 If the reservation of property is not effective according the law of the country to which the material will be shipped, such security for claims will be considered as valid that can operatively be agreed upon in the country concerned and economically meet the reservation of property most closely. The buyer is obliged to seize the measurements necessary in de facto and legitimate respect
- 8. Complaints and Guarantee**
- 8.1 The buyer is bound to examine the goods immediately upon arrival with all due diligence according to given circumstances. Ascertained apparent defects have to be registered within a time limit of 6 (six) days in writing, non-apparent defects have to be registered within 6 (six) days after discovery. Goods that will not be registered by stating the defects detected within the before mentioned term, are considered as approved. Applicable is the receipt of the complaint.
- 8.2 When manufacturing / delivering at buyer's design, we do not guarantee suitability for the purpose required.
- 8.3 We do not accept any warranty for damages resulting from the following: Unsuitable or unqualified usage by the buyer or third parties, incorrect or negligent treatment, unsuitable production facilities, chemical, electro-chemical or electrical effects as far as the responsibility does not lie with us.
- 8.4 In case of justified and immediate complaints we conduct a free-of-charge compensation delivery or remedy to our choice.
- 8.5 If we fail to comply with our obligations according to item 5.4 or contractually or if this miscarries, so the buyer has the right in the frame of the legal requirements to choose reduction of payment or to his own choice cancellation of the purchase contract.
- 8.6 Other or further-reaching warranty claims are excluded under the restrictive conditions of cipher 10. This also refers to claims for replacement of damages that did not originate at the material delivered (consequential harm caused by a defect as e.g. loss of profit). In case of infringement of a guarantee that had explicitly been confirmed in our order confirmation and as such been indicated, quality failure compensation can only insofar be claimed as the buyer was especially guaranteed security against the damage of the kind accrued.
- 8.7 Warranty claims are subject to a period of limitation of twelve (12) months after transfer of risk. If used merchandise are concerned, any liability on defect of quality is excluded; this is not valid in cases of malicious concealment or violation of a guarantee.
- 9. Self-Supply Reservation**
- 9.1 We supply under the reservation of the correct and in due course self-supply. We will be exempted from the sales obligation or liability for defects if after having concluded a congruent contract we are being supplied not correctly, not in due course or not at all and as far as we cite our liberty of performance within a reasonable period of time. A purchase contract will meet this regulation if under careful consideration one can expect a correct, complete and in due course self-supply and if it had been determined along with the sale definitely and verifiably for the procurement of the goods to be supplied by us.
- 9.2 In case and insofar our self-supply will be strongly jeopardized, we have – as soon as we got knowledge of this – to immediately inform the buyer because otherwise we cannot cite this self-supply reservation.
- 9.3 On request by the buyer we are obliged to prove the buyer a congruent contract in the sense of paragraph 1 and to cede to him within fourteen (14) business days our due claims resulting thereof against the (pre) seller on request; otherwise our appealation to this self-supply reservation will be prohibited.
- 10. General Limitation of Liability**
- 10.1 We are maximal liable according to existing applicable legal provisions.
- 10.2 Our liability corresponds primarily with these General Terms of Sale. All claims not explicitly conceded in these terms, especially claims originating from impossibility, delay, violation of contractual accessory obligations (inclusively advice and given information), fault when concluding the contract, unauthorized actions - even if such claims are in connection with warranty claims - are excluded, unless they are based on an intend or gross negligence / default by us, by a legal representative or vicarious agent, or unless they are based on a slightly negligent violation of cardinal obligations or contractual obligations by us, by a legal representative or superior vicarious agent or a culpably violation of life, body and health is concerned.
- 10.3 As far as we are basically liable for compensation according to cipher 10.1, this liability is limited to the damages that could have been foreseen at the conclusion of the contract as possible consequence of a default or under consideration of circumstances that had been known to us or that we had to recognize when executing contractual due diligence. Collateral damages or subsequent damages (as e.g. loss of profit) that are consequences of defaults of the delivery item are also only then eligible for compensation as far as such damages are typically to be expected in accordance with the use of the delivery item.
- 10.4 All claims against us irrespective of which legal grounds will expire at the latest after one (1) year unless imputable, deliberate or malicious behaviour is known to us; in these cases the legal limitation period will be valid.
- 10.5 Of the before mentioned rule all claims of personal damages or damages to privately owned objects according to the Product Liability Law will remain unaffected..
- 11. Force Majeure**
- In case of Force Majeure we are entitled to waive the contract without granting damages. Buyer's possible right of withdrawal will remain unaffected by this. As Force Majeure are such circumstances that cannot be averted with reasonable diligence regarding the circumstances of the individual case., e.g. war, currency and trade political or other mandatory measurements, changes in law, civil commotions, force of nature, fire, strikes, lock-outs, unintentional non-supply with precursor material, traffic- and plant interruptions and other cases of Force Majeure by which the fulfillment of the supply contract is endangered, reasonably complicated, or made impossible or unacceptable.
- 12. Place of Performance, Jurisdiction and Applicable Law**
- 12.1 Place of Performance for our deliveries is our place of business.
- 12.2 Place of Jurisdiction is our place of business (presently Muelheim an der Ruhr. We are also entitled to sue the buyer at his place of business. The same place of jurisdiction is relevant if the buyer does not have a general place of jurisdiction within the country, if after concluding the contract he has moved to another place or changed his known place of business within the country, or if his place of business or his previous known place of business is unknown at the time of suing.
- 12.3 Only the respective law of the Federal Republic of Germany for legal relations of parties within the country is valid for all legal relations between us and the buyer with the exception of the regulations of the agreement with the United Nations concerning contracts for international sales (CISG as amended on April 11, 1980, in the always presently valid form).
- 13. Invalidity**
- The invalidity of single conditions does neither prejudice the validity of the supply contract nor the validity of the remaining sale- and supply conditions.
- 14. Personal Data**
- 14.1 We have the right to computerize all relative data of the buyer by means of data electronic processing.