

General Terms of Sale and Delivery

1. General

These terms are part of all our offers and contracts concerning deliveries and performances. Opposite or different purchasing terms or restrictions of the buyer are not accepted unless we agreed explicitly and by letter in every individual case.

2. Offers

Our offers are subject to confirmation. Orders become binding by our written or printed confirmation. Invoice, delivery note, fax or e-mail must also be seen as a confirmation. The Incoterms are valid as amended.

3. Invoicing

Delivery, performance and invoicing are effected at the prices valid on the delivery day.

4. Delivery

We always try to deliver at the nearest possible time. Fixed times of delivery do not exist. If, differently from this, fixed delivery periods have been agreed upon, the buyer has to grant an appropriate extension of six weeks as a rule in the case of delay. Our delivery obligation is subject to the right and timely self-supply. In the case of a wrong or delayed self-supply we will at once inform the buyer correspondingly. Time-bargains require our preceding explicit confirmation of the delivery-date as a fixed date by letter.

The day of delivery is the day when the goods leave our works or warehouse. If this day cannot be determined, the day of delivery is the day when the goods are made available to the buyer.

The quantities delivered, concerning particularly goods specially produced, can differ by +/- 10% from the ordered quantities.

5. Despatch

We choose the suitable way of transport and the package. Special packages deviating from the standard are invoiced separately. The risk of destruction, loss or damage of the goods passes to the buyer at the moment of their despatch or collection. If the buyer causes a delay, the risk of the accidental destruction passes to the buyer upon the information of the readiness for despatch.

6. Force Majeure

If our production and or delivery is affected or impossible due to Force Majeure of any kind, unexpected circumstances, operating troubles, damages caused by fire, shortness of stuff, raw material or energy, strikes, lock-outs or official instructions, we are released from the obligation of delivery for the period of the impediment. We will inform the buyer at once after the knowledge of the event of the Force Majeure. If the delivery is delayed by more than eight weeks due to the disturbance, both parts have the right to withdraw. Claims for damages of both parties are excluded.

7. Defects

The buyer has to check the goods and the invoice at once after the receipt with regard to defects (§377 HGB). Defects must be notified at once in writing together with proofs, samples and other suitable statements. However, recognizable defects must be notified 14 days after the receipt of the goods at the latest. The warranty time is 12 months from the transfer of the risk to the buyer. We do not take any guaranty concerning wear or damages resulting from the use or working of our goods

which has not been agreed upon. Quality statements which are propagated by our customers concerning our delivered products have no legal effect for us. In the case of defects the claims of the buyer are restricted to a subsequent performance. We decide about a repair or a replacement without defects at our expense. If our after-treatment has no success or if a fixed suitable time-limit for that expires without success, the buyer is allowed to reduce the purchase price or to withdraw from the contract.

In the case of minor defects in the goods delivered the orderer has only the right of an allowance.

The period of limitation concerning material defects or defects of title is one year after the risk transfer. The rules concerning material defects are not valid in case that the subject of contract cannot be used according to agreement as a result of suggestions and advices which have not been executed or have been executed in a wrong way before or after the conclusion of the contract or as a result of the breach of other contractual duties, especially operating instructions.

8. Payment

Invoice amounts have to be paid according to the agreed conditions of payment. The terms of payment, also concerning discounts, begin with the date of invoice. Agreed discounts are only valid if there are no already overdue invoices which have to be settled. Payments are only considered as effected when the amount is available on our account. In the event that a customer defaults in payment we have the right to take interest amounting to 8% above the respective basis interest rate. The default begins at once after the expiry of the maturity; a reminder is not necessary. The retention of payments or the set-off with any counter-claims of the buyer which we deny is not allowed. We can demand securities already before a delivery is effected and without consideration of the agreed condition of payment if after the conclusion of a contract reasonable doubts arise concerning the solvency or the credit-worthiness of the buyer or if agreed conditions of payment or delivery are not adhered to on essential points or if essential changes concerning the business conditions of the buyer arise. If the buyer refuses the furnishing of a security within a determined period of time, we are allowed to withdraw partly or completely from all contracts we concluded with the buyer. We reserve the right to assert further claims concerning in particular goods which we have specially produced for the buyer.

9. Reservation of title

All delivered goods remain our property until the customer's payment in full of all balances owed. The assertion of the reservation of title, especially by taking back the merchandise being allowed in the case of default of payment or endangering of our title of property, must only be seen as a withdrawal from the contract if the seller declares this expressly by letter. The buyer has to inform us immediately in the case of an attachment of another impairment of our proprietary right. This right in the delivered merchandise has to be confirmed to third parties and to us by letter. The buyer is neither allowed to pledge the goods delivered under reservation of title nor to assign them as a security. All outstanding accounts occurred by resale have to be considered as assigned to us and must be named on demand. If our goods are processed, mixed or combined with other materials, we acquire joint property in the resulting products in proportion to the respective invoice value of the goods. Where the value of the existing securities exceeds the value of all claims by more than 20% the seller has the duty to release securities to this amount upon request of the buyer. The seller chooses the security which is released.

10. Moulds, tools, models

So far as the buyer makes available moulds, tools and models, these have to be sent to us free of charge. They are handled by us with the necessary care. The buyer has to bear the costs for the maintenance, alteration and replacement, especially caused by attrition. If we manufacture or provide moulds, tools or models on behalf of the buyer, we invoice the costs correspondingly. The tools remain in our possession until they are completely paid; we are not obliged to hand them over to the buyer. If three years have been passed after the last delivery, we are not obliged to store the moulds, tools or models any longer. Then these pass to our property without any further performance unless the orderer disposes of them in another way. If deliveries are effected according to drawings or other information of the orderer and if herewith protective rights of third parties are injured, we are released from all claims by the orderer.

11. Liability

For any damage not affecting the object of agreement we are only liable – for whatever reason – in the following cases:

- intentional damage
- gross negligence of the management, the owner or managerial employees
- culpable hurt of life, body or health
- defects maliciously concealed or whose absence was guaranteed by us
- defects of the object of agreement where we are liable for personal injury or damage to privately used objects according to the Product Liability Act

In case of a culpable infringement of main contractual obligations we are also liable concerning gross negligence of non-managerial staff and ordinary negligence to a limited extent with regard to any damage typical for the agreement and reasonably foreseeable. All other claims of the buyer in particular claims for damages, no matter what legal reason, are excluded.

12. Final terms

The place of performance and jurisdiction is Wuppertal. We reserve to assert our claims on the buyer also before the court of competent jurisdiction of the buyer's place of business. If single or several clauses of these terms of sale and delivery get ineffective, the effectiveness of the other clauses is not touched. Changes and supplementations of the contract must be written down to become effective. These formal requirements can only be renounced by an expressly written agreement. The writing is not removed by repeated offence.