

Terms & Conditions of Sale (Europe)

1. Scope

The contract shall be exclusively based on the terms and conditions of the order confirmation and these General Terms and Conditions of Business ("Terms of Business"). The Purchaser accepts the applicability of these Terms of Business by placing an order or by accepting delivery of the goods or service. This shall also apply to all future transactions with the Purchaser. The application of Purchaser's terms and conditions shall be excluded, even if we do not expressly object to such terms and conditions.

2. Conclusion of Contract

- 2.1 Our offers shall be non-binding unless they expressly state otherwise. A contract shall not become effective until it has been expressly confirmed by us in a written confirmation of order. The contract shall exclusively be governed by the contents of the confirmation of order and these Terms of Business. Side agreements and amendments to the contract or the Terms of Business require our written confirmation in order to be valid.
- 2.2 Documentation such as images, drawings, measurements or information on capacity, weight, space and power requirements provided in connection with our offers shall be binding only if this is agreed in writing. We retain title and reserve the copyright to such documentation as well as to cost estimates. Such documentation must not be made accessible to third parties and must be returned to us without undue delay on demand.
- 2.3 Our staff cannot conclude contracts and make binding promises on our behalf concerning the goods or other terms and conditions, unless explicitly authorized in writing vis-à-vis the Purchaser. This does not apply to our legal representatives and/or authorized representatives.

3. Prices and Payment

- 3.1 All prices shall be ex works (EXW Incoterms 2000) Frankfurt Airport or – in case of direct delivery (not via Frankfurt Airport) – ex works (EXW Incoterms 2000) Baden-Baden. They include packaging, but exclude assembly, installation, and commissioning. All prices are quoted in Euro. The Purchaser shall bear the statutory VAT as well as any other public charges in connection with the import of the goods.
- 3.2 Each invoice shall be due for payment without any deductions within 30 days of the date of invoice; if this period of payment lapses unsuccessfully the Purchaser shall be in default. Payments are to be credited against the oldest accounts receivable. They will first be credited against any costs incurred, if any, and then against interest. We accept bills of exchange as well as cheques for payment only, if this has been specifically agreed and if they will be paid free and clear of all costs and expenses for us. Payments shall be deemed as effected only once we can dispose of the monies.
- 3.3 If the agreed delivery date is more than four months after conclusion of the contract and if we have to bear an unforeseeable increase in costs with regard to the objects of delivery after conclusion of the contract, we shall be entitled to increase the agreed price accordingly at our reasonable discretion. In particular increased labour costs, material costs, storage costs, energy and shipping costs and public charges may be considered in the price increase. We shall prove the cost increase to the Purchaser upon request. If the price increase is more than 5%, the Purchaser shall be entitled to rescind the contract in writing immediately after receipt of the notification of the price increase.
- 3.4 In case of default, we charge default interest at a rate of 8% per annum above the base rate as published from time to time by the Deutsche Bundesbank. This shall be without prejudice to any further claims on the account of delay.
- 3.5 The Purchaser shall be entitled to exercise set-off or withholding rights only to the extent that his counterclaim is uncontested or has been finally adjudicated.
- 3.6 If we become aware of the risk of Purchaser's impossibility to perform after the conclusion of the contract, we shall be obliged to perform any outstanding deliveries only against prepayment or the provision of security. If such prepayment or security has not been rendered even after the expiration of a reasonable grace period, we may – notwithstanding any further rights – partially or totally rescind the individual contract or all of the contracts affected thereby.

4. Delivery, Passing of Risk

- 4.1 Any delivery dates or delivery times are non-binding unless anything to the contrary has been expressly agreed. Delivery times commence upon confirmation of the respective order, but not before all details of the transaction have been agreed and the Purchaser has provided all documentation to be delivered by him.
- 4.2 Unexpected and unavoidable events such as force majeure, war and warlike events, official orders, riot, delays in transport, strike, lockout, and other production interruptions as well as any other interferences beyond our control release us from our obligation to deliver in time as long as such events last and insofar as they have a material influence on our capacity to deliver. This shall also apply if we are in delay already prior to the occurrence of such events or if our suppliers or their suppliers are in delay. Current delivery times shall be extended by the length of such disturbance. If the disturbance lasts longer than three (3) months, each party shall be entitled to rescind the contract in whole or in part. We will notify the Purchaser of the occurrence of such events in an appropriate way.
- 4.3 With regard to goods which we do not produce ourselves, the correct and timely self-supply shall be reserved.
- 4.4 If deliveries are delayed, the Purchaser shall only be entitled to rescind the contract if we are responsible for the delay and after a reasonable grace period set by the Purchaser has expired.
- 4.5 The risk shall pass to the Purchaser upon delivery of the goods to the carrier. Should the delivery be delayed on grounds for which the Purchaser bears responsibility, the risk shall pass to the Purchaser on the date of the notification to the Purchaser of the readiness for delivery. If we receive no instructions to the contrary, we shall deliver by express delivery or UPS at the cost of the Purchaser.
- 4.6 Partial deliveries shall be permitted for good reasons provided this is reasonable for the Purchaser.

5. Retention of Title

- 5.1 The delivered goods shall remain our property and we reserve legal title until any and all our claims arising from or under the business relationship with the Purchaser have been paid in full. In the case of current accounts, this retention of title shall be security for any balance of unpaid invoices to which we are entitled.
- 5.2 The Purchaser shall be entitled to process and sell the goods for which we have reserved legal title ("Retention Goods") in the course of ordinary business. He is not entitled to pledge the Retention Goods or make any dispositions endangering our title to such Retention Goods. The Purchaser hereby assigns his claim under the resale of the Retention Goods to us, and we hereby accept such assignment. We revocably authorize him to collect any accounts receivable regarding claims assigned to us in his own name but on our account. Such authorization may be revoked if the Purchaser does not meet his payment obligations. If the Purchaser sells the Retention Goods along with other goods, this assignment shall only apply to such part of the entire claim which corresponds to the purchase price payable for the Retention Goods (as agreed between the Purchaser and us) plus 10% of such price. We may revoke such authorization and the right to resell the goods, if the Purchaser is in default of the performance of material obligations.
- 5.3 Any processing or transformation of the Retention Goods by the Purchaser shall always be on our behalf. If Retention Goods are joined with other goods, we shall acquire joint ownership of the new goods in the ratio of the value of the Retention Goods to the other goods at the time of joining. The Purchaser shall store the goods of which we are (co)-owners free of charge. All goods in which we hold (co-) ownership rights are hereinafter also referred to as Retention Goods.
- 5.4 The Purchaser shall provide us at all times with all information – as requested – concerning the Retention Goods or claims assigned to us under this contract. In case third parties access the Retention Goods, the Purchaser shall indicate our ownership, shall notify us immediately and shall provide all documentation to us. The costs of a defense against attachments and claims shall be borne by the Purchaser.
- 5.5 In case the Purchaser is in default regarding his obligations owed to us, we shall be entitled (without prejudice to any other rights) to take back the Retention Goods and realize their value for the purpose of crediting their value against any sums due; we may also request assignment of the Purchaser's claims against third parties for the return of goods, if appropriate. In such a case, the Purchaser shall grant us or our agents immediate access to the Retention Goods and shall surrender the same to us.
- 5.6 The Purchaser shall cooperate with regard to any measures necessary or useful for the validity and enforcement of claims arising from our retention of title. In case we deliver to a country where the retention of title agreed herein does not have the same effect as a security as it does in the Federal Republic of Germany, the Purchaser shall do everything necessary to create equivalent security interests in our favour without undue delay.

Terms & Conditions of Sale (Europe)

6. Warranty

- 6.1 All warranty rights shall require that the Purchaser inspects the goods upon delivery without undue delay and notifies us in writing of any defects without undue delay, but no later than 7 days after delivery; hidden defects must be notified in writing without undue delay upon their discovery.
- 6.2 We shall have the right to inspect and test the goods to which objection was made. The Purchaser will grant us the required period of time and opportunity to exercise such right. We may also demand from the Purchaser that he returns the defective goods to us.
- 6.3 Upon passing of the risk the goods shall be of the quality agreed upon in writing. If the goods contain a defect subject to a warranty obligation, we shall be entitled to remove the defect – at our own discretion and free of charge for the Purchaser – by repair or replacement. Should the repair of a defect or the replacement of the defective goods fail, should such repair or replacement be unreasonable for the Purchaser, or should we refuse removal of the defect, the Purchaser may, at his option, demand a reasonable reduction in price or rescind the contract and he may claim damages pursuant to section 7 or the reimbursement of his futile expenses.
- 6.4 The Purchaser shall give us the necessary reasonable period of time and opportunity for removing the defect. The Purchaser shall only have the right to remove the defect by itself or have the defect removed by a third party and demand compensation of its necessary expenses from us (i) in instances of emergency in which the safety of operations is endangered or (ii) in order to avert a disproportionately great damage or (iii) if we are in default regarding the removal of the defect. We shall reimburse any necessary costs for this only if we are notified immediately in writing of such measures and did not recommend other reasonable measures. Any parts replaced shall be returned to us upon request.
- 6.5 The Purchaser shall bear all costs incurred due to unjustified notice of defect (e.g. for material, transport, and labour), unless he is not responsible for such unjustified notice.
- 6.6 We shall not assume any warranty for damages resulting from incorrect assembly or faulty commissioning by the Purchaser, improper use, undue stress, normal wear and tear, inadequate maintenance in particular due to non-compliance with operational or maintenance instructions, use of improper equipment, unusual operation conditions in particular chemical, electrochemical influences or similar.
- 6.7 The period of limitation for claims for defects shall be twelve months from the handover of the goods to the Purchaser. The statutory period of limitations shall apply with respect to claims for damages incurred due to other reasons than defects of the goods, claims of the Purchaser with respect to defects concealed in bad faith, or defects caused intentionally by us.

7. Liability and Damage Compensation

- 7.1 Our statutory liability for damages shall be limited as follows:
 - (i) In the event of a breach of material contractual obligations, we shall only be liable up to the amount of the damages typically foreseeable at the time of entering into the contract. We shall not be liable for the breach of non-material contractual obligations.
 - (ii) The aforementioned limitation of liability does not apply to liability under the Product Liability Act, in the event of damages caused intentionally or by gross negligence and with regard to culpably caused personal injuries. Furthermore, it does not apply if and to the extent we have assumed a guaranty.
- 7.2 Our liability for damages pursuant to section 7.1 above is limited to a maximum amount equal to the value of the respective goods or services.
- 7.3 All further claims of the Purchaser shall be excluded.
- 7.4 The purchaser shall take all reasonable measures necessary to avert and reduce damages.

8. Intellectual Property Rights

- 8.1 We shall defend the Purchaser against all claims arising from the fact that allegedly the goods infringe any German intellectual property right or copyright. We shall assume any costs or damages payments imposed on the Purchaser by a court, if the Purchaser has notified us immediately in writing of such claims and continuously provides to us all necessary information and leaves all actions for defending the claim including settlement agreements or filing appeals, etc. to us. Sections 7.1 and 7.2 shall apply accordingly.
- 8.2 We shall have the rights at our own option to be released from our obligations under section 8.1 excluding any other rights of the Purchaser by either
 - a) obtaining the necessary licences or,
 - b) if this is not possible due to inappropriate expenses/effort, to withdraw from the contract and return the payment price, or
 - c) to provide to the Purchaser the altered goods or parts thereof which in exchange for the infringing goods or the part thereof dispose of the accusation of infringement regarding the goods.

9. General Provisions

- 9.1 Should a provision of this contract and/or these Terms of Business be fully or partially invalid, the validity of the remaining provisions shall remain unaffected hereby.
- 9.2 The Purchaser shall not be entitled to assign his rights from this contract, save for section 354a HGB (German Commercial Code).
- 9.3 Place of performance and exclusive jurisdiction shall be Baden-Baden/Germany. This shall also apply in case of lawsuits regarding bills of exchange or cheques. However, we shall be entitled to sue the Purchaser at any other court having statutory jurisdiction.
- 9.4 This contract shall be governed by the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.