

Terms and Conditions of Delivery and Payment

Section 1 General provisions

1. These Terms and Conditions of Delivery and Payment shall be part of all offers and agreements regarding deliveries and services of the Seller, including current and future business relations.
2. Any agreements between the contracting parties shall be in writing in order to become effective. The inclusion of the Buyer's General Terms and Conditions shall be subject to the Seller's written confirmation. However, if the Buyer's General Terms and Conditions should become part of the agreement and the Seller is placed in a worse position regarding a substantial provision than he would be hereunder, he shall be entitled to withdraw from such General Terms and Conditions within a reasonable period of time.
3. If Incoterms are applied, the version of 2000 shall prevail.

Section 2 Pricing

The terms and price lists of the Seller in effect at the time that an order is placed shall apply (plus value-added tax), subject to increases in the prices for raw materials that may become necessary during production, which shall be applied as of the date of delivery.

Section 3 Passing of risk and delivery

1. Delivery shall be made by the Seller ex works (EXW). Upon provision or dispatch of the goods, the risk of accidental destruction or deterioration shall pass to the Buyer. This shall apply also if the Seller, at the Buyer's request, ships the goods sold to a location other than the place of performance.
2. Non-compliance with delivery times and periods on the part of the Seller shall entitle the Buyer to assert the rights due to him only if he has set the Seller a reasonable grace period of at least 14 business days.
3. In the event of force majeure, industrial action, regulatory measures and interruptions of operations for which the Seller is not responsible and which last, or are expected to last, for more than one week, the delivery period shall be extended accordingly and appropriately.
4. If the Seller provides proof of careful selection regarding his supplier who fails to supply him in accordance with the agreement, the delivery period shall be extended by the period of delay on the part of the supplier, provided that the Seller cannot reasonably be expected to procure substitute supplies. In the event that delivery from his supplier is impossible, the Seller may withdraw from the agreement with the Buyer.
5. Claims for damages in connection with default or impossibility of performance for which the Seller is responsible shall be limited to reimbursement of proven additional costs (covering purchase on the basis of three comparative offers). Any damages in excess thereof shall be excluded. In the event of default due to minor negligence, the Seller shall be liable for 0.5% a week, but in total for no more than 5% of the order value affected.
6. For operational reasons, the Seller shall be entitled to partial deliveries where this is reasonable on the part of the Buyer. Rights from breach of obligation by way of default or delivery of defective goods shall be limited to the respective partial deliveries.
7. If the Buyer, following a prior, reasonable period of time, fails to accept the goods without being justified in doing so, the Seller shall be entitled to withdraw from the agreement or claim damages for non-performance in the amount of 20% of the order total. The right to assert higher damages shall remain intact. The lump-sum damages may be reduced if and to the extent that the Buyer can demonstrate lower damages.
8. In the event of a significant, proven deterioration in assets of the Buyer, the Seller shall be entitled to execute further deliveries only against advance payment, to declare all outstanding invoice amounts due immediately and, upon return of bills accepted in lieu of payment, to demand payment in cash or collateral.

Section 4 Payment

1. Invoices shall be due immediately upon receipt and shall be payable within 30 days of the date of invoice without deductions and without loss. The payment periods shall commence on the date on which the invoice is sent. Payment shall be deemed received on the day on which the amount is received or credited. Payment settlements by means of cheque or bill shall be in lieu of payment; discounts, bill expenses and costs shall be borne by the Buyer. If the payment term is exceeded, we shall charge late payment interest to such extent as is customary in the banking industry, but at least 8% p.a. above the base rate.
2. Offset with counterclaims or the withholding of any invoice amounts due shall be permitted if the claim is uncontested, acknowledged or confirmed by declaratory judgment.

Section 5 Quality, warranty

1. The quality of the goods shall be subject to the product specification prepared by the Seller. Where the Buyer approves it, the Seller's product specification thus approved by him shall apply. The fitness of the goods for further processing by the Buyer shall be owed under the agreement only to the extent that the details of further processing have been communicated to the Seller; representations about the options for further processing, particularly in the Seller's advertising material, shall be immaterial. Any samples or test deliveries shall generally be non-binding. Customary deviations, minor technical, unavoidable deviations and deviations that stem from the nature of the goods shall not constitute defects. Any liability for defects shall be void if the Buyer modifies the products indirectly by adding other substances or directly by changing their composition.
2. The Buyer shall be deemed in compliance with his duty to inspect under Section 377 HGB (German Commercial Code) only if he takes two representative samples from the delivery of at least 400 grams. Obvious defects shall be reported immediately, but no later than ten (10) days after receipt of the goods.
3. If the goods are defective at the time of passing of the risk, the Seller shall, at his discretion, repair the goods or provide substitute goods within ten (10) days of the goods being returned.

4. The Buyer shall make the Seller's instructions for use available to the user. As for damage caused to a third party due to non-compliance with this obligation, the Buyer shall exempt the Seller from any liability.
5. Warranty claims shall expire after two (2) years of the handover, unless they were concealed fraudulently.
6. If a complaint for defects is not justified (if there is no defect or the Seller is not liable), the Buyer shall reimburse the Seller of any costs incurred as a result (transport costs and costs of the investigation).

Section 6 Liability

1. Claims for damages, except for claims due to personal injury brought against the Seller, shall be excluded in connection with minor negligence unless substantial contractual obligations have been breached. Compensation claims shall be limited to the damage that the Buyer foresaw or was able to foresee at the time that the agreement was entered into (as a rule, 50% of the value is based on the purchase price). The Seller shall not be liable for the intentional actions of his vicarious agents.
2. The Buyer shall exempt the Seller from liability claims brought by a third party where the Buyer is responsible for such damage.
3. Where defective goods necessitate a recall, liability for the resulting costs shall be limited to the Seller's insurance cover in terms of the cause and amount. The reimbursement of such costs further requires that the Seller shall have been given an opportunity to issue a statement prior to the start of the recall measure.

Section 7 Retention of title

1. The Seller shall retain title in the goods delivered until payment has been received in full. The retention of title shall apply to all claims from the business relationship (current account reservation).
2. In the event of delay in payment on the part of the Buyer, the Seller may reclaim the reserved goods. In exercising such right, the Seller may enter the premises of the Buyer during customary business hours. The Buyer shall not pledge, or assign by way of security, the reserved goods. Withdrawal from the agreement shall be deemed given if the Seller demands the return of the reserved goods.
3. The Buyer may process or combine the reserved goods with other goods in the ordinary course of business. In this event, the Seller shall acquire co-ownership in the new product in the amount of the proportionate value of the reserved goods and the combined or new product. Effective immediately, the Buyer shall assign, in the proportion of the co-ownership, to the Seller the claims that arise in connection with his contractual relationship with his client or a third party.
4. The Buyer shall remain authorised to collect on claims, but the Seller's authorisation to collect on the claims himself shall remain intact. However, the Seller shall agree not to use his right to collect as long as the Buyer does not breach any contractual obligations, particularly as long as the Buyer is not in default of payment.
5. The right to resell, use or process the reserved goods and the right to collect on the claims assigned shall expire upon suspension of payment, initiation of bankruptcy proceedings, judicial or extra-judicial composition proceedings; the right to collect shall expire also in the event of a bill or cheque protest.
6. To the extent that the value of the collateral exceeds the claim to be paid by the Buyer by more than 20%, the Seller shall release the collateral in excess of such amount at the Buyer's request.

Section 8 Tools

1. Where we manufacture tools for the Buyer that are necessary for the production of the requested parts, we shall maintain such tools for the Buyer and manufacture parts in accordance with the Buyer's orders.
2. Tools, particularly those invoiced at "pro-rated tool costs", shall remain our property and in our possession at all time. Upon payment of the pro-rated tool costs, the Buyer shall merely acquire the right that the parts produced by means of such tools shall be manufactured exclusively for the Buyer. The Buyer cannot transfer or assign this right of exclusive manufacture.
3. Upon expiry of a period of three years following the last manufacture of parts by means of the tools produced by us, we may scrap the tools without any prior notice.

Section 9 Place of performance and jurisdiction

1. The place of performance shall always be the Seller's domicile.
2. The venue of jurisdiction shall be Berlingerode. The Seller, at his discretion, may also resort to the venue of general jurisdiction of the Buyer.
3. Any legal relationship shall be subject to the civil and commercial laws of Germany to the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Section 10 Severability

1. If individual general terms and conditions are void, the validity of the remaining provisions shall in no way be affected.
2. Void provisions shall be replaced, and gaps or omissions be filled, by an appropriate provision that the parties would have agreed on if they had considered this item at the time they entered into the agreement.

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