

# General Terms & Conditions of Sale, Delivery and Payment

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## Area of Application

1. These conditions of sale apply to business owners, legal entities under public law and special funds under public law.

Delivery of goods and the provision of services are subject to the following conditions only.

Business conditions of our partners shall apply only if we have expressly accepted them.

## General Terms

2. Any separate verbal agreements shall be promptly confirmed in writing by the contracting parties.
3. Orders shall only be binding upon our written confirmation. Any collateral agreements or alterations require our written confirmation.
4. It is accepted practice in this type of business that any details and illustrations contained in brochures and catalogues are approximate only, unless we have specifically described them as binding. Offers are categorically subject to change without notice.

## Long-term and work-on-call contracts, price adjustments

5. Contracts for an indefinite period of time may be terminated on giving 3 months notice.
6. If there is any substantial change in labour, material or energy costs during long-term contracts (contracts with a term of more than 12 months and open-end contracts), then each contracting party is entitled to claim a fair and reasonable adjustment to the price in view of these circumstances.
7. If no definite order quantity is agreed upon, then we will base our calculations on the non-binding quantity (target quantity) expected by the partner for a specific period of time.

If the partner takes delivery of less than the target quantity, we shall be entitled to increase the unit price to a fair and reasonable extent. If it takes delivery of more than the target quantity, we will reduce the unit price to a fair and reasonable extent, provided the partner gives notice of its increased requirements at least 3 months before delivery.

8. With supply agreements deliverable on-call, definite quantities are to be

supplied to us at least 3 months before the date of delivery, unless otherwise agreed.

Additional costs caused by a delayed request for delivery by our partner or subsequent alterations to the request as to time or quantity shall be paid by the partner; our cost estimate shall be decisive for this.

We are entitled to manufacture on-call orders as a single unit.

### **Confidentiality**

9. Each contracting party shall maintain confidentiality in respect of all documents (including samples, models and data) and information to which it has access as a result of our business relationship, use them only for their designated purpose, and treat them with the same care as its own similar documents and information with regard to third parties, when the other contracting party indicates that they are confidential or when it is obvious that confidentiality should be maintained.

This obligation begins upon first receiving the documents and information, and ends 36 months after conclusion of the business relationship.

10. This obligation does not apply to documents and information which are general knowledge or which were already familiar to the contracting party when they were received, without there being any obligation as to confidentiality, or which are later passed on by a third party who is entitled to do so, or which are developed by the receiving contracting party without making use of confidential documents or information of the other contracting party.

### **Drawings and specifications**

11. If a contracting party makes available to the other contracting party any drawings or technical documents on the goods to be delivered or their manufacture, these remain the property of the contracting party who produced them.

### **Samples and production tooling**

12. The manufacturing costs of samples and production tooling (tools, moulds, pattern designs, etc.), unless otherwise agreed, will be invoiced separately from the goods to be delivered. This also applies to tooling which has to be replaced due to wear and tear.
13. We shall bear the costs for the maintenance and appropriate storage, as well as the risk of damage to or destruction of the production tooling.
14. If the partner suspends or terminates the business relationship during the period of production of the samples or production tooling, then it shall bear all costs incurred up to that time.
15. The production tooling shall remain in our possession at least until completion of the delivery contract, even if the partner has paid for it. Afterwards the partner is entitled to request the tooling once agreement on the time of its

return has been reached, and the partner has met its contractual commitments in full.

16. We will keep the production tooling in safe custody for 3 years free of charge after the final delivery to our partner. Following this we will make a written request to our partner to inform us within 6 weeks what should then be done with it. Our obligation in this respect will end if we are not advised within 6 weeks, or if no new order is placed.
17. We may only use purchaser-related tooling for supplies to third parties after receipt of the written agreement of our partner.

### **Prices**

18. Our prices are quoted in Euro and exclude sales tax, packaging, transport, postage and insurance.

### **Conditions of Payment**

19. All accounts are due for payment 30 days after date of invoice.
20. If we have delivered goods which are indisputably partly defective, our partner is nevertheless obliged to pay for the part of the order which is free from defect, unless the part-delivery is of no use to it. Furthermore, the partner can only offset charges with counterclaims which have the authority of a final decision or which are not disputed.
21. When the target has been exceeded, we are entitled to charge default interest at the rate at which the bank charges us for our overdraft facility, but at least 8% above the relevant base interest rate of the European Central Bank.
22. If there is any delay in payment we are entitled, after giving written notice to the partner, to suspend the execution of our obligations until receipt of payments.
23. Bills of exchange and cheques will only be accepted after agreement, and only on account of performance and provided that they are discountable. Discount expenses will be charged from the due date of the invoiced amount onwards. There is no guarantee that the bill of exchange and cheque will be presented punctually or that the bill protest will be submitted.
24. If after the contract is signed it becomes clear that our claim for payment is at risk because of the partner's inability to pay, we reserve the right to refuse our services and to determine a reasonable deadline by which it must pay by instalments, or provide security for each delivery. If the partner either refuses or the deadline elapses, we are entitled to rescind the contract and demand compensation.

### **Delivery**

25. Unless otherwise agreed, our deliveries are "ex factory". The deadline is considered as having been met when we advise that the goods are ready to be forwarded or collected.

26. The period of delivery begins when our order confirmation is despatched, and is extended appropriately when the conditions set out in sub-clause 55 exist.
27. Partial deliveries are permissible to a reasonable extent. They will be charged separately.
28. Over- or under-deliveries caused by manufacturing conditions are permissible within a tolerance of 5% of the total order. The total price will be adjusted accordingly.

### **Despatch and transfer of risk**

29. The partner should take over any goods which we advise are ready for despatch without delay. Otherwise we shall be entitled to forward the goods in any way we see fit, or to store them at the partner's cost and risk.
30. If no particular agreement has been reached, we will select the means and route of transport.
31. The partner shall bear the risk for the goods as soon as they have been delivered to the railway, forwarding agent or the haulage contractor, or when storage commences, at the latest however when they leave the factory or warehouse; this is the case even when we have undertaken to carry out the delivery.

### **Delivery delays**

32. Should we foresee that the goods cannot be delivered within the delivery period, we shall inform the partner promptly of this fact in writing, give it the reasons for the delay, and whenever possible advise the new expected date of delivery.
33. Should the delivery be delayed because of a situation covered by sub-clause 55, or because of a situation brought about by an act or omission of the partner, the delivery period will be extended appropriately.
34. The partner is only entitled to rescind the contract if we are responsible for failing to keep to the delivery date, and it has given us an appropriate extension without effect.

### **Reservation of title**

35. We shall retain title in the goods delivered until all requirements of the business association with the partner have been fulfilled.
36. The partner is entitled to sell these goods using proper business methods as long as it punctually meets its commitments arising out of our business relationship. However, it may not pawn the goods subject to the reservation of title nor transfer ownership thereof as security. It is obliged to secure our legal rights on the onward sale of such goods on credit.
37. If the partner fails to comply with its obligations, particularly if it defaults in payment, we are entitled to rescind the contract and to reclaim the goods, after expiry of an appropriate deadline for performance granted to the partner; this

shall not affect the legal conditions regarding the dispensability of fixing a deadline. The partner is obliged to surrender the goods.

We are entitled to rescind the contract when an application has been made to commence insolvency proceedings in respect of the assets of the partner.

38. The partner hereby assigns to us as security all claims and rights arising out of the sale or any hire permitted of goods to which we have the right of ownership. We hereby accept the assignment.
39. The partner shall always undertake any handling or processing of the goods subject to the reservation of title on our behalf. If such goods are processed or inseparably combined with other items which do not belong to us, then we shall acquire joint ownership in the new item according to the proportion which the invoice value of such goods bears to the other processed or combined items at the time that they were processed or combined.  
If our goods are amalgamated or inseparably combined with other moveable items into a single item, and if the other item is to be regarded as the main item, then the partner shall transfer to us proportional joint ownership, if the main item belongs to it. The partner will keep the ownership or joint ownership in safe custody for us. The same applies to items created through processing or combining or mixing as applies to goods subject to the reservation of title.
40. The partner must inform us without delay of any enforcement measures by third parties in relation to the goods subject to reservation of title, in the claims assigned to us or in other securities, passing over to us any documents necessary for us to intervene. This also applies to any other kind of encroachment.
41. If the value of the existing securities exceeds the secured claims by more than 20% in total, then upon request of our partner, we are obliged to release securities of our own choice to the necessary level.

### **Defects as to quality**

42. The quality of the goods shall comply strictly in accordance with the agreed technical delivery instructions. If we have to deliver according to our partner's drawings, specifications, samples, etc., then it will bear the risk of suitability for the intended usage. The time of the transfer of risk according to sub-clause 31 is decisive for the contractual condition of the goods.
43. For defects as to quality which are caused by unsuitable or inappropriate use, defective installation or commissioning by the partner or third parties, fair wear and tear, faulty or careless handling, we take no more responsibility than for the results of alterations or repairs by the partner or third parties carried out inappropriately and without our consent. The same applies to defects which only minimally reduce the value or the efficiency of the product.
44. The limitation period for claims based on defects as to quality is determined by the law, unless otherwise agreed.
45. If an acceptance inspection or sample inspection was agreed upon, then the partner cannot claim that there are defects which it should have been able to

ascertain by carefully inspecting the goods or the sample.

46. We must be given the opportunity to check the defect claimed. Goods under dispute should be returned to us without delay upon request; we will accept the transportation costs if the complaint about the defect is justified. If the partner does not fulfil these obligations or undertakes alterations to the disputed goods without our agreement, then it will lose its right to make a claim in respect of such defects.
47. With justified claims which are made within the correct time limit, we undertake either to repair the disputed goods or to supply replacements which are free from defects, whichever we consider appropriate.
48. If we either fail to meet these obligations, or fail to meet them within a reasonable period as stated in the contract, then the partner can give us in writing a final deadline, by which time we must fulfil our obligations. After unsuccessful expiry of this deadline the partner can demand a reduction in price, can rescind the contract or can undertake the necessary improvements itself or have them carried out by a third party at our cost and risk. Excluded from this sub-clause is a refund of any increased expenses which may be incurred by the goods being taken somewhere else after delivery, unless this complies with the intended use of the goods.
49. Legal claims for recourse by the partner against us exist only insofar as the partner has not made any agreements with its purchaser which exceed the legal defect claims. Sub-clause 48, final sentence, also applies to the extent of claims for recourse.

### **Other claims, liability**

50. Provided that nothing else arises hereafter, other and continuing claims by the partner against us are excluded. This applies in particular to claims for damages due to breaches of obligations under the law of obligations and from unauthorised action. We are therefore not liable for damage which did not occur to the delivered goods themselves. Above all, we are not liable for loss of profit or other pecuniary loss by the partner.
51. The above limitations of liability do not apply to wrongful intent, to gross negligence by our legal representatives or managerial staff or to culpable violations of essential contractual obligations. With culpable violations of essential contractual obligations we are liable only for damages which are typical for the contract and reasonably foreseeable – excepting cases of wrongful intent or gross negligence by our legal representatives or managerial staff.
52. Further, the limitation of liability does not apply in cases where there is liability for personal injury or property damage to privately used objects according to product liability law where goods supplied are faulty. It also does not apply to injury to life and limb and to the absence of warranted features, when and insofar as the warranty served the purpose of protecting the partner against damages which did not occur to the goods supplied themselves.
53. In as far as our liability is excluded or limited, this applies also to personal

liability of our salaried employees, employees, staff, legal representatives and contract staff.

54. The legal provisions regarding burden of proof are not affected by this.

### **Force majeure**

55. Force majeure, industrial action, unrest, official decisions, absence of deliveries by our suppliers and other unforeseeable, unavoidable and serious occurrences shall release the contracting party from its obligation to perform for the duration of the disturbance and according to the extent of their effects. This also applies if these occurrences happen at a time when the affected contracting partner is in arrears, unless it was responsible for the delay, either intentionally or through gross negligence. The contracting parties are obliged, if reasonably possible, to pass on the necessary information without delay and to adapt their commitments in good faith to the new situation.

### **Place of performance, place of jurisdiction and applicable law**

56. Unless otherwise stated in the confirmation of order, the place of performance is our head office.
57. Our head office is the place of jurisdiction for all legal disputes, including those within the framework of cheque and bill of exchange proceedings. We are also entitled to take legal action at the head office of the partner.
58. The law of the Federal Republic of Germany shall have exclusive application to the contractual relationship.

The United Nations Convention on Contracts for the International Sale of Goods dated 11th April 1980 (CISG - "Vienna Convention") shall not apply.