

Purchasing Terms

The present translation for the customer's convenience only. The original German text of the purchasing terms is binding in all respects. In the event of any divergence between the English and the German texts, constructions, meanings or interpretations of the German text shall govern exclusively.

1. The following purchasing terms shall only apply to business persons in the sense of Section 14 of the German Standard Terms Act (§ 14 BGB). They shall apply exclusively for our orders, including future orders, so far as no other agreement was made expressly and in writing. General terms of sale of the supplier shall not be binding or, nor shall differing terms in its order confirmations. Our purchasing terms shall apply exclusively if we accept the delivery of the supplier without reservation with knowledge of terms of the supplier which contract or differ from our purchasing terms. Oral orders and agreements shall only be legally valid with our written confirmation; the same applies to oral amendments of written orders as well as for the waiver of the provision requiring an agreement to be in writing to be binding.

2. Prices shall be quoted exclusive of value-added tax. The prices shall be maximum prices and shall include delivery to the place designated by us. Custom and duties, packing and insurance costs as well as other ancillary costs shall only be additionally compensated if expressly agreed. If packing material is returned, then the value thereof shall be credited to us; in such event, the packing material shall be sent collect on delivery.

3. Delivery

The delivery dates set forth in our order shall be binding and refer to the price of delivery designated by us. If the supplier recognizes that it will not be able to meet a delivery date, then it shall without undue delay notify us in writing. We shall have the right to refuse acceptance of goods which are delivered prior to the term for delivery set forth in the order and to return or warehouse with third parties, at the cost and risk of the supplier, the goods prematurely delivered. If we are prevented from timely accepting delivery by unforeseeable and extraordinary circumstances, which we were not able to avoid in spite of reasonable care (e.g. business interference, strike), then the period for acceptance shall be extended for the period of the hindrance. If acceptance is not possible for more than six months by reason of the circumstances listed above, then both parties shall have the right to rescind the agreement.

4. Settlement

A packing slip and a bill of delivery with reference to our order and item number and internal part number shall be included in all shipments.

5. Place of Performance

The supplier shall deliver at its risk the goods ordered to the place of delivery designated by us.

6. Acceptance and Inspection of the Goods

Receipts of delivery issued at the designated place of delivery are subject to subsequent inspection for conformity, quantity and quality.

We shall have the right to conduct the inspection by sampling. In the event the permissible marginal quality values or the CQL-values of the goods are exceeded, we are entitled to reject the goods completely or to inspect the goods fully at the cost and risk of the supplier and to request replacement of the defective parts; all other rights are reserved. We reserve the right in the event of defect to charge the costs for the inspection of the replacement delivery. Insufficient or incorrect deliveries as well as apparent defects shall be notified by us within ten days. Hidden defects shall be notified by us within ten days after discovery. This shall also apply for goods which are resold by us worldwide.

7. Returns

Returns of defective goods shall be made with return debit of the amount of the invoice at the cost and risk of the supplier. Replacement deliveries shall be invoiced new with reference to the number of our return shipment and debit note.

8. Warranty

The supplier shall fully warrant the good workmanship, through and proper execution according to agreement and use of good and flawless raw materials.

The goods shall in any event conform to the generally principles of technology, as set forth in particular in DIN guidelines, VDE terms and other recognized technical regulations.

Defects in the goods, even if they were not recognized in the acceptance by sampling, shall give us the right, at our option, either (a) to reduce the purchase price or (b) to request repair (c) if the supplier is in default with the repair or there is special urgency, to undertake the repair on behalf and at the cost of the supplier or (d) to request a replacement delivery or (e) to rescind the agreement, in whole or in part, without payment of compensation. The right to damages, in particular to damages for non-performance, shall be expressly reserved.

If it is not agreed otherwise, the warranty period shall be one year after receipt of the delivery. With respect to repairs, the warranty period shall begin to run new with respect to the repaired part of the goods.

9. Latest Technological State of the Goods

The supplier shall, in particular in connection with longer supply agreements, always ensure that the goods ordered conform to the latest state of the technology. Any planned technical or stylistic changes shall be presented to us for approval. We shall have the right during the term of the agreement to prescribe reasonable changes of technical, structural or stylistic nature.

Any changes in costs shall always be taken into account in connection with such changes and shall be notified to us without undue delay. Reductions in the price of the products by reason if increased production or rationalization shall be credited to us and shall also be notified to us.

10. Proprietary Rights

The supplier warrants by way of independent guarantee that the delivery and use, as agreed, of the goods ordered shall not infringe third parties' proprietary rights including application therefore within the countries of the European Union, Switzerland, the United States, Japan, South Korea, Singapore, Hong Kong, China, Taiwan, Malaysia and any country notified to the supplier from time to time. The supplier shall hold us harmless from all claims which are asserted against us arising out of such infringement; we shall have, in addition to claims for damages, all legal and contractual claims arising out of defective goods and defective title against the supplier; this shall also apply for goods which the supplier procured from third parties.

In connection with the use of proprietary rights licensed to the supplier limited to a certain territory, the supplier shall ensure that the use is permitted in all of the above mentioned countries.

11. Payment

Payment shall be made with fourteen days upon receipt of the invoice with deduction of 2 % discount or net within thirty days.

Neither acknowledgment of performance nor waiver of warranty is connected to the payment.

12. Invoice

The invoice shall be issued without undue delay after shipment of the goods with reference to our order number and the item number. Two copies shall be sent to our address listed on the reverse and may not be included in the shipment.

13. Assignment

Except for the house bank or the factoring company of the supplier, the assignment of receivables from us is not valid without our written report.

14. Confidentiality

All documents which we make available to the supplier for the making of its offer or carrying out of an order shall remain our property and may not be used for other purposes, copied or made available to third parties.

These documents or objects shall be returned to us without request free of charge after the order has been carried out. Products which have been produced pursuant to these documents may not, directly or in connection with other products, be offered, delivered or otherwise brought to the attention of third parties without our written consent.

The supplier agrees to use the knowledge and experience acquired by performing our orders exclusively for orders of our company. It shall maintain in strict confidence the business affairs which became known to it by means of performing our orders. The obligation of confidentiality shall not apply if and so far as it is a matter of general or publicly known knowledge.

15. Validity

If any of these provisions should be invalid, regardless of the reason therefore, the validity of the other provisions shall not be affected thereby.

16. Jurisdiction and Place of Performance

(1) If the supplier is a business person other than a small trader, as defined by the German Commercial Code ("Handelsgesetzbuch") then the courts in Aachen shall have jurisdiction over all disputes arising out of or in connection with this contractual relationship.

(2) Place of performance is Aachen.

17. Governing Law

The purchasing terms and legal relationship between the parties relating to our orders shall be governed by the law of the Federal Republic of Germany. The CISG is excluded.

Selling Terms

The present translation is furnished for the customer's convenience only. The original German text of the terms of delivery and payment is binding in all respects. In the event of any divergence between the English and the German texts, constructions, meanings, or interpretations, the German text, construction, meaning or interpretation shall govern exclusively.

1. General

The following terms of delivery and payment shall only apply to business persons in the sense of Section 24 of the German Standard Terms Act ("AGB-Gesetz"). They shall apply to the entire business relationship with our customers.

The purchaser acknowledges them as binding on it for the present agreement and for all future business transactions.

Any agreement which differs from these terms shall require our written confirmation; any waiver of the provision requiring an agreement to be in writing to be binding shall also require our written confirmation. Standard terms of purchaser shall not be acknowledged as binding and shall not constitute part of the agreement, even if we do not expressly object or if we carry out the agreement.

2. Offer and Delivery

(1) Our offers are non-binding.

(2) If we are prevented from timely performing the contract by unforeseeable, unavoidable and extraordinary disturbances in procurement, manufacture or delivery, whether at our facility or our supplier's, e.g. through lack of power, traffic disturbance, strike, lockout, then the term for delivery shall be extended for a reasonable period of time, however, not for more than six months. The purchaser may rescind in the contract only if after expiration of the extended term for delivery it grants in writing a reasonable grace period of at least three weeks, so far as the reasonable grace period is not longer in light of the underlying circumstances. Notice of rescission shall be given in writing if we do not perform within the extended term. This shall not affect paragraph (3) below.

(3) If the fulfillment of the contract is partially or totally impossible referring to under paragraph (2) mentioned reasons then we shall be released from our obligation to deliver.

(4) We will immediately inform the purchaser of the disturbance under paragraph (2) and the impossibility under paragraph (3).

(5) All claims of the purchaser for damages out of delay or non-performance, as well as claims for contractual or non-contractual damages, are excluded so far as we or persons assisting us in the performance of our obligations hereunder (hereinafter referred to as "assistants") are not responsible for intentional acts, gross negligence or breach of essential obligations under this contract. This shall also apply if any act shall at the same time constitute an act of tort.

(6) Our liability shall be limited to foreseeable damages. Excluded are all claims for damages which were not foreseeable at the time of the conclusion of the agreement or at the time of any breach of obligation, both with respect to terms of damages as well as the amount of damages.

(7) If the purchaser is in default in the payment for an earlier delivery, then we shall have the right to hold back deliveries without being obliged to compensate for any damages arising therefrom.

(8) We will have the right to make partial deliveries to a reasonable extent.

3. Prices

Invoices shall be based on the prices in effect on the date of delivery so far as no special agreement has been made with respect thereto. If in connection with small forward orders or portions of the agreed quantities are called for within the agreed time period, without our being responsible therefore, then we shall have the right, at our option, either to invoice for the lot delivered the price applicable to such quantity or to deliver the remaining quantity and to invoice for the agreed price.

4. Payment

(1) Our invoices shall be payable within fourteen days net after the date of invoice. We reserve the right, however, to make delivery conditional upon immediate payment.

(2) If the purchaser is in default in payment, then we shall have the right to charge default interest in an amount equal to 4 % above the discount rate of the German Federal Bank (Deutsche Bundesbank) so far as no higher or lower amount of damages is proved.

(3) We reserve the right to decide on a case-by-case basis whether to accept bill of exchange and checks. Bills of exchange or checks shall be accepted only as means of payment; they shall satisfy the obligation only subject to collection. Credit shall be affected only subject to standard reservations. For bills of exchange we shall charge the standard bank discount and collection fees. Any liability for timely collection or for timely protest is excluded so far as we or our assistants are not responsible for intentional acts, gross negligence or breach of essential obligations.

(4) In the event that the purchaser is responsible for a bill of exchange or check not being honored in due time or for conditions for payment which do not occur which substantially jeopardize a payment, then we may declare the entire receivable immediately due and payable – even if bills of exchange or checks have been given therefore.

(5) Only persons authorized in writing to collect and upon our form receipts are authorized to accept payment. The purchaser, however, reserves the right to prove to us that in fact in specific cases other persons were authorized to collect.

5. Reservation of Title

(1) The goods shall remain our property until payment of all present and future receivables arising out of our business relationship with the purchaser.

(2) Any processing or modification by the purchaser of the goods sold shall always be undertaken on our behalf. If the goods sold are processed with other goods which do not belong to us, then we shall acquire co-ownership in the new goods in the relationship of the value of the goods sold to the other processed objects at the time of processing.

(3) If the goods sold are inseparably mixed or combined within the meaning of Section 947 of the Federal Civil Code ("Bürgerliches Gesetzbuch") with other objects which do not belong to us, then we shall acquire co-ownership in the goods in the relationship of the value of the goods sold to the other objects at the time of the mixing or combination. If the mixing of combination takes place in such manner that the goods of the purchaser are considered to be the main goods, then it is considered to be agreed that the purchaser transfers proportionate co-ownership to us. The purchaser shall hold the goods so mixed or combined for us free of charge.

(4) The purchaser may sell the goods subject to our reservation of title in the ordinary course of business, either for immediate payment or with reservation of title; it shall not have the right to make any other dispositions, in particular any transfer of the title as security or any pledge.

(5) The purchaser hereby assigns to us, as of its receivables arising from the resale of the goods subject to our reservation of title, an amount which corresponds to our invoice price including value-added tax and all ancillary rights. In the event that receivables of the purchaser arising out of the resale shall be included in a current account, the purchaser hereby assigns to us its claim for the balance of the current account vis-à-vis its customer (including the final balance in the event of bankruptcy). The assignment shall be made in the amount invoiced and the value-added tax charged to the purchaser for our goods subject to reservation of title subsequently resold by the purchaser.

(6) The purchaser shall have the right to collect receivables assigned to us. An assignment or pledge of these receivables is only permitted with our written consent. The authority to collect is excluded if the purchaser falls into default in payment, an application for opening a bankruptcy or composition proceeding is filed, or there is suspension of payments or some other event which endangers our security interest. In this case the purchaser shall upon request notify the debtors in writing of the assignment, provide us with all information and present and deliver all documents. For this purpose the purchaser shall grant us access to its relevant documents, if the case should occur.

(7) Upon the occurrence of the circumstances set forth in paragraph 6, sentence 3 above, the purchaser shall grant us access to the goods subject to its reservation of title which are still in its possession, deliver us an exact list of the goods and separate and deliver the goods to us.

(8) We agree, at the request of the purchaser, to release the security due to us so far as the realizable value of our security exceeds the receivables to be secured by more than 20 %; the choice of security to be released lies with us.

(9) The purchaser shall have us immediately in writing of any attachment by third parties of the goods subject to reservation of title or the receivables assigned to us and support us in every way in order to intervene.

(10) The cost of the performance of the obligation set forth above to cooperate in the pursuit of all rights arising from the reservation of title, as well as all expenditures for the maintenance and storage of the goods shall be borne by the purchaser.

6. Transfer to Risk

(1) Risk of loss and damage shall pass to the purchaser as soon as the goods have left our factory or our warehouse. All shipments, including any returns, shall be made at the risk of the purchaser.

(2) All our shipments are insured against damage in transit at purchaser's costs.

7. Packing and Transportation

(1) Packaging shall be made in accordance with trade and commercial practice. Special packaging and substitute packaging shall be invoiced at cost.

(2) All transportation costs shall be borne by the purchaser.

8. Liability for Defects and Indemnity

(1) The goods shall be delivered with such workmanship and in such condition as is standard for us at the time of delivery.

(2) We will carry out a thorough visual inspection of the goods. We will not carry out a detailed inspection with regard to the manufacturer's specifications. The customer will be explicitly notified that the goods must in any event be inspected for quality in accordance with the manufacturer's specifications prior to any further use, particularly mounting, alteration, further processing, assembly, combining and mixing. Any deviations from the manufacturer's specifications must be reported to us in writing within 30 days at the latest.

(3) The warranty shall lapse if changes are made to the delivered goods by the purchaser or a third party, unless the defect only became apparent at the time of or after the change, or if the purchaser does not, without undue delay, comply with our request to return the goods alleged to be defective.

(4) In the event of justified claims, we will remedy the defect by, at our option, repair free of charge or delivery of a replacement. In this case we shall also bear the costs of transportation. In the event of failure of the repair or replacement, then the purchaser may at its option request reduction in the price of the goods or cancellation of the agreement. Further liability, in particular for damages which did not occur to the delivered goods themselves, is excluded so far as we or our assistants are not responsible for intentional acts, gross negligence or breach of essential obligations under this contract, or so far as quality which should have prevented the incident of damage was not expressly warranted.

(5) Goods which are alleged to be defective must be returned either in their original packaging or in accordance with trade and commercial practice.

9. Repairs

(1) Repairs shall be made without warranty if no notice of defects has been given.

(2) In the event of improper repairs, apparent defects shall be notified without undue delay in writing. Hidden defects which are discovered at a later time shall be notified to us in writing without undue delay after our discovery; otherwise the goods are deemed to be accepted even in view of this defect.

(3) Claims for damages shall only be acknowledged in accordance with Section 8, paragraph 4, sentence 4.

10. Other Claims for Damages

Other claims for damages by the purchaser against us – regardless of the legal basis – are excluded so far as we or our assistants are not responsible for intentional acts, gross negligence or breach of essential obligations.

11. Prohibition on Set-Offs and Liens

The purchaser can only assert a right of retention if this arises out of the same contractual relationship. Set-off by the purchaser or the enforcement of a lien is excluded unless the counterclaim would be uncontested, acknowledged by us or determined by final, unappealable judgment.

12. Claims for Damages for Non-Performance

If we have claims for damages for non-performance against the purchaser, the damages payable shall be an amount equal to 25 % of the value of the goods so far as no higher or lower damages are proved.

13. Labelling of the Goods, Industrial Property Rights

(1) Any change or designation of our goods which could amount to a certificate of origin of the purchaser or a third party or which could give the impression that a special certificate is issued are not permitted.

(2) Insofar as third parties should assert justified claims against the purchaser arising out of the infringement of industrial property rights of which they are owner, we shall, insofar as we are liable according to the applicable statutory provisions towards the purchaser, at our option and at our expense, obtain a license for the goods sold or replace them by non-infringing goods. If this is not possible for legal or technical reasons or cannot be expected of us under reasonable economic criteria, then we will accept the return of goods against refund of the purchase price. For any further claim our liability is governed by the standards set forth in section 10. We do not assume any liability for any use of the goods not agreed with us.

(3) For goods manufactured in accordance with the specifications of the purchaser we do not assume any liability that industrial property rights of third parties will not be infringed unless we or our assistants are not responsible for intentional acts, gross negligence or breach of an essential obligation under this contract; this shall also apply if we have cooperated in the development of the goods or developed the goods according to the specifications of the purchaser.

14. Validity

If any of these provisions should be invalid – regardless of the reason therefor – the validity of the other provisions shall not be affected thereby.

15. Jurisdiction and Place of Performance

(1) If the purchaser is a business person other than a small trader, as defined by the German Commercial Code ("Handelsgesetzbuch"), the courts in Aachen shall have jurisdiction over all disputes arising out of or in connection with this contractual relationship.

(2) Place of Performance is Aachen.

16. Governing Law

These terms of delivery and payment and all legal relationships between the parties relating to our supplies shall be governed by the law of the Federal Republic of Germany. The CISG is excluded.