

General Terms of Sale

1. General

- (1) All deliveries shall be made on the basis of the following terms of sale. Deviating purchase conditions of the buyer do not become part of the contract by acceptance of the order.
- (2) Unless otherwise agreed a contract comes into effect after receipt of the supplier's written order confirmation.
- (3) The supplier retains all rights of ownership and copyright regarding samples, cost estimates, drawings, technical data sheets, application instructions, safety data sheets and others, information of either tangible or intangible nature – also in electronic form – they must not be made available to third parties.
- (4) The buyer assumes sole responsibility for the documents provided by him, such as drawings, gauges, samples and the like. He is responsible for submitted detail drawings not violating intellectual property rights of third parties. The supplier shall be under no obligation to the buyer to examine whether in case of execution or for other reasons any intellectual property rights of third parties are violated due to detail drawings submitted to the supplier. Should nevertheless any claims be made by third parties, the buyer will release the supplier from any claim upon first demand.

2. Prices – payment

- (1) Unless otherwise agreed the prices shall be ex supplier's works, including loading at the works, however, excluding transport packaging and unloading.
- (2) All payments to the supplier shall be effected without any deductions unless otherwise agreed.
- (3) The buyer only has the right to retain payments or offset payments with counterclaims if his counterclaims are undisputed or legally determined.

3. Delivery time, delivery delay, delivery

- (1) The delivery time results from the contract parties' agreements. Compliance with them by supplier shall presuppose that all commercial and technical questions between the contracting parties have been clarified and buyer has fulfilled all obligations incumbent on it, such as supply of the necessary official approvals or certificates or down-payment (if such was agreed upon). If this is not the case the delivery time shall be adequately extended. This does not apply if the supplier is responsible for the delay.
- (2) The adherence to the delivery time is subject to the supplier receiving its own deliveries correctly and promptly. The supplier shall inform the buyer of any impending delays as soon as possible.
- (3) It is considered that the delivery time has been complied with, if the good has left the supplier's works before the expiry of this deadline or if the supplier has notified the readiness for shipment. If the item is to be subject to inspection - except in the case of justified refusal of inspection - the date of inspection, alternatively the notification of readiness for inspection, is decisive.
- (4) If shipment or inspection of the good is delayed for reasons for which the buyer is responsible, then buyer is charged with the costs incurred by the supplier due to the delay, starting one month after notification of readiness for shipment or inspection.
- (5) If the failure to meet the delivery time is due to force majeure, labour disputes or any other occurrences which cannot be influenced by the supplier, the delivery time shall be adequately extended. The supplier shall notify the buyer without delay of the beginning and the end of any such circumstances.
- (6) The buyer shall be entitled to rescind from the contract without fixing of a period of time if it shall be deemed impossible for the supplier to perform the full delivery finally before passing of risk. Moreover the buyer shall be entitled to rescind from the contract if the performance of a part of the delivery is impossible and the buyer has a justified interest in the refusal of a part delivery. If this is not the case, the buyer must pay the contract price apportionable to the part delivery. The same shall apply in case of an inability of the supplier to perform. Otherwise section 8.2 applies. If the incapacity or impossibility occurs during the default of acceptance or if the buyer is solely or largely responsible for the same, he shall be liable to effect payment.
- (7) Should the supplier fail to meet the delivery time and the buyer suffers damages as a result from this, the buyer shall be entitled to demand a compensation for default. For each full week of the delay, this amount shall be a maximum of 0,5%, in total however a maximum of 5% of the value of that part of the total consignment that cannot be used on time or not in accordance with the terms of the contract as a result of the delay. If the time of delivery has expired and the buyer sets the supplier a reasonable deadline for delivery - taking the statutory exceptions into account - but the supplier fails to meet this deadline, the buyer may rescind the contract subject to the applicable statutory provisions. Further claims owing to default in delivery shall be governed exclusively by section 8.2. of these general terms of sale.
- (8) The buyer is obliged to accept the ordered parts. If the buyer is in default in accepting the delivery, the supplier is entitled to claim compensation for arising damages. This amounts to a minimum of 25% of the agreed net purchase price.
- (9) If the buyer must call for or accept the goods within a certain period of time, the supplier is entitled, upon expiry of this period of time, to charge the purchase price or rescind from the contract after setting an appropriate period of grace and to claim settlement for the damage resulting from the non-acceptance, in particular the payment of the purchase price as well as storage- and disposal costs.

4. Transfer of risk, inspection, packing

- (1) The risk is transferred to the buyer once the goods has left the works, also in the case of partial deliveries or if the supplier has taken on other services such as shipping costs or cost of delivery and installation. As far as the parts must be inspected, this is relevant for the transfer of risk. Inspection must be carried out at the time agreed, alternatively after the notification by the supplier about the readiness for inspection. The buyer shall not refuse acceptance in the event of a minor defect.
- (2) If shipping is delayed or does not take place respectively inspection is not carried out due to circumstances which are not the supplier's fault, the risk shall pass to the buyer on the

- date that notice is given that the goods are ready for shipment or ready for inspection. If inspection is not performed on time, the supplier is entitled to ship the goods without inspection or store them at the buyer's cost and risk. In such cases, the goods shall be considered as having been delivered in accordance with the contract. The supplier engages to take out the insurances which the buyer demands at buyer's expense.
- (3) Partial deliveries shall be permissible, insofar as these are acceptable for the buyer.
 - (4) Transportation packaging and all other packaging will not be taken back by the Supplier.

5. Specification of products

- (1) Unless otherwise agreed, the quality of the products which are due under the contract shall be solely determined by the specifications agreed in writing. Only the quality described in the supplier's specifications shall be valid as quality of the goods. Public statements, recommendations or advertising shall not constitute any condition of the goods.
- (2) The properties of specimens and samples respectively drawings are binding only insofar as they have been explicitly agreed to define the quality of the goods.
- (3) Information on properties as well as other technical data shall only be independent warranties if they have been expressly agreed to and designated as such.

6. Reservation of property

- (1) The supplier shall retain title to the goods until all payments specified in the delivery contract have been received.
- (2) The buyer may neither sell nor pledge the goods, nor assign them as security. In the event of distraints, as well as confiscation or any other rights of disposal by third parties, the supplier must be notified thereof without delay.
- (3) Should the goods delivered be connected in such way inseparably with goods not belonging to supplier, supplier shall be entitled to joint ownership in the new product in the ratio of the value of the goods delivered and the other connected goods' value. If the connecting takes place in such a manner that the goods of the buyer are to be regarded as the main item, then it is deemed to be agreed that the buyer transfers joint ownership on a pro rata basis to the supplier. The buyer shall preserve for the supplier the sole or joint ownership resulting from this.
- (4) If the buyer breaches the contract, in particular in the case of delay of payment, the supplier shall be entitled to repossess the goods after due warning, and the buyer will be obliged to hand them over.
- (5) The supplier may only demand surrender of the delivered goods based on the retention of title only if it has previously rescinded the agreement.
- (6) The application for initiation of insolvency proceedings shall entitle the supplier to rescind the contract and demand the immediate return of the delivered goods.

7. Warranty

In the case of material defects and defects of title regarding the delivery the supplier shall warrant by way of exclusion of further claims - subject to para. 8 - as follows:

Material defects

- (1) The supplier shall repair or replace all parts that are proved as defective due to certain circumstances prevalent before the transfer of risk, as per the supplier's discretion. Notice of the discovery of such defects after delivery shall be given without delay and in writing to the supplier. Replaced parts shall become the property of the supplier.
- (2) Upon consultation of the supplier, the buyer must grant the supplier the time and opportunity for all such repair work and supplementary delivery as the supplier deems necessary; otherwise, the supplier is relieved from liability for the ensuing consequences. Only in urgent cases of jeopardy to the operational safety and to prevent disproportionate damage, whereby the supplier must be notified immediately in writing, shall the buyer be entitled to carry out the repair himself or to have it repaired by a third party, and to charge the necessary costs to the supplier.
- (3) Of the costs arising from the repair or replacement delivery, the supplier shall, in the event that the complaint is deemed to be justified, be responsible for the costs of the replaced part including shipment. The supplier also bears the costs of the disassembly and installation insofar as this does not entail an unreasonable burden for the supplier, as well as the costs of any necessary provision of the necessary fitters and assistants including travel costs.
- (4) Within the framework of the legal guidelines, the buyer has the right to withdraw from the contract if the supplier fails to carry out the repair operations or make the replacement delivery following a material defect within the reasonable term assigned for this purpose. Should only an immaterial deficiency exist, the buyer shall only be entitled to a reduction of the contractual price. Otherwise, the right to reduce the purchase price shall be excluded. Further claims are governed by section 8.2 of these terms.
- (5) No warranty shall apply in the following cases in particular: inappropriate or improper use, incorrect assembly or faulty commissioning by the buyer or third party, natural wear and tear, wrong or negligent handling, improper maintenance, the use of unsuitable utilities, etc.
- (6) The supplier does not assume any liability for the suitability of goods manufactured or supplied according to the buyer's provided specification and/or drawing for the designated use. Therefore the supplier only assumes liability for the design in accordance with the drawings. Furthermore the supplier assumes no warranty if defects can be attributed to tools or material provided by the buyer. The warranty for wear parts covers only the suitability of the goods for standard use and the usual durability.
- (7) If the buyer or a third party does not carry out the repair work with proper care, the supplier shall bear no liability for the consequences arising therefrom. The same shall apply to any alterations to the goods delivered undertaken without the supplier's prior consent.

Defects of title

- (1) If use of the item to be supplied results in the violation of domestic intellectual property rights or copyrights, the supplier will, at his own expense, generally obtain the right for the buyer to continue such use, or modify the article to be supplied in a manner acceptable to the buyer such that the intellectual property rights are no longer violated. If this is not

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HypoVereinsbank (Member of UniCredit)
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feasible on commercially reasonable terms or within a reasonable period of time, the buyer shall be entitled to rescind the contract. Also the supplier shall be entitled to rescind the contract under the mentioned preconditions. Furthermore, the supplier shall indemnify the buyer against any undisputed or legally enforceable claims of the respective holders of the intellectual property rights.

(2) In case of an infringement of intellectual property rights or copyrights the supplier's obligations are exclusively subject to section 8.2.

They shall only apply if

- the buyer notifies the supplier without delay of asserted infringements of intellectual property or copyrights.
- the buyer assists the supplier to a reasonable extent in rejecting asserted claims or enables the supplier to execute modification actions according to section 7.1.
- the supplier reserves the right to all defensive measures, including out-of-court arrangements.
- the defect of title is not based on an instruction made by the buyer and the infringement of rights was not caused by the fact that the buyer modified or utilised the goods in a non-contractual manner.

8. Liability

(1) If, due to the supplier's fault, the goods delivered cannot be used by the buyer in accordance with the contract as a result of the omitted or deficient implementation of proposals and advice given prior to or after the conclusion of the contract or due to the infringement of other contractual ancillary obligations, including but not limited to instructions on the operation and maintenance of the goods delivered, the provisions of para. 7 and section 8.2 shall apply mutatis mutandis, to the exclusion of any and all further claims of the buyer.

(2) The supplier is only liable for damages not arising on the delivered item itself, on whatever legal grounds

- a) in the case of intent;
 - b) in the case of gross negligence on the part of the owner/committees or company executives;
 - c) in the event of culpable injury to life, body and health;
 - d) in the case of defects as well as other circumstances the supplier has maliciously concealed or whose absence he has warranted;
 - e) or in the case of defects, as far as the product liability law for personal injuries or damage to property as far as those items will be used privately
- In case of culpable breach of substantial contractual obligations the supplier will also assume liability for gross negligence of nonexecutive employees and for ordinary negligence, the last being limited to the contractual and reasonably predictable damage. Further claims are excluded.

9. Limitation of time

All claims of the buyer - regardless of the legal grounds - fall under the statute of limitation within 12 months, beginning with the delivery of the goods. Compensation claims under para. 8 shall be subject to the statutory periods. The sale of used goods shall exclude any liability for material defects.

10. Applicable law, jurisdiction

- (1) The contract shall be governed by the laws of the Federal Republic of Germany exclusively. The United Nations Convention on Contract for the International Sale of Goods shall not apply.
- (2) Düren shall be the venue. The supplier is also entitled to bring action against the buyer at his place of residence.
- (3) Should individual conditions of these terms of sale be wholly or partially ineffective, then all remaining terms shall remain unaffected thereby. Ineffective conditions shall be replaced by the admissible statutory regulation.

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