



# Conditions of Delivery and Payment

## **General:**

We shall deliver exclusively in accordance with the following conditions of sale and delivery. These conditions shall retain their validity for future deliveries without repeated notification. Diverging and collateral agreements require our express written confirmation. Express objection shall herewith be made to any of the purchaser's conditions of purchase. Such conditions shall also not put us under obligation even if we do not again object to them upon conclusion of any individual contract. Arrangements diverging from our terms and conditions shall only be effective if they have been confirmed by us in writing. Our offers shall be subject to change without notice. Technical alterations as well as changes in form, colour and/or weight shall remain subject to reservation within a reasonable framework. We shall be entitled to accept the contractual offer contained in the order within two weeks following our receipt of the order. The third working day after dispatch of the order by the customer shall be deemed the moment of receipt of the order. The customer shall retain the right to furnish proof of an earlier or later date of receipt. We may give notice of acceptance either through our written confirmation of the order or through the carrying out of the order. Should confirmation of receipt nevertheless be made, this shall not yet constitute binding acceptance of the order. The minimum total of the contract or an order shall amount to €250 net.

Orders will be accepted in writing, by fax, by email or webshop transmission only. Changes of existing orders will be treated like a new order with regard to delivery time or minimum order value.

## **Prices:**

As a rule, the prices that are valid on the day of the order pursuant to our current price list plus the statutory value added tax shall be applicable on the day of invoicing. Our prices shall be effective ex works. Shipment of an invoiced value of goods exceeding €1 000 shall be free of freight charges; this shall also apply to specially arranged freight agreements. The customer shall bear the freight costs incurred for express or fast freight deliveries. If delivery is only possible by public means of transport, delivery shall be effected free of charge only for an invoiced value of goods exceeding €1 000 free domicile of recipient. Carriage costs at the destination of receipt shall be borne by the recipient.

## **Times and Dates of Delivery:**

Unforeseeable circumstances and those not in the sphere of our influence that prevent the performance of the obligations we have assumed shall entitle us to postpone the delivery for the duration of the hindrance or for a reasonable start-up period or to withdraw from the contract owing to a section of the contract not carried out. The right to rescind the contract shall not exist if the events simply cause a short-term failure in our ability to deliver. The circumstances described above shall also apply to strikes and lockouts that result in material complications for us with regard to delivery, irrespective of whether such events affect us or one of our suppliers; this shall not apply if we are responsible for the hindrance in performance. Times and dates of delivery shall only be roughly applicable and shall not be binding unless confirmed by us in writing as binding. In the event that we are unable to adhere to agreed times of delivery, the purchaser has to grant us a reasonable time limit for performance. Following a futile attempt at subsequent performance and expiry of the time limit, the purchaser may rescind the contract. If the purchaser is unjustified in withdrawing from the contract granted, we may demand 10% of the sale price for the costs incurred for the handling of the order and for profit loss without prejudice to the possibility of asserting a higher loss in reality. The customer shall retain the right to furnish proof of lesser damage.

**Part Shipments, Delivery and Passing of Risk:**

Part shipments shall be admissible to the extent that they are customary in trade and commerce and if the quantity of the delivery item gives reason for such. In other respects, we shall be entitled to effect reasonable part shipments at all times. The place of performance for all of our delivery commitments shall be our plant or branch office in which the goods are handed over to the first carrier for delivery to the purchaser. Our deliveries shall be effected at the risk of the purchaser. In the absence of a deviating agreement, the risk shall pass to the purchaser no later than the point in time when we hand over the goods to the freight agent, the carrier or to any other person designated to effect shipment. The passing of risk shall also take place if we carry out the transport or assume duties to be carried out at the place of delivery or if we bear the transport costs. At the request and expense of the purchaser, we shall be committed to take out insurance policies that the purchaser wishes to conclude. For customers picking up the goods themselves or who have contracted a transport carrier, the risk shall pass to the purchaser upon commencement of loading; in these cases, the purchaser shall be solely responsible for the safe operations and transportation with regard to loading and unloading. In the event that we participate, this shall be on behalf of and at the risk of the purchaser. The purchaser shall release us from claims that have been asserted against us due to damaging events and also due to unsafe loading with regard to operations and transport. In other respects, the purchaser shall indemnify and hold us harmless from and against eventual disadvantages and/or charges that we incur owing to infringement of the law on transportation of goods by the purchaser or a carrier employed upon his behalf. If shipment is delayed due to circumstances for which the purchaser is responsible, the risk shall pass to the purchaser upon receipt of notice of readiness to dispatch.

**Reservation of Title:**

We shall retain title to the goods delivered until all payments arising out of the business relationship with the purchaser have been settled. In the event the purchaser is in violation of the contract, in particular in the case of delay in payment, we shall be entitled to take back the goods and the purchaser shall be obligated to surrender them. Following the taking back of the goods we shall be authorised to utilise such goods. The sales proceeds, minus the actual and fair utilisation costs that arise, shall be credited against the accounts payable of the purchaser. The purchaser shall be entitled to resell the goods within the context of a regular business operation. However, he shall already assign to us all claims amounting to the purchase price agreed between us and the purchaser (including value added tax), that arise for the purchaser from the resale to third parties, irrespective of whether the goods are resold prior to or following processing. We shall herewith accept the assignment. The purchaser shall remain authorised to collect this claim following such assignment. Our authority to collect the claims ourselves shall remain unaffected; we agree, however, not to collect the claims as long as the purchaser meets the agreed payment obligations and is not in arrears with payment. If this is the case, however, we may request the purchaser to disclose the assigned claims and the debtors involved, to make the necessary statements with regard to the collection of the receivables, to hand over the necessary documents and to notify the debtors (third parties) of the assignment. The processing and transformation of the goods by the purchaser shall be performed on our behalf at all times. If the goods are processed with other items not belonging to us, we shall acquire co-ownership in the new thing in the ratio of the value of the goods to the other items processed at the time of processing. If the goods are inseparably mixed with other items not belonging to us, we shall acquire co-ownership in the new thing in the ratio of the value of the goods to the other mixed items. The purchaser may neither pledge nor assign our goods by way of security. In the case of attachments and confiscation or other orders by third parties, the purchaser has to inform us immediately and provide us with all information and documents necessary to safeguard our rights. Bailiffs or third parties shall be informed about our ownership. In so far as the purchaser



makes the request, we undertake to make available to the purchaser the securities we are entitled to inasmuch as the value of the claims to be secured does not exceed more than 10% of the value of the claims, and to the extent that those claims have not yet been settled. The choice of the securities to be made available is up to us. The purchaser agrees to handle with care the goods delivered by us as long as we retain reservation of title. In the case of deliveries to countries with other legal systems in which the above regulation of reservation of title does not have the same security effect as in the Federal Republic of Germany, the purchaser shall undertake everything possible to create appropriate security interests immediately. The purchaser shall participate in all measures such as registration and publication, etc. that are necessary and required for the effectiveness and enforceability of such security interests.

**Warranty:**

Vis-à-vis the purchaser, we shall assume responsibility for defects of the goods initially at our option through subsequent improvement or substitute delivery. Section 439 paragraph 3 BGB (German Civil Code) shall remain unaffected. As a rule, if subsequent improvement fails, the purchaser may, at his own option, demand a reduction in price or cancel the contract (rescission). In the case of only a slight breach of contract, in particular, if there are only slight defects, the purchaser shall not be entitled to withdraw from the contract. The goods shall be examined immediately upon delivery. Any notices of defects shall be made immediately in writing or via fax, no later, however, than two days after the day of delivery. If the purchaser fails to make notification, the goods shall be deemed approved, unless it concerns a defect that was not recognizable upon examination. If such defect becomes apparent later, notification must be made immediately upon discovery; otherwise the goods shall be deemed approved even in consideration of this defect. The purchaser shall be responsible for the entire burden of proof for any and all entitlement to claims, in particular for the defect itself, for time of determination of the defect and for notification of the defect within good time. Samples of the faulty goods shall be enclosed with all complaints; otherwise the complaint cannot be processed. If, due to defects of title or defects as to quality, the purchaser chooses to withdraw from the contract following failure of subsequent improvement, he shall be entitled to no further claims to damages owing to the defect. If the purchaser chooses compensation by means of damages following failure of subsequent improvement, the goods shall remain with the purchaser, if this can be reasonably expected of him. Damages shall be limited to the difference between the purchase price and value of the defect object. This shall not apply if we have caused the breach of contract with the intent to deceive. The limitation period for claims for defects shall be one year calculated from the time of delivery of the goods. On principle, our product description shall be deemed the sole agreement as to the quality and nature of the goods. Public comments, sales talk and advertising do not represent a quality description of the goods in conformity with the contract.

**Liability Limitations:**

Concerning unacknowledged claims contained in these terms and conditions, in particular, claims for damages and reimbursement of expenses of the purchaser for each form of faulty performance of the contract as well as cases of unlawful acts, we shall not be liable in the case of a slightly negligent breach of immaterial contractual obligations caused by us, our legal representatives or employees or in cases of other slightly negligent behaviour on our part or the part of our legal representatives or employees. In other cases of slightly negligent neglect of duty caused by us, our legal representatives or employees, our liability shall be limited to the foreseeable, contractually typical, direct average damage depending on the type of goods. The above liability limitations shall not, however, affect the claims of the purchaser arising from product liability. Further, they shall not apply to personal injury and damage to health or to loss of life of the purchaser attributable to us.

**Information, Advice and Duties:**

Information and advice shall be provided on the basis of our experience up until now and are in keeping with our best knowledge; however, such information and advice shall be provided subject to other, written agreements without obligation and may not be brought into play to substantiate claims of any kind against us.

The resale of our products to countries, whose national provisions do not comply with the marking, description and product information on the packaging unit, is not allowed. Our customer is also liable for the misconduct of its purchaser to this effect.

**Terms of payment:**

Our invoices shall be payable with a 2% discount if paid within 14 days of the date of the invoice and with no deduction if settled within 30 days. In addition, a deduction can only then be granted if all previous outstanding accounts have been settled. Despite provisions of the purchaser that are worded differently, we shall be entitled at first to set off payments against the purchaser's previous debts and to inform the purchaser about the type of the settlements effected. If expenses and interest have already accrued, we shall be entitled to set off the payment first against the expenses, then the interest and finally against the main claim. Bills of exchange shall only be accepted as a means of payment if this has been expressly agreed. Discount and other charges for bills of exchange shall be borne by the purchaser. Credit notes for bills of exchange or cheques shall always be subject to collection of the counter value of these papers and with the value of the day on which we dispose of the counter value. Non-compliance with the payment date shall entitle us, without making any special demand for payment, to charge default interest amounting to 8% above the prevailing basis interest rate commencing from the due date. The purchaser shall not be entitled to offset counterclaims or to assert a right of retention, unless the counterclaim is uncontested, ripe for judgment or has been recognised by declaratory judgment. We shall not be obligated to any further deliveries arising from any current contract until payment of invoice amounts due including default interest have been paid in full. In the event that an application for insolvency has been filed with regard to the purchaser's assets, we shall be entitled to declare the entire unpaid balance to be immediately due and repayable, even if we have accepted cheques. Furthermore, in this case, we shall be entitled to request advance payments or provision of security. The purchaser may only exercise a right of retention if his counterclaim is based on the same contractual relationship.

**Place of performance and jurisdiction:**

Place of performance for the purchaser's performance and our performance – also for sales freight paid or free on board, etc. – shall be our registered office. To the extent that the purchaser is a merchant in the context of the HGB (German Commercial Code) or an entrepreneur from one of the treaty states of the EuGVÜ (European Convention on the Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters) or EuGVO (European Regulation on the Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters), the place of jurisdiction shall be Memmingen for all disputes arising directly or indirectly out of the contractual relationship. We shall, however, be entitled to bring an action against the purchaser in the court at his place of residence.

**Final provisions:**

The purchaser's rights and duties arising from the contract concluded with us shall not be transferable to third parties unless we have granted our written consent. If individual provisions of the contract with the purchaser, including these General Terms and Conditions, are or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. These terms and conditions and all legal relationships between us and the purchaser shall be subject to German law; Art. 3 of the law on the United Nations Convention dated April 11, 1980 concerning Contracts for the International Sale of Goods dated July 5, 1989 BGBl. II, pg. 586 (Federal Law Gazette) shall not be applicable. The export of products requires our written approval. The purchaser shall assume the responsibility for the use of the products abroad in accordance with the regulations.