

Purchasing and Ordering Terms and Conditions
(Status as at 01.09.2020)

1. General, Validity

- 1.1 Only our Purchasing and Ordering Terms and Conditions below shall apply for orders and for all commercial transactions with our Sellers.
- 1.2 The Seller's terms and conditions of payment differing from our supplementary to our own T&Cs shall only apply, if they have been expressly recognised in writing by us. Such T&Cs shall not be binding on us even if we do not expressly object to an order confirmation based upon them. If we take delivery of a consignment or a service or state our acceptance or a service or make payments without reservation this shall not constitute any recognition of the Seller's terms and conditions if they differ from, or are supplementary to, our own T&Cs. Our purchasing and ordering terms and conditions shall also apply for all future transactions between us and the Seller without us having to refer to them again on our purchasing and ordering T&Cs.
- 1.3 Our purchasing and ordering T&Cs shall only apply to entrepreneurs within the meaning of Section 14 of the German Civil Code [BGB], legal persons under public law or special funds under public law.

2. Offers, Orders

- 2.1 Offers, estimates etc. worked out and prepared for us shall be free of charge for us and shall not place us under an obligation to place an order. The Seller's offer must be for exactly what we have requested. If the Seller has a solution which is better either technically or economically, he is also to submit this to us as well.
- 2.2 Our orders shall only be binding in those cases in which they have been submitted in writing. Our verbal orders shall only be valid if they have been confirmed in writing.

3. Prices, Terms and Conditions of Payment

- 3.1 The price shown in our order is binding. In the absence of a written agreement the price shall include the cost of delivery „franco domicile“ including packing and value added tax at the rate in force that that time. At our request, the Seller must take back the packaging at his own costs
- 3.2 Unless agreed otherwise in writing, we shall be entitled to pay by bank remittance and under special agreement by cheque or 3-month bill of exchange within 14 days to qualify for a prompt payment discount of 3%, within 20 days to qualify for a prompt payment discount of 2% or within 30 days net, whereby the periods of time stated shall begin to run with the receipt of a verifiable invoice. Payment by cheque or 3-month bill of exchange shall only apply as payment in cash for the purposes of qualifying for a prompt payment discount. The discounting fees shall be for our account. Invoices are to be sent to us for each order stating the order number and cost point.

4. Delivery periods, Partial deliveries

- 4.1 Delivery dates agreed for the Seller's goods or services are binding. It shall be the receipt at the point of delivery specified by us which shall determine whether goods or services have been supplied on time. Any additional costs which may be incurred with speeding up transportation shall be for the Seller's account. As soon as the Seller realises that he will be unable to fulfil some or any of his contractual obligations, or supply them on time, he must notify us of this in writing without undue delay stating the reasons and the probable length of delay. Notification of a delay does not mean that the Seller will not be in default. Our rights based on goods or services being supplied late shall not be adversely affected by notification of delay either. The Seller is obliged to request by us in good time the documents to be provided in order to carry out the order.
- 4.2 Goods and services and part consignments and partial services supplied early may be rejected by us. The delivery times are to be agreed with us prior to delivery, irrespective of the above arrangements.

5. Dispatch, Passing of risk

All goods are to be supplied free to point of delivery after dispatch has been notified in good time. Delivery notes and packing slips are to be attached. The Seller has to pack, mark and dispatch hazardous goods in accordance with the relevant national and international regulations. Risk shall pass over to us after delivery has been taken of the goods by persons authorised by us to do so at the agreed point of delivery.

6. Difficulties in carrying out the contract

Provided that such events were not foreseeable, operational disruptions, shortages of fuel or raw materials, transport disruptions, as well as strikes, lock-outs, official instructions and instances of force majeure, shall exempt the affected party from its obligation to supply or to carry out acceptance for the duration of the disruption and scope of their impact. If, as a result of this, the delivery is delayed by more than 1 month, each of the parties shall consequently be entitled to withdraw from the contract without being able to assert any other claims with regard to the quantity of goods affected by the disruption in supply or acceptance.

7. Quality

- 7.1 The Seller shall have to check the items to be supplied in accordance with the regulations of his quality control system at his expense. The Seller shall ensure at his own expense by marking the items to be supplied in an appropriate manner or by other means, so that when a defect is identified on items to be supplied, all items of the same type affected by the same defect or which may have the same defect can be identified. The Seller shall have to keep us up to date at his expense about the marking system used, so that we are able to identify types of goods ourselves at any time.
- 7.2 We shall be entitled, after giving suitable advance notice (i.e. at least 7 days in advance), to conduct inspections in the Seller's works. The Seller shall bear the costs he incurs for materials and staff. The Seller shall bear the material and staff cost of obtaining material certificates for semi-finished goods or primary materials. Our rights against the Seller in the event of defective goods shall not be affected as a result of inspections being conducted. Material certificates and test records shall constitute part of the scope of delivery and we must have them at the point in time of delivery.

8. Notification of defects, Rights in the event of defects, Statute of Limitations

- 8.1 We shall inspect incoming goods for any overt quality defects within a reasonable period of time as part of a proper commercial procedure, normally by means of random checks, provided that these are normal and economically justifiable. Quality defects shall be regarded as overt if they are obvious and manifest. Our notification of defects shall have been made in good time, provided that are received by the Seller within 2 working days if they are overt, counting from when the goods were received or in the case of concealed defects, within a period of 10 working days from when the defect is identified.
- 8.2 The Seller shall guarantee that the goods supplied comply with the quality, finish and quantity ordered, satisfy the specifications laid down by our works, possess the agreed or guaranteed characteristics, comply with the generally accepted codes of practice and the regulations laid down by law and normal within the industry (E.g. Technical Control Board, Association of German Engineers [VDI], Government Safety Organisation). In particular, amendments in the type of materials worked or in design and execution compared with earlier consignments of the same type of goods are to be notified to us prior to the commencement of production and shall be subject to our written consent.
- 8.3 In the event of defects, delivery of incorrect goods, or discrepancies in quantities, we shall be entitled to our statutory rights in full.
- 8.4 A repair shall be regarded as having failed, unless already otherwise clear given the type of the thing or the defect or other circumstances, after the first unsuccessful attempt at the latest.
- 8.5 The Seller must bear all expenses required for the purpose of review and cure as well, if it turns out, that there actually was no defect.
- 8.6 The period of time for claims covered by warranty shall begin when the goods are delivered, and for goods including assembly or set-up, or other services, the warranty period shall however only begin to run after acceptance and shall be 3 years, provided that no longer warranty period has been prescribed by law or provided for below. The warranty period for claims based on defects to buildings or structures and to works, the success of which consists in planning or monitoring services being rendered, as well as things supplied by the Seller, which have been normally used, as designed, for a building or structure, and which have caused the latter to be defective, shall be 5 years from the beginning of the statutory warranty period in force at that time. The period of limitation for claims asserted on the basis of defects in the Seller's things which are integrated in our things as raw materials and supplies, which are mixed or connected with our things, which in turn are normally designed to be used for a building or structure, and which cause it to be defective, is 5 years from delivery by us, unless the Seller's things as raw materials and supplies have caused the defect in the building or structure.

9. Entrepreneur's recourse

- 9.1 In addition to the claims for defects we are also entitled to the legally determined recourse claims within a supply chain without limitation (entrepreneur's recourse pursuant to Sections 445a, 478 of the German Civil Code [BGB]). In particular, we are entitled to demand exactly the type of cure (remediation or supply of a thing free of defects) from the Seller, which we owe to our customer in each particular case. Our legal choice (Section 439 para. 1 of the German Civil Code [BGB]) is not limited by this.
- 9.2 Before we acknowledge or comply with a defect claim asserted by our customer (including reimbursement of expenses pursuant to Sections 445a para. 1, 439 para. 2 and 3 of the German Civil Code [BGB]), we will inform the Seller with a brief summary of the facts and ask for a written statement. If the statement is not delivered within a reasonable period of time and if no consensual solution is brought about, the claim of defects actually granted by us shall be deemed to be owed to our customer; in this case the Seller is entitled to present the counter evidence.

10. Product liability, Exemption from liability, Liability insurance cover

- 10.1 In so far as the Seller is responsible for product damage and / or defect he shall, given this, be obliged to exempt us at first call from compensation claims for damages asserted against us by third parties, if the cause of such damage or defects is within his sphere of responsibility and he himself is liable in legal relationships with third parties. In keeping with this the Seller is also obliged to refund any expenditure in accordance with Sections 683 and 670 of the German Civil Code [BGB], as well as in accordance with Sections 830, 840, and 426 of the German Civil Code [BGB], which arise in particular from, or in connection with, a recall campaign conducted by us. We shall notify the Seller of the content and scope of the recall measures to be undertaken if it is possible and reasonable to do so and afford him an opportunity to make a response. Our other statutory rights shall not be affected by this.
- 10.2 The Seller shall undertake to maintain a product liability insurance policy with cover for a lump sum of 10 million Euro per claim for personal injury and property damage and prove to us, upon request, that he has taken out and is maintaining such a policy. The scope of statutory liability shall not, however, be limited by taking out and proving that a public liability insurance policy has been taken out.
- 10.3 The Seller shall be liable for all information about the composition and intended use of the delivered goods.

11. Reservation of title – Acquisition of title

- 11.1 We shall acquire title to the delivered goods after acceptance. With the exception of ordinary reservations of title all the Seller's other (qualified) reservations of title shall require our written declaration of consent to be valid. Should the Seller have a reservation of title, we shall be irrevocably entitled to dispose of the goods in the normal course of our business. The Seller furnishes an assurance that the shall supply the goods unencumbered by third party rights.
- 11.2 Materials, machinery, models, drawings, tools etc. provided or financed by us shall remain our property. Such items are to be sent back to us by the Seller at his expense should we request this for a valid reason at any time, without the Seller being entitled to claim a pledge or assert a right of reservation. As long as the items are in the possession of the Seller they are to be insured by him at his expense against all risks for us.

12. Assignment, Rights to set-off and to retention

- 12.1 The Seller may only assign his claims against us with our prior written consent. This shall also apply for factoring. Moreover, Section 354a of the German Commercial Code [HGB] shall not be affected by this.
- 12.2 Our consent for assignments which as a result of an extended reservation of title agreed by the Seller with his suppliers, shall be regarded as having been granted from the outset subject to the proviso that we are also allowed to offset with counter-claims acquired following notification of assignment. Section 354a of the German Commercial Code [HGB] shall neither be affected by this.
- 12.3 The Seller shall only be entitled to a right to set-off or to a right to retention if his counter-claim is undisputed, is admitted by us or has been finally established and is non-appealable or if his counter-claim and our claim are connected by a legal relationship of mutuality within the meaning of Section 320 German Civil Code [BGB].

13. Documents, Non-disclosure

- 13.1 The Seller shall have to submit his calculations, plans etc. in good time and let us have the documents free of charge. The responsibility of the Seller shall not be affected by the approval of the above documents by us.
- 13.2 All information and documents handed over to the Seller by us to enable him to work out an offer, manufacture the goods etc, as well as documents prepared by the Seller to our specific information shall be our property and must not be used by the Seller for other purposes or made accessible to third parties. At our request these are all to be returned without undue delay without the Seller being allowed to retain copies. If an order does not materialise, all documents are to be handed over to us without undue delay and without us having to request them. The Seller shall treat enquiries, orders and deliveries as a business secret and therefore in confidence.

14. Place of fulfilment, Place of jurisdiction, Choice of law, Data Protection

- 14.1 The place of fulfilment and exclusive place of jurisdiction for all claims arising from the specific contractual relationship in which these Purchasing and Ordering Terms and Conditions are included is Essen, unless the Seller is a merchant or a legal entity created under public law or a public law special fund and this is in contravention with compulsory statutory regulations. We shall however, be entitled to institute legal action against a Seller at his general place of jurisdiction as well.
- 14.2 Only the law of the Federal Republic of Germany, as applied between German businesses shall apply to the legal relationship between us and the Seller or between us and third parties. The regulations governing the international sale of goods (CISG; Viennese UN law on sales) and German international private law shall be expressly inapplicable.
- 14.3 We store our Sellers' data as specified in our business relationships overleaf in accordance with the German Federal Data Protection Act [Bundesdatenschutzgesetz].