

General Terms & Conditions

This is an English translation of our German General Terms & Conditions ("Allgemeine Geschäftsbedingungen"). In case of ambiguities or deviations, the German version of the General Terms & Conditions is decisive.

§ 1 General, scope

(1) These General Terms & Conditions (Ts&Cs) shall apply to all our business relations with our customers (hereinafter referred to as the "Purchaser").

(2) The Ts&Cs shall apply in particular to contracts for the sale and/or delivery of movable property (hereinafter also referred to as: "goods"), irrespective of whether we manufacture the goods ourselves or purchase them from suppliers (§§ 433, 651 of the German Civil Code (BGB)). The Ts&Cs in their respective version shall also apply as a framework agreement for future contracts for the sale and/or delivery of movable items with the same Purchaser, without our having to refer to them again in each individual case.

(3) Our Ts&Cs apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Purchaser shall only become part of the contract if and to the extent that we have expressly agreed to their validity. This requirement of consent shall apply in any case, for example even if we carry out the delivery to the Purchaser without reservation in full knowledge of the Purchaser's general terms and conditions.

(4) Individual agreements made in specific cases with the Purchaser (including collateral agreements, supplements and amendments) shall in any case take precedence over these Ts&Cs. Subject to proof to the contrary, a confirmation in text form from our side shall be authoritative for the content of such agreements.

(5) Legally relevant declarations and notifications to be made to us by the Purchaser after conclusion of the contract (e.g. setting of deadlines, notifications of defects, declaration of withdrawal or reduction) shall be made in writing in order to be effective.

(6) References to the validity of statutory provisions have only clarifying significance. Even without such clarification, the statutory provisions shall therefore apply insofar as they are not directly amended by or expressly excluded in these Ts&Cs.

§ 2 Conclusion of contract

(1) Our offers are subject to confirmation and are non-binding. This shall also apply if we have provided the Purchaser with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents – including in electronic form – to which we reserve ownership rights and copyright.

(2) Placement of an order for goods by the Purchaser is deemed to be a binding offer of contract. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within 7 days of its receipt by us.

(3) Acceptance may be declared either in text form (e.g. by order confirmation) or by delivery of the goods to the Purchaser.

§ 3 Delivery period

(1) The delivery period shall be agreed individually or specified by us upon acceptance of the order. Delivery periods promised by us are only binding if a fixed period or date is expressly promised in the order confirmation. Delivery periods begin with the dispatch of the order confirmation, but not before the provision of any documents, approvals or releases to be obtained by the Purchaser. If shipment has been agreed, delivery periods and delivery dates refer to the time of handover to the forwarding agent, carrier or other third party commissioned with the transport.

(2) If we are unable to comply with binding delivery periods for reasons for which we are not responsible (non-availability of performance), we shall inform the Purchaser immediately thereof and at the same time notify the Purchaser of the expected new delivery period. If performance is also unavailable within the new delivery period, we are entitled to withdraw from the contract in whole or in part; we shall immediately reimburse any consideration already rendered by the Purchaser. A case of non-availability of the service in this sense shall be deemed, in particular, to be late delivery by our supplier if we have concluded a congruent hedging transaction. This is without prejudice to our statutory rights of rescission and termination and the statutory provisions governing the performance of the contract in the event of exclusion of the obligation to perform (e.g. impossibility or unreasonableness of performance and/or subsequent performance). The Purchaser's rights of rescission and termination in accordance with §§ 8 and 9 of these Ts&Cs shall also remain unaffected.

§ 4 Delivery, transfer of risk, acceptance, default on acceptance

(1) Delivery shall be ex warehouse, which is also the place of performance for the delivery and any subsequent performance. At the request and expense of the Purchaser, the goods shall be shipped to another destination (shipment purchase). Unless otherwise agreed, we shall be entitled to determine the type of shipping (in particular transport company, shipping route, packaging) ourselves.

(2) We are entitled to make a partial delivery, provided that the partial delivery is reasonably usable for the Purchaser, the delivery as a whole is not significantly delayed by the partial delivery and no significant additional expense arises for the Purchaser.

(3) Within a tolerance of 3% of the total order quantity, excess or short deliveries due to production and transport are permissible. The agreed total price shall change in accordance with its scope.

(4) The risk of accidental loss and accidental deterioration of the goods shall transfer to the Purchaser at the latest when the goods are handed over. In the case of shipment purchases, however, the risk of accidental loss and accidental deterioration of the goods and the risk of delay shall be transferred on delivery of the goods to the forwarding agent, the carrier or any other person or organisation designated to carry out the shipment. If acceptance has been agreed, this shall be definitive for the transfer of risk. The statutory provisions of contract law for work and services shall also apply otherwise to agreed acceptance. The transfer or acceptance shall be deemed to have taken place if the Purchaser is in default on acceptance.

(5) If the Purchaser is in default on acceptance, fails to cooperate or delays our delivery for other reasons for which the Purchaser is responsible, we shall be entitled to demand compensation for the resulting damages including additional expenses (e.g. storage costs). For this we shall charge flat-rate compensation of €2.00 per calendar day and pallet, from the start of the delivery period or – in the absence of a delivery period – from notification that the goods are ready for dispatch. Proof of higher damages and our statutory claims (in particular reimbursement of additional expenses, appropriate compensation, termination) shall remain unaffected; however, the flat-rate amount shall be set off against other monetary claims. The Purchaser has the right to prove that we have incurred no damages at all or considerably less damage than the aforementioned flat rate.

§ 5 Prices and terms of payment

(1) Unless otherwise agreed in individual cases, our prices valid at the time of conclusion of the contract shall apply ex warehouse, plus statutory Value Added Tax.

(2) In the case of a shipment purchase (§ 4 (1)), the Purchaser shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the Purchaser. Any customs duties, fees, taxes and other public charges shall be borne by the Purchaser. We do not take back transport packaging or any other packaging in accordance with the Packaging Ordinance; it becomes the property of the Purchaser, pallets excluded.

(3) The purchase price is due and payable within 30 days of invoicing and delivery or acceptance of the goods.

(4) The Purchaser shall be in default on expiry of the aforementioned payment period. The purchase price shall accrue interest during the period of default at the statutory default interest rate applicable at the time. We reserve the right to assert further claims for damages caused by default. This is without prejudice to our claim against merchants to commercial interest on maturity (§ 353 of the German Commercial Code (HGB)).

(5) The Purchaser shall be entitled to offset or exercise retention rights only to the extent that the claim is legally established or undisputed. In the event of defects in the delivery, § 8 (6) shall remain unaffected.

(6) If it becomes apparent after conclusion of the contract that our claim to the purchase price is at risk due to the Purchaser's inability to pay (e.g. as a result of filing for insolvency proceedings), we are entitled to refuse performance in accordance with the statutory provisions and to withdraw from the contract after a period of grace, if applicable (§ 321 BGB). In the case of contracts for the manufacture of unique items (custom-made items), we may declare our withdrawal immediately; this is without prejudice to the statutory provisions on the dispensability of setting a period of grace.

§ 6 Blanket orders

(1) Upon request, we grant the Purchaser the option to place blanket orders with call-off options for some goods in order to enable more favourable conditions and more specific delivery dates via a larger production quantity. Such blanket orders shall only be concluded by mutual agreement between us and the

Purchaser and shall be expressly identified as such in the order confirmation. The following provisions shall apply exclusively to such blanket orders.

(2)
The Purchaser orders a fixed total quantity of identical items as part of a blanket order. The specification of these items is named in the respective order confirmations. We undertake to cover the agreed total quantity and the Purchaser undertakes to call off and pay for the total quantity.

(3)
The delivery of the individual call-offs shall take place at previously determined quantities and dates, which are stated on the respective order confirmation, unless the Purchaser has mutually agreed on an earlier/later date with us 14 days in advance. During the term of the contract, the Purchaser may unilaterally bring forward a call-off by 20 days or postpone it by 30 days twice with 30 days' notice. After expiry of the respective agreed term, items not yet accepted will be delivered by us within 15 days even without call-off and must be received by the Purchaser. The Purchaser must accept any additional costs incurred due to incompatible delays in delivery or refusal of acceptance.

(4)
Individual prices of the items of a blanket order are stated in the respective order confirmation. Should demonstrably serious cost increases (>= 10%) arise between order confirmation and delivery for services not yet rendered at that time (e.g. transport), we shall be entitled to pass on these additional costs to the Purchaser.

(5)
Immediately after delivery, the Purchaser shall receive a separate invoice for each partial quantity called off. The terms of payment with regard to the individual invoices shall be governed by § 5 of these Ts&Cs.

(6)
Insofar as the above provisions do not contain any special provisions for blanket orders, the remaining provisions of these Ts&Cs shall also apply to blanket orders.

§ 7 Retention of title

(1)
Until we receive full payment for all our current and future claims from the purchase contract and an ongoing business relationship (secured claims), we reserve title to the sold goods.

(2)
The goods subject to retention of title may neither be pledged to third parties nor transferred by way of security prior to full payment of the secured claims. The Purchaser must inform us immediately in writing if and insofar as access by third parties to the goods belonging to us occurs.

(3)
In the event of a breach of contract by the Purchaser, in particular non-payment of the purchase price due, we are entitled to withdraw from the contract in accordance with the statutory provisions and/or demand return of the goods on the basis of retention of title. The demand for return shall not simultaneously entail declaration of withdrawal from the contract; rather, we are entitled only to demand return of the goods and to reserve the right to withdraw from the contract. If the Purchaser does not pay the purchase price due, we may only assert these rights if we have previously unsuccessfully set the Purchaser a reasonable grace period for payment or if such setting of a grace period is dispensable under the statutory provisions.

(4)
Until revoked, the Purchaser is entitled to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition.

(a)
The retention of title shall extend to the full value of the products resulting from the processing, mixing or combining of our goods, whereby we shall be deemed to be the manufacturer. If the ownership rights of third parties remain in force in the event of processing, mixing or combining with goods of third parties, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. The same provisions shall apply to the resulting product as to the goods delivered under retention of title.

(b)
The Purchaser hereby assigns to us by way of security any claims against third parties arising from the resale of the goods or the product as a whole, or in the amount of our possible co-ownership share pursuant to the preceding paragraph. We accept the assignment. The obligations of the Purchaser stated in paragraph 2 shall also apply with regard to the assigned claims.

(c)
The Purchaser remains authorised to collect the claim in addition to us. We undertake not to collect the claim as long as the Purchaser meets its payment obligations towards us, is not in default of payment, no application for the opening of insolvency proceedings has been filed and there is no other impairment to the Purchaser's ability to pay. If this is the case, however, we may demand that the Purchaser informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. Furthermore, in this case we are entitled to revoke the Purchaser's authority to further sell and process the goods subject to retention of title. In the event of such a revocation, the direct debit authorisation shall also expire.

(d)
If the realisable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the Purchaser's request.

§ 8 Rights of the Purchaser in the event of defects

(1)
The statutory provisions shall apply to the Purchaser's rights in the event of material defects or defects of title (including incorrect and short delivery, improper assembly or defective assembly instructions), unless specified otherwise below.

(2)
The basis of our liability for defects is above all the agreement reached on the quality of the goods. All product descriptions which are the subject of the individual contract shall be deemed to be an agreement on the quality of the goods, irrespective of whether the product description originates from the Purchaser, from the manufacturer or from us.

(3)
If the quality has not been agreed, the statutory provisions shall be used to assess whether a defect exists or not (§ 434 (1) (2) and 3 BGB). However, we accept no liability for public statements made by the manufacturer or other third parties (e.g. advertising statements).

(4)
The Purchaser's claims for defects presuppose that it has fulfilled its statutory obligations to inspect and given notice of defects (§§ 377, 381 (2) HGB). The Purchaser shall inspect received goods immediately upon receipt. In the case of building materials and other goods intended for installation or other further processing, an inspection must in any case be carried out immediately before processing. If a defect becomes apparent during the inspection or later, we must be notified of this immediately in writing. The notification shall be deemed immediate if it is made within seven working days, whereby the timely dispatch of the notification shall suffice to comply with the deadline. Irrespective of this obligation to inspect and give notice of defects, the Purchaser must notify us in writing of obvious defects (including incorrect and short delivery) within seven working days of delivery, whereby here too the timely dispatch of the notification is sufficient to meet the deadline. If the Purchaser fails to inspect the goods properly and/or to notify us of any defects, our liability for the defect for which no notification has been provided shall be excluded.

(5)
If the delivered item is defective, we may initially choose whether we provide supplementary performance by remedying the defect (repair) or by supplying a defect-free item (replacement delivery). Our right to refuse the chosen type of supplementary performance under the statutory conditions shall remain unaffected.

(6)
We are entitled to make the supplementary performance dependent on payment of the purchase price due by the Purchaser. However, the Purchaser is entitled to retain a reasonable part of the purchase price in proportion to the defect.

(7)
The Purchaser shall give us the time and opportunity required to provide supplementary performance, in particular by handing over the rejected goods for inspection purposes. In the event of a replacement delivery, the Purchaser shall return the defective item to us in accordance with the statutory provisions.

(8)
We shall bear the expenses necessary for the purpose of inspection and supplementary performance, in particular transport, travel, labour and material costs, if a defect actually exists. If, however, a request by the Purchaser to remedy a defect turns out to be unjustified, we may demand reimbursement of the resulting costs from the Purchaser, unless the lack of defectiveness was not recognisable to the Purchaser.

(9)
If the supplementary performance has failed or a reasonable period to be set by the Purchaser for the supplementary performance has expired without success or is dispensable according to the statutory provisions, the Purchaser may withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, there is no right of withdrawal.

(10)
Claims of the Purchaser for damages or reimbursement of futile expenses exist only in accordance with § 9 and are otherwise excluded.

§ 9 Other liability

(1)
Unless otherwise stated in these Ts&Cs including the following provisions, we shall be liable in the event of a breach of contractual or non-contractual obligations in accordance with the relevant statutory provisions.

(2)
We shall be liable for damages – on whatever legal grounds – in the event of intent or gross negligence. In the case of simple negligence we shall only be liable

a) for damages resulting from loss of life, physical injury or damage to health, b) for damages resulting from the breach of an essential contractual obligation (obligation the fulfilment of which is essential for the proper performance of the contract and on compliance with which the contractual partner regularly relies and may expect to rely); in this case, however, our liability shall be limited to compensation for foreseeable, typical damage.

(3)
The limitations of liability resulting from paragraph 2 shall not apply if we have fraudulently concealed a defect or assumed a guarantee for the quality of the goods. The same shall apply to claims of the Purchaser under the German Product Liability Act or other statutory warranty liability claims.

(4)
Insofar as our liability is excluded or limited, this shall also apply to our (legal or lawful) representatives or vicarious agents.

(5)
On the grounds of a breach of obligation which does not consist in a defect, the Purchaser may only withdraw from or terminate the contract if we are responsible for the breach of obligation. A free right of termination of the Purchaser (in particular according to §§ 651, 649 BGB) is excluded. Otherwise, the statutory requirements and legal consequences shall apply.

§ 10 Limitation period

(1)
Notwithstanding § 438 (1) (3) BGB, the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance.

(2)
The above limitation period under sales law also applies to contractual and non-contractual claims for damages by the Purchaser based on a defect in the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. Claims within the meaning of § 438 (1) (2) BGB, in the event of the assumption of a guarantee of quality, in the event of fraudulent concealment of the defect, intentional or grossly negligent causation or injury to life, limb or health as well as claims under the Product Liability Act shall, however, become statute-barred exclusively in accordance with the statutory limitation periods.

§ 11 Choice of law and place of jurisdiction

(1)
These Ts&Cs and all legal relationships between us and the Purchaser are governed by the law of the Federal Republic of Germany, excluding all international and supranational (contractual) legal systems, in particular the UN Convention on Contracts for the International Sale of Goods.

(2)
If the Purchaser is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction – including international jurisdiction – for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in 59457 Werl. However, we are also entitled to bring an action at the general place of jurisdiction of the Purchaser.