

I. Area of Application

1. All of our deliveries and services are governed solely by these Terms and Conditions of Sale and Delivery, provided the Buyer is a contractor, legal entity under public law, or a special fund under public law. They also apply to all future business with the Buyer even if they are not expressly referred to each time.
2. We do not recognise the general terms and conditions of the Buyer, unless we have explicitly approved these in writing. This also applies if we provide the services without reservation and in awareness of conditions to the contrary of or deviating from these standard conditions.
3. All agreements should be documented in writing. This also applies to subsidiary agreements and quality warranties as well as subsequent changes to the contract.

II. Offer—Order Confirmation—Default of Acceptance

1. The documents associated with the offer, such as illustrations, drawings, weights and dimensions are approximate only, unless otherwise expressly agreed. For cost estimates, drawings and other offer and contract documents, we reserve the right of ownership and copyright; it is not permitted to copy the documents or make them available to a third party without our consent.
2. Unless expressly agreed otherwise, our offers are always subject to change. The contract is concluded with the written confirmation of order or with the conclusive acceptance by fulfilment or invoicing.
3. In the event that the Buyer is in default of acceptance, we can—after we have unsuccessfully set the Buyer a reasonable period of time for the service or subsequent fulfilment—rescind the contract and claim damages. In this case, or if the customer withdraws from the contract for any reason, we are entitled to 20% of the agreed price as compensation for damages without having to furnish proof. The Buyer is entitled to prove that there was no loss or that the loss was not in the amount stated. We reserve the right to claim higher damages subject to provision of substantiated evidence.

III. Prices—Price Increases—Value-Added Tax (VAT)

1. Unless otherwise expressly agreed, all prices are ex works from the supplying plant or storage location Auenwald-Däfern and exclude packaging, freight, customs duties, insurance and other ancillary costs.
2. In the event that some or all of the following costs—material and labour costs, foreign currency costs, customs duties and tax charges at the time that our offer is submitted—which our prices are based on, increase in the time period between the conclusion of the contract and the delivery or supply of service, we reserve the right to adapt our prices accordingly.
3. These prices are exclusive of statutory value-added tax. For export shipments, the calculation of the value-added tax is omitted within the EU, but only if the required VAT identification number of the Buyer is provided.

IV. Delivery Time—Force Majeure—Failure of Suppliers to Honour Obligations—Partial Deliveries

1. In principle, our delivery dates are not fixed dates (Sect. 323 Para. 2 Art. 2 of the German Civil Code (Bürgerliches Gesetzbuch, BGB); Sect. 376 of the German Commercial Code (Handelsgesetzbuch, HGB)).
2. The delivery deadlines and dates shall be extended in the case of unforeseen events which are outside of our control, such as interruption of operations, weather, or actions relating to industrial conflicts such as strikes and lockouts. We are not liable for the aforesaid circumstances even if they occur when progress of work is already delayed. In serious cases, we will notify the Buyer of such delays.
3. We are not relieved of our contractual obligation if we, through no fault of our own, have not been supplied on time and properly with the correct merchandise and are unable to fulfil the contract.

4. Partial deliveries are—as far as the Buyer is in agreement—permitted. We are allowed to issue partial invoices for each partial delivery.

V. Terms of Payment

1. Our invoices are to be paid within 30 days of the invoice date in full or within 10 days with a 2% discount.
2. Bills of exchange are not accepted and cheques only if agreed upon in writing, and only on account of payment. The Buyer bears all costs associated with cheques.
3. The Buyer is only entitled to offset payment if their counter-claims have been legally established, are undisputed, or are recognised by us.
4. In the event that the financial circumstances of the Buyer deteriorate after the contract has been concluded or if a deterioration of the Buyer's financial circumstances becomes apparent only after the conclusion of the contract, we are entitled to request a security and/or to revoke any potential granted payment terms. In the event that the Buyer is not in a position to provide the security requested within a reasonable period of time, we are entitled to withdraw from the contract. Existing claims from services rendered or due to default remain unaffected.

VI. Shipping—Transfer of Risk—Insurance—Damage During Transport

1. The risk of accidental deterioration or loss of products passes to the Buyer as soon as the products have been delivered to the Buyer or to the person designated to ship the delivery, but no later than when they leave our factory, and even if (i) we have undertaken the delivery; (ii) partial deliveries are made; or (iii) we have undertaken to provide other services as well. In the event that the transport is delayed for reasons we are not responsible for, or due to the conduct of the Buyer, the risk passes to the Buyer upon notice from us that the merchandise is ready for transport.
2. Shipping is always on account of the Buyer. Unless shipping instructions are given, we will determine the best means of shipping, but without any guarantee that it will be the least expensive option. Any transport damage must be reported at the time of goods receipt with written confirmation from the particular railway, postal service, shipper or carrier.
3. Insurance against transport damage is only effected at the express request and on account of the Buyer.

VII. Claims for Defects in Quality—Complaints—Time Limits for Notices of Defect

1. We must be notified of any defects immediately, but no later than 14 days after the goods (obvious defects) have been delivered or the defect is discovered. Otherwise, claims for defects in quality are excluded.
2. Claims for defects in quality lapse twelve (12) months after the date when the risk was transferred. This does not apply if the law requires longer time limits as per Sect. 438, Para. 1, Art. 2 (buildings and objects for buildings), Sect. 479, Para. 1 (right of recourse), Sect. 634 a, Para. 1, Art. 2 (defects or deficiencies in the construction), Sect. 438, Para. 3. and Sect. 634 a, Para. 3 (malice) of the German Civil Code or as per the German Product Liability Act.
3. We are not obliged to satisfy claims for defects as long as the Buyer is in arrears with their payment obligations in an amount exceeding the reduced value of the delivered item caused by the defect.
4. Claims for defects and damages on the part of the Buyer are excluded if the Buyer's attempts to rectify defects make rectifying the defects more difficult or impossible.
5. No claims can be lodged for defects or damages that the Buyer experiences as the result of natural wear and tear, or that after transfer of risk were the result of improper use, care, faulty installation or commissioning by the Buyer or a third party.
6. The Buyer can only lodge claims for damages in accordance with the following section VIII.

General Terms & Conditions Sale and Delivery



VIII. Limitation of Liability

1. We assume liability for damages and for the refund of futile expenditure within the meaning of Sect. 284 of the German Civil Code (hereinafter referred to as "damages") on grounds of defective delivered goods or services, or on grounds of a breach of any contractual or non-contractual obligations, in particular on grounds of tort, only in cases of intent or gross negligence. The above limitation of liability does not apply (i) in cases of injury to life, body or health; (ii) in cases of assuming a warranty or procurement risk; (iii) in a breach of essential contractual obligations; or (iv) with liability pursuant to the German Product Liability Act.
2. Damages on grounds of violation of significant contractual obligations is limited to damages for such loss or injury as must have been foreseeable under the circumstances at the time of execution of the contract (loss or injury typical for the type of contract), provided that there was no malicious intent or gross negligence, and that it does not involve any injury to life, body or health, or the taking over of a warranty or a procurement risk.
3. All limitations of liability apply to the same extent to vicarious agents.
4. The foregoing provisions do not bring about a change of the burden of proof to the disadvantage of the Buyer.

IX. Reservation of Title

1. We reserve title in the delivered products until full payment of all claims arising from the business relationship between the Buyer and ourselves have been satisfied. This also applies if the purchase price for certain deliveries designated by the Buyer has been paid.
2. The Buyer is permitted to process, join and mix the products under our reservation of title in the ordinary course of business, unless the Buyer is in default of payment or has ceased payments. Any processing, joining or mixing of the delivered products is always carried out for the benefit of the producer, without our incurring any obligations in this respect. In case the (co-)ownership ceases through processing, joining or mixing, it is now agreed that the (co-)ownership in the new object passes to us in proportion of the invoice values of the processed, joint or mixed products. The Buyer holds the objects of our (co-)ownership in safekeeping on our behalf free of charge.
3. The Buyer is permitted to process, join and mix the products under our reservation of title or to which we hold (co-)ownership (reservation products) in the ordinary course of business, unless the Buyer is in default of payment or has ceased payments. The Buyer is not permitted to pledge the reservation products or assign them as a security. A sale abroad is permissible only with our prior written consent. In the event that the Buyer sells reservation products, the Buyer now assigns to us, until the satisfaction of all claims to us, the rights arising for the Buyer from such sale against their purchasers along with all ancillary rights, securities and reservations of titles. We are permitted to require the Buyer to notify their customers of the assignment and to provide us with all the information and documents needed for collection.
4. The Buyer is permitted to collect the claims assigned to us provided the Buyer is not in default of payment or has not ceased payments. In the event that the claims of the Buyer from the resale of the reservation products are received in a current account, the Buyer now assigns to us their claim for payment from the respective recognised balance in the amount of the associated claims from the resale of the reservation products. In the event that we only have co-ownership of the products sold, the aforesaid assignment applies only in the amount of our co-ownership. In the event that reservation products are sold together with other products at a certain total price, the aforesaid assignment applies only in the amount of the invoice value of our reservation products or in the amount of our co-ownership. In the event that the Buyer receives a cheque or bill of exchange for the sale of our reservation products, the Buyer transfers the cheque or bill of exchange to us until all of our claims have been paid. The Buyer is obligated to keep the cheque or bill of exchange in safekeeping for us. In addition, the regulations in the preceding paragraph apply accordingly.

5. In the event that the value of the reservation products together with the other securities granted to us exceeds our claims against the Buyer by more than 20%, we are obliged to release them if the Buyer so requests.
6. The Buyer notifies us promptly and lodges an objection if reservation products or other objects or claims to which we have rights are pledged to third parties or are at risk of being otherwise impaired. The notification must include the necessary documents. Expenses we incur due to such events are refunded by the Buyer.
7. In the event that deliveries abroad require us to take certain actions for the country of import to the efficacy of the retention of title referred to in Sect. IX.1—IX.5 or the other rights described there, the Buyer must give notification of this and carry out such measures at their own expense. In the event that the law of the country of import does not permit the retention of title, but permits the Buyer to retain other rights to the delivery item, we are permitted to exercise all such rights. In the event that the above fails to achieve an equivalent security for our claims against the Buyer, the Buyer undertakes at their own expense to provide other securities for the delivered goods or other securities.

X. Place of Performance—Jurisdiction—Applicable Law

1. The place of performance for all obligations of both parties is Auenwald-Däfern (Germany).
2. The place of jurisdiction for all disputes between us and the Buyer is Auenwald-Däfern, provided that the Buyer is a merchant, a legal person under public law or a special fund under public law (Germany). The same place of jurisdiction applies if (i) the Buyer does not have a general place of jurisdiction in Germany; (ii) the Buyer moves their permanent or usual place of residence out of Germany after the contract is concluded; or (iii) the Buyer's usual place of residence at the time of the filing of a complaint is unknown. We are, however, entitled to sue the Buyer at their general place of jurisdiction.
3. The legal relationship between ourselves and the Buyer is solely governed by the substantive law of the Federal Republic of Germany. The application of the UN law on the sale of goods is excluded.



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