

Terms of Sale and Delivery

1. General

Our deliveries are based on the following Terms of Sale and Delivery which the customer acknowledges by placing the order. Other general terms and conditions of trade of the customer shall not be applicable unless they have been recognized by us in writing in each specific case. Should individual provisions of these Terms of Sale and Delivery be invalid, this shall not affect the validity of the remaining provisions. Should individual provisions be invalid, they will continue to be valid as far as it is admissible. Should this not be possible, such provision shall be deemed agreed instead which ensures the economic purpose of the omitted provision as far as possible.

2. Quotations and orders

Our quotations are not binding and without engagement. Any orders, agreements and promises will become binding for us only upon our written confirmation of order which can also be sent when presenting the invoice. The specifications of our delivery items are subject to variations customary in the trade. The quantities to be delivered may be 5% larger or smaller than the ordered quantity.

3. Prices

Prices are understood in € ex works Büttelborn without value-added tax. Packing will be charged at cost price and will not be taken back. Packing will be charged according to the weights and number of items ascertained upon dispatch.

In case of deliveries to be effected later than two months after signing of the contract we are entitled to adjust the agreed prices in accordance with the alteration of prices of raw materials, cost of labour and other cost occurring after the signing of the contract.

We will charge € 25.- as a minimum per delivered item, the minimum order value is € 50.-. We reserve the right not to accept orders of less value.

4. Tools

If it is agreed that the costs for tools are charged on a pro rata basis, the tools nevertheless remain our property.

5. Delivery

The goods will be sold ex works Büttelborn, unless expressly otherwise agreed in writing in each specific case. The risk will pass to Buyer with the notice of readiness for shipment. If there is no notice of readiness for shipment, the risk will pass to Buyer when the goods leave our premises, at the latest. Unless otherwise agreed, the dispatch of goods through us will always be at Buyer's expense and risk. The goods will be insured against damage and loss during transport only on written instruction of Buyer and at Buyer's expense. Partial shipments are admitted. In the case of orders for goods to be delivered on demand, we are entitled to manufacture the total quantity immediately. If an order comprises several deliveries, possible rights of Buyer because of non-performance, defective or delayed performance shall refer only to the respective delivery affected. If the goods are not requested immediately after the agreed date of delivery and upon notice of readiness for shipment, we are entitled to present the invoice and charge the corresponding storage expenses.

6. Date of delivery

The dates of delivery are not binding unless expressly otherwise agreed. They are calculated from the date of receipt of the confirmation of order. A delivery date is considered as adhered to if we advise the customer in time of the readiness for shipment or (if we have assumed the shipment) ship the goods in time. In other respects, the compliance with dates of delivery is subject to the proviso that we receive the deliveries from our suppliers in time.

Force majeure, industrial disputes as well as other circumstances for which we are not responsible and which prevent the timely manufacture or dispatch of the goods will result in a reasonable extension of the agreed dates of delivery. If the aforementioned circumstances persist for more than two months, we are entitled to withdraw from the contract - in whole or in part -.

7. Terms of payment

Our invoices are payable within 30 days after the date of invoice without deduction. Cheques will be accepted only by way of provisional performance and subject to the proviso that they are covered. In case of default in payment we are entitled to charge a default interest of 8% above the respective basic interest rate. The withholding of due payments or a set-off are admissible only if the counterclaim is non-controversial or has become res judicata. An assignment of claims of Buyer against us without our consent shall be excluded.

8. Reservation of ownership

We reserve the ownership of the bought object until receipt of all payments from the contract for delivery. If Buyer acts in breach of contract, especially if he is in default of payment, we are entitled to take the bought object back. The taking back of the bought object by us is a withdrawal from the contract. After taking back the bought object we shall be authorized to make use of the same, and the proceeds from its use shall be credited against the obligations of Buyer - less reasonable expenses for utilization.

Buyer agrees to treat the bought object with care. He agrees in particular to insure the bought object sufficiently for the replacement value against fire, water and theft. If service or inspection works are necessary, Buyer shall carry them out in time at his own expense.

In the event of seizures or other attachments by third parties Buyer shall notify us without delay in writing in order that we can file a suit in accordance with Section 771 ZPO (German code of civil procedure). In case that the third party is unable to reimburse the court fees and extra-judicial costs of a law suit to us in accordance with Section 771 ZPO, Buyer shall be liable for our loss of receipts.

Buyer is entitled to resell the bought object in the ordinary course of business; however, he assigns all receivables in the amount of the sum total of the invoice (including VAT) accruing to him from the resale against his customers or third parties, independently of whether the bought object was resold after having been processed or not. Buyer is authorized to collect this receivable also after the assignment. Our right to collect the receivable ourselves shall remain unaffected. However, we agree not to collect the receivable as long as Buyer meets his payments from the proceeds received, is not in default and, in particular, has not instituted insolvency proceedings or is not in a state of cessation of payments. However, should this be the case, we may request that Buyer informs us of the assigned receivables and their debtors, furnishes all particulars for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.

Transformation or processing of the bought object by Buyer will always be carried out on our behalf. If the bought object is processed with other objects which are not our property, we shall acquire co-ownership of the new object in the ratio of the value of the bought object (sum total of invoice including VAT) to the other items processed at the time of processing. In other respects, the same shall apply for the object arising from processing as for the bought object delivered with reservations.

If the bought object is inseparably mixed with other items which are not our property, we shall acquire co-ownership of the new object in the ratio of the value of the bought object (sum total of invoice including VAT) to the other processed items at the time of mixing. If mixing is done such that the object of Buyer is to be considered as main object, it shall be deemed as agreed that Buyer transfers a proportionate co-ownership to us. Buyer shall hold the resulting sole property or jointly held property in custody for us.

Buyer shall also assign to us the claims against third parties resulting from the union of the bought object with a real-estate property, in order to provide security for our claims against him.

We agree to release the securities to which we are entitled upon request of Buyer if the realizable value of our securities exceeds the debts to be secured by more than 10 %. The selection of the securities to be released is incumbent upon us.

9. Industrial property rights

Any interest in the documents furnished to us, especially drawings and plans, shall remain with us; the documents may be made accessible to third parties only with our written consent. If the delivery item is manufactured according to the specifications of Buyer, Buyer shall assume responsibility for the industrial property rights of third parties not being infringed, exempting us from any third party claims because of the infringement of industrial property rights and indemnifying us, if necessary, without any further obligation on our part to deliver the goods. The aforementioned clause shall apply independently of whether we deliver the goods to German or foreign customers.

10. Warranty

For claims of the Buyer based on defects it is started from the assumption that Buyer has duly met his duties to examine and notify defects which he owes according to Section 377 HGB (German commercial code). In case of a defect of the bought object, we are entitled, at our discretion, to subsequent performance by removal of the defects, or delivery of a new object free from defects. If we decide to have the defect removed, we shall be bound to bear all expenses necessary for the purpose of removing the defects provided that they are not increased by the fact that the bought object was taken to another place than the place of performance. If subsequent performance fails, Buyer is entitled, at his discretion, to demand the termination of the contract or a reduction of the purchase price. Other statutory rights of Buyer in case of a defect shall remain unaffected. However, we shall not be liable for natural wear, the consequences of incorrect use of the bought object, its inadequate handling, its improper maintenance or other failures of Buyer or third parties.

11. Damages

Claims for damages against us and the persons employed in performing our obligations of any kind whatsoever and for any reason whatsoever shall be excluded in the case of slight negligence, unless we are accused of having failed to comply with cardinal duties. However, in this case a claim for damages of Buyer shall be limited to the typical damage predictable upon signing of the contract. The same shall apply in the case of grossly negligent breach of duty by persons simply employed in performing our obligations.

However, the aforementioned limitations of liability shall not apply in case of liability for having violated the life and health of others, liability in accordance with the Product Liability Act or liability under a warranty.

12. Withdrawal from contract

In case Buyer gives us a period of grace before exercising the right to withdraw from the contract, this period shall be at least six weeks. We, on our part, are entitled to withdraw from the contract at any time if Buyer stops his payments, if persistent enforcement measures are applied against Buyer or insolvency proceedings have been instituted on the assets of Buyer, unless Buyer proves without delay at our request that he is unable to pay due debts or provides absolute bank guarantees of an adequate amount.

13. Period of limitation

Any claims of Buyer for defects of the bought object shall become statute-barred after 12 months. The same shall apply to all other claims of Buyer for which legal ground whatsoever. The commencement of the period of limitation is determined by the relevant legal provisions. Notwithstanding the above clauses the legal limitation periods shall apply in case of intent or fraud and also in the case of claims under the Product Liability Act.

14. Place of performance and jurisdiction

Place of performance is Büttelborn and jurisdiction is Darmstadt. However, we are also entitled to invoke the court having jurisdiction over the place of registered office of Buyer. Contracts shall be governed exclusively by the law of the Federal Republic of Germany. However, the UN Convention on Contracts for the International Sale of Goods shall not be applicable.

15. Export restrictions pursuant to the US Export Administration Act

The goods delivered by us and any relevant information are subject to the US Export Administration Act if applicable. In this case Buyer must not send the goods directly or indirectly into countries, to destinations or ultimate buyers to which a delivery is prohibited pursuant to US law.

Furthermore, Buyer should not enter into obligations by orders placed to or by companies which are illicit according to US law. Any orders comprising the delivery to persons or legal persons which are under the control of a country subject to the prohibition pursuant to the US Export Administration Act, will be effected only if prior approval of the US Government has been obtained.

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