

General Terms & Conditions of Sale & Delivery

1. General

- 1.1 The following terms and conditions apply to all our offers and deliveries and are an integral part of the purchase contract. We shall only be bound to differing or supplementary agreements, in particular the Purchaser's conditions of purchase, if we have expressly confirmed this. Confirmation must be made in writing. A lack of response on our part does not constitute acceptance.
- 1.2 Unless agreed in a separate written agreement, service specifications, brochures relating to the contract or the like, as well as agreed measurements and weights do not constitute guarantees of quality or durability within the meaning of section 443 BGB (German Civil Code), rather these are pure product descriptions. A guarantee shall only be assumed through issue of a specific certificate.

2. Order acceptance

- 2.1 Under these terms and conditions, orders shall only become binding for us once we have confirmed them in writing.
- 2.2 In the event that deliveries become impossible for us or our suppliers due to the occurrence of unforeseeable, extraordinary circumstances that cannot be controlled by us with reasonable effort (such as official orders, force majeure or strikes), we shall be released from our delivery obligations, even for orders that have been confirmed.

3. Prices

- 3.1 Provided that a different provision has not been expressly agreed in writing in an individual case, our prices are "ex works". Prices include packaging, but not our delivery and shipping costs or insurance, customs and other additional expenses. The applicable rate of turnover tax shall be added to the prices.
- 3.2 We reserve the right to modify prices in the event of significant changes in costs. In the event of an increase, we shall inform the Purchaser of this at the latest four weeks before shipment of the goods. In this case, the Purchaser shall have the right to withdraw from the purchase contract within eight days following receipt of such notification.

4. Delivery times

- 4.1 Up until our acceptance of an order, details regarding delivery shall remain non-binding.
- 4.2 We shall not be liable for the impossibility of a delivery or for delays to a delivery, provided that these have been caused by force majeure or other circumstances that we are not responsible for that were not foreseeable at the time of concluding the contract (such as all types of operational disruptions; difficulties in materials or energy procurement; transport delays; strikes; legal lock-outs; lack of manpower, energy or raw materials; difficulties in obtaining any necessary official authorisation; official and constitutional measures such as sanctions that have been imposed in a country where a delivery is to take place and that will not permit the delivery; missed delivery,



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Frank Herzog

Geschäftsführung:

Gerrit Schneider, Oliver Edelman,
Samuel Weckel, Sean Keith

Reg.-Gericht: Amtsgericht Coburg,

HRB 3228

USt-IdNr.: DE209 523 226

Sitz der Gesellschaft: Lichtenfels

Deutsche Bank Nürnberg

IBAN DE39 7607 0012 0862 9669 00

SWIFT DEUTDE33

JPMorgan Chase Bank, N.A.-

London Branch

IBAN: GB20CHAS609244241405501

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incorrect or delayed delivery by suppliers, despite our best efforts to the rectify the situation). If such circumstances make a delivery or service impossible or considerably more difficult for us, and if the hindrance is not just of a temporary nature, we shall be entitled to withdraw from the contract. For temporary hindrances, the delivery and service periods shall be extended or postponed according to the duration of the hindrance, plus a reasonable re-starting period. If our contractual partner cannot be reasonably expected to accept the delivery or service as a result of the delay, he/she shall be entitled to withdraw from the contract by immediate written declaration.

- 4.3 If we default on a delivery or service or if we are unable to provide a delivery or service for any reason whatsoever, our liability for compensation payments shall be limited to the extent described in numbers 4.5 and 8 of these terms and conditions.
- 4.4 If the Purchaser grants us a reasonable grace period if we have not provided the due service, despite the agreed service being due and receiving a warning from the Purchaser, the Purchaser shall be entitled to withdraw from the contract following a fruitless expiry of the grace period. The grace period must amount to at least four (4) weeks.
- 4.5 Claims for compensation instead of the service and claims for losses are limited to compensation for the typically foreseeable damages. We shall only be liable without restriction for cases of wilful intent or gross negligence, in the event of loss of life, bodily injury, damage to health or breach of fundamental contractual rights or obligations. We shall not be liable for compensation claims that arise from a delay or rejection of any necessary authorisation.
- 4.6 Upon our request, the Purchaser shall declare within a reasonable deadline whether he/she wishes to withdraw from the contract due to the delivery delay and/or will demand compensation instead of the service, or whether he/she will insist on the delivery being made.
- 4.7 We shall be entitled to make deliveries in instalments to a reasonable degree.

5. Transport insurance and transfer of risk

- 5.1 We shall only provide transport insurance upon express request by the Purchaser, who shall bear the costs for this.
- 5.2 The risk shall be passed to the customer upon handover of the ordered goods to the railway company, to the carrier or to another transport company, irrespective of whether or not the transport costs are covered by us; if shipment is delayed as a result of the Purchaser's behaviour, the risk shall be transferred to the Purchaser upon issue of the notice that the goods are ready for shipment.



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6. Payment terms

- 6.1 The purchase price for consumables and replacement parts shall be payable immediately after invoicing in the net amount and without any deductions.
- 6.2 For the delivery of machinery, 30 percent of the purchase price shall be due upon placing the order, and 60 percent shall be due upon delivery. Provided that a different provision is not expressly agreed in writing in the individual case, the remaining 10 percent shall be due for payment at the latest 90 days after delivery.
- 6.3 Payments shall be considered as received on the date that we can use the invoice amount without making a loss.
- 6.4 The assertion of rights of retention and setting-off with counter-claims by the Purchaser is excluded, unless these are done on the basis of uncontested or legally effective claims of the Purchaser.
- 6.5 Delayed or deferred payments shall bear interest of 8 percent above the basic rate of interest as published by the German Bundesbank in accordance with section 247 BGB if we cannot provide evidence of greater damages in the individual case or if the Purchaser is able to prove lesser damages.
- 6.6 In the event that the Purchaser defaults on payment, i.e. does not pay within 30 days from the due date and receipt of the invoice, we shall be entitled to claim additional damages for late payment.
- 6.7 We shall be entitled to make further deliveries dependent on a timely receipt of payment.
- 6.8 If circumstances become known to us after concluding the contract that reduce the Purchaser's creditworthiness or that lead to justified doubts as to the Purchaser's ability to make payment, we shall be entitled to cancel the order, request immediate payment or a return of the delivered goods. If the reclaimed goods have already been used by the Purchaser and have therefore suffered a loss in value, we shall be entitled to invoice a reasonable amount to cover the loss in value.

7. Warranty

- 7.1 The Purchaser is obliged to inspect the delivered goods without undue delay. For the delivery of consumables and replacement parts, this must take place at the latest three days following arrival, and for the delivery of machinery, at the latest eight days following installation. Any revealed defects that are attributable to a material or manufacturing defect must be reported in writing without undue delay. If the Purchaser does not report a defect, the delivered goods shall be deemed as acceptable, unless it concerns a defect that was not recognisable at the time of inspection. If such a defect only appears later, written notice must be given without undue delay, and at latest eight days following discovery of the defect; the delivered goods shall otherwise be deemed as acceptable, even taking the defect into account.



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- 7.2 Claims for defects shall be excluded in cases of only minor deviations from the agreed condition, in cases of only a minor impairment of usability, in cases of natural wear and tear and for damages that are attributable to an incorrect or improper use after the transfer of risk, or for the use of unsuitable materials or careless handling.
- 7.3 We shall not be liable on the basis of public statements made by us or our agents if the Purchaser cannot prove that these public statements influenced his/her purchasing decision, or if we did not know of and could not have known about these public statements, or if the statement in question had already been amended at the time that the purchasing decision was made.
- 7.4 If there is a defect that we are responsible for at the time of transfer of risk, we shall be entitled to choose whether to rectify the defect (repair) or to provide a replacement part. If the defect cannot be rectified or if we are not prepared to or not in the position to rectify it or provide a replacement part, the Purchaser shall be entitled to demand a reduction of the purchase price or a rescission of the contract. Section 9 shall apply with respect to compensation claims. Warranty obligations that go beyond those specified in section 8 are excluded, unless we have expressly assumed a guarantee within the meaning of section 443 BGB.
- 7.5 Warranty claims for material defects shall expire in 12 months. The period begins on the date of transfer of risk.

8. Compensation claims

- 8.1 We shall only be liable for damages to the Purchaser, for any legal reason whatsoever, in particular damages caused by a breach of duties arising from the contractual obligations and from impermissible actions, provided that we or our agents have committed wilful intent or gross negligence. In particular, there shall be no liability for defects that are attributable to improper handling or the use of unsuitable materials.
- 8.2 The limitation of liability shall not apply to a liability for damages caused by loss of life, physical injury or damage to health and by a breach of fundamental contractual rights and obligations as well as for damages caused by a lack of the guaranteed properties within the meaning of section 443 BGB, although consequential damages can only be replaced to the extent that the guaranteed properties are intended protect the Purchaser against such consequential damages; we shall only be liable for other consequential damages to the extent described above.

9. Reservation of ownership

- 9.1 Deliveries shall remain our property up until complete payment. In the event of delayed payment, the Purchaser shall be required to return the delivered goods upon our request. This shall not constitute our withdrawal from the contract, unless we have expressly stated this in writing.
- 9.2 The Purchaser shall bear the risk during reservation of ownership and shall store the delivered goods with due care. He/she shall insure the goods against fire and water damage and burglary and shall provide us with evidence of such insurance and the timely payment of the premiums upon our



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request. The respective claims against the insurance are hereby now assigned to us. The Purchaser shall inform us without undue delay of any third-party interventions in our property. The Purchaser shall bear the costs of an intervention made by us.

- 9.3 The Purchaser shall be entitled to resell the delivered goods as part of the usual course of business. He/she shall however now transfer all receivables to us that arise from a resale, irrespective of whether the goods are resold before or after processing or in connection with other goods. The Purchaser shall be authorised to collect the debt, even after its assignment, up until this is revoked, which is possible at any time. Following revocation, the Purchaser shall provide us with all information required for collecting the debt and inform the third-party debtors of the assignment. The Purchaser may not pledge or transfer as a security the delivered goods that remain subject to reservation of ownership.
- 9.4 The processing or combining of the delivered goods by the Purchaser shall always be made for us. We shall acquire a co-ownership of the new goods that is proportionate to the value of the goods delivered by us and the other combined goods at the time of mixing them. The provisions of this article shall apply to the new goods.

10. Software licence

- 10.1 Provided that a different provision is not expressly agreed in writing in an individual case, we generally grant only one non-transferable, non-exclusive right to use the data processing programme (software) provided by us in accordance with the following conditions. The licence holder shall receive the software on machine-readable data carriers, on which it is stored as object code in an executable state.
- 10.2 Use of the software includes the complete or partial saving (copying) of the software and the data in the data processing unit, executing the programmes, data processing and making further copies of the material in machinereadable form, provided that this is necessary for a use that is in accordance with the contract. Making copies for simultaneous use of the software on multiple data processing units is not permitted.
- 10.3 The licence holder shall be entitled to connect the issued software with other data processing programmes. The licence holder is otherwise not entitled to make changes, translations or other amendments and changes to the software. Likewise, a back translation of the software in the form of source programmes or in other forms is excluded.
- 10.4 The licence holder shall not be permitted to transfer the rights specified here to third parties or to grant them respective usage rights. Irrespective of the usage rights granted above, we shall retain all rights to the software, including all copies and any partial copies that the licence holder makes of it.
- 10.5 The licence holder shall be obliged to maintain unchanged all protection notices contained in the software, such as copyright notices and other reservations of rights, and keep these in unchanged form in all complete or partial copies that he/she makes of machine-readable licence material.



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10.6 The licence holder shall not grant third parties access to the software provided by us - neither in original form nor as complete or partial copies - without express written consent. The same applies to a sale of machinery with the software provided by us and in the event of a complete or partial sale or dissolution of the licence holder's company. The licence holder shall inform us without undue delay of any intended sale or dissolution (machine or company). In this respect, we may only withhold the necessary approval for passing the software on to a third party for good cause.

10.7 Employees of the customer or other persons shall not be considered as third parties, provided that they are using the software for the licence holder and at the licence holder's location in accordance with the contract.

10.8 The licence holder agrees with us that it is not possible to develop software in such a way that it can be free from all errors under all conditions of use. With respect to the software licensed by us, we guarantee usage that corresponds to the contract without major errors and fundamental conformity to the service specification that is valid at the time of shipment and that is available to the licence holder prior to conclusion of the contract. Our warranty is limited to the obligation to either rectify the defect that is causing the major error, to provide assistance to the licence holder in working around the error, or to change the programme or exchange it with a functionally equivalent software so that fundamental conformity to the service specification can be reached. If we are unable to fulfil our obligations as described above in one way or another within a reasonable period, the licence holder shall be entitled to cancel the contract that includes the software licence. This cancellation right shall expire six months following delivery of the software. Section 9 shall apply with respect to compensation claims.

11. Export control requirements

Certain goods are subject to German and European export control requirements. A re-export of goods out of the Federal Republic of Germany is only possible with permission from the Federal Office for Economic Affairs in Frankfurt. The Purchaser shall be responsible for compliance to the applicable requirements.

12. Place of performance, jurisdiction and governing law

12.1 The place of performance for both parties is Lichtenfels, Germany.

12.2 The place of jurisdiction for both parties regarding all disputes arising directly or indirectly from the contractual relationship is Frankfurt am Main, Germany, also for complaints regarding bills of exchange or cheque processes; we can however initiate legal proceedings against the Purchaser at any other justified place of jurisdiction.

12.3 The law of the Federal Republic of Germany applies, excluding the Vienna Sales Convention.



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