



General Terms and Conditions of Delivery

(Status 04/2006)

I. Sphere of validity

1. Our T&Cs apply for all our offers, goods and services. Terms and conditions of a Buyer which differ from our own shall only place us under an obligation if they are expressly recognised by us in writing.
2. The latest version of our T&Cs shall also apply for future transactions with the Buyer.
3. Provided that reference is made to contractual arrangements normal in commerce in the order confirmation or in written correspondence, the "International Rules for the Interpretation of contractual arrangements normal in commerce" (Incoterms) shall apply.

II. Delivery

1. Unless an express agreement is made to the contrary, the delivery shall be ex Supplier's supply depot.
2. If the consignment is supplied in loaned containers, these are to be returned freight-free within 90 days from receipt of the consignment empty and in perfect condition. The Buyer shall be liable for damage to the loaned containers for which he is to blame. If the loaned packing has been taken over by the Buyer or if it is not returned to us for whatever reason, and / or it cannot be used again, it will consequently be invoiced at replacement value.
3. Non-returnable packing will be taken back freight free upon request.
4. Our delivery dates are non-binding, unless an agreement has been made to the contrary.
5. When we furnish an assurance for a delivery date or a delivery period, the Buyer shall have to set us an appropriate subsequent period for fulfilment in writing, if we are in default. A period of at least two weeks shall be regarded as appropriate. Once this period has expired unsuccessfully, the Buyer may withdraw from the contract with regard to the goods not reported as being ready for dispatch by the time the subsequent period expires. Under such circumstances the Buyer can only withdraw from the contract as a whole if the part performances rendered are no longer of interest for him. In addition to this, the Buyer is – provided that he can establish that he has incurred a loss as a result – entitled to assert a claim for compensation for default. We shall not recognise any other claims. For each full week of the delay such damages shall amount to ½ a percent but are not, however, to exceed a total of 5 percent of the value of that part of the overall delivery which cannot be used on time or in compliance with the contract as a result of the delay. The Buyer shall not be entitled to assert any other claims.
6. Not only the Buyer's compensation claims for damages on account of default in delivery, but also his compensation claims for damages instead of performance in excess of those limits stated in No 5 shall not be recognised in any cases in which a consignment is delivered late, even if a consignment is delivered after any period we may have been set to deliver has expired. This shall not apply in so far as liability is compulsory in instances of intent, gross negligence or on account of death, personal injury, or physical harm. The Buyer may only withdraw from the contract in accordance with the law provided that we are to blame for the delay in delivery. The above regulations do not entail an amendment in the burden of proof to the detriment of the Buyer.
7. Force majeure, measures taken as a result of labour disputes, official measures both within Germany and in other countries for which we are not to blame, power cuts for which we are not to blame as well as unfore-

seeable operational breakdowns and restrictions affecting the Supplier, including those attributable to a disruption in the agreed supply of raw materials or other cases of force majeure for which we are not to blame, and which have lasted for, or will probably last for, more than a week, shall entitle the Supplier to extend the delivery periods as appropriate. The precondition for this is however that the Supplier has made all efforts and arrangements in advance which can be expected of him to reduce or to cancel the consequences of the disruptions in deliveries. If, as a result of the circumstances described above, delivery is delayed by a period of more than three months, both parties to the contract shall be entitled to withdraw from the contract.

Compensation claims for non-fulfilment or late fulfilment shall not be recognised in such circumstances. As soon as it is clear that a delivery of the named type will be delayed, the Buyer must be notified of this without delay.

8. Part deliveries are allowed without special agreement, provided that it is reasonable for the Buyer to accept them. Over or under quantities of up to 10% shall be regarded as contractual fulfilment.
9. Contracts including agreed part deliveries (Call-off orders) shall place the Buyer under an obligation to take delivery of the part deliveries in roughly equal monthly instalments, provided that no agreement has been made to the contrary.

III. Passing of risk

1. The risk of accidental loss and accidental deterioration of goods to be delivered shall pass over to the Buyer at the point in time at which the goods are handed over by the Supplier to the freight forwarder. Goods not taken delivery of on time will be put into store at the cost and risk of the Buyer. In the event of discrepancies in weight or volume for which neither the Supplier or Buyer are to blame, the weight or filling quantity as recorded before the goods left the Supplier's premises shall be the figures that count.

IV. Prices, Payment

1. The prices can be seen in the order confirmation. Prices will be ex works plus value added tax at the rate in force owed at that time.
2. In so far as the prices of raw materials, the manufacturing costs, the costs of customs duty, or other tax burdens, increase by a significant amount after the point in time at which the order confirmation is raised, without the Supplier being responsible for these increases in costs, the Supplier shall be entitled to amend his prices as appropriate at his equitable discretion.
3. Unless an agreement is made otherwise, the invoiced amount is to be paid in full within 30 days from the date of invoice at the agreed terms of payment. A payment will only have been made on time if the Supplier is able to dispose of the money on, and the value date by which the money is credited to the account stated by the Supplier is no later than, the date on which the money is payable. Prompt payment reductions and discounts are only granted by separate agreements.
4. In the event of default in payment, default interest amounting to 8% above the base rate at that point in time is to be paid, without a separate written payment reminder having to be sent out. The Supplier shall be at liberty to prove that the actual loss he has sustained is more than base rate plus 8%. Moreover, the Supplier may withhold part or all subsequent deliveries under this and other contracts or refuse to deliver



them and demand that all consignments are paid for immediately and demand cash in advance.

5. Bills of exchange may only be submitted in payment with the prior consent of the Supplier. Discounting fees and bill of exchange expenses shall be for the Buyer's account.
6. Subject to the Suppliers's other rights, a significant deterioration in the financial status of the Buyer shall entitle the Supplier only to carry out the orders not yet carried out by him concurrently with payment for them. Under the same preconditions the Supplier's claims to payment against the Buyer for transactions will become payable immediately, to the extent that they have been carried out. Instead of this, at his choice, the Supplier may collect the assigned accounts by way of fulfilment, or demand the return of the goods subject to reservation of title in the possession of the Buyer at the Buyer's expense.

V. Reservation of title

1. The title to the delivered goods shall be reserved until all accounts against the Buyer from the business relationship, regardless of whatever legal reason on which they are based, shall be reserved. This shall apply in particular even in those cases in which payments are made for designated claims. In a current account arrangement, an account created under the current account arrangement shall be assigned to us as a security.
2. The reservation of title shall not lapse as a result of the delivered goods being processed. The new thing created as a result of processing shall be kept in safekeeping for us and shall serve as a security for our claims up to the value of the goods subject to the reservation of title which have been processed. If the goods subject to the reservation of title are mixed or combined with other goods we shall be entitled to co-ownership of the new thing in proportion to the value of the goods subject to reservation of title. The Buyer is entitled to sell the goods subject to the reservation of title in normal commercial transactions. Extraordinary disposals such as pledging, transfer of ownership as a security etc to third parties are not allowed.
3. If the seller sells the goods subject to the reservation of title - regardless of what condition they are in - he shall hereby assign to us here and now his claim from the resale with all ancillary rights to secure our claims. We hereby accept this assignment.
4. In the event that the goods subject to the reservation of title are sold together with other goods not belonging to us, be it without processing, or be it after processing, the assignment of the claim for the purchase price shall only apply for the amount of the value of the goods subject to reservation. We hereby accept this assignment here and now.
5. The Buyer is authorised to collect the account from the resale in spite of the assignment as long as he is not in default. At our request the Buyer shall have to notify us of the identity of the debtor of the assigned accounts and notify the debtors that the account has been assigned. We shall be entitled to revoke the Buyer's authorisation to collect accounts if there is an important reason for doing so. In such a case we shall be authorised to revoke the authorisation to sell the goods subject to the reservation of title and to collect the accounts assigned to us. In addition to this, we shall in such a case be entitled to demand that the goods subject to the reservation are handed over to us without the Buyer being entitled to a right of reservation against this right to have the goods handed over to us, and without us withdrawing from the contract as

a result, unless we have stated withdrawal from the contract in writing to the Buyer. Besides which, we may notify the third party debtor of the assignment. The Buyer shall have to pass over the documents necessary for this and pass over the necessary information.

6. The Buyer must notify us straight away if the goods subject to the reservation of title have been pledged or if our rights have been otherwise impaired by a third party.
7. If the value of the security handed over to us exceeds our accounts by a total of more than 20%, we shall, given this, be obliged at the Buyer's demand, to assign title or to release assignments to him for over and above this 20%.

VI. Warranty

We shall be liable for defects in our goods as follows:

1. All those parts or services are to be rectified free of charge as we see fit either by supplying new replacement parts or rendering the services again, if the original ones show a defect within the period of limitation regardless of the amount of time such parts have been in operation - provided that the cause of the defect already existed at the point in time at which risk was passed.
2. Claims based on quality defects shall become time-barred after 12 months. Legal defects shall also become time-barred after 12 months. This shall not apply in so far as the law in accordance with § 438 Section 1 No 2 (Structures and things for structures), § 479 Section 1 (Right to recourse) und § 634 a Section 1 No 2 (Structure defects) of the (German) Civil Code [BGB] prescribes longer periods as well as in cases of death, personal injury, and physical harm, intent or a grossly negligent breach of duty on our side and malicious non-disclosure of a defect. The statutory regulations on the suspension of a running of a period, interruption of a period and restarting periods again shall not be affected.
3. The Buyer shall have to notify us straight away in writing of defects and stop any processing work he may be carrying out. Manifest defects are to be notified to us within seven days from the receipt of the goods at the latest, and concealed defects are to be notified to us within 7 days from discovery. The full burden of proof for all preconditions which have to be satisfied before a claim can be asserted, in particular concerning the defect itself, the point in time at which the defect was identified and for the defect being notified in time shall be incumbent upon the Buyer.
4. If the Buyer fails to notify a defect or if the goods are used, mixed, refilled or sold by him, this shall consequently be regarded as unconditional approval.
5. Upon request the Buyer shall have to afford us the opportunity to inspect the goods about which a complaint has been made and to confirm whether they are really defective. For this the Buyer shall have to provide us with facilities and space to conduct an inspection. He shall have to allow us an opportunity to render subsequent fulfilment within an appropriate period of time. If the Buyer fails to fulfil these obligations, all his claims under warranty shall lapse.
6. If the subsequent fulfilment fails, if it is unreasonable or if it is refused by us, or if a case as described in § 281 Section 2 or 323 Section 2 BGB is extant, the Buyer may withdraw from the contract or reduce the remuneration - irrespective of any compensation claims to damages to which he may be entitled in accordance with Article VII.



7. The Buyer shall not be entitled to any warranty claims if the discrepancy from the agreed condition is no more than minor, in the event of over or under performance of up to 10%, if the impairment of use is no more than minor, or for natural wear and tear incurred after risk has been passed over as a result of negligent handling, excessive loads, unsuitable working materials or which occur as a result of special external influences not allowed for in this contract. If improper modifications or repair work are carried out by the Buyer or by third parties, the Buyer shall likewise not be entitled to any claims under warranty for the above and the consequences arising as a result.

VII. Liability

1. Our liability shall be determined solely by these terms and conditions of business. No claims, compensation claims and claims for the reimbursement of expenditure by the Buyer (hereinafter known as compensation claims) regardless of whatever reason on which they are based, shall be recognised for breaches against minor duties, provided that we, our legal representatives or our assistants are guilty of no more than ordinary negligence. In the event that we are in breach of cardinal duties or important duties, we shall also be liable for ordinary negligence.
2. We shall only be liable for the gross faults of our assistants in those cases in which they are senior employees or if cardinal or important duties have been breached.
3. In so far as we, our legal representatives or one of our senior employees is not guilty of the charge of intent or having committed a gross fault, our liability shall be limited to the reimbursement of the damage foreseeable at the point in time at which the contract is concluded or at which the duty was breached and this damage was beyond the control of the Buyer. These limitations of liability shall also apply for gross faults committed by ordinary assistants.
4. In so far as we, our legal representatives, or one of our senior employees are not guilty of the charge of intent or having committed a gross fault, the Buyer's claim – notwithstanding the following ruling under Article VII No 5 – shall become time-barred within one year of its origination.
5. The above restrictions on liability in accordance with No 1 – 4 shall not apply for death, personal injury and physical harm. Moreover, that shall not apply in so far as we have furnished an assurance or guarantee concerning condition, or maliciously concealed a defect. Our liability in accordance with the (German) Product Liability Act shall not be affected either.

VIII. Technical instructions for use

1. The Supplier's instructions for use shall only constitute general guidelines. Given the diversity of uses to

which the individual products can be put and on account of the particular circumstances of use, it shall be incumbent upon the Buyer to carry out his own checks and tests on our products to confirm suitability for his intended use.

2. The Buyer shall also bear the risk of the success of his work with regard to technical support in operation rendered by the Supplier – also with regard to any third party proprietary rights which may exist. Any claims the Buyer may assert against the Supplier in accordance with VII shall not be excluded as a result.

IX. Offsetting

1. The Buyer may only offset uncontested counter-claims or counter-claims which have been declared final and absolute in a court of law against the Supplier's claim for payment. The Buyer shall only be entitled to a right of retention to the extent that this is based on the same contractual relationship. Besides which, the counter-claim must be uncontested or have been declared final and absolute in a court of law.

X. Place of jurisdiction and place of fulfilment

1. If the Buyer is a registered trader, the place of fulfilment for all liabilities created by the business relationship or from the individual contract shall be Eilenburg.
2. This contract shall be governed exclusively by the law of the Federal Republic of Germany. Collision law shall not be applied. The Hague standard laws on sales, the UN standard law on sales or other conventions on the law of the sale of goods shall not apply.
3. If the Supplier is a registered trader, a legal entity established under public law, or a public-law special fund, the place of jurisdiction shall, at the choice of the Supplier, be the courts having jurisdiction where he has his principal place of business or the Buyer's general place of jurisdiction. The place of jurisdiction shall also apply for disputes in proceedings based on documents, bills of exchange or cheques or if the other party to the contract does not have any general place of jurisdiction in Germany or has, or has relocated, his place of residence or normal place of abode outside the Federal Republic of Germany.

VIII. Final provisions

1. Side agreements, assurances, amendments or supplements to the contract shall be subject to the written confirmation of the Supplier.
2. Should individual provisions of these T&Cs or other contractual agreements be partly or completely invalid, the remaining provisions shall continue to be valid. The parties to the contract shall agree another valid provision to replace the invalid provision. The replacement provision is to be as close as possible to the replaced provision economically.