

Conditions of Delivery, Payment and Guarantee

1. Offer and Conclusion of the Contract

- a) All business transactions are based on the following conditions. They are also valid for existing business relations and for all future business concluded with the ordering party, even if they are not confirmed in each individual case.
- b) Conditions of the ordering party which deviate from ours are hereby explicitly contradicted. These even do not place us under any obligation if we do not contradict these once more upon conclusion of the contract and make delivery to the ordering party without reservation although we are aware that his conditions deviate from ours. The ordering party's conditions only have validity if they have been explicitly confirmed by us in writing.
- c) Our offers are non-binding with regard to the price, quantities, period of delivery and the delivery possibilities.
- d) We are not bound by clerical and calculation errors and easily discernible discrepancies in offers and order and confirmation letters. They are to be immediately checked by the ordering party and can be amended by ourselves at all times subject to an exclusion of liability.
- e) Warranties of qualities, special possibilities of use and application of our goods and oral agreements which result in an amendment of our Conditions of Sale, Delivery and Payment, collateral and subsequent contractual agreements are only binding for us after they have been confirmed in writing by ourselves.

2. Prices

- a) Should nothing to the contrary be explicitly agreed to, the prices are deemed to be subject to change without notice for deliveries ex our warehouse or our supplying works. Packaging, transport and freight costs are invoiced separately. No payments will be refunded to self-collectors.
- b) General price increases for labour and material can result in price changes during the term of the contract. The contract remains valid even in its amended form.
- c) Should nothing to the contrary be stipulated in the order confirmation, the prices quoted are those in our price list having validity on the date of delivery. Should the shipping be delayed for grounds for which the purchaser is responsible, the date of the readiness for shipping is deemed to be the date of calculation.
- d) The turnover tax is not included in our prices, the corresponding amount being calculated in the statutory amount on the date of invoice.
- e) Small quantities are subjected to a small quantities surcharge, this being calculated on the basis of the dimension and quality.

3. Delivery

- a) The dimensions, weights and unit quantities determined on our shipping department are decisive. Partial deliveries are permissible. Increased and reduced deliveries of maximum 20% are permissible.
- b) All deliveries are made ex Detmold or our supplying works. Should we acquire the services of a third party for the performance of our delivery duties (vicarious agent), we only assume liability for the care taken when selecting and supervising.
- c) No contract cancellations can be accepted if the goods are already being manufactured.
- d) We only have a duty to deliver within the scope of our real possibilities. The assertion of claims for compensation on the grounds of a delivery default is excluded, the exception being intent or gross negligence.

- e) In the case of the occurrence of a force majeure, we are entitled to deliver with a corresponding delay or rescind the contract in part or as a whole without our having to pay compensation. A force majeure is deemed to be equal to a strike, lock-out and other situations suffered either by ourselves or a supplier, which renders our delivery either extremely difficult or impossible.
- f) We assume no liability for loss or damage in transit.
- g) We reserve the right to make slight deviations from submitted samples. Considerable deviations only provide an entitlement to rescind the contract or demand a replacement delivery, but not to compensation or the reimbursement of lost profits.
- h) We do not guarantee the adherence to specific weights and dimensions. We reserve the right to make deviations plus/minus 10% as stipulated in DIN 2005.
- i) We can only deliver goods to be delivered on demand within the scope of the vicarious agent's manufacturing possibility. We are entitled to have the complete order quantity manufactured by the vicarious agent immediately. Therefore, any requests for change made by the ordering party cannot be taken onto account after the placement of the order, the exception being if this was explicitly agreed to.

4. Reservation of Title

- a) All deliveries are made subject to a reservation of title pursuant to Section 449 BGB (German civil code). The delivered goods remain our property until full payment has been made. Should the goods be resold prior to payment of the purchase price, the claim to which the purchaser is entitled which he has already assigned to us upon conclusion of the contract is to be subjected to a right of retention instead of the goods.
- b) When processing or mixing with the consequence that the goods delivered subject to a reservation of title are deemed to be a non-fundamental part of the new goods, the purchaser already assigns the title in the resulting goods from this moment in time in order to secure the claim, subject to a simultaneous agreement that the purchaser keeps the goods in safe storage for us.
- c) The purchaser is entitled to sell the goods or the product manufactured from these within the scope of his ordinary course of business. However, he is not to pledge the same nor is he to assign them as security. The claims resulting from the resale which he has against the third party are assigned to us in the amount of the original invoice amount by way of security, without this requiring a separate agreement in each individual case.
- d) As long as he meets his payment obligations towards us in a correct manner, the purchaser is entitled to recover this claim and that he issue payment instructions.
- e) The title also has validity with regard of the forwarder who has had the goods handed over to him as commissioned by the purchaser or by our order.

5. Payment

- a) No discount for prompt payment will be granted when making payments against invoice for mould costs, mould cost shares, mouthpiece costs, mouthpiece costs shares and other tools.
- b) Payments for the other deliveries (trade deliveries) are payable without deduction within a period of 30 days of the invoice being issued. Bank charges incurred when paying in the purchaser's country are to be settled by him. We grant a prompt payment discount of 2% if payment is made within a period of 10 days of the date of invoice, but only when order invoices have been settled.
- c) Initial orders are to be immediately paid in cash.
- d) Advance payments and payments on account will not be subjected to interest.

- e) Payment by way of a bill of exchange requires a special agreement. Any acceptance of discountable bills of exchange or cheques is only made pending full discharge of the debt and is not deemed to be a cash payment, so that a discount for prompt payment is not justified. The purchaser is to bear the discount charges which are due immediately.
- f) Should payment periods not be adhered to, the customer is deemed to be in default of payment without a reminder being necessary. We are entitled to demand payment of default interest of 8% p.a. above the corresponding basic European Central Bank interest rate, notwithstanding all other claims. We also reserve the right to rescind all of the contracts in part or as a whole.
- g) We also have the same right should the purchaser's financial situation fundamentally worsen. Should the ordering party be in default with his payments more than once within a period of 12 calendar months or should we after the conclusion of the contract become aware of circumstances in which a careful businessman would only make deliveries against advance payment or COD, all of our invoices are due immediately and actionable after the expiry of a fixed time-limit of one week, in deference to the agreements reached. In such cases, we are also entitled to only making outstanding deliveries against a pre-payment or the provision of security and rescind the contract after expiry of a reasonable time-limit or demand compensation for non-performance. The discontinuation of payments, composition proceedings or an insolvency of the ordering party also result in all of our claims being due immediately, in deference to the agreements reached. In such cases, the promised discounts, bonuses, etc. are forfeited, so that the ordering party is to pay the gross invoiced amount.
- h) Payments are only valid if they are directly made to us. Payments made to employees or representatives are only valid if these have been granted authority to collect.
- i) The setting off on the grounds of purported counter-claims is excluded except for those cases where the counter-claim is undisputed, recognised by ourselves or has been finally and conclusively determined. The ordering party is entitled to exercise a right of retention in as far as his counter-claim is based on the same contractual relationship.

6. Guarantee

- a) Quality and design-related consultations and all technical information are provided to the best of our knowledge. We assume no liability in this regard. We neither guarantee that the goods supplied are specifically suitable for further processing/use by the user nor do we provide a guarantee with regard to physical/chemical reactions with other components.
- b) Ordered goods are manufactured on the basis of a sample or drawing with exact specification of the dimension and purpose of use.
- c) We only assume liability for all defects, including a liability for sound title in our delivered goods to the extent that we either replace the defective goods free of charge, compensate the reduced value or remedy the defect at no cost, according to our choice. Should we not be prepared to, or in a position to remedy the defect or make a replacement delivery, or should this be delayed for a period which exceeds a reasonable time-limit and we are not responsible for such a delay, should attempts at remedying or replacement deliveries not succeed and it cannot be expected of the ordering party that he accept an additional attempt at remedying the defect or an additional replacement delivery, he can either reduce the purchase price or rescind the contract, as he chooses. All other claims, irrespective of the legal grounds, for purported direct damages (including consequential damages), claims for default damages, the reimbursement of wages, personal injury, stoppages, freight and packaging costs, lost profits, etc. are excluded, this also having validity for other claims for compensation. The

foregoing exemption from liability has no validity should the damage be caused by intent or gross negligence.

7. Passing of the Risk

- a) The risk passes to the ordering party upon completion of loading (even when using our own means of transport or delivering carriage paid) at the latest or as from the date of the readiness for shipment if the ordering party is responsible for a delay in the acceptance or shipping.
- b) The ordering party bears the full risk of transport difficulties of all kinds, especially transport delays, damage, destruction or loss, even if we have taken out a transport insurance, the foregoing also having validity with regard to partial deliveries. This is also the case if the goods are not shipped from the place of performance but from one of diverse supplying works or supply depots. This has no validity should the cause be within our area of risk and we are responsible for actions of intent or gross negligence.
- c) If it has been agreed that the transport insurance is to be covered by our floating transport insurance and should damage in transit occur, the ordering party is to prepare a goods damage report (damage acknowledgement by the freight forwarder on the consignment note, goods damage report by the Federal Railways, etc.) prior to taking delivery of the goods. We are to be immediately informed of damage in transit under inclusion of a copy of the goods damage report and the consignment note. Delivery of the goods is to be accepted by the ordering party even if they should be subjected to insignificant defects, this notwithstanding his rights pursuant to clause VI (liability for defects in the delivery). Should the ordering party not meet these obligations in good time, we can refuse to process the damage or make a settlement, respectively.
- d) The ordering party is to issue us with shipping instructions together with the order, otherwise we choose the transport route and the mode of transport and the most inexpensive transport route.

8. Claims for Defects

- a) Claims can only be asserted for defects immediately after delivery of the goods, within a period of 8 days at the latest. We are entitled to choose whether to remedy defects at our expense or provide a replacement delivery. Price deductions are not permitted.
- b) A liability for defects is excluded if
 - aa) the value or suitability of the goods delivered are reduced insignificantly,
 - bb) the damage is caused by negligence or an accident for which we are not responsible,
 - cc) the complaint results from the purchaser making an ordering or other error,
 - dd) the maintenance or care of the supplied material is not carried out according to the sellers's instructions.

9. Manufacture of Goods to Order

- a) As far as products are manufactured on the basis of drawings, information or representative samples provided by the purchaser, the purchaser assumes liability for all consequences of the infringement of existing proprietary rights, this also having analogous validity for exports to territories outside the Federal Republic of Germany. The purchaser is to indemnify us for the damage incurred by ourselves in such cases.
- b) Representative samples merely serve as an indication.
- c) We reserve the title in our drawings, samples and models and they are not to be supplied to third parties for inspection. We have free disposition of tools and devices as our property, even if the purchaser has paid proportional costs. The ordering party is to pay half of the proportional tool costs upon the placement of the order and half upon presentation of the initial pilot sample, the said payment being repaid in the form of the crediting of 5% of the net goods value with the continuous deliveries until such time as full settlement of the total amount.

10. Partial Nullity

Should individual provisions of these Conditions of Delivery, Payment and Guarantee be legally invalid, this has no effect on the validity of the remaining conditions.

11. Place of Performance and Jurisdictional Venue

Place of performance and jurisdictional venue is Detmold, Germany, even if the deliveries are made ex works. It is agreed that Detmold has jurisdiction with regard to disputes. German law has exclusive validity under exclusion of the Convention pertaining to the International Sale of Goods even if the ordering party does not have his legal domicile in the Federal Republic of Germany.