

## General Terms of Sale, Delivery and Payment

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### 1. Scope of Validity

1. These terms of sale have validity for transactions conducted with companies, legal entities under public law and special funds under public law.
2. Our deliveries and performances are exclusively made and provided on the basis of the following terms.
3. Our partners' terms and conditions of trade which have not been explicitly recognised by us have no validity.

### 2. Offers and Contract Conclusion, Estimate

1. The contractual partners are to individually confirm oral agreements and those made by telephone in writing without delay.
2. As far as the contract has already been concluded orally or in writing in accordance with customary trade usage, it shall only come into effect with our written confirmation of order. Subsequent amendments made to the written contract require a written stipulation on the grounds of legal certainty.
3. The information and illustrations in brochures and catalogues are approximate values which are customary in the branch, the exception being if these have been expressly described by us as being binding.
4. Estimates for the carrying out of work on motor vehicles, trailers, especially loading cranes, loading devices and their components are only binding if we have expressly declared them to be so. We reserve the right to exceed the estimate by no more than 15% without prior notice should certain work be necessary.

### 3. Long-term Contracts and Contracts on Demand, Price Adjustments

1. Should delivery be agreed for a time which is later than 4 months after conclusion of the contract, we are entitled to pass increases in material prices, wages and taxes on to the partner as long as these are incurred a minimum of 4 months after conclusion of the contract.
2. Should nothing to the contrary be agreed to, we reserve the right to provide notification of binding quantities on the grounds of delivery contracts on demand within a minimum period of 3 months prior to the delivery date.
3. Should no demand be made or specified in good time, we are - upon expiry of a deadline without success - entitled to specify ourselves and supply the goods or cancel the overdue part of the contract and assert a claim for compensation.

#### **4. Confidentiality**

1. The contractual partners shall solely use the documents (including samples, models, drawings, estimates and other data) and knowledge acquired from the business relationship for the jointly pursued purposes of this contract and shall not disclose them to third parties. In doing so, the parties shall hold them in the same confidence as their own proprietary documents and knowledge to the extent that the other contractual partner has designated them as being confidential or it is obvious that there is an interest in their being held in confidence.
2. This obligation shall come into force upon the documents being obtained or knowledge gained and is deemed to no longer exist 36 months after termination of the business relationship.
3. The partner hereby consents to all of the data required for the handling of the order being stored.

#### **5. Prices**

Our prices are deemed to be in euros ex works excluding Value Added Tax, packaging, freight, etc. The rate of Value Added Tax having validity upon delivery is applicable.

#### **6. Conditions of Payment**

1. All receivables are due for settlement by the date of delivery of the corresponding invoice.
2. Should we have supplied goods which are indisputably partially defective, our partner shall nevertheless pay for that part of the delivery which is not defective, the exception being should he have no interest in the part-delivery. In all other cases, the partner may only set-off any counter-claims which have been finally and conclusively determined or which are undisputed.
3. Should the period of payment not be adhered to, we are entitled to charge default interest pursuant to Section 247 BGB [German Civil Code] to the amount of 8 percent above the corresponding basic European Central Bank interest rate.
4. In the case of a default of payment, we may cease to fulfil our obligations until receipt of the payment upon having served written notice to the partner.
5. Bills of exchange and cheques will only be accepted upon agreement, on account of performance and subject to their being discountable. Discount charges are payable as from the date of the invoiced amount being due for payment. No warranty is given for the presentation of the bill of exchange and cheque on time and for the submission of a bill of exchange protest.

6. Should it be determined after conclusion of the contract that our payment claim is endangered due to the partner being unable to pay, we may refuse to perform and set the partner a reasonable deadline, during which time he shall be obliged to pay against delivery or against collateral. Should the partner refuse to do so or the period expire without success, we are entitled to withdraw from the contract and assert a claim for compensation.

## **7. Delivery**

1. Should nothing to the contrary be agreed to, delivery is to be made `ex works`. The notification of the readiness for shipping or collection by ourselves is authoritative with regard to the adherence to the delivery date or period of delivery.
2. Agreed periods of delivery commence on the date of our confirmation of order; should none be issued, the period of delivery commences on the date of the order being accepted. In both cases, however, the delivery periods do not commence before clarification of all details of the execution and are deemed to have been adhered to if the goods leave our works prior to termination of the period of delivery and is reasonably prolonged should the provisions of clause 13 be given.
3. Part-deliveries are permitted to a reasonable extent. These are to be invoiced separately.

## **8. Shipment, Passing of Risk and Acceptance**

1. Goods which have been notified as being ready for shipping are to be immediately accepted by the partner. Otherwise, we are entitled to choose to either send the goods or store them at the partner's cost and risk.
2. Should no shipping instructions be issued, we shall select the means of transport and the transport route.
3. The risk passes to the partner upon the goods being handed to the person commissioned with the shipment or upon commencement of the storage, but upon it leaving the works or warehouse, irrespective of which party is to bear the shipping costs.
4. If required, the packaging is chosen at our discretion. We assume no responsibility for damage in transit.
5. Should the shipping or acceptance of the goods be delayed through no fault of our own, the risk resulting from the notified readiness for shipping passes to the partner and we shall be entitled to invoice the goods.

## **9. Delay in Delivery**

1. Should it be possible for us to foresee that the goods cannot be delivered during the period of delivery; we shall provide the partner with written notification of the grounds for this in addition to the expected date of delivery, where possible.

2. Should the delivery be delayed as a result of one of the situations stipulated in clause 13 or due to actions or omissions on the part of the partner, the period of delivery is to be reasonably prolonged.
3. The partner is only entitled to withdraw from the contract if we are responsible for the non-adherence to the delivery date and he has granted us a reasonable final deadline without success.

## **10. Reservation of Title**

1. We reserve title to the delivered goods until settlement of all claims from the business relationship with the partner.
2. The partner is entitled to sell these goods in the ordinary course of business as long as he meets his obligations from the business relationship entered into with ourselves in good time. However, he is neither to pledge the goods subject to reservation of title nor is he to transfer them as security. He has a duty to secure our rights upon the credited resale of the goods subject to reservation of title.
3. In the case of a breach of duty being committed by the partner, especially a default of payment, we are entitled to withdraw from the contract and take back the goods after an unsuccessful expiry of a reasonable deadline set for performance. The legal provisions pertaining to the dispensability of a deadline remain unaffected. The partner shall be obliged to surrender the goods.
4. We are entitled to withdraw from the contract should an application be made for the commencement of insolvency proceedings in regards to the partner's assets.
5. The partner hereby assigns all claims and rights arising from the sale of the goods or any rental of the goods to which the partner is entitled, the said goods being subject to a reservation of title by ourselves, as security. We hereby accept the assignment.
6. Any processing or working of the goods subject to reservation of title by the partner is to be carried out by ourselves. Should the goods subject to reservation of title be processed with or inseparably joined to other objects not belonging to us, we shall acquire co-ownership of the new item in the ratio of the invoice value of the goods subject to reservation of title to the other processed or joined goods at the time of the processing or joining.
7. Should our goods be joined to other moving objects to form a uniform item or be inseparably joined to such, and if the other object is to be seen as being the main object, the partner hereby assigns proportional co-ownership to us in as far as the main object belongs to him. The partner shall retain ownership or co-ownership on our behalf. Notwithstanding this, the object resulting from the processing or joining or combining respectively is subject to the same provisions as have validity for the goods subject to reservation of title.
8. The partner is to provide us with immediate written notification of compulsory execution measures being taken on the goods subject to reservation of title, on the receivables assigned by ourselves or on other securities, whereby he shall also surrender the documents required for such an intervention. This is also valid for impairments of all kinds.

9. Our reservation of title is conditional to the extent that the ownership of the goods subject to reservation of title is transferred to the partner upon full settlement of all claims which our company is entitled to on the strength of the business relationship, the partner being entitled to the assigned claims. Should the value of existing securities exceed the secured claims by more than 20 percent, we shall be obliged to release securities at our own discretion, at the request of the partner.
10. In order for us to exercise our reservation of title, the partner hereby grants us an irrevocably unlimited access to his site, company premises or place of storage. This does not require an enforceable court judgement.

## **11. Defects, Warranty, Warranty Period**

1. The quality of the goods is exclusively geared to the agreed technical delivery instructions. If we are to deliver on the basis of drawings, specifications, samples, etc. provided by our partner, he shall assume the risk relating to their suitability for the intended purpose. The time of the passing of the risk pursuant to clause 8.3 is decisive for the contractual condition of the goods.
2. We assume no responsibility for defects of quality or incorrect use, defective assembly or commissioning by the partner or a third party, normal wear, incorrect or careless treatment, nor do we assume responsibility for the results of incorrect changes or repair work carried out by the partner or a third party without our approval. The same is the case with regard to defects which only slightly reduce the value or suitability of the goods.
3. If acceptance of the goods or prior sampling is agreed to, no complaints shall be recognised which pertain to defects which the partner should have been able to detect, had he carried out due and proper acceptance or prior sampling.
4. We are to be provided with the opportunity of being able to detect the defect which is the subject of the complaint; the shipping costs shall be borne by us to the extent that the complaint of defects is justified. Should the partner not meet these obligations or carry out changes to the goods which are already subject to complaint without this being approved by us, he is to lose any claims which he may assert on the grounds of a defect as to quality.
5. In the case of damage in transit, this meaning damage caused to the packaging or the shipment, the consignee shall be obliged to have the carrier issue a corresponding written certificate. In this case, the carrier is not to issue a signed clear receipt.
6. Notifications of other defective deliveries, this especially including delivery which deviate from the order, are to be reported in writing within a period of 8 days in the case of obvious damage, notification of concealed damage having to be made within a period of 8 days of the damage being detected. The period is to be computed on the basis of the date of delivery and the date the letter of complaint is received. The nature of the deviation from the order or the defect is to be described in detail.

7. Should the ordering party resell the goods and subsequently have recourse to us on the grounds of a warranty claim, the period for submitting a complaint pursuant to clause 11.6 also has validity if the ordering party has not examined the goods himself and the defect would have been detectable by the ordering party had he examined the goods in the manner which is customary in the trade.
8. Contrary to the provisions of Section 476 BGB, the ordering party is liable to furnish proof that the delivered goods were already defective upon delivery. This has no validity in the case of fraudulent misrepresentation or intent, in addition to the existence of a defect of a nature which cannot result from any interference with the goods by the ordering party or a third party.
9. In the case of justified complaints being made within the specified period, we reserve the right, at our own discretion, to either remedy the defect or effect a replacement delivery. Should the remedying of the defect/replacement delivery prove unsuccessful, the ordering party is entitled to decide whether to annul the contract or demand a corresponding reduction of the selling price (diminution).

In the case of a remedy and replacement delivery, we shall bear the expenses incurred for this purpose. This does not have any validity should the expenditure incurred be increased due to the fact that the purchased goods are transported to a location other than the ordering party's place of abode or business establishment or another place of destination. When returning or replacing the delivered goods, the ordering party is to make such goods available for transport after they have been correctly packed. Goods which have been replaced by ourselves shall transfer to our ownership.

The partner only has legal rights of recourse to ourselves in as far as the partner has reached agreement with his purchaser which exceed the statutory warranty claims.

We assume liability in accordance with the legal provisions as far as the ordering party asserts claims for compensation on the grounds of intent or gross negligence, including intent or gross negligence on the part of our vicarious agents. We also assume liability in accordance with the legal provisions as far as we culpably commit a breach of a contractual duty. In both cases, the compensation liability is restricted to the damage which is foreseeable and typical. This is not the case should we have maliciously not disclosed a defect or have provided a guarantee of a quality.

The liability for compensation is otherwise excluded. This is also valid for the personal liability of our salaried employees, waged employees, members of staff, legal representatives and vicarious agents.

11. The period of limitation for warranty claims amounts to 1 year after delivery.
12. The foregoing restrictions of the warranty are not valid in the case of death, injury or health impairments.

## **12. Other Claims, Liability**

1. The assertion of claims against ourselves by the partner over and above the foregoing is excluded. This especially has validity with regard to claims for compensation arising from a breach of duty arising from the relationship under a law of obligations and tortious acts. We therefore assume no liability for damage which has not been caused to the delivered goods themselves. We especially assume no liability for a loss of profits or other pecuniary damage incurred by the partner
2. The foregoing liability restrictions are not valid for intent or gross negligence on the part of our legal representatives or executive staff in addition to the culpable breach of fundamental contractual duties. We solely assume liability for the damage which is reasonably foreseeable and typical for the contract (the exception being in the case of intent or gross negligence on the part of our legal representatives or executive staff).
3. The restriction of liability is also not valid in those cases in which liability is to be assumed pursuant to the German Product Liability Act for personal injury or material damage to privately used objects resulting from defects in the delivered goods. They are equally invalid for death, injury or health impairments and the absence of a warranted quality, if and as far as the warranting of the quality had the purpose of securing the partner against damages which were not caused to the delivered goods themselves.
4. In as far as our liability is restricted or excluded, this also has validity for the personal liability of our salaried employees, waged employees, members of staff, legal representatives and vicarious agents.
5. This has no effect on the statutory provisions pertaining to the onus of proof.

## **13. Force Majeure**

Force majeure, industrial disputes, disturbances, official acts, the non-receipt of supplies from our supplier and other unforeseeable, inevitable and serious events exempt the contractual partners from the performance obligations for the duration of the disturbance and in the scope of its effects. This also has validity should these events occur at a moment in time at which the affected contractual partner is in default, the exception being if the default is caused by intent or gross negligence. The contractual partners are obliged to providing notification without delay, within the scope of that which is reasonable, and to adapting their duties to the altered situation in good faith.

## **14. Place of Performance and Jurisdiction, Applicable Law**

1. Our business location is deemed to be the place of performance unless otherwise stated in the confirmation of order.
2. Our business location is the place of jurisdiction for all legal disputes, including those within the scope of a bill of exchange and cheque processes. We are also entitled to file a suit at the partner's business location.

3. The laws of the Federal Republic of Germany shall exclusively apply to this contractual relationship to the exclusion of the Convention on the International Sale of Goods (CISG – ‘Vienna Sales Convention’) of 11 April 1980 pertaining to contracts concluded for the sale of goods.

#### **15. Binding Character of these Terms**

Should individual provisions of these terms and conditions of trade be ineffective now or in the future, these shall have no effect on the validity of the remaining provisions concluded between the partners.

Valid as of 06/2002