

## **Terms and Conditions of Sale**

We do business exclusively on the basis of the Terms and Conditions set forth below. These Terms and Conditions will also apply to all future transactions even if not expressly agreed to in each case. Any exception to these Terms and Conditions will be valid only if agreed to by us in writing. Any terms and conditions of the customer that we have not explicitly acknowledged in writing will be immaterial even if we fail to explicitly object to such terms and conditions.

The customer will be notified of any changes in these Terms and Conditions in writing. Such changes will be considered to have been accepted unless the customer objects in writing. We will make explicit mention of this fact upon announcement of any changes. The Customer must notify us of any objection within one month of announcement of any such changes.

Communication by e-mail and facsimile transmission will also be considered to satisfy the written-form requirement for the purposes of compliance with our Terms and Conditions.

### **I. Quotations, Scope of Delivery**

1. Our quotations are subject to change. Understandings made orally, in person or by telephone must be confirmed in writing to be valid.
2. Samples only approximate the characteristics of goods. Documents related to our quotations such as brochures, photos and drawings as well as weights and measures will be considered only approximations unless explicitly specified as binding by us. Order confirmations will be exclusively determinative for the purposes of definition of the quality of goods and services.
3. Our written order confirmations will be determinative for the purposes of definition of the scope of delivery. In the absence of such written confirmation, our quotation will be determinative. Collateral agreements and changes must be confirmed in writing by us.
4. Partial shipments are permissible if the customer can be reasonably expected to accept such shipments. We reserve the right to deviate from quantities specified by  $\pm 10\%$  for technical reasons. In the event more stringent tolerances are commercially accepted in the case of individual products, such tolerances will apply for the purposes of the respective agreement.

### **II. Duties of the Customer**

1. In the event any permit or export permit is required for shipment of the goods, the customer will provide us with all data and information needed to apply for such permits. This will apply in particular for any necessary certificate of final destination that contains information on the intended use.
2. The customer must also inform us of any unusual, not normally foreseeable uses for the goods.

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3. The customer will comply with all provisions of German and international foreign trade law. The customer may use the goods received from us only for the contractually agreed purpose or the purpose communicated to us and agrees to refrain from selling or otherwise making the goods available to persons, companies, organizations or facilities included in the sanction lists of the European Union (Council Regulations (EC) 2580/2001 and 181/2002 in their respective versions) or in the US Denied Persons List.
4. The customer will reimburse us for any loss or damage suffered as a result of any breach of the above duties by the customer. The customer will also indemnify and hold us harmless from any claims brought by third parties.

### **III. Prices and Conditions of Payment**

1. Prices apply ex works, including packaging. The actual quantities shipped will be invoiced. Changes in the cost of materials and labour that occur four months after execution of the agreement will entitle us to change our prices accordingly.
2. In the case of shipments to other countries, the customer will bear all duties, fees, taxes, costs for technical certification, etc., incurred outside the Federal Republic of Germany. This will also apply accordingly to the cost of any necessary legalization of certificates of origin, invoices for consular services, etc..
3. Payments by check will be subject to clearance. If the customer should fail to meet its financial obligations, not honor checks or suspend payments, we may call the entire outstanding amount due immediately even if we have already accepted checks. We also reserve the right to require payment in advance.
4. The customer may not offset counterclaims or exercise any rights of retention unless claims of the customer are undisputed or legally enforceable.
5. If it should become apparent after execution of a contract that our claim to payment is at risk due to the customer's inability to make payment, we may refuse to make shipment and request that the customer either make payment upon delivery within a period specified by us or provide appropriate security. In the event this period should elapse with no response from the customer, we may cancel the order and demand reimbursement of expenses incurred. No such period of notice will be required if the customer seriously and definitively refuses to make payment or if special circumstances exist that justify immediate cancellation of the contract by us after weighing the interests of both sides.

### **IV. Delivery Time**

1. Dates and deadlines specified in our order confirmations or otherwise agreed with the customer will be binding. Compliance with such dates and deadlines by us presupposes timely receipt of all documents to be supplied by the customer as well as compliance with the agreed conditions of payment and other obligations by the customer. If these conditions are not met in a timely manner, delivery or performance will be delayed accordingly.
2. Delivery will be considered to have been made on a timely basis if the goods are ready for shipment or collected by the delivery date. If shipment is delayed for reasons

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attributable to the customer, delivery will be considered to have been made on a timely basis upon notification of completion or availability for shipment by the agreed delivery date.

3. If we are prevented from performing our obligations due to the occurrence of unforeseeable unusual circumstances affecting our operations or those of our suppliers that we could not avoid despite all due care in view of the given circumstances, for example, disruption of operation, governmental intervention, delays in the delivery of essential raw and building materials, delivery will be postponed by the duration of any such occurrence unless delivery or performance is rendered impossible. In the event delivery or performance should become impossible due to the circumstances mentioned above, we will be released from our obligation to make delivery.

If the operations of the customer should be affected by any of the above-mentioned circumstances, the same legal consequences will also apply in respect of the customer's obligation to accept delivery.

We may rely on the circumstances mentioned here only if we notify the customer accordingly without delay.

4. In the event shipment or delivery is delayed at the request of the customer, we may charge a storage fee as of one month after notification of completion or readiness for shipment in the amount of one-half percent of the net invoiced amount for each month of delay or any fraction thereof. This storage fee will not exceed five percent of the net invoiced amount unless we document that higher costs were incurred.

### **V. Shipment and Passage of Risk**

1. The risk of loss or damage will pass to the customer upon shipment. If shipment is delayed for reasons lying within the sphere of influence of the customer or the customer's agents, the risk of loss or damage will pass to the customer as of the day of readiness for shipment.
2. We will obtain freight insurance only if requested to do so by the customer in writing and paid for in advance.

### **VI. Packaging**

1. In the event goods are shipped in returnable containers, the empty containers must be returned to us in perfect condition within no later than 30 days from the date of delivery at the expense and risk of the customer or be turned over to us at our vehicle in return for acknowledgement of receipt.
2. In the event the customer should fail to comply with the provision contained in 1 above, we may demand appropriate compensation for any time in excess of 30 days and after setting a period for the return of the containers demand payment of the cost of replacement less any such compensation already paid in the case of failure to comply with our request during such period.
3. The markings on returnable containers may not be removed. Returnable containers may not be exchanged and may not be filled with other materials. The customer will be

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responsible for any decrease in value, exchange or loss attributable to the customer. The containers may not be used for storage purposes or transferred to a third party unless agreed to by us in writing beforehand.

4. In the case of shipments in tank cars or ISO tank containers, the customer agrees to take all reasonable measures to empty the containers and return them to us at an address designated by us as quickly as possible. In the event the standing time at the location of the customer is prolonged due to reasons attributable to the customer, the customer will bear the commensurate rental fee for the tank cars.

### **VII. Retention of Title**

1. Shipped goods will remain our property after shipment until we have received payment in full of the agreed price, including all amounts already due or that will become due, and until clearance of all checks.
2. In the event the customer pays by check and we issue the customer a bill of exchange for the purposes of refinancing, our ownership rights will cease to exist only when we can no longer be held responsible for the bill.
3. The customer may resell the goods in the course of ordinary business activity. The customer hereby assigns to us any claims arising from the resale of goods to which we retain title, in particular claims for payment against the purchasers of such goods, and we accept such assignment. The customer will notify its debtors of such assignment at our request. The customer will notify us of the outstanding receivables and the names of the respective debtors.
4. The customer is authorized to collect amounts owed us in connection with the resale of goods. We may revoke such authority to make collection in the case of arrears on payments owing to us or if we become aware of circumstances that from a commercial point of view would compromise the creditworthiness of the customer.
5. The customer may not assign any security interest in goods to which we retain title. In the case of any action, and in particular any form of attachment, by a third party against goods to which we retain title, the customer will identify us as the owner and notify us without delay, providing a copy of the judicial order.
6. We may in the case of any breach of contract by the customer cancel the contract, demand the return of any goods supplied by us and claim damages.
7. If the value of any securities provided exceeds our claims by more than 20%, we will, at our sole discretion, reassign or release securities if requested to do so by the customer.

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### VIII. Rights of the Customer in the Case of Defects

1. We hereby assign our claims against suppliers of significant third-party products to the customer. The customer may hold us liable for defects in such significant third-party products only if judicial action against the third-party suppliers has been unsuccessful.
2. If the purchase represents a commercial transaction for the customer, the customer must notify us of any defects in writing without delay and at the very latest within one week of receipt of the goods. The customer must notify us in writing without delay upon detection of any other defect that cannot be detected within the above period even upon careful inspection.
3. In the case of legitimate defects, we may at our discretion correct the defect or supply a replacement within a reasonable period of at least 14 days. If corrective work should prove inadequate, the customer may – unless the default is of negligible importance – reduce the price or rescind the contract. The customer may also claim damages or reimbursement of expenses if appropriate. If the customer should rescind the contract, the customer will return the goods to us.
4. The customer will bear the costs of returning the goods for the purposes of corrective work.
5. No further claims of the customer in respect of expenses incurred for the purposes of carrying out required corrective work, in particular for shipping, freight, materials and labor, will not be honored if such expenses are increased due to the fact that the goods are subsequently brought to a location other than the delivery destination by the customer or any other party unless required by the intended use of the goods or agreed to by us upon execution of the contract.
6. We will be liable for claims arising from defects in products only in the case of gross negligence on our part or that of our agents or in the case of breach of a material contractual obligation. A material contractual obligation is one that must be met if the contract is to be properly fulfilled and on which the customer may rely.

No liability can be assumed for unforeseeable, so-called excess damage. It is expressly agreed that this limitation will not apply in the case of loss of life or personal injury due to a culpable breach of duty on the part of any of our agents.

7. If we warrant that the goods will comply with certain specifications, the conditions pertaining to limitation of liability contained in para. 5 above will not apply. Claims brought under the Product Liability Act (*Produkthaftungsgesetz* – ProdHaftG) will remain unaffected.
8. We accept no liability for the suitability of the goods for the purposes contemplated by the customer unless such purposes are expressly stipulated by us. In the event we provide advice in respect of the use of the goods, we are liable for willful misconduct and gross negligence.

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### IX. Limitation of Liability, Damages

1. Unless stipulated otherwise in these Terms and Conditions, our liability for any breach of contractual obligations or any or other obligations will be governed by the relevant provisions of law. We will at our sole discretion determine whether circumstances warrant limitation of our liability.
2. We will be liable for damages – for whatever legal reason – in the case of willful misconduct and gross negligence. In the case of simple negligence, we will be liable only in the case of
  - a) claims arising in connection with the loss of life, personal injury or illness,
  - b) claims arising in connection with the breach of a material contractual obligation (i.e., an obligation that must be fulfilled to permit proper performance of the contract and may regularly be relied upon by the customer). Our liability will, however, then be limited to foreseeable and typically occurring damages.
3. The limitations to our liability pursuant to 2 above will not apply in the case of concealment of a defect with intent to deceive or if we have extended a warranty on the respective products. The limitations to our liability do not apply in the case of claims of the customer under the Product Liability Act.
4. The customer may rescind or cancel the order due to breach of contract only if the breach can be attributed to us. The contract will otherwise be governed and construed in accordance with the provisions of law and legal practice.
5. In the case of delay, the customer's claim for damages will be limited to 5 per cent of the net purchase price unless such delay is due to willful misconduct or gross negligence on our part.

### X. Limitation Periods

1. The general period of limitation for claims arising from defects in materials and workmanship or defects of title is one year from the date of delivery.
2. In the event the goods consist of a construction material, the period of limitation will be five years from the date of delivery.
3. Special provisions of law governing real rights of third parties to the return of property (§ 438(1) no. 1 of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB)), intent to deceive on our part and claims against suppliers in the case of sale to a consumer pursuant to § 479 of the German Civil Code will apply.
4. Contractual and other claims of the customer arising from defective goods will also become time-barred upon expiration of the periods specified under the provisions of law governing contracts unless the application of the regular legally prescribed periods pursuant to §§ 195 and 199 of the German Civil Code would result in earlier expiration of such claims under the given circumstances.

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5. Warranty periods prescribed by the Product Liability Act will apply. The legal warranty periods will otherwise apply exclusively in the case of claims for damages on the part of the customer pursuant to section IX.

### **XI. Place of Performance, Jurisdiction, Applicable Law**

1. Bielefeld, Germany, is the place of performance for all obligations arising from this Agreement.
2. Any disputes arising from this contractual relationship will be submitted to the jurisdiction of the courts of Bielefeld if the customer is a businessman, a public law corporation or special fund under public law. We may, however, at our discretion, take action before the courts having jurisdiction over the registered place of business of the customer.
3. The provisions of this Agreement will be interpreted and construed exclusively in accordance with German law. Application of the United Nations Convention on the International Sale of Goods of April 11, 1980 (CISG) is excluded.

### **XII. Privacy Policy**

We reserve the right to store, transmit, modify and delete personally identifiable information on the customer. We will inform the customer thereof accordingly pursuant to § 33 of the German Federal Data Protection Act (*Bundesdatenschutzgesetz – BDSG*).