



General Terms and Conditions of Delivery and Payment

As at: February 2021

I. Scope of applicability

1. These General Terms and Conditions of Delivery and Payment apply for all contracts (including in the future) with companies, legal persons under public law and public law special funds on deliveries or other performances, including work contracts and the delivery of non-fungible goods. Terms of purchase of the buyer will not be recognised even if we do not explicitly object to them again after we receive them. These terms and conditions apply irrespective of whether they are separately referred to in an individual case.
2. Any arrangements which deviate from these terms and conditions or additions must be in writing. This does not apply to arrangements agreed with directors or authorised signatories or other persons authorised by us to agree differing arrangements or additions.

II. Offer and the conclusion of the contract

1. Our offers are subject to confirmation. Oral agreements, promises, assurances or guarantees of our employees in connection with the conclusion of the contract shall only become binding upon our written confirmation. Written form shall also be deemed to have been complied with through a transmission by fax or e-mail. Exclusively the content of our order confirmation shall be deemed to have been contractually agreed.
2. Orders, purchase orders, order confirmations, commercial confirmation letters etc. submitted to us shall not have any binding effect with respect to us if we fail to respond to them, unless we subsequently issue a separate order confirmation in response to such submissions. A contract shall only come into being once we have sent you our order confirmation.
3. We shall retain the ownership title and copyright to any offers or cost estimates submitted by us and any drawings, images, descriptions or other documents or materials originating from us or third parties and provided to the contract partner, unless otherwise agreed. The contract partner is not permitted to make the above-mentioned items available to third parties without our explicit consent, either as such or according to their content. Any use of the above-mentioned items and documents or any reproduction thereof are only permitted insofar as it is necessary for the conclusion or performance of contracts. The above-mentioned documents and materials and any reproductions thereof must be promptly returned to us at the customer's expense if a contract is not concluded or if they are no longer needed for the further performance of the contract.
4. In case of doubt, the interpretation of trading clauses is governed by the current version of Incoterms.



III. Prices

1. Unless otherwise agreed, the prices and terms set out in our price-list effective upon the conclusion of the contract are ex works or warehouse and subject to the addition of freight charges and VAT.
2. If the price increases due to official measures, particularly the introduction or renewal of customs duties of any kind, we shall have the right to adjust the agreed prices to a corresponding extent.
3. The agreed price is a fixed price. If an increase in the agreed price becomes necessary for quantities which we have not yet delivered because, due to a change in the raw materials or economic situation, serious circumstances arise which make the production and/or purchasing of the relevant product significantly more expensive compared to the time when the prices were agreed, the market price shall be newly agreed taking into account these issues.

IV. Payment and setting off

1. Unless otherwise agreed or specified in our invoices, the purchase price shall be due for payment immediately after delivery, without any discount deduction, and payable such that we can dispose of the funds on the due date. The costs of the payment transaction shall be borne by the buyer. The buyer shall only have a right of retention and a set-off right insofar as its counterclaims are undisputed or have been established with legally binding effect.
2. In the event that the payment date is exceeded or the customer defaults, we shall charge interest in the amount of 9 percentage points over the base interest rate, unless higher interest rates have been agreed. We reserve the right to assert further claims for losses due to delay.
3. The purchase price shall be due for payment upon the conclusion of the contract. The buyer shall be deemed to be in default no later than 10 business days from the due date of our claim, without a reminder being required.
4. If it becomes clear after the conclusion of the contract that our payment claim is jeopardised due to the buyer's inability to pay or if the buyer defaults on the payment of a significant amount or if other circumstances arise which indicate a significant deterioration in the buyer's ability to pay after the conclusion of the contract, we shall be entitled to the rights under Article 321 of the German Civil Code (Bürgerliches Gesetzbuch – BGB). We shall then also have the right to declare to be due for payment all claims from the current business relationship with the buyer which have not yet fallen due.
5. Any agreed discount always relates to the invoice value exclusive of freight charges and is subject to full settlement of all due liabilities of the buyer as of the time of the discounting. Unless otherwise agreed, discount time limits begin from the invoice date.



V. Carrying out the deliveries; delivery periods and deadlines

1. Our delivery obligation is subject to correct and timely delivery by our own suppliers, unless we are culpable for the incorrect or late delivery by our own suppliers.

2. Information concerning delivery times is only approximate. Any explicitly agreed binding delivery periods begin with the date of the return confirmation of our order confirmation by the buyer and are only effective subject to timely clarification of all the details of the purchase order and timely fulfilment of all obligations of the buyer, such as the provision of all official certificates, letters of credit and guarantees or making advance payments.

3. The moment of despatch of the shipment or collection from the plant or warehouse shall be decisive with regard to compliance with any explicitly agreed binding delivery periods and deadlines. If the goods cannot be despatched in good time without any fault on our part, they shall be deemed to have been complied with upon notification that the goods are ready to be shipped or can be collected. If conditionally confirmed delivery times are exceeded, this shall not give rise to a default.

4. In the event of a delay in making delivery, the buyer will be able to set us an appropriate additional time limit and, after it expires ineffectively, rescind the contract insofar as it has not yet been fulfilled. In such cases, claims for compensation for losses shall be governed by section XII of these terms and conditions.

5. If events of force majeure occur, the contractual obligations of both parties shall be suspended and the deadlines and time limits for the fulfilment of contractual obligations shall be postponed accordingly. An event of force majeure shall be deemed to have occurred if the obstruction to the contractual performance results from an event which cannot be foreseen or averted, even if the utmost care such as cannot be reasonably expected is exercised. Events of force majeure are deemed to include industrial disputes in our own or third-party establishments, serious transportation impediments, serious machine malfunctions, measures of governmental authorities and other circumstances for which neither party is responsible. The other party must be promptly notified of the occurrence of an event of force majeure. At the earliest after the event of force majeure has lasted six weeks each of the parties shall have the right to rescind the contract, to the exclusion of any compensation obligation in this respect. In the event of such rescission, the buyer shall have to pay the purchase price relating to the part of the delivery which is possible, as well as compensation for our expenses. If the buyer has a legitimate interest in refusing the partial delivery, it shall only have to pay compensation for our expenses.

6. The buyer undertakes to fulfil the security and reliability requirements issued by the German customs administration for certification as an "Authorised Economic Operator" (AEO). If the buyer itself does not hold or has not applied for recognition as an Authorised Economic Operator, it must sign a separate formal undertaking with respect to us based on a standard form provided by the customs office regarding compliance with the security and reliability requirements. The buyer undertakes to immediately inform us if it or the assistants deployed by it in connection with the performance of the contract violate compliance with the security and reliability requirements or if compliance with them can no longer be guaranteed.



We shall have the right to rescind the contract if the buyer fails to fulfil the security and reliability requirements necessary for recognition as an Authorised Economic Operator or when requested to do so fails to make a security declaration with respect to us within the time limit set by us or if the buyer or the assistants deployed by it in connection with the performance of the contract culpably violate those security and reliability requirements seriously or repeatedly.

VI. Retention of ownership

1. All delivered goods shall remain our property (goods subject to retention of title) until all receivables, including the respective balance claims, to which we are entitled in connection with the business relationship (balance reservation) have been settled. This also applies for receivables arising in the future or contingent receivables, for example from acceptor's bills of exchange, and also if payments are made towards specially designated receivables. This balance reservation shall finally expire upon the settlement of all receivables still outstanding and covered by this balance reservation at the time of the payment.

2. Working or processing of the goods subject to retention of title shall occur for us as the manufacturer in the meaning of Article 950 BGB, without obligating us. The worked and processed goods shall be deemed to be goods subject to retention of title in the meaning of paragraph 1. In the event of processing, connection or combining of the goods subject to retention of title with other goods by the buyer, we shall be entitled to pro rata co-ownership to the new item according to the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other goods used. For the event that our ownership title expires due to connection or combining, the buyer transfers to us already now the ownership rights to the new product or goods (which it shall safekeep for us free of charge) to which it is entitled, in the amount of the invoice value of the goods subject to retention of title. Our co-ownership rights shall constitute goods subject to retention of title in the meaning of paragraph 1.

3. The buyer is permitted to sell the goods subject to retention of title in the normal course of business and according to its normal terms and conditions of business only, as long as it is not in default and provided that the receivables from the resale transfer to us in accordance with paragraphs 4 to 6. It does not have the right to otherwise dispose of the goods subject to retention of title.

4. The receivables from the resale of the goods subject to retention of title are assigned to us already now, together with all security that the buyer acquires for the claim. They serve as security to the same extent as the goods subject to retention of title. Should the goods subject to retention of title be sold by the buyer together with other goods that are not sold by us, the claim from the resale will be assigned to us in the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other sold goods. Should goods to which we have co-ownership shares under paragraph 2 be sold, a portion shall be assigned to us corresponding to our co-ownership share.



5. The buyer has the right to collect receivables from the resale. This collection authorisation shall expire if we revoke it, but no later than upon a payment default, a failure to honour a bill of exchange or an application for the opening of insolvency proceedings. We shall only exercise our revocation right if it becomes clear after the conclusion of the contract that our claim to payment under this or other contracts with the buyer is jeopardised due to its inability to make payment. At our request, the buyer shall be obliged to immediately notify its customers of the assignment to us and provide us with the documents necessary for the collection.

6. The buyer must notify us without delay of any attachment or other interventions by third parties. The buyer shall bear all the costs which have to be incurred to have such interventions set aside or for the return transport of the goods subject to retention of title, if they are not compensated for by third parties.

7. If the buyer delays in making payment or fails to honour a bill of exchange on the due date, we shall have the right to prohibit further processing, take the goods subject to retention of title back, if necessary entering the buyer's premises for that purpose, and sell the goods subject to retention of title on optimal terms, crediting the proceeds to the purchase price. The same shall apply if it becomes clear after the conclusion of the contract that our claim for payment is jeopardised. Taking back goods does not constitute rescission of the contract. The provisions of the German Insolvency Act (Insolvenzordnung) remain unaffected.

8. If the invoice value of the existing security exceeds the secured claims, including accessory claims (interest, costs etc.) by a total of more than 10%, to that extent we will be obliged, at the buyer's request, to release security according to our choice.

VII. Quality, dimensions and weight

1. The quality, types and dimensions of the goods shall be determined according to the DIN and EN standards agreed upon the conclusion of the contract or, in the absence of such an agreement, according to the DIN and EN standards applicable upon the conclusion of the contract or, in the absence thereof, based on usual commercial practice. References to standards and similar guidelines, works verification documents or similar credentials or information on quality, types, dimensions, weights or the usability of the goods do not constitute warranties or guarantees, nor do declarations of conformity and relevant marks such as CE and GS.

2. For the weights, the weighing carried out by us or our upstream suppliers is decisive. The weight shall be substantiated through the submission of the weighing slip. Insofar as it is legally permitted, weights can be determined without weighing pursuant to standards. We shall have the right to determine the weight without weighing pursuant to standards (theoretically) subject to the addition of 2 1/2 % (commercial weight). Unit quantities and bundle quantities and the like specified in the despatch note are non-binding for goods charged according to weight. If it is not customary that individual weighing occur, the total weight of the shipment shall apply. Differences vis-à-vis the calculated individual weights will be proportionally distributed among them.



VIII. Acceptances

1. If an acceptance is agreed, it can only occur in the supplying factory and/or our warehouse immediately after notification is given of readiness for acceptance. The personnel costs of acceptance shall be borne by the buyer and it shall be charged for the material/equipment costs of acceptance according to our price-list or the price-list of the supplying factory.
2. If the acceptance does not occur, does not occur in good time or is incomplete, without any fault on our part, we shall have the right to ship the goods without acceptance or to place them in storage at the buyer's expense and risk and charge it for them.
3. If the buyer fails to accept the work within a reasonable time limit set for it by us, acceptance shall be deemed to have occurred.
4. If the buyer accepts/collects partial quantities from us, acceptance shall not occur with the last part of the delivered quantity, rather each partial quantity shall be separately accepted.

IX. Shipping, transfer of risk, packaging and partial deliveries

1. We shall select the shipping route and means of transport, as well as the forwarder and carrier.
2. Goods reported as being ready for shipment in accordance with the contract must be called off without delay and no later than within seven days, otherwise we shall have the right, after issuing a reminder, to ship them according to our choice at the buyer's expense and risk or to place them in storage according to our own discretion and immediately charge for them.
3. If, without any fault on our part, the transportation by the envisaged route or to the envisaged location at the envisaged time is impossible or significantly impeded, we shall have the right to deliver by a different route or to a different location. The additional costs that arise shall be borne by the buyer. The buyer shall previously be given the opportunity to take a position.
4. For all transactions, including in the case of carriage paid and free of charge deliveries, the risk, including the risk of seizure of the goods, shall transfer to the buyer upon the handover of the goods to a forwarder or carrier and no later than the time when the goods leave the warehouse or the supplying plant. We shall only take out insurance at the instruction and expense of the buyer. The obligation of unloading and the related costs shall be borne by the buyer.
5. The goods shall be delivered unpacked and without rust protection. We will deliver in packaging where this is usual commercial practice. We shall provide packaging, protection and/or transportation aids based on our experience at the buyer's expense. They will be taken back at our warehouse. We shall not bear the buyer's costs for the return transport or for its own disposal of the packaging.



6. We have the right to provide partial deliveries to a reasonable extent. We also have the right to deliver more or less than the agreed quantity of the delivery, to a reasonable extent. Specifying an 'approx.' quantity gives us the right to deliver more or less than the agreed quantity by up to 10%.

X. Blanket orders, ongoing deliveries

1. In the case of contracts concerning ongoing deliveries, call-offs and type classifications must be submitted to us for roughly equal monthly volumes, otherwise we shall have the right to make the determinations ourselves according to our reasonable discretion.

2. If the individual call-offs exceed in total the contractually agreed quantity, we shall have the right but not the obligation to deliver the excess quantity. We will be able to charge for the excess quantity at the prices effective upon the call-off or delivery.

XI. Liability for material defects

1. We accept no liability and/or provide no warranty for a particular purpose of use or particular suitability of the goods, unless this is explicitly agreed in writing. The buyer shall bear the risk of suitability and application subject to an explicit agreement to the contrary. Material defects in the goods must be reported in writing without delay and no later than seven days from delivery. Defects which cannot be detected within that time limit, even by way of an examination carried out with the utmost care, must be reported in writing immediately after they are discovered and no later than before the end of the agreed or statutory limitation period, and any processing must be immediately ceased.

2. In the event of a legitimate, timely complaint, we will be able to either eliminate the defect or provide a defect-free item, according to our choice (supplementary performance). If the supplementary performance fails or is refused, the buyer will be able, following the ineffective lapse of a reasonable time limit set by it, to rescind the contract or reduce the purchase price. If the defect is insignificant or if the fitness of the goods is not significantly reduced, our liability for material defects shall be excluded. If the goods have already been sold, processed or transformed, the buyer shall only be entitled to a price reduction.

3. Expenses related to the supplementary performance shall only be borne by us insofar as they are reasonable in an individual case, particularly in relation to the purchase price for the goods, and on no account in excess of 150% of the purchase price. We shall only bear further expenses, for example in connection with the installation and extension of the defective item, in accordance with section XII of these terms and conditions.

4. After the buyer has carried out an agreed acceptance of the goods, any complaints regarding defects that could be identified in the agreed type of acceptance shall be excluded. If the buyer failed to detect a defect as a result of negligence, it may only assert rights due to that defect if we fraudulently concealed the defect or provided a guarantee for the quality/characteristics of the goods.



5. If the buyer does not promptly give us the opportunity to confirm the defect, in particular if it fails to promptly make the goods being the subject of the complaint or samples thereof available at our request for the purposes of verification, the rights due to the material defect shall be forfeit.

6. In the case of goods which have been sold as degraded (e.g. so-called II-A material) and/or used material, the buyer shall not be entitled to any rights relating to material defects. Where degraded and/or used material is sold, our liability due to material defects shall be excluded.

7. Further claims of the buyer are governed by section XII of these terms and conditions. Rights of recourse of the buyer under Articles 478 and 479 BGB remain unaffected.

8. Lump-sum compensation claims for complaints or losses will not be recognised by us.

XII. General limitations of liability and time limitation

1. Insofar as the United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods applies, the buyer shall only be entitled to compensation for losses to the extent we acted culpably. Otherwise, even where the UN Convention on Contracts for the International Sale of Goods applies, the following provisions of this section XII apply.

2. We shall only be liable for breach of contractual or non-contractual obligations, particularly due to impossibility, default, culpability upon the initiation of the contract or impermissible action, including for our managerial employees and other vicarious agents, in cases of wilful misconduct or gross negligence and limited to the losses under a typical contract that were foreseeable upon the conclusion of the contract.

3. The limitations under paragraph 2 above shall not apply in the event of a culpable breach of key contractual obligations, i.e. obligations whose fulfilment makes the correct performance of the contract possible at all and upon whose fulfilment the buyer can generally rely, or in the event of culpably caused loss of life or injury to the body or health, and they also shall not apply if and to the extent that we have provided a guarantee for the quality/characteristics of the sold goods or in cases of mandatory liability under the German Product Liability Act (Produkthaftungsgesetz). The regulations regarding the burden of proof remain unaffected by this.

4. Our liability for losses and consequential losses due to defects, particularly for production downtime, business interruptions and lost profits, is excluded.

5. Unless otherwise agreed, any contractual claims that arise for the buyer against us due to or in connection with the delivery of the goods shall expire by time limitation one year after the delivery of the goods. This time limit also applies for goods which are used for a building structure in accordance with their usual manner of utilisation and have caused it to be defective, unless this type of use has been agreed in writing. This does not affect our liability for intentional or grossly negligent breaches of obligation or culpably caused loss of life or



injury to the body or health or the time limitation of recourse claims under Articles 478 and 479 BGB.

Repairs or replacement delivery shall not cause the time limitation period to begin again.

XIII. Place of performance, place of jurisdiction and applicable law

1. Any differing arrangements or additions to the contract must be in writing.
2. The place of performance for all the obligations under the contract is 04932 Röderland/OT Haida, Am Waldbad.
3. The exclusive place of jurisdiction for all legal disputes is Cottbus. However, we shall have the right, according to our choice, to take legal action against the customer also at other legally permitted places of jurisdiction.
4. German law applies exclusively for all contracts concluded with us.

XIV. Miscellaneous

1. If a buyer based outside the Federal Republic of Germany (a foreign customer) or its representative collects EU-duty paid goods or transports or ships them abroad, the buyer must provide us with the export certificate required for tax purposes. If it fails to provide that certificate, the buyer shall have to pay for those deliveries the VAT on its invoice amount that we are required to pay by law.
2. In the case of deliveries of EU-duty paid goods from one EU Member State into another, the buyer shall have to notify us before the delivery of its VAT identification number under which its income is taxed in the EU. Otherwise, it must pay us for our deliveries, in addition to the agreed purchase price, the amount of VAT that we are required to pay by law.

XV. Severability clause

Should individual provisions of these terms and conditions be ineffective or unenforceable or become ineffective or unenforceable after the conclusion of the contract, the effectiveness of the other provisions hereof shall not be affected. The ineffective or unenforceable provision shall be replaced by an effective or enforceable provision whose effects come closest to the commercial objective that the parties intended to achieve with the ineffective/unenforceable provision. The above provisions shall apply accordingly if it transpires that these terms and conditions contain unintended gaps/omissions.