

Terms of Sale, Delivery and Payment
effective from 01 October 2019

No. I.1.1

Sec. 1 Scope and Form

- (1) These Terms of Sale shall apply exclusively unless agreed otherwise in writing; contradictory or differing terms of the Customer shall not be binding to us even if we do not expressly object to them or make delivery without reservation.
- (2) These Terms of Sale shall apply for all of our business relationships with our Customers but only if our Customers are entrepreneurs, legal entities governed by public law or special funds under public law.
- (3) Legally relevant declarations and notifications by the Customer relating to the contract (e.g. deadlines, notifications of defects, notices of rescission or abatement) must be in writing or text form (e.g. letter, e-mail) to be valid. Legal formal requirements and further evidence, particularly in the case of doubt regarding the legitimacy of the declarant, shall remain unaffected.

Sec. 2 Conclusion of the Contract

- (1) Our offers are subject to change and non-binding unless otherwise provided in writing. The same shall apply if we have provided the Customer with catalogs, technical documentation (e.g. drawings, plans, computations, calculations, references to DIN standards), other product specifications or documents – even in text form.
- (2) If the Customer places an order for goods this shall be deemed a binding contractual offer. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within 2 weeks after we have received it.
- (3) An order shall be deemed accepted once we have confirmed it (e.g. with an order confirmation) or by delivering the goods to the Customer. We also expressly reserve the right to make changes in the construction, design, choice of material and manufacture even after the order confirmation has been sent as long as they do not change the price and/or essential functions or delivery time and as they can be reasonably expected by the Customer.

Sec. 3 Delivery Deadlines

- (1) The delivery deadline will be agreed individually or expressly stated by us upon accepting the order. If this is not the case, the delivery deadline shall be approx. six weeks from the conclusion of the contract. Correct and timely self-delivery is expressly reserved.
- (2) The delivery time shall be extended should unforeseeable and/or unavoidable and/or extraordinary events occur for which we are not responsible, particularly in the event of strikes of any kind and in the event of late self-delivery, even if these events occur during an already-existing delay. The Customer shall be notified thereof without delay and shall at the same time be informed of the anticipated new delivery date. If performance remains unavailable within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall refund the Customer for any consideration already paid.

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- (3) If shipping is delayed upon the Customer's request or for other reasons for which we are not responsible, the Customer shall bear the additional costs that arise therefrom as well as the risk of accidental loss or accidental deterioration of the goods to be delivered from the time of notification of readiness for shipment.
- (4) In the case of storage at our works (or by our representatives), we shall be entitled to charge a minimum of 0.5% but a maximum of 5% of the delivery value (final invoice amount excluding value-added tax) for each month of storage commenced. The Customer shall be entitled to prove that we have incurred no damages at all or damages which are substantially lower than the lump sum above. We reserve the right to assert additional claims.
- (5) We categorically reserve the right to make partial deliveries and early deliveries.
- (6) In the case of a delay in delivery for which we are responsible, we shall be liable pursuant to statutory requirements provided that the delay in delivery is due to an intentional or grossly negligent breach of contract for which we are responsible; fault on the part of our representatives or vicarious agents shall be attributable to us. However, if the delay in delivery is due to a grossly negligent breach of contract for which we are responsible, our liability for damages shall be limited to those damages which are foreseeable and which typically occur. We shall not be liable in the case of slight negligence. In any case, however, a written reminder from the Customer is required.
- (7) Our adherence to the delivery deadline assumes that the Customer timely and properly complies with its contractual obligations, particularly its payment obligations.

Sec. 4 Transfer of Risk, Shipment, Packaging

- (1) The Risk shall pass to the Customer ex works or ex our delivery warehouse (INCOTERMS 2010); this shall include partial deliveries. At the Customer's request and expense, the goods shall be shipped to another destination (sales shipment).
- (2) The risk of accidental loss and accidental deterioration of the goods shall pass at the latest upon delivery to the Customer. In the case of a sales shipment, however, the risk shall transfer upon delivery of the goods to the carrier, forwarder or other person or entity responsible for handling the shipment. If acceptance has been agreed, the time of acceptance shall be authoritative.
- (3) Shipment shall be effected at the Customer's risk and expense; if the Customer has not provided shipping instructions, we shall be entitled to determine the shipping method ourselves (particularly carriers, delivery route, packaging).
- (4) The packaging costs shall be charged at cost price unless otherwise agreed.
- (5) We reserve the right to conclude a cargo insurance. In the case of damages during shipment, adjustments shall be made according to our insurance terms upon presentation of the following documents:

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- a) Statement of facts from the transport institute (e.g. carrier receipt),
 - b) Original bill of lading,
 - c) Transfer of the claims arising from the damage incurred.
- (6) The Customer shall be obligated to notify us in writing of damages which have occurred during shipment within 8 days of receiving the shipment. The defective items must be returned free our works in Lüdenscheid.

Sec. 5 Prices, Payment Terms, Securities

- (1) Our prices are stated ex works (pursuant to INCOTERMS 2010) plus statutory value-added tax. The Customer shall bear the cost of any duties, fees, taxes or other public levies unless otherwise agreed.
- (2) Our prices are based on the relevant cost factors at the time that the offer is submitted (order confirmation). Should these change between the time that the contract is concluded and when the goods are shipped, we reserve the right to change the price in reasonable proportion to the increased costs.
- (3) The purchase price is due for payment within 30 days of invoicing. All payments from the Customer shall be made without deduction and free of charge to our bank account in Lüdenscheid on the dates specified. The Customer shall only be entitled to set-off rights with undisputed or legally established claims; in these cases, the Customer shall also be entitled to withhold funds. The Customer shall also be entitled to withhold funds if the reason for the right to withhold funds is a defect in the delivery for which we are responsible; in these cases, the right to withhold funds may only be exercised in proportion to the defect.
- (4) Should the Customer's financial circumstances change after the date of dispatch of our order confirmation which are likely to call into question whether the Customer can satisfy its payment obligations, we shall be entitled to withhold delivery of the goods or demand a security; we shall be entitled to withdraw from the contract should the Customer fail to honor our demand for a security within a reasonable time.
- (5) Bills of exchange and checks shall only be accepted on account of payment; the Customer alone shall bear the bank, discount and collection charges. Payments via bills of exchange and checks shall not be deemed satisfied until the respective amount has been credited to our account.
- (6) Should the Customer default in payment, we shall be entitled to claim default interest of 9% above the respective base interest rate.

Sec. 6 Liability Claims for Material Defects

- (1) In the case of defects, we shall be liable by providing supplementary performance at our option free of charge for defects in the construction, manufacture, color, quality or other

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defects in workmanship, either by remedying the defect free of charge or by supplying an defect-free item. Any replaced items shall be returned to us upon request; the provisions governing rescission shall apply in this respect.

- (2) With respect to goods delivered pursuant to outturn and approval samples we shall only be liable for defects that arise and that are timely communicated if the delivered items deviate from the outturn and approval samples submitted to the Customer which were deemed to be good. Deficient or insufficient function control of this sample by the Customer shall be at the Customer's expense and shall release us from liability for defects and any other liabilities.
- (3) Our liability for defects assumes that the Customer has provided specific notification of the defect in writing pursuant to Sec. 377 German Commercial Code (HGB) within 6 days of receipt of the goods. Defects which were originally hidden and later become apparent must be notified specifically in writing within the same period, calculated from the time of discovery.
- (4) Our liability for defects further presumes that the goods were properly installed, put into operation and used in full compliance with our operating instructions.
- (5) Should supplementary performance fail, in the case of significant defects, the Customer shall be entitled to assert rights of rescission or reduction in price after setting a time limit in advance.
- (6) In the production of electronic assemblies in which components manufactured by third parties are processed, our liability for defects shall be limited to assigning to the Customer our claims against the supplier of the respective components upon written request; however, our liability shall be excluded to the extent that the Customer is able to indemnify the supplier of the respective components.
- (7) The statute of limitations is 24 months calculated from delivery. The same shall apply if an acceptance has been agreed. In this case, the time of acceptance shall be the time when the statute of limitations begins.
- (8) Claims by the Customer for damages or reimbursement for wasted expenditures even in the case of defects shall only arise in accordance with section 7 and are otherwise precluded.

Sec. 7 Other Liability

- (1) Liability for damages in accordance with the Product Liability Act shall remain unaffected; liability for damages shall also remain unaffected when they arise from personal injury be it bodily injury or damage to health including the death of a person.
- (2) Insofar as the damages are caused by willful intent or gross negligence, the statutory provisions shall apply. Insofar as we have culpably violated an essential contractual obligation, we shall be liable for compensation for damages including compensation in lieu of performance; in this case, our liability shall be limited to foreseeable damages. The same shall apply in the case that the Customer asserts claims to compensation in lieu of performance. However, we otherwise shall not be liable in the case of slight negligence.

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Sec. 8 Reservation of Title

- (1) We reserve title to the goods until all payments under this supply agreement have been received including all other contracts which have been concluded between ourselves and the Customer. The Customer may resell the reserved goods in the normal course of business. However, it hereby now assigns to us all claims in the amount of the respective invoice value accruing from the resale against the customer or against third parties. The Customer shall also be authorized to collect claims after they have been assigned. Our authority to collect the claims ourselves shall remain unaffected thereby. In particular, we may demand that the Customer notify us of the assigned claim along with its stock and debtors, provide us with all information necessary for collection and hand the corresponding documents over to us without delay as well as notify the debtors of the assignment in writing.
- (2) The Customer is not entitled to pledge the reserved goods or assign them to third parties as security.
- (3) In the case of a breach of contract by the Customer, particularly in the case of default in payment, we shall be entitled to take the goods back. Our reclamation or seizure of the goods shall not be a declaration of withdrawal; this shall only be the case if we state this expressly.
- (4) The Customer shall notify us without delay of seizures or other interference by third parties.
- (5) Should the goods be resold with other goods which we do not own, the Customer's claim shall be considered assigned to the purchaser in the amount of the delivery price agreed between us and the Customer.
- (6) Should our ownership be relinquished as a result of installation, the Customer shall assign its claim of compensation due to it.
- (7) The working and processing of the reserved goods by the Customer is always done for us.
- (8) Upon the Customer's request, we shall be obligated to release securities at our option as the realizable value of the claims to be secured exceed our claims by more than 10%.

Sec. 9 Place of Performance – Place of Jurisdiction – Applicable Law

- (1) The place of performance for all obligations under this agreement, including a claim to withdrawal, is Lüdenscheid or Brilon.
- (2) The place of jurisdiction is Cologne. However, we shall also be entitled to file suit against the Customer at the latter's general place of jurisdiction.
- (3) The law of the Federal Republic of Germany shall govern at the exclusion of the UN Convention on Contracts for the International Sale of Goods.