

# Terms & Conditions of Sale

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Our deliveries and services shall be done exclusively on the basis of the following Terms & Conditions of Sale. Customer's terms of purchase shall have no binding effect on us even if we fail to expressly oppose them. Any divergence from the following terms, any ancillary agreements, and any commitments made by our representatives must be expressly confirmed in writing in order to become effective.

**1. Prices:** Quotations shall be without obligation, and prices charged shall not be binding for follow-up orders. If cost prices increase subsequent to conclusion of the contract due to rises in wages, salaries, freight costs and energy prices, or due to changes in existing levies or the introduction of new levies, etc., then we shall be entitled to increase our prices accordingly. This shall not apply to goods to be delivered or services to be rendered within four months of conclusion of the contract, unless such deliveries or services are made or rendered in the context of recurring obligations.

We shall only be obliged to grant discounts or other allowances if same have been agreed in writing on placement of order. Unless otherwise stated by us, all prices shall be ex works without packaging.

Any information given by telephone regarding prices and the possibility of delivery shall only become binding on being confirmed in writing. In the case of orders given by telephone, we shall not be responsible for anything misheard or misunderstood.

**2. Terms of Payment:** Unless otherwise agreed, our terms of payment shall be 2% discount on payment within 14 days or alternatively without deduction within 30 days - of receipt of invoice and of the due date for payment. In all events, payments must be made in cash and received within the prescribed period. If the deadline for payment is exceeded culpably, we shall be entitled to default interest as laid down by law, without any reminder being required.

Cheques and bills of exchange shall only be accepted in payment on reimbursement of the normal bank charges. We shall not be responsible for cheques and bills of exchange being submitted in time. Invocation by Customer of Bills of Exchange Act *Wechselgesetz* s. 53 (1) is excluded.

Default interest and charges for bills of exchange shall be paid immediately.

We shall be entitled to claim advance payment for customised orders.

Contributions towards tool costs must be paid in advance at all times.

Default in payment and other circumstances casting doubt on Customer's credit worthiness shall entitle us to demand immediate payment of all outstanding receivables and, insofar as bills of exchange are in our possession, to satisfy our claims vis-à-vis the defaulting party by anticipating such bills. We shall only make further deliveries provided Customer furnishes security or makes advance payment. Our right to rescission pursuant to Item 11 below shall remain unaffected. Customer shall only be entitled to retain or offset payments in the event of complaints or counterdemands provided such counterclaims are undisputed or have been established by a court of law.

**3. Reservation of Title:** Until such time as the delivery/service has been paid in full, including all and any

costs and interest, and until such time as all previous deliveries/services covered by the existing business relationship have been settled, the goods supplied shall remain our property.

Any processing and re-working of the goods subject to our reservation of title shall be done on our behalf. If such processing or re-working creates property held by Customer, then such property shall pass to us at the same time, and the product shall be kept by Customer on our behalf. If goods subject to reservation of title are processed with third-party goods, we shall be entitled to prorated co-ownership in the product, depending on the value of the goods processed at the time of such processing. As long as our reservation of title persists, Customer shall have the right to sell the goods or the product made therefrom in the course of normal business, taking the following conditions into account.

Without any specific agreement to this effect being required in each case, the accounts receivable from third parties created by such re-sale shall be assigned to us by way of security up to the total invoiced value of the goods involved that are subject to our reservation of title. Customer is authorised to collect such receivables for our account. However, we shall have authority at all times to inform the third-party customer whose name must be disclosed to us on request about such assignment, and to demand that direct payment be made to ourselves. The provision laid down in this paragraph shall apply accordingly if goods subject to our reservation of title are used for performing a contract for work or services.

If the invoiced value of the goods subject to our reservation of title exceeds the value of our claim by over 20%, we undertake to release such goods accordingly on being requested to do so in writing.

We are at liberty to pledge items supplied. This shall not be deemed waiver of our reservation of title or rescission of the contract. In the case of pledging or similar impairment by third parties, we must be notified to this effect at once by registered post. Until such time as our claims have been satisfied in full, the goods and any accounts receivable created in their stead may be neither pledged to third parties nor assigned to third parties by way of security.

**4. Call-Off Purchase Agreements:** Call-off purchase agreements are contracts for a fixed quantity of goods, delivery or acceptance of which must be effected - in part deliveries as the case may be - within a specific period on Customer's demand. We are entitled but under no obligation to make subsequent delivery of quantities not called off within the specified period.

If part quantities are called off, each delivery shall be deemed a separate transaction as regards the obligation to inspect the goods and lodge complaints and as regards price adjustment. Defects in a part delivery shall not entitle Customer to cancel the contract as a whole.

If Customer defaults in accepting the entire delivery or parts thereof, then we shall be authorised to charge for the performance not accepted and to store the goods at Customer's expense and risk. If the goods are stored on our own premises, we shall charge 1% of the invoiced amount by way of storage fees for each new month, commencing 30 days after notification has been given that the goods are ready for consignment. If the goods are stored on third-party premises, we shall charge the costs incurred on ourselves.

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In the event of default in acceptance we shall also be entitled at our own option to rescind the contract and/or to demand compensation on expiry of a reasonable period of grace set by us. In the case of call-off purchase agreements, we shall also be entitled to the rights accruing from default in acceptance if Customer violates its obligation to take acceptance of delivery in respect of individual part deliveries.

**5. Delivery Period, Part Delivery:** Delivery dates or deadlines shall only be binding if we have agreed to them or confirmed them in writing. Delivery periods shall commence on confirmation of the order being sent, not however prior to provision of the documents, permits or releases to be obtained by Customer, and not prior to receipt of any agreed advance payment. Delivery dates and deadlines shall be deemed met if the item to be delivered has left the works before the end of the delivery period, or if notification has been given to the effect that the item concerned is ready for consignment.

The delivery period shall be extended reasonably in the event of labour disputes, in particular strikes or lock-outs, or if unforeseen obstacles arise which are beyond our control, provided it is proved that such obstacles have a major effect on completion or delivery of the item to be delivered. This shall also apply if such circumstances affect our own suppliers.

Part deliveries are permissible and may be charged individually.

**6. Packaging, Consignment:** Packaging and consignment shall be done in accordance with Customer's instructions or, if no such instructions are given, at our discretion. Packaging is charged at cost price, is recyclable in accordance with packing regulations, and will be taken back by free return delivery if requested. Packaging which is lent out (collicos) must be emptied immediately and returned to us. If lent packaging is not received back at our works within four weeks of the delivery being made, then as from the 29<sup>th</sup> day of its absence we shall charge a fee of € 1.00 for the fifth week and every consecutive week thereafter to compensate for loss of use.

All consignments shall be made at Customer's risk. In the case of COD-consignments, Customer shall be responsible for proper receipt of the amount cashed on delivery.

**7. Contribution Towards Tool Costs, Copyright:** By paying a contribution towards tool costs and the cost of constructing models, Customer shall not acquire any rights in the tools or models, which shall remain our property.

We reserve our title and copyright in samples, estimates, drawings and similar information in both physical and non-physical form, including electronic form. Such information may not be made accessible to third parties without our written consent.

**8. Weights & Measures, Technical Specifications, Illustrations:** All the weights and measures and all the technical specifications and illustrations contained in our quotations, confirmations of order, drawings, pictures, catalogues, etc., are approximate values as is usual in the industry sector.

**9. Claims Based on Defects:** Written notification of obvious defects and of differences in quantities and

measurements in respect of the goods must be sent to us immediately on delivery being made, failing which the goods shall be deemed accepted.

Complaints about hidden defects must be filed in writing immediately on discovery of such defects.

If this does not happen, so the ware is regarded as approved in consideration of this defect.

In the case of legitimate complaints, Customer may initially only demand post-performance, which shall be effected by remedying the defect or supplying items in perfect condition, at our option. Customer may only rescind the contract or reduce payment once post-performance has finally failed or become impossible.

If Customer or a third party improperly makes repairs itself, then we shall not be held liable for the consequences resulting therefrom. The same shall apply to any changes made to any item supplied without our prior approval.

All claims based on defects shall become statute-barred one year after passing of risk. This shall not apply to supplied items which have been used for a building construction in line with normal usage and have caused defects to such construction. In such cases the statutory prescriptive period shall apply to claims based on defects. This shall likewise apply if we act with deliberate and/or malicious intent.

The liability based on defects does not include usual wear and abrasion (of for example bearings, shaft seal rings, friction linings, etc.), excessive demand, incorrect or careless treatment, inadmissible ambient temperatures, not reproducible software faults, consequences of not proper maintenance or application conditions that originate due to special external influences which are not presupposed after the contract.

**10. Exclusion of Liability:** Customer's compensation claims of whatsoever nature are excluded, unless they are based on deliberate intent or gross negligence on our part, or on the part of any of our legal representatives, or on the part of anyone helping us to perform our obligations.

This limitation of liability shall not apply to compensation for any injury to life and limb or for any health hazard caused by ourselves, our legal representatives, or those helping us to perform our obligations. Moreover, it shall not apply to claims under the Product Liability Act *Produkthaftungsgesetz* or in the event of culpable violation of important contractual obligations; in the latter instance, our liability shall be limited in the event of slight or moderate negligence to damage such as is reasonably foreseeable and typical for the type of contract at issue.

**11. Rescission:** If it comes to our knowledge subsequent to conclusion of the contract that Customer's financial situation has substantially deteriorated, or that Customer has pledged its tools, machines, stocks or outstanding receivables, or if Customer fails to pay due bills immediately in spite of a reminder to do so, then we reserve the right to rescind the contract and/or to demand compensation without this giving rise to any claims against ourselves on Customer's part.

We shall likewise be entitled to rescind the contract without this giving rise to any claims on Customer's part if the discharging of an order becomes impossible due to unforeseen government measures, suspension of business operations, shortages in raw materials or fuel, fire, or similar occurrences.