

Conditions of Sale, Delivery and Payment



1. Scope of Application

- 1.1 These Conditions of Sale apply for every (delivery) framework contract (hereinafter "contract") and all individual contracts and/or orders within the framework of a contract (hereinafter "individual contract") with companies, legal persons under public law and special funds under public law (hereinafter "partners").
Our deliveries and services are exclusively made available on the basis of the following conditions.
The partner's terms and conditions shall not apply unless expressly recognised by us.

2. General Provisions

- 2.1 The contracting parties shall confirm verbal agreements in writing without delay.
2.2 Orders shall only become binding once we have confirmed the order.
2.3 The information and illustrations contained within brochures and catalogues are approximate values customary for the industry, unless we have expressly designated them as binding.
2.4 We are entitled to refuse to accept an order placed by a partner if it becomes apparent that our claim to payment arising from the individual contract would be jeopardised by the partner's lack of solvency at the point in time at which the order is accepted. This is especially the case if and to the extent that the sum insured provided to us by our trade credit insurer to secure our claims against the partner is exceeded upon acceptance of the order, or if our deductible regarding any bad debt of the partner is raised by our trade credit insurer after conclusion of this contract compared to the deductible at the conclusion of the contract, and the reasons for the increase in the deductible is within the partner's sphere of influence in this regard. The same applies to any extension of this contract. The same applies, notwithstanding the provision in Item 8.4, for the fulfilment of an order, regarding which § 321 Paragraph 1 Sentence 2 of the German Civil Code (BGB) shall apply supplementarily.
2.5 Should individual parts of these Conditions of Sale be or become ineffective, the validity of the remaining provisions shall not be affected by this.

3. Long-term and Call-off Agreements, Price Adjustment

- 3.1 Permanent contracts can be terminated with a notice period of 3 months.
3.2 In the case of long-term contracts (contracts with a term of more than 6 months and permanent contracts), if there is a material change in wages, material or energy costs, each contracting party is entitled to request negotiations for a reasonable adjustment of the price, taking into account these factors.
3.3 If a binding order quantity has not been agreed, we base our calculation on the non-binding order quantity (target quantity) expected by the partner for a certain period of time.
If the partner purchases less than the target quantity, we are entitled to increase the unit price accordingly. If the partner purchases more than the target quantity, we shall decrease the unit price accordingly, provided that the partner has given notice of the increased demand at least two months prior to the delivery.
3.4 Unless otherwise agreed, we must be informed of binding quantities by telephone at least 2 months prior to the delivery date for call-off delivery contracts.
Additional costs arising from a delayed call or subsequent changes to the call regarding time or quantity caused by our partner shall be borne by the partner, unless it is not responsible for the delay or subsequent change; our calculation shall be decisive in this regard.

4. Confidentiality

- 4.1 Each contracting party shall solely use all the documents (including samples, models and data) and information received as a result of the business relationship for the joint objectives pursued, and will keep them confidential vis-à-vis third parties with the same care as exercised for its own documents and information if the other contracting party designates them as confidential, or has an obvious interest in their being kept confidential.
This obligation shall begin upon receipt of said documents or information and end 36 months after the end of the business relationship.
4.2 This obligation does not apply to documents and information that are generally known, or which were already known to the contracting party upon receipt and prior to this confidentiality obligation being made, or which were disclosed by a third party authorised to do the same subsequently to this confidentiality obligation being made, or which are independently developed by the contracting party that received them without making use of the confidential documents or knowledge belonging to the other contracting party.

5. Drawings and Descriptions

If one contracting party provides the other with drawings or technical documentation relating to the goods to be delivered or their manufacture, these shall remain the property of the contracting party which provides them.

6. Samples and Production Equipment

- 6.1 The production costs for samples and production equipment (tools, moulds, templates, etc.) shall be invoiced separately from the goods to be delivered, unless otherwise agreed. This also applies to production equipment that must be replaced due to wear and tear.
6.2 The costs for the maintenance and proper storage, as well as the risk of damage or destruction, of the production equipment shall be borne by us.
6.3 If the partner suspends or terminates the cooperation while the samples or production equipment are being manufactured, the partner shall bear the manufacturing costs incurred up to that point.
6.4 The production equipment shall remain our property, even when the partner has paid for it, until the delivery contract has been executed, at the earliest. Thereafter, the partner shall be entitled to request the production equipment if mutual agreement has been reached regarding the handover date, and if the partner has fully met its contractual obligations.
6.5 We will store the production equipment free of charge for three years after the final delivery to our partner. Thereafter we will write to our partner to request that the partner gives us instructions on the further usage of the equipment within 6 weeks. Our safekeeping obligation shall end if no information is forthcoming within these 6 weeks, or if a new order is not placed.
6.6 Customer-related production equipment may only be used for deliveries to third parties with the prior written consent of our partner.

7. Prices

Our prices are in Euros and exclude sales tax, packaging costs, freight charges, postage costs and insurance fees.

8. Terms of Payment

- 8.1 All invoices are due within 30 days of the invoice date.
8.2 Where we have indisputably delivered partially defective goods, our partner is nevertheless obliged to make payment for the non-defective portion, unless the partner has no interest in the partial delivery. Incidentally, the partner may offset claims for compensation for costs incurred when remedying defects or arranging completion; the partner may only offset other counter claims if they are legally established, ready for decision or undisputed. A right of retention or right to refuse performance on the part of the partner shall only exist within these limits.
8.3 If the payment term is exceeded, we are entitled to levy default interest amounting to the sum charged to us by the bank for overdraft facilities, however the minimum levied will be 8 percentage points above the applicable base rate of the European Central Bank.
8.4 In the event of default of payment, we can cease to fulfil our obligations until the payments have been received, subsequent to informing the partner of this in writing.
8.5 Bills of exchange and cheques are only accepted by agreement, only as conditional payment, and on the condition that they may be discounted. The discount charges are calculated from the date the invoice is due. A guarantee for timely presentation of the bill of exchange and cheque, and for the protesting of a bill of exchange, is excluded.

9. Delivery

- 9.1 Unless otherwise agreed, we deliver "ex works". The decisive factor for compliance with the delivery date or the delivery period is the notification of dispatch or readiness for collection by us.
9.2 The delivery period shall commence upon dispatch of our order confirmation and is extended accordingly if the requirements of Item 15 apply.
9.3 Partial deliveries are permitted within reason. They will be invoiced separately.
9.4 Production-related over- or under-deliveries are permissible within a tolerance limit of 10 percent of the total order quantity. The total price will be amended in accordance with the scope of delivery.

10. Shipping and Transfer of Risk

- 10.1 Goods notified as ready for dispatch must be accepted by the partner without delay. Otherwise, we are entitled to ship them as we choose or to store them at the expense and risk of the partner.
10.2 Unless otherwise agreed, we will choose the means of transport and the transport route.

- 10.3 Upon handing over to the railway company, the forwarding agent or the carrier, or upon commencement of storage, at the latest however upon leaving the plant or warehouse, the risk shall pass to the partner, even if we have taken on the delivery.
- 11. Default in Delivery**
- 11.1 If we can foresee that the goods cannot be delivered within the delivery period, we will notify the partner of this immediately in writing, giving the reasons for this and, if possible, stating the expected delivery date.
- 11.2 If the delivery is delayed due to a set of circumstances detailed under Item 15 or due to the actions or negligence of the partner, the delivery period shall be extended by an amount of time appropriate to the circumstances.
- 11.3 The partner is only entitled to withdraw from an individual contract if we are responsible for the non-compliance with the delivery date, and the partner has given us a reasonable grace period without success.
- 12. Retention of Title**
- 12.1 We reserve ownership of the delivered goods until all claims arising from the business relationship with the partner have been settled.
- 12.2 The partner is entitled to sell these goods as part of its ordinary course of business provided that it meets its obligations arising out of the business relationship with us in good time. However, the partner may neither pledge the goods subject to retention of title or use them as collateral. It is obliged to secure our rights in the event of the credited reselling of the goods subject to retention of title.
- 12.3 In the event that the partner breaches its obligations, particularly in the event of default of payment, we are entitled to withdraw from an individual contract and take the goods back after an appropriate deadline set regarding the partner's performance has passed without success; the statutory provisions on the dispensibility of setting a deadline shall remain unaffected. The partner is obliged to surrender the goods.
- 12.4 All claims and rights arising from the sale or, if applicable, the leasing, of the goods to which the partner is entitled and to which we hold ownership rights, shall be assigned to us for security at this point. We hereby accept this assignment.
- 12.5 Any processing or editing of the goods subject to retention of title shall always be undertaken by the partner for us. If the goods subject to retention of title are processed or inseparably mixed with other items not belonging to us, then we shall acquire co-ownership of the new item according to the ratio of the invoice value of the goods subject to retention of title, to the other goods processed or mixed at the time of processing or mixing. If our goods are connected with other movable objects to form a single object or inseparably mixed, and the other item is to be regarded as the main item, the partner agrees to transfer joint ownership to us in proportion to the extent to which the main item belongs to the partner. The partner shall preserve the sole ownership or co-ownership for us. Incidentally, the same shall apply for the object created by a processing or mixing process as for goods subject to retention of title.
- 12.6 The partner must inform us immediately, providing the documents necessary for an intervention, regarding third-party enforcement measures connected to the goods subject to retention of title, connected to claims assigned to us, or connected to other collateral. This also applies to impairments of any kind.
- 12.7 If the value of the existing collateral exceeds the secured claims by a total of more than 20 percent, we undertake to release collateral of our choice, at the request of the partner.
- 13. Material Defects**
- 13.1 The condition of the goods is based exclusively on the agreed technical delivery instructions. If we are to perform delivery in line with drawings, specifications, samples etc. belonging to our partner, the partner shall assume the risk of them being suitable for their intended purpose. The time at which risk is transferred shall be decisive with regard to the contractual condition of the goods, pursuant to Item 10.3.
- 13.2 In our deliveries, we comply with the applicable statutory provisions of the European Union and the Federal Republic of Germany, e.g. the REACH Regulation (Regulation EC No. 1907/2006), the Electrical and Electronic Equipment Act (ElektroG) and the Electrical and Electronic Equipment Regulation (Elektro-StoffV) as national implementations of the Directives 2002/95/EC (RoHS I) and 2011/65/EU (RoHS II) and Directive 2002/96/EC (WEEE) and the End-of-Life Vehicles Ordinance (AltfahrzeugV) as the national implementation of EU Directive 2000/53/EC. We will inform the partner about any changes to the goods, their ability to be supplied, their possible uses or quality without delay, particularly if these changes are caused by the REACH Regulation, and determine suitable steps with the partner on a case-by-case basis.
- 13.3 We shall not assume responsibility for material defects caused by unsuitable or improper use, incorrect installation or commissioning by the partner or third parties, normal wear and tear, faulty or negligent treatment, nor for the consequences of improper changes or repairs carried out without our permission by the partner or third parties. The same shall apply to defects that only marginally reduce the value or suitability of the goods.
- 13.4 The statute of limitations for claims relating to material defects is 12 months. This shall not apply if the law stipulates mandatory longer periods of time, particularly for defects in construction and for goods which were used for a construction project, in line with their usual use, and which caused the construction to be defective. Sentence 1 shall also not apply to damage arising from injury to life, limb or health and in case of intent or gross negligence or any other violation of essential contractual obligations (these are obligations which must be fulfilled for the contract to be properly executed at all, and on compliance with which the contracting party regularly relies and may rely) of our legal representatives or executives.
- 13.5 If acceptance of the goods or an initial inspection of a sample has been agreed, issuing a complaint regarding defects that the partner would have been able to note upon careful acceptance or initial inspection of the sample shall be excluded.
- 13.6 We shall have the opportunity to ascertain the defect about which a complaint had been made. The goods involved in the complaint are to be returned to us upon request without delay; we shall bear the transport costs if the notification of the defect is justified. If the partner does not comply with these obligations, or makes changes to the goods already involved in the complaint without our approval, any claims for material defects shall lapse.
- 13.7 In the case of justified, timely complaints regarding defects, we will, at our discretion, rectify the goods involved in the complaint or deliver faultless replacement goods.
- 13.8 If we fail to comply with these obligations or fail to do so within a reasonable period of time, the partner may set a final deadline in writing within which we must comply with our obligations. Once this deadline has passed without success, the partner may request a reduction in price, withdraw from the individual purchase agreement or undertake the necessary rectification itself or engage a third party to do so, at our expense and at our risk. Reimbursement is excluded if the expenses increase because the goods were delivered to another location after our delivery was made, unless this corresponds to the intended use of the goods.
- 13.9 Legal recourse claims of the partner against us shall exist only to the extent that the partner has not made any agreements with its customer that go beyond statutory warranty claims. In addition, Item 13.8, last sentence, shall apply accordingly regarding the scope of recourse claims.
- 14. Other Claims, Liability**
- 14.1 Unless otherwise stated below, other and further claims made against us by the partner are excluded. This applies in particular to claims for damages due to breaches of obligations arising from the contractual obligation and from unauthorised activity. We are therefore not liable for damage that did not occur to the delivered goods themselves. Above all, we are not liable for lost profits or other financial losses suffered by the partner.
- 14.2 The above limitations of liability shall not apply in cases of intent, gross negligence on the part of our legal representatives or senior managers, or the culpable violation of essential contractual obligations, i.e. obligations which must be fulfilled for the contract to be properly executed, and on compliance with which the contracting party regularly relies and may rely. In the event of a culpable breach of essential contractual obligations, we are only liable for contractually typical, reasonably foreseeable damage, except in cases of intent or gross negligence on the part of our legal representatives or senior managers. The limitation of liability also does not apply in cases where, in line with the Product Liability Act, liability is assumed for personal injury or material damage to privately used property in the case of defects in the delivered goods. It also does not apply in the event of injury to life, body or health and in the absence of pledged characteristics, if and to the extent that the purpose of the pledge was to protect the partner against damages that did not occur to the delivered goods themselves.
- 14.4 If our liability is excluded or limited, this also applies to the personal liability of our employees, workers, personnel, legal representatives, and vicarious agents.
- 14.5 The statutory provisions regarding the burden of proof remain unaffected.
- 15. Force Majeure**
- Force majeure, industrial disputes, riots, official measures, non-arrival of deliveries from our suppliers and other unpredictable, unavoidable and serious events shall release the contracting parties from their obligation to perform for the duration of the disruption and to the extent of the effect of the disruption. This also applies if these events occur at a time when the contracting party concerned is in default, unless it caused the default intentionally or through gross negligence.

The contracting parties undertake to provide the necessary information, within reason, and to adjust their obligations to the changed circumstances in good faith.

16. Place of Performance, Jurisdiction, and Applicable Law

- 16.1 Unless otherwise stated in the purchase order, the place of performance is our registered office.
- 16.2 For all disputes arising out of and in connection with a contract, including within the context of proceedings relating to bills of exchange and cheques, our registered office shall be the place of jurisdiction. We are also entitled to initiate proceedings at the location of the partner's registered office.
- 16.3 Only the law of the Federal Republic of Germany shall apply to the contractual relationship.
The application of the United Nations Convention dated 11 April 1980 on contracts for the sale of goods (CISG - "Vienna Sales Convention") is excluded.