

## § 1 General provisions

- (1) Supplies, services and offers shall be made on the basis of these Terms and Conditions to the exclusion of all other terms and conditions, even if express reference is not made to these Terms and Conditions during negotiations. We do not recognise any conflicting terms or conditions, notwithstanding our having not expressly stated that we reject them nor our having made reference to correspondence with the other contractual party in which the other party's terms or conditions are mentioned. Our General Terms and Conditions apply to all our contracts with businesses, public entities and special public-law funds as well as to all future business relationships, notwithstanding their not having been explicitly restated. Our Terms and Conditions are deemed to have been adopted on acceptance of the goods, if not sooner.
- (2) Any conflicting terms or conditions of the purchaser's and any terms or conditions which differ from ours do not apply unless our express written consent has been given to their application.
- (3) In the instance of contractual obligations of a permanent nature these Terms and Conditions shall only apply from 1 January 2003 onwards, provided the contract was made prior to 1 January 2002. Our existing General Terms and Conditions of Sale and Supply are applicable to such permanent contractual obligations, a copy of which can be obtained on request.
- (4) The purchaser may not assign any of its rights arising from the contractual agreement unless we have consented to assignment.

## § 2 Offer, conclusion of contract, documentation and notice requirements

- (1) Our sales employees are not authorised to make additional oral agreements nor to give assurances which go beyond the scope of the written contract. The written contractual documentation forms the entire agreement. There can be no additional oral agreements.
- (2) None of our prices quoted are binding. Statements as to delivery periods are non-binding estimates only unless expressly agreed to be of the essence. Particulars in respect of the article for sale (e.g. technical data, tolerance levels, proportions, weight etc.) and its product description are descriptive labels only which are not of a binding nature unless we have expressly confirmed this to be the case. Where calculations are made based on weight, the decisive weight shall be that shown on our scales; the purchaser does, however, have a right to provide evidence of discrepancies in weight. We reserve the right to make technical alterations in line with standard market practice to the goods being supplied, provided such alterations will not compromise the purchaser unduly nor impair the goods' fitness for use.
- (3) We reserve our right of ownership and copyright to construction drawings, samples, price quotes and similar business property, whether of a tangible or intangible nature. Such business property is to be treated in the strictest confidence and must not be made available to third parties without our consent. The purchaser shall be liable to us in full as provided for at law for any breach of this duty of confidentiality. Advertising by word of mouth using our name, and any similar forms of marketing, are not permitted unless this has been agreed in advance.
- (4) Our written consent must be obtained for all changes to orders made after the contract has been concluded. We expressly reserve the right to invoice for expenses incurred as a result of such changes. We also reserve the right to claim compensation for costs of planning and administration which have been incurred to no avail. Delays in manufacturing and supplying the goods resulting from such changes are at the purchaser's expense.
- (5) On placing the order the purchaser must notify us of any special legal, regulatory or other requirements which are of relevance to the contract and which arise from other regulations, laws or guidelines.

## § 3 Price of goods

- (1) Our prices are quoted net ex works and include consignment at our works and packaging. It is the purchaser's responsibility to unload and store the goods. The purchaser will be invoiced separately for all storage containers (pallets, shelving, wire metal boxes and shower frames) and credited for the relevant amount after they are returned. Value added tax will be added onto the price on the date of the invoice. Unless otherwise agreed, the purchaser shall bear the cost of any transport or similar insurance which may have been arranged. If part deliveries are being made, each delivery may be invoiced separately.
- (2) If on the day of delivery, this being 4 months or more after the contract was concluded, there have been changes in the basis on which the price was agreed (e.g. an increase in the price of raw materials or wages), we reserve the right to adjust the price accordingly after notifying the purchaser.
- (3) In the event that the price is not agreed at the time at which the contract is concluded, the price shall be that which is applicable on the date of delivery.
- (4) Prices which are quoted to include free delivery are only valid provided that the cheapest of the available rail, car or shipping routes is used and such transport is accessible and unimpeded. Any charge for dead freight for which we are not liable shall be borne by the purchaser. The purchaser is responsible for keeping the routes leading to and from the unloading bay in a roadworthy condition, and for ensuring that there is adequate loading capacity, room for manoeuvring and visibility. If the purchaser breaches its duty to maintain safe road conditions the purchaser shall be liable to pay compensation for all resulting damage including damage to the delivery vehicle. Delivery vehicles must be able to access the unloading bay freely and without delay and must be able to unload goods without being held up.
- (5) Unless precluded by law the purchaser shall bear the cost of all incidental expenses, public charges, newly imposed taxes and carriage charges, including any increases therein, which directly or indirectly affect delivery or cause the price thereof to rise.
- (6) Invoices will be calculated in Euros. In the event that an invoice is issued in another currency we reserve the right to charge a subsequent settlement fee if there has been any material change in the exchange rate of Euros to the relevant other currency in the period from when the order was confirmed and when the goods were delivered.

## § 4 Terms of payment

- (1) Payment is due in full on receipt of the invoice, provided the confirmation of order (or alternatively the invoice) does not provide otherwise. Any discounts will only be granted on the final invoice less any amounts due to be credited to the purchaser.
- (2) If the purchaser falls into arrears we have the right to charge default interest at a rate of 8 per cent above the base rate. At our discretion we also reserve the right to charge a higher rate of interest for damage caused by the delay in payment. Any rebates, discounts or other allowances which may have been arranged are considered revoked in the event of a default in payment. We may also insist that all future deliveries are made on a prepayment only basis; all monies which are outstanding under the contract may be called in for immediate payment.
- (3) All sums owed to us become immediately repayable if the purchaser breaches any payment condition or falls behind with repayments, or in the event of any circumstances which have the effect of reducing the purchaser's creditworthiness.
- (4) The purchaser does not have a right of set-off unless the purchaser's counterclaims are undisputed or accepted by us, or there has been a final legal judgment establishing their validity.
- (5) The purchaser is entitled to exert a right of retention provided that the purchaser's counterclaim rests upon the same contract.

- (6) We are not obliged to accept bills of exchange or cheques. Any such credit granted is subject to its redemption (for payment, not in lieu of fulfillment); it is redeemed at the value on that date on which we have the equivalent value at our disposal. Bills of exchange will be discharged with a charge made for any discounts, stamp duty, bank charges and collection expenses, where relevant, incurred by us in transferring the bills.
- (7) In the event that the purchaser has undisputed claims against us, amounts owed to us shall fall due for payment on the date on which our indebtedness is due for payment, and will be settled according to its value on that date.
- (8) If the purchaser is obliged to pay the purchase price under multiple contracts, whilst also owing interest and expenses, any payments made for less than the entire balance owed will at our discretion be set off against expenses first, then interest and finally against the purchase price owed, notwithstanding that payment is being made in respect of particular debts.
- (9) We reserve our right to instigate further contractual or legal claims in the event of a default in payment.

## **§ 5 Delivery periods and obstacles to delivery**

- (1) The delivery period commences on despatch of the purchase confirmation but no sooner than the purchaser has supplied the necessary documentation, permits and clearances, payment liabilities have been met and all technical issues have been resolved.
- (2) The delivery period is deemed to have been met provided that before its expiry the delivery goods have left the works or notice has been given that the goods are ready for despatch.
- (3) We have a right to rescind the contract in part or in full or to increase the delivery period for the duration of the circumstance causing the delay should there be unforeseen obstacles to delivery which are unintentional on our part and which we are not able to avert despite our exercising reasonable care in the circumstances in trying to do so - irrespective of whether the obstacle lies with us or with any of our subcontractors - such as force majeure (e.g. war, fire or natural disasters) or delays in the our being supplied with essential raw materials etc. We also reserve the same rights in the event of strike action or lockouts affecting us or any of our subcontractors. We will notify the purchaser promptly of any such circumstances.
- (4) The purchaser may rescind the contract in the event of a delay in the goods being delivered provided that a reasonable period of time has expired without delivery having been made. If it is impossible for us to deliver the goods then the purchaser shall be entitled to exercise this right without the need for any time limit to be set. The purchaser does not have a right to claim for compensation (including consequential loss) without prejudice to clauses 5 and 6 which do not have as their object to reverse the burden of proof. The same applies for reimbursement of costs.
- (5) If the delay in delivering is for reasons for which we are accountable or which are due to an intentional or grossly negligent breach of duty on our part, we shall be liable in accordance with statutory provisions. The same applies for loss of life, bodily harm and damage to health or if a guarantee has been given in respect of a deadline for delivery. Should we infringe an essential contractual duty or be guilty of breaching a "cardinal duty" without intent, our liability shall be restricted to foreseeable damage typical for this kind of contract; liability is excluded under clause 4. The same applies accordingly for reimbursement of costs.
- (6) If a fixed transaction has been agreed, we shall be liable in accordance with the statutory provisions; the same applies if the purchaser asserts that it is no longer interested in carrying through the contract because of a delay on our part for which we are liable.
- (7) If despatch is delayed at the request of the purchaser, the costs of storage shall be charged to the purchaser starting one month after notification of readiness for despatch was given. The same applies if the goods are not requested in time. This also applies for instances in which despatch is impossible, provided we are not liable for this due to intentional action or gross negligence on our part and we have not breached any essential contractual duties (cardinal duties). Should the purchaser delay in accepting the goods then the risk passes to the purchaser. In this case we shall not be liable for rust or other damage, provided we are not liable for this due to intentional action or gross negligence on our part and we have not breached any essential contractual duties (cardinal duties). The object of this clause is not to reverse the burden of proof.

## **§ 6 Transfer of risk, acceptance of goods, part deliveries and despatch**

- (1) If there is an obligation for the goods to be collected, the risk transfers to the purchaser once the goods have been selected and made available to the purchaser in accordance with the contract. The same applies where there is an obligation for the goods to be despatched, namely on transfer of the goods to the carrier. If we are obliged to deliver the goods then risk transfers to the purchaser when the goods leave our works. The same applies in the event of a creditor default.
- (2) Without prejudice to the purchaser's rights under § 8 and § 9 the purchaser must accept all goods delivered notwithstanding that they may have minor defects. Goods which have been notified as being ready for despatch must be collected promptly provided that this does not cause the delivery date to be brought forward.
- (3) Any acceptance checks the purchaser may wish to carry out must be expressly agreed in writing. The purchaser will be invoiced additionally for the functional expenses and labour costs of any such checks. Should it not be possible to carry out such checks within the agreed period of time, through not fault of our own, then the goods will be deemed to be duly supplied in accordance with the contract.
- (4) Part deliveries are permissible so long as it is reasonable for the purchaser to accept a part delivery.
- (5) Without prejudice to any other arrangements which may have been made, all means of despatch, transport and protecting the goods are at our discretion; if other methods should be selected at the request of the purchaser then the purchaser must bear any additional cost thereof. We agree to exercise reasonable commercial care in this respect. This does not mean that we shall assume any obligation to despatch or deliver the goods to the purchaser. Our liability shall be governed by § 8 and § 9.
- (6) Our heaters are burn-painted in accordance with German DIN 55 900-FWA and are protected against damage during transport by means of special packaging. Showers and other goods are delivered with the usual commercial packaging. At the request of the purchaser packaging will be removed in accordance with the relevant statutory provisions.
- (7) No claim may be made against us in respect of defects in packaging provided that the goods were duly packaged by us, nor may the purchaser make a claim against us based on any note made by the railway company on the waybill as to "packaging defective on receipt" or goods "received unpackaged". Our liability is governed by § 8 and § 9.
- (8) It is the purchaser's responsibility to unload the goods at its own expense. Goods must be unloaded promptly and in an appropriate manner by a sufficient number of staff made available by the purchaser. A charge will be made for delays. Delivery on site means delivery exclusive of unloading but on the condition that there is an access route which suitable for heavy trucks.

## **§ 7 Retention of title**

- (1) We shall retain ownership to all goods delivered until the purchaser has paid all current and future debts under the contract. Retention of title in respect of goods extends to replacement parts and spare parts, such as motors, control units etc. even if the parts are incorporated into the goods, since this does not cause them to become essential components within the meaning of § 93 of the German Civil Code (BGB). In instances in which payment is made by means of cheques and bills of exchange, title is retained after payment by cheque has occurred until such time as we are discharged from liability under the bill. In case of an open account (in the business relationship sense) we shall retain ownership of the goods until all sums due have been paid under the open account; the proviso relates to the recognised unpaid balance; in such instances the provisions contained in this § 7 apply accordingly.
- (2) Should the purchaser breach the contract, particularly in the case of a default in payment, we shall be entitled to recover the goods after setting a deadline which does not result in payment. The mere act of recovering goods shall not constitute rescission of the contract by us unless a reasonable deadline set by us for compliance has passed without payment resulting, and we have expressly rescinded the contract. All costs incurred by us in recovering the goods (particularly transport costs) shall be borne by the purchaser. Furthermore, we have a right to prohibit the purchaser from selling the goods on, processing, attaching to or combining goods to which the retention of title attaches with other goods, and to cancel any authorisation for collection (§ 7 V). Until such a time as full payment has been made in respect of the purchase price and all costs due, the purchaser shall have no right to demand delivery of goods which have been recovered in instances in which we have not expressly terminated the contract.
- (3) The purchaser must handle the goods with care (including meeting requirements for inspection and repair).
- (4) The purchaser may not pledge, give as security nor assign the delivery goods or any claims existing in respect thereof. The purchaser must notify us in writing without delay should the goods be seized by or the subject of any other third party intervention, so that we may instigate proceedings in accordance with § 771 of the German Civil Procedure Rules (ZPO). The purchaser shall bear all remaining costs of such action, notwithstanding our winning the action under § 771 of the German Civil Procedure Rules (ZPO).
- (5) The purchaser is entitled to resell, process and combine the purchased goods with other goods within the normal course of business; however, the purchaser agrees to transfer to us all rights and ancillary claims arising from the resale, processing or combination of the purchased goods or as a result of any other legal grounds (particularly as regards insurance or claims resulting from tortious action), the value of such rights being the total price agreed for the goods (inclusive of value-added tax). If the delivered goods are jointly owned by us as a result of our having retained title to them then claims shall be assigned in proportion to the co-ownership shares. Should assigned claims be received into an open account, the recipient agrees to assign to us a corresponding proportion of the balance from the open account (including the final balance); if interim balances are used and it has been agreed that amounts will be carried forward, then debts due to us from the interim balance under the aforementioned provisions shall be treated as if assigned to us in respect of the next balance. The purchaser retains the right to enforce such claims notwithstanding that they have been assigned by the purchaser, and this is without prejudice to our right to enforce these claims ourselves. However, we agree not to enforce any claims we have so long as the purchaser can meet its payment obligations from the proceeds received, and the purchaser is not in payment default, nor has a petition been lodged for insolvency proceedings to be commenced, nor payment ceased. If one of these is the case the purchaser shall on demand notify us of the assigned debts and the relevant third party debtors, provide all the information necessary for enforcement of the claim, including the relevant documentation, and shall notify the third party debtor of the assignment. This also applies if the purchaser has in breach of contract sold on, processed or combined the purchased goods with others.
- (6) Title is also retained in respect of the full value of goods created by processing or transforming our goods, so that these goods are considered to be produced for us and we are treated as being the manufacturer thereof. Should the right of ownership of any third parties be retained in the course of processing or transforming our goods with goods of such third parties, the purchaser agrees to grant to us co-ownership in due proportion to the objective value of these goods; in this instance the purchaser shall store such goods with due care on our behalf. Should goods which we own be made into one unified product through combination with another product, or mixed so that the goods can no longer be distinguished, the other product being viewed as the main product, then the purchaser shall assign to us a right of co-ownership in proportion to the purchaser's share in the main product; the purchaser must ensure that the resulting co-owned product is stored with due care on our behalf. The same provisions apply to co-owned goods as to goods delivered to which title has been retained.
- (7) As security for our claims against the purchaser, the purchaser assigns to us all of its rights which may arise as against third parties in connection with any manner of mixing our delivered goods with other goods. This assignment takes priority over all others.
- (8) The security to which we are entitled shall not be enforced to the extent that the estimated value of our security exceeds the nominal value of the claims to be secured by 50%; it is at our discretion to decide which security shall be released.

## **§ 8 Warranties**

- We shall be liable for defects in the goods delivered as set out below, provided the purchaser is a commercial customer and the purchaser has fulfilled its duties of inspecting the goods on receipt and giving notice of any claim without delay in accordance with § 377 of the German Commercial Code (HGB); all claims must be made in writing.
- (1) Should the purchased goods be defective, we are entitled at our discretion to remedy the defect or supply non-defective replacement goods (subsequent performance) provided the defect is not merely a minor defect. We may refuse subsequent performance if one or both of these methods of subsequent performance are impossible or unreasonable. We may also refuse subsequent performance for as long as the purchaser fails to meet its payment obligations to us to an extent equivalent to the non-defective part of performance.
  - (2) If subsequent performance as provided by clause (1) is impossible or unsuccessful, the purchaser has a choice of discounting the purchase price or rescinding the contract in accordance with the relevant statutory provisions; this applies particularly where subsequent performance has been delayed or we are guilty of refusing to subsequently perform, and for cases in which subsequent performance has failed on two occasions. Notwithstanding clause (4), the purchaser has no right to make any other claims on any legal grounds (especially claims based on fault at the time the contract was concluded, breaches of primary or secondary contractual duties, reimbursement of costs except as provided by § 439 clause 2 of the German Civil Code (BGB), illegitimate action and any other tortious acts); this applies in particular to claims resulting from damage which is not to the actual goods themselves and for compensation for loss of profits; it also includes claims which are not caused by the defectiveness of the goods.
  - (3) The aforementioned provisions also apply if another product is delivered or delivery is of a lesser amount than agreed.
  - (4) In accordance with the statutory provisions we shall be liable for breaches of duty committed by our agents or legal representatives intentionally or by gross negligence. The statutory provisions also apply to instances in which we are guilty of breaching an essential contractual duty (cardinal duty); unless we are proven to have acted with intent our remaining liability is limited to foreseeable damage typical for that kind of contract. We shall be liable in accordance with the statutory provisions for loss of life, bodily harm and damage to health, and as provided by the Product Liability Act. The same applies to instances in which a guarantee has been given or there has been an undertaking as to qualitative characteristics, provided that our liability is triggered by a defect which is covered by one of these. The aforementioned provisions apply accordingly to claims for reimbursement of costs. The object of this clause is not to reverse the burden of proof.

- (5) We do not accept responsibility for damage resulting from any of the following: unsuitable or improper use, faulty assembly by the purchaser or any third party (in particular as a result of a failure to observe our instructions for assembly or use, standards or local planning regulations), natural wear and tear, incorrect or careless treatment or use, unsuitable equipment, faulty constructions works, unsuitable building premises, replacement materials, influences of a chemical, electromagnetic or electrical manner (provided we are not liable in this respect), and improper alterations or repairs carried out by the purchaser or any third party without our prior consent. The purchaser must ensure that we ourselves, or a third party agent, are given the opportunity of assessing defects in situ which are the subject of a claim. No alternations may be made to the defective product without our express prior consent; any breach of this provision shall result in the purchaser's right to bring a claim becoming invalid so long as the defect is either due to the alteration or subsequently no longer unequivocally identifiable.
- (6) The limitation period for bringing claims for defects is one year from the date of delivery of the goods, unless we are guilty of intent or causing loss of life, bodily harm or damage to health. The limitation period is 5 years for goods used in the customary manner in the context of a building and which have caused it to become defective. The purchaser has no right to call for a price reduction nor to rescind the contract after the limitation period for subsequent performance has expired. In instances which are covered by the previous sentence the purchaser may, however, refuse to pay the purchase price inasmuch as the purchaser would be entitled to do so by reason of rescinding the contract or claiming a price reduction; we have a right to rescind the contract in the event that the purchaser refuses to pay as a result of not being entitled to rescind the contract. The above is without prejudice to the statutory limitation periods contained in § 478 et seq. of the German Civil Code (BGB) in respect of the entrepreneur's rights of recourse. The object of this clause is not to reverse the burden of proof.
- (7) Any undertakings or guarantees given are invalid unless expressly given in writing.
- (8) Any exclusion of liability on our part applies to our legal representatives and agents accordingly.

### **§ 9 Termination of contract by the purchaser and other liability on our part**

- (1) The provisions below apply to breaches of duty which do not fall within the scope of our liability for defects, and are neither intended to exclude nor restrict the statutory right to rescission of contract. Equally it is not intended to exclude or restrict any additional legal or contractual rights or claims to which we are entitled.
- (2) Any additional claims by the purchaser on any legal grounds (especially claims based on fault at the time the contract was concluded, breaches of primary or secondary contractual duties, reimbursement of costs, illegitimate action and any other tortious acts) are excluded; this applies in particular to claims resulting from damage which is not to the actual goods themselves and for compensation for loss of profits; it also includes claims which are not caused by the defectiveness of the goods. In accordance with the statutory provisions we shall be liable for breaches of duty committed by our agents or legal representatives intentionally or by gross negligence; the statutory provisions also apply to instances in which we are guilty of breaching an essential contractual duty (cardinal duty); unless we are proven to have acted with intent our remaining liability is limited to foreseeable damage typical for that kind of contract. We shall be liable in accordance with the statutory provisions for loss of life, bodily harm and damage to health. The same applies to instances in which a guarantee has been given or there has been an undertaking as to qualitative characteristics, provided that our liability is triggered by a defect which is covered by one of these. The aforementioned provisions apply accordingly to claims for reimbursement of costs. The object of this clause is not to reverse the burden of proof.
- (3) Any exclusion of liability on our part applies to our legal representatives and agents accordingly.

### **§ 10 Long-term arrangements and on-demand orders**

In the case of arrangements which provide for a longer transaction period or for orders to be made on demand, the purchaser must ensure that call-ups are issued with the relevant specifications for approximately the same amounts per month. We reserve the right to delay manufacturing the goods until the purchaser has issued a call-up for the goods. Failure to issue a call-up or to specify goods within a reasonable period stipulated by us will result in the goods being delivered without the goods having been called up, whereby the current price as at that day will be charged; we also have a right to claim compensation for the damage caused to us as a result of the delay. The duty to call up goods is an essential contractual obligation of the purchaser's, breach of which may cause us to no longer be interested in the contract continuing; in this case we have a right to claim damages in lieu of performance in accordance with the statutory provisions and to be released from the remaining contract by termination thereof; where the arrangement provides for a longer transaction period, the right to terminate the contract shall be substituted by the right to rescind the remaining contract in accordance with the statutory provisions.

### **§ 11 Returns of goods**

We are not obliged to take back goods duly delivered in accordance with the contract. Should we nevertheless decide to take back goods, a refund will be made as previously agreed in writing for unused, non-defective goods following inspection of the goods at our works and after deduction of a charge for expenses incurred in respect of transport costs, inspection, disbursements, damage caused during transport and similar expenditure, as well as a charge for residual loss of value.

### **§ 12 Place of performance, jurisdiction, applicable law and language and allocation of the burden of proof**

- (1) The place of performance of the contract is the place at which the goods are despatched (being the location of the works or of the warehouse).
- (2) This contract is subject to the jurisdiction applicable at our place of business, provided the purchaser is a commercial customer, public law entity or fund which is regulated by public law. The same applies if the purchaser's place of business is abroad. We also have the right to bring an action against the purchaser in other admissible jurisdictions.
- (3) All claims and rights under this contract are subject to non-harmonised German law (German Civil Code (BGB) and German Commercial Code (HGB)). The United Nations sale of goods provisions (CISG) are expressly excluded. The applicable language for this contract is German.
- (4) None of the provisions contained in these Terms and Conditions are intended to reverse any allocation of the burden of proof provided by statute or case law.

### **§ 13 Miscellaneous provisions**

- (1) Amendments to the contract must be made in writing in order to be effective.
- (2) In the event that any provision contained with these Terms and Conditions should be invalid, this shall not affect the validity of the remaining terms and conditions. The parties must, however, agree on a replacement term which to a large extent matches the invalid term in respect of its purpose and economic meaning.
- (3) We agree to use the purchaser's data for no purpose other than for business purposes in accordance with the relevant data protection laws.