

Terms of delivery and payment

I. General Remarks

The following terms of delivery and payment shall apply to all business relations with our customers. The purchaser acknowledges them as binding upon him for the present contract and for any future transactions. Any deviating agreement shall be subject to our written confirmation. The purchaser waives the enforcement of his own terms of purchase. These latter shall become a part of the present contract neither through our failing to make explicit objection to them nor through the fact of our making delivery to the purchaser.

II. Offers and Delivery

1. Our offers shall be made without obligation.
2. In cases where we shall be hindered in the timely performance of the contract by disruptions in procurement, fabrication or delivery be it on our own part or on the part of our suppliers, e. g. due to failures in energy supply, traffic hold-ups, strike, or lockout, the time for delivery shall be appropriately extended. We will inform the customer in writing about the duration of the extension of delivery time necessitated by the above-mentioned circumstances. The purchaser shall only have the right to withdraw from the contract if, after this extended period shall have lapsed, he also accords to us in writing a reasonable additional period for delivery. The withdrawal must be made in writing if we fail to perform within the additional period.
3. If we are totally or partly unable to perform the contract for the reasons mentioned in Section 2, we shall be absolved of our obligation to deliver.
4. We will immediately inform the purchaser about the hindrance acc. to Section 2 and the impossibility acc. to Section 3.
5. Claims for damages on the part of the purchaser due to delay in performance or non-performance shall be excluded except in the case where there can be proven deliberate intent or gross negligence on our part.
6. If the purchaser is in delay in respect of payment for a previous delivery, we shall be entitled to retain any deliveries without being obliged to compensate for any damage possibly sustained thereby.
7. We shall be entitled to deliver in installments.
8. Reservation of self-supply: We do not assume the risk of procurement. In the event that we do not receive the delivery item or do not receive it in full with respect to essential parts of the delivery item, although we ourselves have concluded an appropriate purchase contract, we are entitled to rescind our contract with the customer. This shall not affect our responsibility in case of intent and/or negligence. We shall inform the customer without delay that the delivery item is unavailable or is not available punctually and, if we intend to rescind the contract, shall exercise our right of rescission immediately. In case of rescission, we shall refund any sums already paid by the customer without delay.

III. Prices

1. Upon delivery, the Seller is entitled to a proportional increase of the agreed price if the costs for raw materials, energy, wages and salaries, customs duties, levies, etc. have increased between the submission of the Purchase Order and delivery and the production of the delivery becomes more expensive as a result. The Seller must notify the Buyer in advance of any price increase. The Buyer may object to the price increase within seven days of receipt of the notification. In case of an objection, the Seller has the choice between withdrawal from the contract or delivery at the originally agreed price. The Seller must notify the Buyer of the decision immediately. If the Seller declares the withdrawal from the contract, further claims of the Buyer are excluded.
2. If the industry index (cost development in road transportation) determined by the Bundesverband Güterkraftverkehr Logistik und Entsorgung (BGL) changes by more than 10 % compared to the situation at the beginning of the contract or compared to the last adjustment, the costs can be adjusted to the respective increased or decreased industry index. The changed costs shall come into force at the beginning of the second following month following the justified request for an increase or reduction by one party.

IV. Payment

1. Effect from the 01.09.2015 we will transmit our invoices electronically.
2. Our invoices are payable within 30 days from the date of invoice. However, we can also make the delivery dependent on immediate payment.

3. In the case of a delay in payment by the purchaser, we shall be entitled to charge interest at a rate of 5% above the discount rate of the Deutsche Bundesbank applying at the date in question, the charged interest rate to amount, however, in no case to less than 9% per annum.
4. We reserve the right to decide on the acceptance of bills of exchange and cheques in each case as it arises. They will only be accepted on account of payment. The credit will only be given with the usual proviso. For bills of exchange, we shall charge the discount and collection charges in accordance with bank practices. We shall not take over any guarantee for timely collection or due protest.
5. If any bill of exchange or a cheque is not honoured on schedule or if any circumstances arise on the side of the purchaser that in our opinion no longer justify an extension of the credit period, we shall have the right to declare the total amount in question immediately due for payment, even if bills of exchange or cheques have already been submitted by way of payment for the same.
6. The purchaser shall only be entitled to claim a right of retention if it is based on the same contractual relationship. He shall only be entitled to set-off if we have accepted the counterclaim or if this latter has been legally recognized to apply.

V. Retention of Title

1. The goods shall remain our property until all receivables arising from our business relations with the purchaser have been paid. These also include conditional receivables.
2. In the case where the goods subject to retention of title shall have been processed or combined in the sense of §§ 947 and 950 of the German Civil Code with other objects that are not our property, we shall enjoy a co-owner's interest in the new-arising object(s) amounting to the selling price charged to the purchaser including turnover tax. The purchaser shall hold in custody the object for us free of charge.
3. The purchaser may use the goods subject to retention of title and resell them in the ordinary course of business as long as he is not in default with respect to payment for same. However, he must not pledge said goods subject to retention or assign them by way of security. The purchaser shall assign to the seller any claim to payment on his part vis-à-vis his customers arising from possible resale of the goods subject to retention of title, as well as to any further receivables accruing to the purchaser with respect to the goods subject to retention of title arising from any other legal ground vis-à-vis his customers or third parties (in particular receivables arising as a result of impermissible actions and claims for insurance benefits) in the amount of the final sum (including VAT) of the invoice of the seller to same. The seller shall accept this assignment. The seller's authority to himself collect the sum due shall hereby remain unaffected. The seller, however, for his part undertakes not to attempt to collect the sum due as long as the purchaser performs in a proper manner his obligations to pay. In the case where this does not happen, the seller shall have the right to demand from the purchaser that he disclose the assigned claims and the respective debtors to him, that he provide any information required for the collection thereof, that he hand over the corresponding documents and that he inform the debtor about the assignment.
4. The purchaser must inform us about any access of third parties to the goods subject to retention of title or the claims assigned to us immediately in writing and support us in any possible way in the intervention.
5. The costs for the performance of the above mentioned obligation to participate in the prosecution of any rights arising from the retention of title, as well as any expenses incurred in the maintenance and storage of the goods shall be borne by the purchaser.

VI. Packaging and dispatch

Packaging shall be provided according to professional and customary standards; special packaging and replacement packaging shall be charged at the cost price. For certain articles that are susceptible to damage during transport, special packaging shall be charged.

VII. Passing of Risk

The risk shall pass to the purchaser as soon as the goods leave our works or stock. Any shipments, including any reshipments, travel at the purchaser's risk. We shall only take out a transport insurance policy if the party placing the order demands this in writing and if this latter explicitly declares in writing that he will take over the total amount of the insurance expenses.

VIII. Liability for Defects and Damages

1. The goods will be delivered in the degree of completion and the condition that is usual for us at the time of delivery.
2. Our deliveries must be checked immediately upon receipt with a view to ensuring that they are in every respect proper and in order.. Complaints regarding short or wrong deliveries, or about any defects, must be made in writing within a period no longer than 14 days after receipt. Complaints about defects not immediately obvious must be made within 6 months.
3. The warranty obligation shall not apply if interventions or changes to the goods supplied are made by a third party or if the purchaser does not immediately meet our demand to return the object complained about.
4. In the case of a legitimate complaint, we shall set right the defect, at our discretion, by repair at no cost or by a substitute delivery. If the repair or delivery of a substitute fails, the purchaser can demand, at his discretion, the reduction of the payment or the rescission of the contract. Any further liability, in particular for damages that shall not have occurred within the goods supplied themselves, is excluded except in the case where there can be proven deliberate intent or gross negligence on our part.
5. The dispatch of the goods complained about to us must be effected in professional packaging carriage paid.
6. By a repair of the goods supplied, the original limitation periods shall be neither suspended nor interrupted.

IX. Repair

1. Any repairs made shall be made without guarantee if no report of nonconformity is provided.
2. In the case of an imperfect repair, obvious defects must be complained about at the latest within 2 weeks after receipt of the goods. Complaints bearing on defects not obvious must be made within a period of 6 months.
3. Claims for damages will only be accepted where they comply with the conditions of VIII Section 4 Sentence 3.

X. Other Claims for Damages

Excluded are all other claims for damages against us on the part of the purchaser, be it on any legal grounds whatsoever, except in the case where there can be proven deliberate intent or gross negligence on our part.

XI. Effectiveness

In the case where any individual provisions of these terms of delivery shall prove, for any reason whatsoever, to be inapplicable, the effectiveness of the other provisions shall remain unaffected by this.

XII. Place of Jurisdiction

The place of jurisdiction for any disputes arising in connection with the contractual relationship - including rescission - shall be 49377 Vechta / Germany.

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