

General Conditions of Sale and Delivery

I. Scope of application

1. These General Terms and Conditions of Purchase and Delivery apply for all business relations, i.e. for all contracts and other services with our customers in the commercial sector (in respect to entrepreneurs and enterprises).

Our conditions apply exclusively, unless otherwise agreed in writing.

2. Alterations and additions to these General Terms and Conditions of Purchase and Delivery must be in writing, including renunciation of the written form.

II. Offers / Conclusion of the contract

1. A contract (purchase – or delivery contract) will only be regarded as concluded upon our written confirmation. This also applies if the sent or submitted offer included documents like catalogues, brochures, photocopies etc. which only contained rough descriptions or information.
2. Our offers are non-binding. Changes of the delivery goods because of further technical development are reserved.
3. We reserve the right to implement technical changes and design deviation from the descriptions made in the brochures, catalogues and written documentation as well as amendments of model, construction and material in the course of technical advancement and the further development without effecting any entitlement for the buyer against us.

III. Prices and terms of payment

1. Our prices are quoted in EUROS ex works plus VAT at the statutory rate, including packaging.
2. Unless otherwise agreed, we are bound by the prices in our offers for 30 days from the date of the offer. Otherwise, the prices listed in our order confirmation plus the respective VAT shall apply.

Additional deliveries and services are invoiced separately.

3. Invoices are payable net, clear of charges within 30 days as of invoice date. Payments shall not be considered effected until credited to our account with our bank.
4. Counterclaims by the buyer that are contested by us or that have not been legally confirmed shall not entitle the buyer to withhold or offset payments. The rights of retention and to refuse performance may be exercised only if the counterclaims arise from the same contractual relationship.
5. If payment is not made within the payment term, we shall be entitled to charge overdue interest at a rate of 5 % above the respective discount rate of the European Central Bank calculated from the date of default. Furthermore we reserve the right to invoice all additional costs like charges deriving from increasing bank fees etc..
6. Upon payment default of the buyer, or material deterioration of his credit worthiness after the conclusion of contract, all claims will become immediately due - even when a deferred payment has been allowed. Furthermore, in such cases we are entitled to request advance payment or security and to withdraw from all existing contracts after an appropriate period of grace. All costs arising here from have to be borne by the Buyer.

IV. Deliveries

1. We endeavor to observe the agreed delivery times. Binding delivery dates and deadlines have to be agreed in writing.
2. All claims of the Buyer are excluded in case of delays in delivery and in performance due to Force Majeure such as war, strikes, lockouts, political unrests, transportations obstacles, acts of public authorities, etc.. The same shall apply to delays in delivery suffered by unforeseeable other hindrances, regardless of whether they occur at our premises or at the site of our sub-contractors (e.g. breaks in production, fire damages, unforeseeable procurement difficulties, etc.).
3. Partial deliveries are permissible as far as these can be reasonably expected of the Buyer.
4. We shall also be liable to the Buyer for a delay of delivery within the scope of applicable legal regulations if this delay derives from gross negligence or intentional breach of contract caused by us. If the default in delivery is not based on an intentional or gross negligent breach of contract, our liability is limited to the foreseeable, typically occurring damage.

V. Transfer of risk

1. Dispatch is always carried out at the risk of the Buyer.
2. Risk shall in all cases pass to the Buyer as soon as the goods leave our premises, even if free delivery had been agreed. If the agreed shipment is delayed as a result of circumstances for which the Buyer is responsible, the risk shall pass to the Buyer from the date upon which the goods are ready for dispatch. Upon request of the Buyer, the delivery will be insured against transportation and fire damages at the expense of the Buyer.
3. Unless otherwise instructed by the Buyer, we reserve the right to select the packaging, the route of dispatch and the type of dispatch according to our best judgment and in compliance with commercial practice at the cost of the Buyer.

VI. Warranty / Compensation

1. Visible defects must be immediately reported to us in writing, however, at the latest within 10 days of receipt of the delivery. In the case of other defects which cannot be detected within this period even with careful inspection, have to be notified to us in writing within 10 days after discovery at the latest. Goods found to be defective must be kept in the state, in which they were at the point in time of the determination of the deficiency, so that they can be readily inspected by us or an authorised representative. Liability for normal wear and tear is excluded.
2. Justifiably asserted deficiencies of our performance will be removed by means of a supplementary performance. We are entitled to choose whether the subsequent performance is to be effected by remedying the defect or delivering an item which is free of defects. If the supplementary performance fails within a reasonable period of time, the Buyer has the right to withdraw from the contract or to reduce the price accordingly.
3. The guarantee and warranty period shall be 36 months from the date of manufacture. The before mentioned provisions in respect to the warranty period do not apply if a longer period is required by law.

4. Claims for damages by the Buyer, for whatever legal reason, are excluded. This does not apply in cases of willful intent or of gross negligence or for injury to life, to the body or to health, of liability according to the Product Liability Act, in cases of warranty or damages arising from an attributable breach of contractual duties or in other cases where applicable mandatory law requires such liability.

Liability for the violation of material contractual obligations shall, however, be limited to replacement of damages typical for the contract and foreseeable damages.

5. The Buyer is solely and directly entitled to assert warranty claims. These claims may not be assigned to third parties.

VII. Reservation of proprietary rights

1. We reserve the right to the retention of title to the delivery item until the complete payment of all claims which result from the entire business relation with the Buyer.

The Buyer is required to insure the goods subject to retention of title adequately against theft, destruction and accidental damage (including fire and water) and has to give proof hereof upon request. Upon request he has to inform us on the whereabouts of the goods subject to retention and to permit our representative to inspect the storage location.

2. If the retained goods are processed or if they are combined with other items, we will obtain co-ownership of the newly produced item in the ratio of the value of the retained goods. The value of the retained goods and the new item will be determined by the invoice value, or alternatively the market value has to be considered; the time of processing is decisive. In processing the goods, the Buyer works for us without obtaining any right to assert any claims against us because of the processing.
3. The Buyer is entitled to process or to sell the goods subject to retention as long as he is not in default with regard to its payment obligations towards us. As a security, the Buyer already now assigns all receivables from such sales to us. We grant the Buyer the revocable right to collect the assigned receivables for his own account and on his own behalf. Upon our request, the Buyer will disclose the assignment and provide us with the necessary information and documents.
4. If the value of securities exceeds our claims by a total of more than 25 %, we shall be obliged upon request of the Buyer or upon request of his creditor to release the exceeding part of the securities.
5. The Buyer is obliged to immediately inform us if enforcement into the retained goods or the receivables assigned to us takes place. All costs and damages have to borne by the Buyer.

VIII. Export orders

Deliveries to other states are only carried out on basis of these General Terms and Conditions of Purchase and Delivery.

If the goods are being delivered to another member state of the European Union (EU), the Buyer is obliged to forward his VAT identification number applicable for the delivery plus a declaration of professional sector before dispatch of the goods.

If, according to the law of the Buyer's country, the transfer the purchase price to us is complicated or if the value of this country should deteriorate, we reserve the right to refuse delivery without becoming subject to any claim for compensation or the right to modify our payment terms and times. The Buyer is also obliged to immediately compensate us in case of disadvantageous fluctuations in the currency rate, provided that the orders are paid in a currency other than the EURO.

All disputes shall be finally settled under the Rules of Arbitration and Conciliation of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the Rule, provided that both parties agree with this procedure.

IX. Design changes

We reserve the right to make design changes at any time. However, we are not obliged to implement such changes on already delivered products.

X. Intellectual property rights

If the deliveries are carried out in accordance with the Buyer's drawings, models or in accordance with other and intellectual property rights of third parties are violated as a result here from, the Buyer has to indemnify us from all damages and lost profit arising from this.

XI. Data protection

We use an EDP system. The Buyer hereby grants us his express permission to store and process any data disclosed in the course of contractual relations and required for handling the order.

XII. Place of performance and place of jurisdiction

Place of performance for the delivery is the respective place of dispatch of the goods. Erfüllungsort für die Zahlung ist der Sitz von Möhlenhoff, Salzgitter.

The parties agree that all disputes arising from this contract have to be exclusively settled before the competent court at the seat of Möhlenhoff, Salzgitter.

XIII. Final provision

If one or more of the provisions contained in these Terms and Conditions of Purchase and Delivery is found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not be affected. In such case the effected invalid provision has to be substituted with a valid provision which shall serve the intended purpose in the best economic manner. The same applies in the case of an omission.