

Terms and Conditions of Sale and Delivery (As of August 2022)

I. General information

1. These Terms and Conditions are a component of all contracts entered into between us and the customer. They also apply if we do not explicitly refer to them in subsequent contracts. The terms and conditions of the customer do not apply; we hereby expressly object to such terms and conditions.
2. Additions and amendments to contracts and these Terms and Conditions require written form or electronic form to take effect. The same applies to the amendment of this written form requirement. A subsequent qualifying electronic signature or notarisation cannot be requested.

II. Offers and contract formation

1. Our offers are subject to change without notice and non-binding unless expressly indicated as binding or include a specific acceptance period.
2. An order of goods by the customer is considered a binding contract offer. Contracts entered into and other agreements do not become binding until we accept them.
3. They can be accepted either in writing (e.g. by order confirmation) or by delivery of goods to the customer.
4. Our services are based on the description of services in our offer and our order confirmation, and on the descriptions of services contained in any technical documentation or that we have confirmed.

III. Supply and packaging

1. Unless agreed otherwise, delivery is EXW INCOTERMS as currently amended.
2. Unless agreed otherwise, we are responsible for the packaging of the delivery items. Packaging costs will be invoiced to the customer.
3. The delivery dates we stipulate are provisional and non-binding unless we expressly refer to them as binding.
4. The delivery period begins on formation of the contract, but not before the customer has provided any documents, permits, approvals or other objects necessary or before receipt of any agreed prepayment.
5. The delivery period will be extended in the event of force majeure, i.e. unforeseeable events beyond our control, such as industrial disputes, including, but not limited to, strikes and lock-outs, as well as business disruptions, raw material or energy shortages, cyberattacks, damage due to fire or explosion, epidemics or pandemics), sovereign acts and official orders, delays in the delivery of essential materials, to the extent that such impediments affect delivery of the delivery item. This also applies if these circumstances affect sub-suppliers. The delivery period will be extended in line with the duration of such acts and impediments. The above circumstances are also beyond our control if they occur during a pre-existing delay. The customer will be notified of such impediments immediately.
6. If we are unable to comply with binding delivery periods and dates for reasons beyond our control (non-availability of performance), we will inform the customer of this without delay and stipulate a new provisional delivery date at the same time. If the performance is still not available by the new delivery date, we will be entitled to withdraw from the contract in full or in part; we will reimburse any consideration already paid by the customer without delay. In particular, the non-availability of performance includes the incorrect or late delivery to us by our supplier, if a matching hedge transaction was entered into with the latter. A matching hedge transaction exists if, on the day of contract formation, we possess a supply contract that is objectively designed so that, assuming smooth proceedings, we can deliver to the customer with the same certainty as contractually agreed with it. This does not affect any other statutory rights or claims of either party.
7. If we culpably fail to comply with delivery periods, we will be in default only if the customer requests that we deliver again while setting a reasonable time limit. Claims for compensation for damages caused by delay are excluded for simple negligence. The restrictions of section VIII. 2b apply if the customer wishes to withdraw from the contract and claim damages in lieu of performance.

IV. Scope of delivery

1. The scope of delivery is determined by the respective contract.
2. We reserve the right to amend the delivery item due to technological improvements or to legal requirements, provided that such changes do not significantly alter the delivery item and the customer can reasonably be expected to accept them.

V. Terms of payment and set-off

1. Unless agreed otherwise, invoices are payable in full within 14 days of date of being issued.
2. The customer is entitled to offset only if its counterclaims are legally established or undisputed. The customer is authorised to exercise a right of retention only if its counterclaim is based on the same contractual relationship.
3. In the event of default in payment on the part of the customer, we are entitled – without prejudice to any further claims – to declare all receivables arising from the contract concerned immediately due and payable. Furthermore, we are entitled to perform outstanding performance only in return for prepayment or having been granted sufficient collateral.

VI. Pricing

Unless agreed otherwise by the parties, our prices valid at the time of delivery apply. We reserve the right to alter prices appropriately if, after entering the contract, cost reductions or increases occur (e.g. due to changes in the price of materials, wage costs, energy costs, customs, or volumes). This will be demonstrated to the customer on request.

VII. Property rights and tools

1. We retain all ownership, copyright, and other property rights to technical documentation (e.g. drawings, plans, calculations), catalogues, other product descriptions and other documents. Regardless of whether these documents are indicated as being “confidential”, they must not be made accessible to third parties without our prior written consent.
2. If items are produced according to the customer’s drawings, models, samples or other documents, the customer guarantees that third-party property rights are not infringed.

VIII. Warranty/liability

1. Warranty claims on the part of the customer require that the customer has properly complied with its duties to examine goods and give notice of defects in accordance with section 377 of the *Handelsgesetzbuch* (HGB – German Commercial Code). This is the case if the customer gives notice of visible material defects, in written or electronic form, without delay or not more than 14 days after receiving the goods. The completed goods return form must be included with the notice of complaint. The customer must give notice of other material defects, in written or electronic form, without delay on discovery.
2. We are liable for defective delivery items as follows:
 - a) For a period of 12 months from transfer of risk, the customer initially has a claim to supplementary performance (correction or replacement) of our choosing. If the supplementary performance is unsuccessful on at least two occasions or is disproportionate, the customer can withdraw from the contract or reduce the purchase price.
 - b) Our liability and the liability of a manager or agent is limited to cases of wilful misconduct or gross negligence. We are liable in accordance with the statutory provisions in the event of a breach of cardinal contractual obligations. Claims for damages are limited to damages typical and foreseeable for the contract. These regulations also extend to claims for damages in addition to performance and damages in lieu of performance, on whatever legal grounds, in particular on account of defects, the infringement of duties arising from the contract or from a tortious act. This also applies in the event of claims for reimbursement of wasted expenditure.
 - c) In particular, defects due to natural wear and tear and incorrect assembly as well as minor divergences from the agreed quality are excluded from warranty.

3. The primary basis for our liability for defects is the agreement made on the quality and intended use of the goods (including accessories and instructions). An agreement of quality in this context refers to any product descriptions or manufacturer's specifications that are the subject of the individual contract or that we had made publicly known (including in particular in catalogues or on our website) as at the time of contract formation. If the quality was not agreed, it must be assessed based on the statutory regulation whether there is a defect (section 434(3) of the *Bürgerliches Gesetzbuch* (BGB – German Civil Code). Public comments made by the manufacturer or on its behalf, in particular in advertising or on the goods' label, take precedence over comments by third parties. Claims for damages arising from tort are excluded unless the damage is caused by wilful misconduct or gross negligence. This also applies to activities by our vicarious and performing agents. In the event of injury to life, limb, or health or in the event of product liability, our liability is governed by the statutory provisions.

IX. Retention of title

1. We retain ownership of the delivery items until paid for.
2. If the customer violates the contract, including in particular in the event of default in payment, we are entitled to demand that the surrender of the delivery items or to withdraw from the contract.
3. The customer is entitled to resell the delivery items in the ordinary course of business; it thereby transfers to us all receivables in the amount of the purchase price agreed between us and the customer (including VAT) that accrue to the customer from the resale, regardless of whether the delivery items are resold without or after processing. We accept the transfer. The customer is authorised to collect these receivables after their transfer. This does not affect our right to collect the receivables ourselves. However, if this is the case, we are entitled to demand that the customer makes the transferred receivables and their debtors known, provides all information necessary for collection, hands over the associated documents and informs the debtors (third parties) of the transfer.
4. If the delivery items are processed or inextricably mixed with other objects that do not belong to us, we acquire co-ownership of the new object in proportion of the value of the delivery items to the other processed objects at the time of processing or to the other objects mixed. The customer will hold the co-owned object on our behalf.
5. The customer is not authorised to pledge the delivery items or assign them as collateral. In the event of attachments and seizures or other third-party dispositions, or if insolvency or composition proceedings are initiated against the customer's assets, it must inform us of this without delay and provide us with all information and documents necessary to safeguard our rights. Enforcement officers or third parties must be notified of our title.
6. At the customer's request, we undertake to release the collateral owed to us to the extent that its value exceeds that of the receivables secured, if they have not yet been settled, by more than 10%.

X. Compliance

The customer undertakes to comply with the applicable laws, provisions, and ordinances, etc. in all actions, measures, contracts, and other proceedings.

XI. Place of jurisdiction and applicable law

1. The place of jurisdiction is Stuttgart. We are also entitled to sue the customer at the court of its registered office.
2. The law of the Federal Republic of Germany applies without regard to conflict of law principles and the UN Convention on Contracts for the International Sale of Goods.

XII. Miscellaneous

1. Transfers of the customer's rights and obligations arising from the contract entered with us require our written consent to take effect.
2. If a provision of these terms and conditions or other agreements entered is or becomes invalid, this does not affect the validity of the rest of the contract. The parties are required to replace the invalid provision with a regulation that as closely as possible approximates its intended commercial purpose.