

General Terms of Sales and Delivery for Contracts with Merchants valid effective November 1st, 2004

1. General

- 1.1 All present and future sales and delivery contracts entered into by the Seller are based on the following terms and conditions of business. All sales are subject exclusively to our terms of delivery and payment, which our customer accepted when placing the order. This also applies to future transactions, even if they are not particularly referred to, but if the purchaser has received them in connection with an order confirmed by us. If the order is placed under variant terms of delivery and payment, only our terms of delivery and payment shall apply, even if we do not object. Thus deviations shall only apply, if they expressly accepted by us in writing.
- 1.2 Insofar as we request to return a signed copy of our contract or our sales confirmation, neither signing nor returning it shall be deemed a prerequisite for the validity of the contract or the confirmation, respectively.

2. Delivery, Performance, Time Limits

- 2.1 In the event of non-compliance with the delivery date and the times of delivery, the Seller is not entitled to claim any damages, unless such delay in delivery is due to or has been caused by an incidence of intent or gross negligence. In the case of slight negligence, any damage claims due to such delay in delivery are in any case limited to the foreseeable damage typically resulting from such default as well as to 10% of the value invoiced for the purchased goods.
- 2.2 The Buyer shall not be entitled to rescission or compensation in lieu of performance, unless having granted to the Seller a reasonable period of grace after occurrence of the default and subject to the Seller having failed to deliver within such period of grace for reasons within the Seller's responsibility.
- 2.3 All sales are subject to the correct and timely self-delivery of the contractual goods and/or the raw materials and supplementary materials required for production as well as subject to the happy arrival of the goods to be delivered.
- 2.4 The Seller is entitled to make partial deliveries in partial quantities which are reasonable for the Buyer in commercial intercourse. The Buyer is obliged to pay the relevant partial quantities, especially per truck, wagon, etc.. Any partial deliveries under one contract shall be deemed separate business transactions.
- 2.5 Any right of rescission due to either party in principle refers to that part of the contract which has not been fulfilled yet. This does not apply if the partial performances which have already been effected are of no interest to the Buyer.
- 2.6 Insofar as, in case of a fob or fot transaction, the contract of carriage is concluded by the Seller, this is done for the account of the Buyer. This shall not affect the passing of the risk pursuant to the provisions of the INCOTERMS.
- 2.7 For the interpretation of the contractual stipulations, the INCOTERMS shall apply in their respectively latest version.
- 2.8 Taking over and calling off the sold goods are fundamental obligations of the Buyer. After the due date, the Seller is entitled to give the Buyer a time limit for taking over / calling off the goods and after lapse of such time limit, the Seller is entitled at his own discretion to either claim performance or rescind or to require pre-payment of the purchase price.

3. Payment, Set off, Right of Retention

- 3.1 In case of the Buyer being in default in payment, we are entitled - notwithstanding any other rights - to retain all pending deliveries until receipt of full payments.
- 3.2 The Buyer is neither entitled to make any set offs against the Seller's claims nor to assert any right of retention, unless his claims are undisputed or have become res judicata.
- 3.3 Should the Seller get to know any circumstances after conclusion of the contract which make the creditworthiness of the Buyer appear doubtful, should in particular the Buyer be in default by more than 14 days of all or part of his payment obligations resulting from the business relationship in spite of a reminder, the Seller is entitled to suspend fulfillment of his own obligations until receipt of payment for all pending claims and to require pre-payment of all claims resulting from any contract concluded with the Buyer. Should the Buyer fail to meet the Seller's rightful request for pre-payment within 3 days, the Seller is entitled to refuse fulfillment of all current contracts, and to definitely refuse fulfillment of any contracts which have not yet been executed after lapse of a period of grace of another 3 days, and to claim compensation in lieu of performance.
- 3.4 We entitled to assign the claims resulting from our business relationships
- 3.5 If the purchaser is in arrears with any payments due to us, all existing claims are payable immediately.

4. Reservation of Title and Assignment of Claims

- 4.1.1 The Seller remains owner of any goods delivered by the Seller in fulfillment of the contract, even as collateral performances (goods under retention of title), until fulfillment of all, even conditional, claims incurring or becoming due later, resulting from contracts which have been concluded either at the same time or later, as well as from bills of exchange or cheques or from a current account balance.
- The Seller is obliged to keep the goods in safe custody free of charge and to mark them in his books and at the place of storage in a way that they can be identified and separated at any time.
- 4.1.2 The Buyer is obliged to obtain insurance cover with a German insurer for the goods under retention against damages of all kind for at least 120% of the purchase price. He hereby assigns to the Seller any possible claims against his insurers in connection with the goods under retention, e.g. out of or in connection with insurance contracts against the risks of storage, fire, burglary and water.
- 4.2 Any acquisition of ownership by the Buyer pursuant to § 950 BGB [German Civil Code] shall be excluded. Any possible processing or treatment of the goods, any mixture or installation are done by order and to the interest of the Seller without obligation for him. The goods so processed or treated shall be considered as goods under retention of title in the meaning of these present provisions and the Buyer shall keep them in safe custody for the Seller.
- 4.3 In the case of the goods under retention being processed or treated, connected and/or mixed or installed together with other goods which are not the property of the Seller, the Seller acquires co-ownership in the new merchandise in the proportion of the invoice value (alternatively the market value) of the goods delivered by him to the value of the other goods which were used at the time of the processing, mixture, and/or installation. If the Buyer acquires the sole ownership in the new merchandise (main good), he hereby transfers to the Seller the co-ownership share subject to the invoice value (alternatively the market value) of the goods under retention and keeps them in safe custody for the Seller.
- 4.4.1 The Buyer hereby assigns to the Seller his claims against his buyers / customers for payment of the price for the goods supplied by the Seller or the share of the price, respectively, insofar as the goods supplied by the Seller have been processed, treated or installed within the scope of a contract for work and services or any other contract. If the Delivery performed by the Seller represents only part of the overall performance which the Buyer has performed with respect to his customers or part of an overall contract, such assignment of the claim resulting from the contract concluded between the Buyer and his customer shall apply to the amount which is shown in the Seller's invoice as the purchase price or the proportionate purchase price, respectively, or which results from these. If the Buyer has not agreed a total price but a price for the individual items of his performance with the performance taken over by the Seller being separately shown, this assignment

shall refer to such separately shown part of the Buyer's claim and it shall be limited to the amount calculated by the Seller.

- 4.4.2 The Buyer is not entitled to sell the goods under retention in the due course of business transactions and to directly debit the assigned claims, unless he duly and timely fulfils his payment obligations to the Seller. The direct debit authorisation shall terminate in case of insolvency, excessive indebtedness or in cases of an application for bankruptcy or a petition for instituting composition proceedings with reference to the assets of the Buyer and in cases of delay with a total payment or a partial payment. Furthermore, the Seller is entitled to revoke any direct debit authorisations.
- 4.5 Should the value of the securities granted to the Seller exceed the overall claim against the Buyer by more than 20%, the Seller is insofar obliged to release the securities at his discretion upon the Buyer's request.
- 4.6 The Buyer's right to own the goods under retention shall lapse if he has not fulfilled his obligations resulting from this present or any other contract in spite of a reminder and in spite of a time limit having been set. In this case, the Seller may demand return of the goods under retention. Such demand for returning the goods also implies rescission of the sales contract. Insofar as the Seller makes use of the goods under retention, the proceeds shall be deducted from the Buyer's liabilities. In each case of rescission and restitution, the Seller shall keep the right to assert damage claims. The goods shall be returned to the Seller free of charge.

5. Notice of Defects, Warranty, Liability

- 5.1.1 The Buyer must examine the goods forthwith upon delivery, latest however, immediately after unloading by the means of transport and he must forthwith give specified notice in writing (or by fax or e-mail) of any possible defects, incorrect deliveries or deficiencies. If the goods are sent on by the Buyer, the examination must nevertheless take place at the first place of destination. Part of a due examination is at least an inspection of all issues of quality, appearance, colour, cut, odour, soiling, etc.. Should the own knowledge not be sufficient, experts have to get involved. In case of packed goods, an examination by means of representative sampling is required.
- 5.1.2 The time limit for a notice of defects for goods which are not in compliance with the contract (quality, quantity, weight differences, incorrect deliveries) is 3 days upon delivery or exemption at the agreed place, insofar as this can be established within the scope of a commercial examination in the due intercourse of business transactions, and in case of initially not detectable complaints 3 days after detection. Any notices of defects shall require a concrete description of the issues complained of in order to become effective. The goods shall be deemed accepted, unless a timely notice of defects regarding those non-compliances with the contract which are detectable within the scope of a due examination, if applicable by experts, has been given.
- 5.2 Has payment against documents been agreed, the Buyer shall not be entitled to inspect the goods. Any notices of defects do not entitle the Buyer to refuse the taking of the documents and the payment of the purchase price.
- 5.3 With the notice of defects, the Buyer must give the opportunity to the Seller to forthwith inspect the defect and for this purpose he must inform the Seller about the place where the goods are to be found and he must grant the Seller access to the goods. If the goods are touched, further processed, further dispatched or modified, the goods are considered as accepted as regards any defects which have been detectable prior to that. In case of hidden defects, the Buyer bears the burden of proof that the goods had already been in a defective condition at the time of delivery.
- 5.4 In case of defects which are not detectable within the scope of a thorough commercial examination, which also includes involving experts, the time limits pursuant to figure 5.1.2 shall only start as of the time of the defects being detected.
- 5.5 In case of a sales „as seen“ or „as inspected“, any notices of defects regarding the quality and condition shall be excluded for all defects which are detectable within the scope of a comprehensive sampling inspection, if applicable by involving experts.
- 5.6 Are the goods deemed approved, any damage claims due to possible consequential damages resulting from defects are excluded, with the exception of 6.1.1.a) or in case of fraudulent concealment of the non-conformity with the contract at the side of the Seller.
- 5.7.1 In case of quantity and quality defects, the Seller must be granted the opportunity for subsequent performance by free of charge substitute delivery or subsequent improvement at his discretion, before the legal rights shall be due to the Buyer. In the cases which have been legally provided for, the Seller is entitled to refuse subsequent performance. The legal warranty rights, including any possible damage claims, shall only be due to the Buyer if the Seller has been set a reasonable time limit for this.
- 5.7.2 Should the subsequent performance by new delivery or the subsequent improvement fail to take place within a reasonable period or should it fail in a second attempt as well, the Buyer shall be entitled to assert the legal warranty rights. The claim for compensation is excluded insofar as the Seller can prove that the defective delivery is not due to his fault or that the failure to subsequently perform is not caused by any reasons within his responsibility. The liability for lack of promised or guaranteed characteristics or for a fraudulent concealment of a defect is exclusively subject to the legal stipulations.

6. General Restriction of Liability / Limitation of Action

- 6.1.1 Any damage claims from and in connection with the sales contract are subject to the legal stipulations as regards their reasons and amounts, if
- a) they are due to an intentional or gross negligent infringement of the contract by the Seller's management or executive staff,
 - b) the Seller can be blamed for breach of material contractual obligations,
 - c) the Seller has assumed a special warranty or a case of fraudulent promises regarding the characteristics of the goods or fraudulent concealment is present, or
 - d) the claims are derived from imperative legal provisions, especially the Product Liability Act or the Principles of the Recourse against the Entrepreneur (§ 478 BGB).
- Otherwise, the liability of the Seller and his vicarious agents, especially his staff, for damages apply subject to his negligence. In case of slight negligence or conduct irrespective of any negligence, it is excluded.
- 6.1.2 Insofar as the Seller is liable, his liability (except pursuant to 6.1.1.b) in all cases of gross and slight negligence is limited to the damage which he could typically have foreseen when considering the circumstances, which he has known or would have had to know.
- 6.2 Any warranty and damage claims against the Seller resulting from or in connection with the contracts concluded or to be concluded, for whatsoever reasons, are subject to a limitation period of one year upon delivery of the delivered goods to the Buyer. This shall not apply to any damage claims based on the injury of life, body or health or violation of freedom or under the conditions of the figures 6.1.1.a), c) and d). Are the goods not forthwith accepted upon exemption or other notices about the possibility of taking over the goods, the time limit shall start as of the receipt of the notice at the Buyer's.
- ## 7. General, Applicable Law, Place of Jurisdiction
- 7.1 The entire contractual relationship shall be exclusively subject to the Law of the Federal Republic of Germany, particularly to the German Civil Code (Bürgerliches Gesetzbuch) and the Commercial Code (Handelsgesetzbuch).
- 7.2 The place of jurisdiction shall be the company's place of business or Hamburg at our option.