

General Terms and Conditions of Sale (April 2004)

**This English version of the General Terms and Conditions of Sale is only for translation purposes.
Only the German version is binding upon the Parties.**

1. **Validity:**

1.1 These General Terms and Conditions of Sale apply for all current and future legal transactions involving the sale of products and services to the Customer, who is himself an entrepreneur. We hereby exclude the applicability of the General Terms and Conditions of the Customer. These shall not apply even if they are referred to – whenever, in whatever form and for whatever reason - in business dealings with us and we do not expressly contradict them, if the Customer excludes the binding power of other terms and conditions in his own terms and conditions, or if we make the delivery to the Customer with no reservations despite the Customer's conditions deviating from our own.

1.2 Our General Terms and Conditions of Sale are exclusively binding in our legal relations with the Customer from the point at which we make an offer or respond to an enquiry concerning a product.

2. **Written form:**

All legal declarations shall be made in writing. This requirement may itself only be waived in writing.

3. **Data:**

We are entitled to process all data arising from the business relationship, including person-related data, for our own purposes. The Customer is hereby informed of this.

4. **Ordering, origin:**

4.1 Contracts obligating us shall only become binding if we provide written confirmation.

4.2 The Customer shall take sole responsibility for the accuracy and completeness of the order details (specifications), the relevant standards to be applied, the classifications, the related documents handed to us and conformity with the product requirements for a specific geographical area.

4.3 All drawings and specifications or documentation submitted by the Customer shall only serve a descriptive purpose and, without our express agreement, shall not constitute an assurance of quality or represent any other basis for claims against us, even in the event of repeated deliveries. If the Customer approves products which differ from those specified in the order, these shall

be regarded as tolerated from the outset.

4.4 Where no additional quality assurance agreements are entered into, the Customer shall determine the main test characteristics and the testing procedure in the specifications. These are based on the test certificates described in 13.12.

4.5 We reserve the right to determine the origin of the products or parts supplied by us.

5. **Prices:**

5.1 Only prices which we have confirmed are binding. Unless otherwise agreed upon in writing, the prices given in the price list valid at the time of concluding the contract shall be payable for the products and services supplied.

5.2 Our prices are ex works and do not include packaging, transport, freight insurance or VAT.

6. **Delivery times:**

Only delivery times confirmed by us in writing shall be binding, provided that the Customer has submitted all the necessary order information and has carried out all actions required of him. Transactions delivery involving on a fixed date require a separate agreement. Where delivery times are exceeded we shall only be deemed to be in delay following expiry of an appropriate extension granted by the Customer.

7. **Force majeure/frustrating events:**

In the case of force majeure or unforeseen events for which we carry no responsibility (in particular shortages of materials or power supplies, war, labour disputes, operational interruptions, disruptions to our own supplies) but which seriously affect the delivery, we are entitled to reduce or discontinue the delivery for the duration of the interruption after informing the Customer in writing. If the interruption lasts for longer than six months both we and the Customer are entitled to withdraw from the contract. The Customer shall not be entitled to assert damage claims as a result. Once the interruption is over we are entitled, after a suitable start-up period commensurate with our production methods, to recommence delivery, provided that we inform the Customer of the delivery and the Customer does not withdraw from the contract in writing within one week.

8. **Acceptance:**

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- 8.1 Where services are provided, the Customer shall submit the result of the work to an acceptance test, to be carried out in our factory, immediately on receiving notification of the goods' readiness for delivery. Where a test procedure has been agreed for a particular product or service, the acceptance test shall be carried out in accordance with the agreed procedure. We are entitled to take part in the acceptance test.
- 8.2 If the delivered goods are free of defects, the Customer must declare acceptance of the goods in writing immediately. The goods are deemed to be defective if they exhibit deficiencies which void or reduce their value or their suitability for their usual purpose or the purpose defined in the order. A defect is defined as a reproducible divergence from the contractually agreed requirements or specifications during usage according to the contract. Any confirmations and approvals granted by the Customer regarding preliminary work shall be binding upon the Customer at acceptance.
- 8.3 If the Customer detects defects during the acceptance test he shall inform us immediately, providing us with a description of the defect as precise as possible.
- 8.4 Defects which are not insignificant shall be remedied within a period of time to be agreed between the parties after making a conclusive analysis of the particular defects.
- 8.5 The Customer is not entitled to refuse acceptance on the basis of immaterial defects. Immaterial defects are those which restrict the functioning either not at all or only to a negligible extent.
- 8.6 If the Customer does not accept the goods in accordance with the above stipulations, we are entitled to set the Customer a suitable deadline for accepting the goods.
- 9. Shipment and packaging; transfer of risk:**
- 9.1 We select the method of shipment and the route. Any wishes on the Customer's part shall be taken into consideration where possible. The Customer shall pay for any additional costs arising from such special wishes.
- 9.2 If the Customer requests the goods to be sent to him, risks involving accidental loss or accidental damage to the products shall pass to the Customer at the point of despatch, and on leaving our plant at the latest. This applies regardless of whether the goods are despatched from the place of fulfilment or who carries the freight costs.
- 9.3 Further, risk shall also pass to the Customer, including that of accidental loss, once he has received notification of the readiness for shipment, or in the event of the Customer delaying acceptance.
- 10. Payment:**
- 10.1 Unless otherwise agreed, our invoices shall be paid, without any deduction, within 30 days of the invoice date. Discount shall only be granted on the basis of a written agreement. We are entitled to demand advance payment or security before delivery. If the Customer delays payment we are entitled to interest on arrears to the value of 8 percentage points per annum above the valid base interest rate. We reserve the right to claim higher damages caused by default.
- 10.2. Payments shall only be made in the currency agreed. Cheques shall only be accepted on account of payment and shall only be deemed valid on being cashed in full without any reservation imposed by a bank.
- 11. Offsetting and rights of retention:**
- 11.1 The Customer is not entitled to offset payment with counterclaims unless the counterclaim is undisputed or has legal force.
- 11.2 The Customer is only entitled to exercise a right of retention if his counterclaim concerns the same contractual relationship.
- 12. Retention of title:**
- 12.1 We retain title of the delivered products up to the point at which all trade receivables arising from the business relationship with the Customer have been paid in full. This also applies to all future deliveries, even where we do not make repeated express reference to this.
- 12.2 The Customer undertakes to handle the delivered products with care until title passes to him. He undertakes in particular to arrange sufficient insurance against theft, fire, storm, water or loss for the products. Where maintenance or inspection work needs to be carried out, the Customer shall arrange for this in good time and at his own cost. Until title has been transferred, the Customer shall inform us immediately in writing if the delivered products are seized or exposed to other interventions by third parties.
- 12.3 The Customer may sell our products by way of orderly business. In doing so, the Customer

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- shall contractually reserve our title and take appropriate organisational measures to ensure this. The Customer hereby in advance cedes to us claims against the purchaser from any sale contract until all offsettable claims to which we are entitled from him in accordance with 12.1 are settled. Hereby also ceded are all receivables from bills of exchange drawn on receivables from the onward sale of our property (trade bills). We are entitled to demand surrender and endorsement by the Customer at any time. We are authorised at any time to inform the purchaser about the cession of the Customer's claims against him to us. All cessions to us are hereby accepted. The Customer shall inform us of all absolving considerations in accordance with Section 354a Clause 2 of the German Commercial Code (HGB).
- 12.4 Any reprocessing or reconstruction of the products performed by the Customer shall always be carried out in our name and on our behalf. The Customer's contingent rights on the products continue in this case. Where the products are processed with other objects not owned by us, we shall assume co-title of the new item to the value of the objective value of our products relative to the other processed objects at the time of the processing. The same applies for blending. Where blending results in the Customer's property being regarded as the principle object, it is taken as agreed that the Customer confers co-title on us and holds for us the resulting sole or co-title in custody.
- 12.5 If the Customer does not fulfil his obligations arising from the retention of title we are entitled to demand restoration of the products after withdrawing from the contract.
- 12.6 If we receive securities from the Customer, we may release these if they exceed 20% of our trade receivables.
- 13. Warranty and notification of defects:**
- 13.1 The Customer's warranty rights presume that he has fulfilled the examination and notification obligations in an orderly manner in accordance with Section 377 of the German Commercial Code (HGB). Should grounds for a notification of defects arise despite great care being taken, Section 377 of the HGB stipulates that obvious defects should be notified immediately, but within 14 days of receipt of goods at the latest, and concealed defects notified immediately on the defect being discovered, otherwise the goods shall be deemed to have been approved. Part of the information requirement is for a technical survey form which we supply to be completed in full.
- 13.2 In addition, the Customer must provide evidence that the goods have been stored correctly, that our assembly instructions have been observed during installation, that the goods have been handled and used correctly, that the maintenance instruction have been observed or that the appropriate inspections for the given use have been carried out and that only suitable materials have been made use of when using the products.
- 13.3 Should, despite all due care and attention being taken, the products display defects which existed at the time of the transfer of risk, the goods, subject to a notification of defects being received within the specified time, shall be remedied or replaced, as we deem fit. An opportunity to remedy the complaint must always be granted within a suitable timeframe.
- 13.4 If the remedial action proves unsatisfactory the Customer, regardless of any damage claims, is entitled to withdraw from the contract or to reduce the payment. The Customer may not demand compensation for needlessly incurred expenses.
- 13.5 Claims based on defects shall not be asserted for negligible deviations from the contractually agreed specifications, for insignificant impairment to the usability, for natural wear and tear or for damage which occurs after the transfer of risk as the result of incorrect or negligent handling, excessive use, use of unsuitable materials or as the result of extraordinary external influences not foreseen in the contract. If the Customer or third parties carry out improper maintenance work or alterations, warranty claims are excluded for this and any consequences.
- 13.6 Claims from the Customer regarding expenses required for remedial action, especially transport, shipment, labour and material costs, are excluded where the expenses increase because the goods delivered by us are subsequently taken to a location other than the Customer's place of business, unless the transfer is in line with the goods' stipulated use.
- 13.7 The Customer only has rights of recourse against us if he has not entered into

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- agreements with his customers which exceed the mandatory claims based on defects.
- 13.8 Our liability to pay compensation for damage to property or for financial loss or for reimbursement of expenses is limited to foreseeable, typical damages or expenses where we can prove that we have only breached our obligations through minor negligence. Where the property damage is covered by an insurance policy taken out by the Customer, we are only liable to the Customer for the disadvantage he incurs by claiming on his insurance. If the insurance policy does not provide cover, we are obliged to cover the costs ourselves.
- 13.9 We are not liable to pay compensation for consequential damage to objects other than the delivered products themselves, or to other property of the Customer if we can prove that we have only breached our obligations through minor negligence, and that the damage is not the result of a major breach of contract. This non-liability does not apply if we are able to receive cover for the incurred damage from existing public or product liability insurance policies. If the damage is due to a serious breach of contract, our liability is limited to the foreseeable, typical damage, assuming that the breach of our obligations is the result of minor negligence.
- 13.10 We carry unlimited liability for damage resulting from loss of life, physical injury or impairment of health. The above limitations of liability do not apply, if we have given assurances or guarantees for a particular characteristic or if we have maliciously concealed a defect.
- 13.11 Claims based on defects lapse 12 months after delivery of the products to our Customer, or after transfer of risk as defined in clause 9.2. The above stipulations do not apply if the law prescribes longer periods. A special agreement is required for a warranty covering a specified length of operation or product life.
- 13.12 Test certificates issued by us at the request of the Customer in accordance with EN 10204 serve exclusively as a formal confirmation of our service to the Customer and are not to be used as proof of the Customer's services to third parties without our written agreement. Without extra agreements they in no case imply any guarantee or obligations above and beyond the performance of the service.
- 13.13 Where type approvals or other nationally stipulated conditions apply to the products our warranty extends at the time of the transfer of risk according to clause 9.2 to observing the approval criteria for the country which is named in the Customer's order and on the type plate of the product.
- 14. Product descriptions**
- 14.1 If the order is based on certain product names or labels used by us or if these are referred to, the relevant factory specifications and standards for these products are binding, and we will inform the Customer of these on request. We reserve the right to make changes to product specifications and standards.
- 14.2 The Customer alone shall decide on the suitability of the products to be supplied by us for the chosen applications, countries and configurations. A purpose specified by the Customer for our products shall only become an integral part of the contract on the basis of a written agreement. This also applies if the Customer has involved us in the development of his products during which we have, e.g., given advice and made recommendations. In the case of reselling, nobody is entitled, without our written agreement, to give further statements and descriptions or assurances other than those authorised by us.
- 14.3 Specifications given e.g. in brochures, leaflets, catalogues etc. do not represent assured characteristics or guarantees.
- 15. Liability:**
- 15.1 We accept liability in accordance with the law in the case of intent or gross negligence on the part of our representatives or agents. Otherwise we are only liable under the terms of the Product Liability Act (Produkthaftungsgesetz), for loss of life, physical injury, impairment of health or for culpable breach of key contractual obligations. Damage claims for breach of key contractual obligations are, however, limited to typical contract damages and foreseeable damages. Even in cases of gross negligence our liability is limited to typical contract and foreseeable damages where none of the exceptional cases contained in clause 2 of this paragraph applies.
- 15.2 Liability for damage to the Customer's legal assets arising from the delivered goods, e.g. damage to other objects, is expressly excluded. This does not apply in the case of liability for intent or gross negligence or loss

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of life, physical injury or impairment of health.

- 15.3 The regulations of the preceding clauses cover damages for whatever legal reason, in particular due to defects, breach of obligations arising from the contractual relationship or from unauthorised actions.

16. Severability clause

Should one or more provisions of these terms and conditions prove invalid, or become invalid in the future, this shall not affect the validity of the remaining provisions. The Customer is obliged to assist in formulating an effective provision which most closely approximates the legal and economic intention of the original provision.

17. Confidentiality:

The Customer is committed to treating knowledge and information confidentially which arises from the business relationship with us. This applies in particular to the know how, production methods and techniques he comes into contact with when auditing our processes or when he enlists our services in the development of his products. The Customer undertakes to impose this same obligation in writing on any third parties he involves in whatever legal capacity, and to document this on our request. The Customer is liable to compensate us for any damage arising from breach of this obligation, excluding continuation of offence. The confidentiality obligation applies beyond the termination of the business relationship with us.

18. Place of fulfilment, court of jurisdiction:

The place of fulfilment, the exclusive court of jurisdiction and the return location under the packaging regulation is Neu-Isenburg.

19. Applicable law:

Legal relations between us and the Customer are subject exclusively to the laws of the Federal Republic of Germany. Application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.