

§ 1 General - Applicability

(1) Our terms of sale apply exclusively. We do not accept a customer's terms that contradict or deviate from our terms of sale unless we have expressly consented in writing to their applicability. Our terms of sale also apply in the event that we make delivery to the customer without reservation, even while knowing of the customer's terms that contradict or deviate from our terms of sale. Any invalidity of individual terms shall not affect the validity of the remaining terms.

(2) All agreements that have been entered into between us and the customer for the purpose of performing the contract are set forth in writing in this contract.

§ 2 Offer – Offer Documentation

(1) Our offer is subject to change unless otherwise provided in the order confirmation.

(2) We retain all ownership rights and copyrights to images, drawings, calculations, technical documents and other records. This applies also with respect to written documents that are designated as "confidential". The customer may copy such documents only for its own use and not share them with third parties.

§ 3 Prices and Terms of Payment

(1) Except as otherwise provided in the order confirmation, our prices apply "ex factory", exclusive of packing and shipping, which are invoiced separately. This applies to all shipments, including return shipments.

(2) The statutory value added tax is not included in our prices; such tax is specified separately in the invoice at the amount in effect on the date of the invoice if applicable. Custom duties are not included in the price and have to be paid by the customer.

(3) Except as otherwise provided in the order confirmation, the invoiced amounts are payable within 30 days without a discount, as of the date of the invoice. Repairs shall be due as pure wage labor within 10 days without discount. The statutory provisions relating to the consequences of default shall apply. In certain cases, we have the right to demand a security deposit or advance payment from the customer. All payments shall be made to us, free of charges. In the event of delayed payment, the customer shall owe default interest in the amount of 8 percentage points over the respective statutory basic interest rate [*Basiszinssatz*] of the European Central Bank from the time payment is due. We retain the right to assert any additional claims for damages.

(4) The customer shall have rights of setoff only if the customer's counterclaims have been finally determined, are undisputed or have been acknowledged by us. The customer shall have the right to exercise a right of retention to the extent that its counterclaim is based on the same contractual relationship.

§ 4 Delivery Period

(1) Statements on delivery periods are estimates and not binding. The beginning of the delivery period specified by us presumes the resolution of all technical issues.

(2) The performance of our delivery obligation also presumes the timely and proper satisfaction of the customer's obligation. We reserve the defense of nonperformance of the contract. The delivery period shall be deemed satisfied if, prior to its expiration, the goods have left the factory, or we have notified the customer of their readiness for shipment. If the failure to satisfy the delivery period is due to *force majeure*, labor disputes or other events that are outside of our control, the delivery period will expand accordingly.

(3) If the customer is in default with respect to acceptance or if the customer culpably breaches other duties to cooperate, then we shall have the right to demand reimbursement of any loss sustained by us, including any additional efforts expended. We reserve the right to assert additional claims for damages.

(4) To the extent that the conditions of paragraph 3 exist, the risk of incidental destruction or incidental deterioration of the goods shall devolve on the customer at the time that the customer has fallen into acceptance or payment default.

(5) We will be liable pursuant to the statutory provisions to the extent that, as a consequence of a delay in delivery that is our responsibility, the customer has the right to assert that its interest in continued performance of the contract has ceased. We shall be liable for consequential damages sustained by the customer by reason of a delay in delivery for which we are responsible only in the event of a specific written agreement. Operational disturbances of any kind, including scarcity of raw materials, strikes and lockouts, *force majeure*, and other circumstances that delay or render impossible the manufacture of the ordered goods, as well as circumstances occurring after conclusion of the contract that materially increase the cost of production or render production uneconomical shall entitle us to withdraw from the contract in whole or in part, or at a reasonable price increase.

(6) We shall also be liable pursuant to the statutory provisions to the extent that the delay in delivery is due to a breach of contract that is intentional or grossly negligent and that is our responsibility. To the extent that the delay in delivery is not due to an international breach of contract that is our responsibility, our liability for damages shall be limited to the foreseeable loss typically sustained.

§ 5 Open-Ended Purchase Orders

Orders called shall be accepted by the customer within the time period confirmed by us. We have the right, upon expiration of the deadline specified by us and with prior notice, to deliver and invoice the tools still situated in the call-off warehouse.

§ 6 Deliveries on Approval [”auf Gutbefund”]

For deliveries on approval, the customer commits to examine these tools consistent with the agreed conditions of use and to advise us of the result. If the customer fails to advise us of the determination within the agreed time, the delivery will be invoiced. We have the right at any time to demand return of such tools.

§ 7 Reservation of Changes

We reserve the right, even without prior notice, to change the ordered and confirmed tools to the extent that this does not impair their functionality.

§ 8 Transfer of the Risk – Packing Costs

- (1) To the extent that the order confirmation does not provide otherwise, delivery is agreed "ex factory".
- (2) Shipment packaging and all other packaging materials will not be taken back, except for pallets. The customer is responsible for disposing of the packaging materials at its own expense.
- (3) If requested by the customer, we will provide for insurance of the delivery; any expenses incurred for such insurance shall be borne by the customer.

§ 9 Warranty for Defects

- (1) The customer's warranty rights presume that the customer has properly satisfied its obligations to inspect and complain pursuant to § 377 of the German Commercial Code (HGB).
- (2) To the extent that the item purchased is defective, we have the right, at our election, to cure in the form of a correction of the defect or of delivery of a new defect-free item. In the event of correction of the defect, we will bear the expenses only up to the amount of the purchase price.
- (3) We shall be liable pursuant to the statutory provisions to the extent that the customer asserts claims for damages that are based on intentional misconduct or gross negligence, including international misconduct or gross negligence on the part of our representatives or agents. To the extent we are not accused of intentional breach of contract, our liability for damages is limited to the loss that is foreseeable and sustained in the typical case.
- (4) To the extent that the customer has a right to restitution instead of performance, our liability for damages shall be limited to the compensation of the loss that is foreseeable and sustained in the typical case. Except as otherwise provided above, liability is excluded.
- (5) The limitations period for the assertion of warranty claims is 12 months, beginning as of the date of the transfer of the risk.

§ 10 Limits of Liability

- (1) Any further liability for damages other than that set forth in § 9 is excluded, without regard to the legal nature of the claim asserted. This applies, in particular, to claims for damages relating to culpability in the conclusion of the agreement, other breaches of duty, or tort claims for restitution of property damage pursuant to § 823 of the German Civil Code (BGB).
- (2) To the extent that our liability for damages is excluded or limited, this shall also apply with respect to personal liability for damages of our employees, workers, staff members, representatives and agents.

§ 11 Retention of Title as Security

- (1) We will retain title to the delivered goods until the receipt of all payments from the business relationship with the customer. To the extent that we agree with the customer on payment of the purchase price owed on the basis of the check/note payment procedure, the retention also extends to the redemption of the note accepted by us from the customer, and is not extinguished by the crediting of the check received by us. In the event of conduct of the customer in contravention of the contract, especially in the event of payment default, we shall have the right to repossess the purchased goods. The repossession of the goods by us does not constitute withdrawal from the contract. After repossession of the purchased goods, we are authorized to dispose of them; the proceeds from the disposition shall be credited to the amount owed by the customer, minus the reasonable costs of disposition.
- (2) The customer is obliged to handle the purchased goods with care and, in particular, the customer shall, at its own expense, adequately insure such goods against fire, water and theft damage. To the extent that maintenance and inspection work is required, the customer must carry out such work in time and at its own expense.
- (3) In the event of attachments or other executions by third parties, the customer shall notify us immediately in writing so that we can file suit pursuant to § 771 of the German Code of Civil Procedure (ZPO). To the extent that the third party is not in a position to reimburse us the in-court and out-of-court costs of an action pursuant to § 771 of the German Code of Civil Procedure, the customer shall be liable for any deficiency.
- (4) The customer has the right to resell the purchased goods in the ordinary course of business; however, the customer assigns to us, already now, all demands in the amount of the final commercial invoice (including value-added tax if applicable) of our demand that accrue to the customer by reason of the resale to its customer or third party, irrespective of whether the purchased goods are sold with or without processing. The demand assigned to us in advance by the customer also relates to the recognized balance as well as, in the event of the bankruptcy of the end customer, to the then available "causal" balance, in the event that there exists a current account relationship between the customer and the end customer pursuant to § 355 of the German Commercial Code. The customer shall remain authorized to collect such demand even after the assignment. Our authority to collect the demand ourselves will remain unaffected. If the customer fails to satisfy its payment obligations or if the customer applies for the initiation of insolvency proceedings or such an application is initiated by a third party, we can require that the customer identify to us the assigned claims and the obligors thereunder, makes all required statements required for collection, delivers the related documents, and notifies its obligors (third parties) of the assignment.
- (5) The processing or the reconfiguration of the purchased goods by the customer is always undertaken on our behalf. If the purchased goods are processed together with other goods not belonging to us, we will acquire co-ownership of the new goods in the proportion that the value of the purchased goods (commercial invoice end amount, including value-added tax) bears to the other processed goods at the time of processing. In other respects, the same provisions that apply to the purchased goods delivered under retention of title shall also apply to the goods created by processing.
- (6) If the purchased goods are inseparably commingled with other goods not belonging to us, we will acquire co-ownership of the new goods in the proportion that the value of the purchased goods (commercial invoice end amount, including value-added tax) bears to the commingled goods at the time of processing. If the commingling occurs in such a manner that the goods of the customer must be viewed as the main item, then it is deemed agreed that the customer will assign to us a pro-rata co-ownership share. The customer shall keep the solely owned property or co-owned property on our behalf.

§ 12 Jurisdiction, Place of Performance

- (1) To the extent that the customer is a merchant [*Kaufmann*], the place of jurisdiction shall be the court at the location of our registered office; however, we also have the right to sue the customer at the court at the location of the customer's registered office.
- (2) The law of the Federal Republic of Germany shall apply, to the exclusion of the UN Convention on the International Sale of Goods (CISG).