

**1 Scope of Application**

- 1.1 Our General Terms and Conditions of Sale, Delivery and Payment below (hereinafter "Terms and Conditions") apply for the entire term of the business relationship, i.e. also to future contracts, even if a reference on this Terms and Conditions is no longer expressly made in the future contracts.
- 1.2 Our Terms and Conditions shall apply exclusively. Any differing, conflicting or additional terms and conditions of the buyer shall only apply if we have confirmed them in writing. Our Terms and Conditions shall be solely applicable even if we unconditionally deliver to the buyer in the knowledge that the terms and conditions of the buyer conflict with or differ from our Terms and Conditions.
- 1.3 References to statutory provisions are only be made for clarifying purposes. Statutory provisions shall therefore apply even without such clarifications if these Terms and Conditions are not deviating or excluding such statutory provisions.

**2 Offers**

As far as price, quantity, delivery date and availability are concerned, our offers are always subject to change.

**3 Formal Requirements, No Assignment**

- 3.1 All agreements between us and the buyer shall be made in writing. All agreements, orders by telephone or arrangements, especially with our technical advisers and sales force, are only binding for us if we have confirmed them in writing
- 3.2 Claims of the buyer arising from the agreements concluded with us are not assignable.

**4 Prices**

- 4.1 Our prices are calculated according to the delivery terms FCA (Free Carrier – Incoterms 2020) Heinrich-Follmann-Strasse 1, 32423 Minden, Germany; in case other delivery terms are agreed upon, the prices will be recalculated accordingly. The prices are net prices and are inter alia exclusive of packaging, which is invoiced separately. The specified prices do also not include value added tax; VAT will be charged separately at the statutory rate.
- 4.2 We reserve the right to amend the prices for contracts with an agreed term of more than six weeks in accordance with the following provisions: should wages, materials costs or other cost factors change up to completion of the delivery, we are entitled to adjust the price by a reasonable amount according to the changes in costs. The buyer shall only be entitled to rescind if the price increase considerably exceeds the increase in the general cost of living between the time the order was placed and the delivery. At the request of the buyer, we shall verify the changes in costs. In the case of successive delivery contracts, the right of rescission of the buyer is limited to the part of the delivery that is affected by the price increase.

**5 Delivery**

- 5.1 Unless otherwise agreed in the individual case, terms of delivery are FCA (Free Carrier – Incoterms 2020) Heinrich-Follmann-Strasse 1, 32423 Minden, Germany. If in individual cases it is agreed that we bear the freight costs, the buyer shall nevertheless bear the risk of accidental loss and accidental deterioration of the goods from the time the goods are handed over to the carrier.
- 5.2 Special requests by the buyer with regard to the mode of forwarding the goods or insurance must be communicated to us in writing and in due time; we will take these into account where we deem them reasonable. The costs incurred thereby shall be borne by the buyer. Unless a special mode of dispatch has been agreed, the most appropriate mode shall be chosen at our own free discretion.
- 5.3 Delivery times are non-binding. We reserve the right to sufficient self-supply. Fixed delivery periods or delivery dates are to be agreed individually and in writing. Notwithstanding clause 10 and 11, our liability for damages caused by delay of delivery shall be limited to a maximum of 5% of the agreed purchase price of the respective sales contract. In the event of a delay in delivery, the buyer shall only be entitled to rescind from the contract if the buyer has set a reasonable additional period for performance. Partial delay of delivery only entitles the buyer to rescind from the contract with regard to the part of the order with which we are in delay, unless partial performance of the contract is of no interest to the buyer.
- 5.4 We reserve the right to change the performance, provided that this exclusively concerns customary quantity or quality tolerances and the changes are reasonable for the buyer. Customary quantity tolerances in this sense represent under- or over-deliveries of up to ± 10 % of the agreed delivery quantity. Under-deliveries within this scope do not constitute a defect pursuant to § 434 para. 3 of the German Civil Code. Over-deliveries within this scope shall be invoiced according to the actual delivery quantity.

**6 Force Majeure**

- 6.1 Cases of force majeure (e.g. riots, blockades, weather conditions, epidemics, pandemics, fire, earthquakes, war, shortages of raw materials) as well as events of any type that affect the fulfilment of our obligations, and for which we are not responsible, give us the right to withdraw from the contract in whole or in part without the buyer having any claim for compensation against us.
- 6.2 Cases of force majeure acc. clause 6.1 occurring either at our premises or those of our suppliers shall only entitle the buyer to terminate or rescind from the contract in the event that the buyer can no longer reasonably be expected to wait any longer, in all other cases, the agreed delivery deadline or date shall be postponed by the duration of the delay caused by the event of force majeure. Termination or rescission is however possible at the earliest four weeks after the occurrence of the case of force majeure. Liability is excluded in these cases.

**7 Retention of Title**

- 7.1 All delivered goods shall remain our property until all claims against the buyer from the business relationship, including claims arising in future from contracts concluded at the same time or at

a later date, have been settled in full (reserved goods). This also applies if individual or all the claims of the buyer are included in a current invoice and the balance has been drawn and recognised. When accepting checks and bills of exchange the reservation of title does not expire until they have been cashed.

- 7.2 Until the reservation of title has expired the buyer is not entitled to pledge the goods to third parties or transfer them as security. If our property is impaired by third parties through seizure or otherwise, the buyer is obliged to notify us thereof without delay. The buyer shall pay the costs of interventions by third parties.
- 7.3 In the event of conduct that contravenes the agreement and the culpable infringement of the buyer's key contractual obligations, especially in the case of payment default, we are entitled to take back the reserved goods if the prerequisites for rescission from the agreement are met; the buyer is obliged to surrender the goods. The return of the reserved goods does not constitute a rescission from the contract unless we have expressed the right to rescission in writing.
- 7.4 The buyer is entitled to further process or resell the goods in the course of ordinary business as long as the buyer is not in default regarding the fulfilment of buyer's obligations towards us and provided he does not suspend payments. Clauses 7.5 to 7.11 apply.
- 7.5 The processing or transformation of the reserved goods by the buyer is always carried out for us within the meaning of § 950 of the German Civil Code (BGB) without any obligation on our part. Through processing or transformation of the reserved goods the buyer shall not acquire ownership acc. to § 950 BGB of the new item. If the reserved goods are processed, mixed, combined or inseparably blended with other items not belonging to us, we shall acquire joint title to the new item in proportion to the value of the reserved goods compared with the other processed or blended items at the time of processing or blending. The provisions of subsection 7 apply accordingly to the item produced through processing. If the blending occurs in such a way that the buyer's item has to be seen as the main item, it is agreed that the buyer will transfer joint title to us on a pro rata basis. The buyer shall hold the resultant sole property or joint property in safe custody for us.
- 7.6 If the buyer sells the reserved goods, all payment claims against the secondary buyer arising from the resale of the reserved goods shall hereby be assigned to us with all subsidiary rights in advance. The assignment shall take place based on the sum of the total amounts owed to us by the buyer. The provision of this subsection 7.6 shall apply on a pro rata basis even if the buyer has processed, mixed, or blended our reserved goods and we have obtained joint title thereto in the amount of its own invoice value or in case the reserved goods have been firmly installed. If the reserved goods are processed, mixed, blended or firmly installed, we are entitled from this assignment to a portion of the respective claim arising from the resale that corresponds with the amount of the invoice value for our reserved goods. If the reserved goods are sold by the buyer together with other goods which we have not supplied, the buyer shall herewith assign to us a share of the claim arising from the resale in the amount of the invoice value of the reserved goods. If the buyer has sold this claim under a factoring agreement, it shall herewith assign to us the claim against the factor that replaces such a claim. If the claim arising from the resale by the buyer is placed in a current account relationship with its customer, the buyer shall herewith assign to us its claims arising from the current account relationship in the amount of the invoice value of the reserved goods. We hereby accept the above assignments.
- 7.7 On our request, the buyer shall be obliged to inform his customers of the assignment. Upon request, the buyer shall be obliged to provide us with an exact list of the claims to which he is entitled, including the names and addresses of the customers, the amounts of the individual claims, the invoice date, etc., and to supply it with all the information and documents required to assert the assigned claims and to allow us to check this information. The buyer hereby authorizes us to inform the customers of the assignment and to collect the claim ourselves. If the buyer has collected the claim himself, the buyer shall only collect the funds as our trustee. In case of suspension of payment by the buyer or the filing or institution of insolvency proceedings the right to resell, utilise or process the reserved goods and the authority to collect the assigned claims shall expire. The authorisation for collection shall also expire in the event of a cheque or bill protest.
- 7.8 Amounts which are received by the buyer from assigned claims shall be kept for us separately until they have been transferred to us.
- 7.9 The buyer shall not be entitled to pledge or use the reserved goods or the assigned claims as security. The buyer shall immediately inform us of any pledges, stating the particulars of the creditor.
- 7.10 We undertake to release our security that we hold in so far as the realizable value thereof exceeds the total of our claim to be secured by more than 10%. It is incumbent upon us to select the security to be released.
- 7.11 The buyer shall hold the reserved goods in safe custody for us free of charge. The buyer shall insure them against usual risks such as fire, theft and water to the customary extent. The buyer shall hereby assign its indemnity claims to which the buyer is entitled against insurance companies or any other obligated parties to us in the amount of its claims. We hereby accept the assignment.

**8 Payment Terms**

- 8.1 Unless a different payment period has been expressly agreed in writing, each invoice shall be due for payment without deduction within 10 days of the invoice date.
- 8.2 The buyer is in default of payment if the buyer does not pay on the agreed date. During the period of payment default, we are entitled of interests of 9 percentage points above the base interest rate (§ 288 (2) of the German Civil Code (BGB)) on the money owed. We reserve the right to claim and prove higher damages in individual cases. Individually granted payment deferrals shall not be deemed or construed as a waiver of any claims due to default in payment.

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- 8.3 We do not accept cheques, bills and drafts without prior written agreement. In case we have duly agreed to a cheque, bill or draft buyer's payment obligation shall only be deemed to have been performed when we could fully compensate the amount owed by the buyer through that cheque, bill or draft.
- 8.4 Setoffs against a purchase price claim by the buyer shall be excluded, unless the counterclaim has been determined by a final unappealable court decision or have been accepted by us.
- 8.5 Normally, a direct debit collection (SEPA) will be notified to the buyer together with the invoice (or via another communication channel agreed with the buyer) no later than one calendar day before the due date of the direct debit (advance information/"pre-notification"). In individual cases, the amount debited may differ from the amount notified in the invoice or in the pre-notification if the buyer has received credit notes or individual transactions have been cancelled in the period between the issuing of the invoice or the transmission of the pre-notification and the due date. The buyer shall be obliged to ensure that there are sufficient funds in the account designated in the SEPA mandate and to ensure that the amounts due can be collected by us. This obligation shall also apply if the buyer does not receive advance information or does not receive it in time in individual cases.
- 8.6 Payment default, deterioration in the buyer's financial circumstances, suspension of payment, filing for bankruptcy proceedings or a change in or liquidation of the company entitle us to demand advance payment or the provision of security for all contracts yet to be executed, subject to our other rights. Invoiced amounts not yet due shall in this instance become immediately due for payment.
- 8.7 At our discretion in cases of payment default, deterioration in the buyer's financial circumstances, suspension of payment, filing for the institution of composition or bankruptcy proceedings, or a change in or liquidation of the company, we shall be entitled to rescind from all current contracts with the buyer in whole or in part without being liable towards the buyer for compensation claims in this respect.
- 9 Take over Default**  
If the buyer defaults in taking delivery of the goods, we are entitled, to invoice the goods and to store them on account and at the risk of the buyer without prior setting an additional period for take over. If we store the goods at our premises, we charge 1% of the invoiced amount for each commenced month. The buyer is entitled to prove lower amount of damage.
- 10 Liability for Defects and Warranty (Gewährleistung)**
- 10.1 Claims for defects by the buyer are subject to the buyer having fulfilled its legal duty to inspect the goods and to give notice of defects (§ 377 of the German Commercial Code (HGB)). The buyer shall be obliged to inspect the goods immediately after delivery and, if a defect becomes apparent, notify us without undue delay. If the buyer fails to notify us within due time, the goods shall be deemed to have been approved, unless the defect was not detectable during the inspection ("hidden defect"). If such a hidden defect is discovered later, notification must be made without undue delay after discovery, otherwise the goods shall also be deemed to have been approved referred to this defect. For the preservation of the rights of the buyer the timely dispatch of the defect notification is sufficient. In addition, the other provisions § 377 of the German Commercial Code (HGB) shall apply.
- 10.2 For the avoidance of doubt, we accept no responsibility for defects which do not originate from our sphere, especially if these are caused by natural wear and tear, incorrect or negligent handling, improper onward transport, improper storage or unsuitable or improper use or failure to follow the instructions for processing and use. Standard deviations in quality, dimensions and quantities shall not be a defect.
- 10.3 We are only liable for the suitability of our goods for specific purposes or for the attainment of a specific production result or for chemical resistance in further processing with other substances if we have expressly agreed to this in writing. In terms of the specification of the goods, only the product description in our Technical data Sheets shall be deemed to have been agreed. Public statements claims or advertising do not constitute contractual quality or specification of the goods.
- 10.4 In so far as a defect exists in the goods for which we are responsible, we are initially entitled at our discretion to either supply a replacement or to repair the goods ("subsequent performance"). Our choice must take into account the type of defect and the legitimate interests of the buyer. If our goods have already been processed, this rules out repair in principle. Within the scope of subsequent performance, our liability is excluded with regard to expenses for the removal of a defective good and the installation or fitting of a repaired or delivered good free of defects.
- 10.5 If remedy of subsequent performance fails after a reasonable time period, the buyer may at his discretion demand a reduction of the purchase price or rescind from the contract. If the buyer chooses to rescind from the contract, he is not entitled to compensation for damages as a result of the defect. If the buyer opts for compensation claims, the buyer keeps the goods if this can reasonably be expected of the buyer. Compensation claims are limited to the difference between the purchase price and the value of the defective goods unless we have fraudulently caused the breach of contract. If only one part of the entire deliveries of goods is defective, the buyer may then only rescind from the contract as a whole if the buyer has no interest in the remainder of the delivery or it would be unreasonable to expect him to adhere to the terms of the contract.
- 10.6 The buyer's claims due to defects shall become statute-barred within one year, unless
- the product delivered is a good which has been used for a building and is usually destined to be integrated into a building (Bauwerk), in which case a limitation period of three years shall apply, or
  - the claims are based on non-contractual compensation (delict or tort), in which case a limitation period of two years shall apply.
- In cases set forth in clause 11.2 the statutory periods of limitation shall apply).
- 10.7 The applicable statutory provisions on the commencement of the periods of limitation shall apply. The aforementioned periods of limitation shall also apply to the exercise of the right to rescind from the contract or the right to reduce the purchase price. Statutory limitation periods shall also apply to the execution of rights to rescind or reduction of price.
- 11 Other Liability**
- 11.1 The aforementioned clauses provide conclusively our warranty for the goods and exclude other warranty and compensation claims of any type irrespective of the legal nature of the asserted claim, especially due to a breach of contract or tortious act/delict and for claims of compensation for lost of profit or due to property damage suffered by the buyer.
- 11.2 We shall only be liable for damages according to the statutory provisions without limitation if
- the claims are due to a loss of life, personal injury, or illness, or
  - the claims are based on our wilful misconduct or gross negligence by us or our legal representatives or vicarious agents, or
  - the claims are based on a legitimate claim acc. to the Product Liability Act, or
  - we have accepted a respective procurement risk or have provided a respective guarantee.
- 11.3 In the case of the negligent breach of essential contractual obligations (obligations whose fulfilment is a prerequisite for enabling the proper fulfilment of the contract in the first place and on which the buyer regularly relies and rely) we are only liable – unless there is a case of unlimited liability of the preceding Sec 11.2 a. to d. – for the contractually typical, reasonably foreseeable damage.
- 11.4 This shall not amend the burden of proof given by law. In so far as our liability is excluded or restricted, this also applies to the personal liability of our, employees, workers, representatives or vicarious agents.
- 12 Services and Advice**  
Services and advice that go beyond our obligations as a seller are subject to an express written agreement.
- 13 Applicable Law, Place of Performance, Place of Jurisdiction/Arbitration, Data Protection, Severability**
- 13.1 All contracts concluded between the buyer and us are subject to the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). Referral to a legal system other than that of the Federal Republic of Germany through the rules of private international law is excluded (exclusion of renvoi). The chosen law of the Federal Republic of Germany also applies to non-contractual obligations resulting from or in connection with the contractual relationship between the buyer and us.
- 13.2 The place of performance is our registered office in Minden.
- 13.3 a. For buyers having its corporate seat in a member state of the EU/EEA it is agreed: The competent courts at our registered office in Minden (Germany) shall have exclusive jurisdiction regarding all disputes (contractual or non-contractual) between the buyer and us resulting from this Terms and Conditions and any sales contract concluded thereunder. However, we shall be entitled to issue proceedings incl. interim actions against buyer at any other place of jurisdiction given by law. Mandatory statutory procedural provisions, in particular on exclusive jurisdiction, shall remain unaffected.  
b. For buyers having its corporate seat outside the EU/EEA it is agreed: All disputes arising out of or in connection with this Terms and Conditions and any sales contract concluded, including its validity, shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law. The arbitral tribunal shall be comprised of a sole arbitrator. The seat of arbitration is Minden (Germany); the language of the arbitration shall be English.
- 13.4 Buyer undertakes to comply with the currently applicable data protection provisions.
- 13.5 Should any provision of the contracts, including these Terms and Conditions be or become invalid in whole or in part, the validity of the remainder of the provisions shall not be affected thereby.

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