

1. Generally:

All our supplies and services as well as all contracts concluded with us are exclusively subject to the following conditions of sale. Terms of the Purchaser which contradict or which deviate from our sales terms and which are not expressly recognized by us are not valid even if we do not expressly object to them. Where a continuing business relationship exists, all future contracts, supplies and services are also subject to our conditions of sale.

2. Offer, Conclusion of Contract: Our offers are subject to change and non-binding. Orders are only valid if confirmed by us in writing or if recognized by us through the act of delivery. Any additional verbal agreements, supplements and modifications are also only valid if confirmed in writing.

3. Delivery, Default:

3.1 Unless otherwise agreed, any dates quoted for delivery are non-binding.

3.2 We are entitled to make partial deliveries as far as the Purchaser must reasonably accept this in the circumstances of an Individual case. The corresponding invoices issued are payable without regard to whether complete delivery has been made.

3.3 In the event delivery is delayed, the Purchaser may set us a reasonable grace period with the notice that he rejects the acceptance of the delivery item after expiry of the grace period. After the expiry of the grace period, the Purchaser is entitled to cancel the contract of sale through written notice or to request damages instead of performance.

At our request the Purchaser is obligated to state within a reasonable period whether he cancels the contract due to delay in delivery, seeks damages instead of performance or insists on performance.

3.4 Our liability is set forth in para. 9. Furthermore In the event of slight negligence, our liability is limited to the invoice value of the respective delivery item.

4. Return of loan packaging:

In the event of delayed return (meaning In the event normal unloading times are exceeded) of loading equipment, loading tanks and other loan packaging we reserve the right to charge the Purchaser for the costs incurred by us.

5. Prices:

5.1 Unless otherwise expressly agreed, prices are quoted »ex works«, excluding packaging and plus delivery and shipping costs as well as plus any applicable Value Added Tax.

5.2 The prices valid on the day of dispatch shall apply. Should the latter be higher than the contractual price, the Purchaser is entitled to cancel the contract with regard to the quantities still to be delivered. Cancellation shall be made within 14 days after notification of said price increase.

6. Payment:

6.1 The payment shall be made in Euro to one of our bank accounts indicated on the reverse side.

6.2 Should Purchaser be in arrears with payment, interest for default shall be due and payable at 12 %, but at least 8 % above the respective base interest rate. We reserve the right to claim further damages. If the interest we claim is higher than the statutory interest for delayed payment, the Purchaser has the right to demonstrate lower damages just as we have the right to show that greater damages were incurred.

6.3 Should Purchaser be in arrears with payment or should there be reasonable doubts as to Purchaser's solvency or credit rating, we are - without prejudice to our other rights - entitled to require payment in advance for deliveries not yet made, and to require immediate payment of all our claims arising from the business relation.

6.4 Bills of exchange and cheques shall be accepted upon separate agreement and only by way of payment. All expenses incurred in this regard shall be borne by the Purchaser.

6.5 Only uncontested or legally proved claims shall entitle the Purchaser to set-off or withhold payment.

7. Force Majeure:

Events of Force Majeure, in particular strikes, lock outs, operation or transport interruptions, including at our suppliers, shall suspend the contractual obligations of each party for the period of the disturbance and to the extent of its effects. Should the delays caused exceed a period of 6 weeks, both parties shall be entitled to cancel the contract, with respect to the contractual performance affected by such delays. No other claims exist.

8. Quality:

8.1 All our data, especially data relating to product suitability, processing and use, as well as to technical support, have been compiled to the best of our knowledge. The Purchaser, however, must still perform his own inspections and preliminary trials.

8.2 The Purchaser undertakes to examine the goods immediately after delivery with respect to any detects concerning quality and suitability of purpose and object to ascertainable detects. Sample testing shall also be performed if this can be reasonably expected of the Purchaser. Failure to proceed in aforesaid manner shall result in the goods being regarded as accepted.

8.3 Complaints must be made within 8 days after receipt of the goods. In case of hidden faults, however, complaints are to be made immediately on discovery, within one year after receipt at the very latest. Said claims shall only be taken into consideration if and when made in writing and with the relevant documentation attached. To comply with the time limit it shall be sufficient if the complaint is sent in good time.

8.4 We are not liable on the basis of public statements by us, the manufacturer or his agents, if we were not aware of the statement or were not required to have knowledge thereof, the statement was already corrected at the time of the purchase decision or the Purchaser cannot show that the statement influenced his purchase decision.

8.5 We are not liable for defects which only marginally reduce the value or the suitability of the object. A marginal defect exists in particular if the defect can be removed by the Purchaser himself with insignificant effort.

8.6 If the Purchaser requests replacement performance due to a defect, we may choose whether we remove the defect ourselves or deliver a defect-free object as a replacement. The right to reduce the price or cancel the contract in the event of unsuccessful replacement performance shall remain unaffected.

8.7 Where complaints are justified, the goods may only be returned to us at our expense if after we receive notice of the defect we do not offer to collect or dispose of the goods.

8.8 If increased costs arise because the Purchaser has transferred the goods to a place other than his commercial place of business, we shall charge the Purchaser for the increased costs in connection with the remedying of the defect, unless the transfer corresponds to the designated use of the object.

8.9 Damage and claims for reimbursement of expenses shall remain unaffected as far as not excluded by para. 9.

8.10 All claims due to a defect are subject to a limitation period of one year after delivery of the object. No warranty is made for used objects. The statutory limitation period for objects which are used for a building structure in accordance with their usual manner of use, and which cause the defectiveness thereof, shall remain unaffected.

8.11 The rights of the Purchaser under §§ 478, 479 German Civil Code remain unaffected.

9. Liability:

Our liability is excluded, regardless of the legal grounds. This shall not apply in the event of intentional actions or gross negligence by us or our legal representatives or agents or in the event of breach of material contractual duties. In the event of a slightly negligent breach of material contractual duties, our liability is limited to twice the invoice value of the respective delivery item. For damages due to delayed performance para. 3.4 shall also apply. Our liability for damages due to injury to life, the body or health, the liability based on a guarantee and under mandatory statutory provisions, in particular the Product Liability Act, remain unaffected.

10. Reservation of Ownership:

10.1 The goods that have been sold remain our sole property until all outstanding debts arising from the business connection with the Purchaser have been paid in full. The Purchaser has power of disposal of the purchased goods in the ordinary course of business, or he may process the goods until revocation by us.

10.2 Reservation of ownership and power of disposal, as laid down in clause 10.1, also apply to the full value of the manufactured goods produced by processing, mixing and blending or combining our goods. In each case we qualify as the manufacturer. In cases where the goods are processed, mixed and blended, or combined with those of a third party, and where the reservation of the latter continues to apply, then we acquire joint ownership in proportion to the Invoice value of those processed goods. If security rights of a third party are in fact or in law below that share, the difference will be to our benefit.

10.3 If the Purchaser resells our goods to third parties he hereby assigns the entire resulting payment claim - or in the amount of our joint share therein (see para. 10.2) - to us. In the event the parties agree on a current account, the respective balance amounts shall be assigned. However, the Purchaser shall be entitled to collect such payment claim on our behalf until we revoke such right or until his payments are discontinued. The Purchaser is only authorized to make assignment of these claims - even only for the purpose of collection by way of factoring - with our express written consent.

10.4 The Purchaser shall immediately give notice to us if any third party raises any claim with respect to such goods or claims which are owned by us.

10.5 If the value of the collateral exceeds our accounts receivable by more than 20% then we will release collateral on demand and at our discretion.

10.6 We are also entitled to take back goods on the basis of the reservation of title, even if we have not previously cancelled the contract. If products are taken back by way of the exercise of the reservation of ownership, this shall not constitute cancellation of the contract.

10.7 If the laws of the country in which the goods are located after delivery do not permit the Vendor to retain the title to said goods, but allow the retention of other similar rights to the delivery item, the Purchaser shall provide us with such other equivalent right. The Purchaser undertakes to assist us in the fulfillment of any form requirements necessary for such purpose.

11. Place of Fulfillment. Applicable Law and Jurisdiction:

11.1 The originating point of the goods shall, in each case, be the place of fulfillment for the delivery. Kempten shall be the place of fulfillment for payment.

11.2 Exclusively the laws of the Federal Republic of Germany shall apply between the parties. The application of the 1980 United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

11.3 If the Purchaser is a merchant or does not have a general place of jurisdiction in Germany, the place of jurisdiction is Kempten. We shall, however, have the right to also bring a claim against the Purchaser at his general place of jurisdiction.