

§ 1 Scope; general

Our deliveries and performances are made exclusively in accordance with these General Terms of Sale and Delivery terms (terms). They shall also apply to all future business relations, even if they are not agreed explicitly again or we do not explicitly refer to them again. They shall also apply if in the individual case we have not raised objections against deviating terms of the customer which are hereby explicitly rejected. Our terms shall also apply if we execute delivery to the customer without reservations in spite of being aware of terms of the client (also called customer) contrary to, or deviating from, our terms. We shall not be under any obligation inasmuch as the customer's terms of business, independently of the contents of these terms, deviate negatively to us from statutory provisions. Acceptance of deviating terms and modifications must be made in writing. These terms do not apply with respect to consumers (in terms of § 13 of the German Civil Code [BGB]).

§ 2 Offer; conclusion of the contract; certification

1. Our offers are non-binding obligation. They are only invitations for the customer to submit orders to the customer.
2. The customer's order constitutes a binding offer. We can accept or reject this offer at our choice within 4 weeks by sending a documentary ('textliche') acknowledgement of the order from our competent department. If such an acknowledgement is not made, the delivery note, or an invoice sent before delivery, is deemed to be an acknowledgement of the order. Our silence does not constitute acceptance.
3. We reserve title ('Eigentum'), copyright as well as statutory patent and utility model rights for figures, drawings, calculations, results of data processing operations and other records made available by us to the customer within the framework of contract negotiations. They are entrusted only for the purpose of our respective offer and must not be made available to third parties, not even as extracts, without our explicit consent. This shall apply in particular to written documents marked "confidential"; before passing them on to third parties the customer must obtain our explicit written consent. Our documents concerning the order must be returned to us free of charge if it is placed elsewhere. Copies must be destroyed.
4. Our employees, commercial agents or other distribution agents are not entitled to waive the requirement of a written acknowledgement of the order, nor to make promises or give guarantees deviating in contents.
5. The customer tells us with his inquiry what certifications he requires and desires for items of deliveries and performances. The customer must bear the costs for certifications which are procured on the basis of his information submitted with regard to the items of delivery and performances, in particular the costs for any CCC certification.

§ 3 Prices; payments; packing

1. Unless anything to the contrary follows from the acknowledgement of the order, our prices are valid „ex works“. The Incoterms in the version valid at the time of conclusion of the contract shall apply. Taxes, in particular VAT, customs duties and levies as well as the costs for our customary packing, and any other costs we may exceptionally bear for freight charges, dispatch costs and other delivery costs, will be charged in addition to the quoted prices. We are not liable for any damage arising due to inadequate packing based on stipulations made by the customer. Unless anything to the contrary is agreed, we choose the packing, mode of dispatch and route of transport.
2. We reserve the right to raise our prices accordingly if after conclusion of the contract cost increases occur, because of the conclusion of collective agreements or price increases of materials, changed criteria for testing, product-related certification requirements and/or product specifications, if the time between contract agreement and scheduled delivery is at least 4 months and there is no corresponding compensation through reduction of other price levels during the same period of time. We are bound to prices for at least one year. We are not bound to previous prices in the case of new orders or follow-up orders. If the delivery quantity, delivery or size or other comparable parameters change in relation to the agreed price basis, we are entitled to demand adequate cost-compensation from the customer.
3. The customer is obliged to pay the sales price within 10 days deducting 2% cash discount or within 30 days net, reckoned from the date of the invoice. If this payment has not been made, the customer will be in arrears ('Verzug') as from this date without further preterms. Payment shall be made by bank draft. Any payment charges shall be borne by the contracting partner. Cash discount is granted on precondition that all invoices due previously have been settled.
4. We are entitled to charge maturity-interest. As from occurrence of the delay, we shall be entitled in accordance with § 247 of the German Civil Code (BGB) to demand interest on arrears ('Verzug') in the amount of 8 % above the basic interest rate. We reserve the right to claim further damage incurred.
5. If the customer is in arrears ('Verzug') with a payment, all other claims shall fall due immediately, unless the contracting partner is not responsible for the delay.

6. The customer shall be entitled to offset rights only if his counterclaims have become *res judicata*, are uncontested or are acknowledged by us.
7. Retention of a due payment by the customer is excluded, unless we substantially violate obligations arising from the same contractual relationship in spite of a written warning and do not offer appropriate hedging.
8. We shall be entitled at our discretion to appropriate payments at first to the account of costs, interest and/or older debts before the principal performance. In the event that we become aware of circumstances calling into question the customer's ability to pay and creditworthiness, the customer stops payments or it becomes known that an application has been made to institute insolvency proceedings, we shall be entitled to call in the entire remaining debt. In this case we may, in addition, demand advance payments and securities. As long as this has not been fulfilled or fulfilled in a contestable way only, we are not obliged to continue the performance. The same shall also apply in the case of late payment of a previous delivery. We are also entitled in the cases mentioned above to cancel all orders, after having set the customer an appropriate deadline, during which he, at his choice, can provide security or effect his counter-performance against our performance contemporaneously, provided that this deadline has expired without result. In the case of a revocation, the customer has to reimburse us for expenditures proven to have been incurred; we are entitled to claim further damages.
9. We shall be entitled to assign our claims against the customer.
10. Unless anything to the contrary is agreed, costs for moulds and development costs are remunerated separately. Regarding the costs for moulds, 50 % will be due upon placement of the order and 50 % after taking delivery, but 4/5 thereof at the latest 30 days after delivery of the moulds. Development costs will be due following acceptance of the respective performance; however, we have the right to demand payments on account, after agreed milestones have been reached.

§ 4 Quality; specifications; warranties; proprietary rights

1. Our deliveries and performances conform to the recognised state of the art. The content and execution of the deliveries and performances is given solely by the agreed specifications. For understandable reasons we are entitled to insist on a change of the specifications, or at our discretion to replace the affected items, in as far as reasonable for the customer, by deliveries and performances that are functionally equivalent, particularly in the case of changed availability of production materials or bought in parts unavailability of raw materials and purchased parts, except for considerably increased costs. We are entitled to make improvements of the delivery and performance items. The same applies, if purchasing costs do not increase only marginally. Specifications and References to legal and technical standards, and other technical documents serve as descriptions of the performances and must not be interpreted as warranties. In special cases warranties can be given, after negotiation and for reasonable reimbursement, in the form of an explicit separate warranty certificate from us in writing; otherwise no warranties are granted by us, particularly not in verbal form or by conclusive declaration; in every case warranties must be given by two employees. No warranties are given for wear parts. Consequential damage and consequential costs, in particular for transportation costs and costs entailed by mounting and dismantling are not comprised by guarantees.
2. If we have given advice to the customer outside our contractual performances, we shall be liable for proper functioning and suitability of the delivered product only in the case of gross negligence and intent.
3. Deviations from drawings, figures, measures, weights and other performance data usual in commercial practice are permissible.
4. In the case of deliveries in instalments, deliveries in excess of or short by up to 10 % remain reserved; in particular we shall be entitled to deliver completely filled loading devices; the total delivery quantity remains unaffected thereby.
5. Our deliveries and performances are suitable for normal use. The check of suitability for the utilisation envisaged by the customer is the responsibility of the customer, who will notify us in good time whether the product will be used under unusual terms, under terms entailing a special risk for safety, health or the environment, or under terms involving increased stress. He will also inform us without delay if it is found that our deliveries are unsuitable or only limitedly suitable for his envisaged utilisation. If our deliveries are conjoined with other objects or built- in other objects, the customer is responsible for the interfaces.
6. We are not obliged to check whether our deliveries and performances or their utilisation infringe proprietary rights, or applications for proprietary rights, of third parties. We are not liable for claims arising in connection with utilisation of our deliveries and performances in accordance with the contract from infringements of proprietary rights and applications for proprietary rights outside the Federal German Republic.

§ 5 Period of delivery and performance, partial delivery

1. Delivery periods do not begin prior to the submission of any documents to be procured by the customer that are required for handling the order, and not prior to receipt of agreed advance payments. A delivery period is deemed to have been observed if the consignment is ready for dispatch within the deadline and the customer has been notified accordingly, or when the consignment leaves our premises.

2. In the case of *force majeure* or other unforeseeable or exceptional circumstances, such as non-delivery by the previous supplier, interruption of operations due to fire, storm or similar circumstances, breakdown of production facilities or machines, strike or lockout, shortage of material, energy or transport facilities, interference by public authorities (even if occurring at our suppliers), we shall be entitled – in as far as the above circumstances prevent us from timely fulfilment of our obligation to deliver and perform – to delay the delivery or performance for the duration of the impediment. We immediately inform the customer of the appearance and disappearance of such a situation. The customer shall be entitled in any case to set an appropriate grace period of at least 14 days to us in writing, if we exceed the agreed delivery date by more than one week. After the grace period has expired without result, the customer shall be entitled to rescission. Claims of compensation and reimbursement of expenses are excluded.

3. We shall be entitled to partial deliveries to a reasonable extent prior to expiry of the delivery period. Partial deliveries and invoices for units capable of operating are permissible.

4. In the case of delay of dispatch of the delivery because of circumstances for which we are not responsible we shall be entitled to bill storage charges in the amount of 0.5 % of the invoice sum for every month or part of a month, unless the customer provides evidence of a lower damage. Further claims – e.g. all claims arising from occurrence of a delay – shall remain unaffected.

5. If an agreed delivery period is not adhered to through our fault, the customer shall be entitled, if we have not acted with gross negligence or wilfully, and under exclusion of further claims, to demand compensation for delay after expiry of an appropriate grace period of at least 14 days according to § 5 Item 2. The compensation for delay is limited to at most 5 % of the part of the delivery not effected on the due date. It is left to the customer to provide proof of a higher damage. Rights of the customer for rescission and giving notice of termination remain unaffected; but rescission and notice of termination shall be excluded if the customer himself is in default of acceptance.

6. In the case of orders on call without agreement of a term, sizes of production units and dates of acceptance, we can demand a binding decision to this effect at the latest 3 months after acknowledgement of the order.

7. If the customer does not meet his obligations to take delivery, we shall, notwithstanding other rights, not be bound to the provisions governing emergency sales, but instead are entitled to sell the delivery items elsewhere, after notifying the customer and expiry of a reasonable period of grace, normally after 14 days.

§ 6 Passing of the risk

Unless otherwise agreed, risk is passed to the customer as soon as the goods are placed ready for fetching at the agreed place. This also applies if we make arrangements for transport on request by the customer.

§ 7 Liability in the case of defects ('Sachmängelhaftung')

1. The customer shall check goods delivered coming to hand according to the statutory regulations and give notice of any defects forthwith and submit a detailed description of the defects complained of in writing. By handling complaints coming to hand and checking the goods we do not waive the assertion that complaints were late or incomplete.

2. We do not grant warranty for damages and disturbances attributable to natural wear and tear, faulty installation or putting into operation by the customer, improper use or operating errors, faulty or unsuitable electric power supply, operation with the wrong type of current or voltage, fire, lightning, explosion, moisture or failure to carry out necessary or recommended operational and/or maintenance tasks. Nor do we grant warranty in the event that parts are exchanged or materials for consumption are used that are not in conformity with the original specification.

3. We warrant ('gewährleisten') for a period of one year reckoned from the delivery and/or performance. If there is a defect we shall initially have the right according to our choice to rectify the defect or to deliver a product free of defects. In the case that subsequent fulfilment ('Nacherfüllung') fails, it is left to the customer to reduce the purchase price or to rescind the contract in so far, as he sees fit. A failure of subsequent fulfilment ('Nacherfüllung') is deemed to be given if two attempts of subsequent fulfilment ('Nacherfüllung') have failed. Further claims, and in particular claims for reimbursement of expenditures or for compensation on account of damages or consequential damages, exist only within the framework of the regulation in § 8. After subsequent fulfilment ('Nacherfüllung') has been effected, the warranty limitation for replaced parts does not run again from the beginning.

4. In as far as the customer is entitled to assert rights to set an appropriate deadline for us to render performance, the deadline is considered appropriate only if it is not shorter than 14 days. We shall be entitled to refuse subsequent fulfilment ('Nacherfüllung'), if it is possible only with unreasonably great effort or costs. Costs are unreasonably high in particular if the total effort

for subsequent fulfilment ('Nacherfüllung') (including compensation delivery) exceeds 110 % of the market value of the sold goods. Further rights of the customer shall remain unaffected.

5. We shall not bear the expenditures necessary for subsequent fulfilment ('Nacherfüllung'), in particular costs of transport, road toll, labour and materials, as far as any increase from the goods having been taken to a location other than the place of fulfilment.

6. If a defect is not ascertainable, the customer shall bear our expenditures resulting from the complaint including our costs of inspection..

7. Warranty claims against us are exclusively due to the direct customer and may not be assigned. § 354a of the German Commercial Code (HGB) remains unaffected.

8. In the case of insignificant defects, the customer has no right to rescind and remains obliged to accept delivery.

9. Recourse claims of the customer according to §§ 478, 479 of the German Civil Code (BGB) exist only if use by a consumer was justified and only to the legal extent, but not in respect of *ex gratia* settlements agreed with us, and presuppose observance of own duties of the party entitled to recourse, in particular observance of duties in respect of complaints. We shall not be liable if our customer has concluded a liability increasing agreement or if the objects of deliveries and performances by us are processed. Rights of recourse do not exist in case of goodwill of the customer

§ 8 Claims for compensation

1. Unless otherwise provided for in these terms, we shall be liable for compensation on account of violations of contractual, extra-contractual and statutory obligations and for reimbursement of futile expenditures only in the case of intent or gross negligence. This shall also apply to violations of obligations committed by our legal representatives and vicarious agents. In the case of slight negligence we shall be liable only if essential contractual obligations have been violated. In the event of liability we will, taking into account the limits mentioned below, make compensation for the customer's proven damage to the extent that was foreseeable for us upon conclusion of the contract with regard to the occurrence and amount of the damage as consequence of a neglect of duty and that could not be averted by the customer.

2. We shall not be liable for damages not having been caused to the delivered product itself; in particular, we shall not be liable for loss of profit or other financial losses incurred by the customer.

3. Liability for damages arising from injury to life, limb or health shall be excluded from the restriction of liability set forth above.

4. The aforementioned Terms also apply to claims arising from *culpa in contrahendo*, a violation of collateral duties and in particular to claims arising from the negligence independent product liability.

5. The customer may demand compensation in lieu of performance only in the case of considerable violations of obligations by us.

6. If the customer pleads an agreement on the nature of the product by virtue of a public statement or advertisement by us, the manufacturer or his agents, the burden of proof that this statement caused him to buy the product shall be on him.

7. Guarantees or guaranteed properties and/or qualities shall be effective only in written form and must have been signed by at least two staff members of our sales organisation. For guarantees § 4 Nr. 1 also applies.

8. If the contract relates to a product defined only on the generic level, our liability shall be governed by the regulations set forth above in this case as well; liability regardless of fault shall be excluded.

9. In other respects we shall be liable only within the limits of statutory regulations under private law.

§ 9 Reservation of title ('Eigentumsvorbehalt')

1. All our deliveries and performances are effected subject to reservation of title ('Eigentumsvorbehalt'). The title ('Eigentum') shall not pass to the customer until we have been satisfied in respect of all our claims arising from the business relationship. This shall encompass all claims regardless of legal grounds, including any arising or contingent in future as well as any arising from contracts concluded simultaneously or later within the framework of the business relationship. This shall also apply if payments are made for especially identified claims. In the case of a current account, the retained title ('Eigentum') serves as security for our claim in respect of the balance.

2. The customer shall be obliged to treat the purchased product with care, and in particular to insure it at his expense for new value against fire, water, storm, breakage and theft. If maintenance and inspection works are necessary, the customer must effect them at his expense in good time and an expert manner.

3. The customer shall not be permitted to pledge the delivered products to which we have reserved title ('Eigentum') or to assign them as security. In the case of attachments as well as seizures or other dispositions by third parties, he must inform the third party regarding our title ('Eigentum') and inform us immediately in writing and before that verbally. . In such a case the customer shall lend us assistance necessary for the safeguarding of our rights. Costs incurred for interventions that may become necessary shall be borne by the customer. If payments are suspended, the customer shall also notify us of items of our deliveries and performances still in his possession ('Besitz').

4. In the case of behaviour of the customer contrary to the contract, in particular arrears ('Verzug') with the payments, we shall be entitled – notwithstanding continuance of the contract – to demand back immediately the objects of deliveries and performances. The customer shall be obliged to surrender the objects. Our demand to return shall be regarded as rescission of the contract only if we explicitly state this in writing.

5. Processing or transformation of the reserved objects of deliveries and performances by the customer is always effected for us. In the case of processing, utilisation, compound or mixture, the reserved ownership of the processed, compound or mixed objects of deliveries and performances spreads to the processed, compound or mixed products. If the reserved products are processed, compound or inseparably mixed with other objects not owned by us, we acquire ownership ('Eigentum') of a new object in the ratio of the invoice value of the reserved objects of deliveries and performances to the invoice value of the other utilised objects at the time of the processing, compound or mixture. Co-ownership interests ('Miteigentumsanteile') thus created shall be considered to constitute reserved items of deliveries and performances in the sense of these terms. If our items of deliveries and performances are linked or inseparably mixed with other movable objects to constitute an integrated object and this object is deemed to be the main object, the customer shall transfer co-ownership ('Miteigentum') to us on a *pro rata* basis to the extent that the main object is owned by him. In the cases designated above, the customer shall as of now assign his title ('Eigentum') to the processed, connected or mixed object to us. Instead of surrender, the customer shall take the processed, connected or mixed object into safekeeping for us. In other respects the same regulations applying to the reserved items of deliveries and performances shall apply for the processed, connected or mixed objects.

6. The customer shall be entitled to process and sell the reserved objects of deliveries and performances in the ordinary course of business, unless he is in arrears ('Verzug') towards us or has ceased payment or an application has been submitted to institute insolvency proceedings in respect of his property. The customer shall as of now assign to us in full amount all claims against purchasers of third parties accruing to him from a resale, with all the rights pertaining thereto. We accept this assignment. If objects of deliveries and performances of the customer – are sold after processing, connection or mixture - together with objects not belonging to the customer, he shall already as from now assign to us the claims resulting from the resale in the amount of the value of the reserved items of deliveries and performances, with all ancillary rights and ranking in priority to other claims. We accept this assignment already as of now. The customer shall be authorised to collect this claim even after the assignment. Our possibility to collect the claims ourselves shall not be affected thereby. However, we will not collect any claims as long as the customer properly meets his obligations in respect of payment and otherwise, in particular is not in arrears ('Verzug') and no justified doubts exist regarding the ability of the customer to pay and his creditworthiness. The customer shall not be authorised in any case to assign the claim otherwise.

7. We can demand that the customer notifies us of the assigned claims and their debtors, provides all information required for collection, delivers the necessary records and advises the debtors of the assignment. Any bills of exchange that may have been given by third party buyers are to be assigned to us.

8. If the value of all the securities to which we are entitled exceeds the total claim against the customer by more than 20 %, we shall be obliged to this extent to release securities of our choice on the customer's request. If by mutual agreement we take back items of deliveries and performances, only the amount of their current market value shall be credited.

§ 10 Provisions, stipulations, third party rights, industrial property rights

1. If we have to deliver according to drawings, models, samples or use of parts or other provisions (materials) of the customer, the customer shall guarantee that third party rights, in particular third party proprietary rights, are thereby not infringed in the country of destination of the goods reported to us. The customer shall exempt us from third party claims in this respect and compensate us for incurred damage. If a third party forbids us production, delivery or performance by reference to a proprietary right owned by this party, we shall be entitled – without checking the legal situation – to suspend the works until the legal situation has been clarified by the customer and the third party. If continued processing of the order can no longer be reasonably expected of us on account of the delay, we shall be entitled of our own choice to rescind or give notice of termination, completely or partly. Claims on our part for damages remain unaffected thereby.

2. Drawings and samples made available to us that have not led to placement of an order will be returned by us on request, otherwise we have the right to destroy them 3 months after submission of the offer. We will first inform the customer in good time of the intention to destroy these items.

3. Copyrights and, where applicable, industrial property rights, and in particular all rights of use and utilisation as well as the know-how regarding the models, moulds and devices, drafts, drawings produced by us or by a third party to our order, as well as the delivery object, shall be due to us.

§ 11 Moulds/tools and provision of materials

1. The price for moulds also includes the cost of one-time sampling, but not the cost for testing and processing devices or for alterations instigated by

the customer. Costs for further samplings for which we are responsible shall be borne by us as far to our default.

2. Unless anything to the contrary is agreed, we are and shall remain owner of the moulds manufactured for the customer by ourselves or a third party commissioned by us. We are entitled to use moulds owned by us for third party orders. Our duty to keep the mould in custody shall expire two years after the last partial delivery using the mould and following prior notification of the customer.

3. If it is agreed that the customer becomes owner of the moulds, the title ('Eigentum') shall pass to him not until full payment of the purchase price. If the customer so wishes, we shall mark the moulds as customer property not in his possession and insure them on request by the customer at his expense. We are entitled to claim rights of pledge and retention.

4. Regarding moulds owned by the customer in accordance with paragraph 3 and/or moulds made available by the customer on loan, our liability in respect of custody and care shall be limited to the diligence shown in our own concerns. Costs for maintenance and repair shall be borne by the customer. Our obligations lapse if the customer fails to collect the moulds within an appropriate deadline after completion of the order and a request to this effect. We are entitled to claim rights of pledge and retention.

5. If materials are delivered by the customer, they are to be delivered in good time and perfect condition at his expense and risk with an additional quantity margin of at least 5 %.

In the case of non-fulfilment of these preconditions the delivery time shall be extended appropriately. Except for cases of *force majeure* the customer shall bear the additional costs thus incurred, including costs for interruptions of production.

We examine such materials on arrival only with regard to obvious damage, in particular transport damage, as well as with regard to identity and quantity deviations; we are not obliged to make goods arrival checks in other respects. We will notify the customer in writing without delay as soon as defects of the materials become known under the conditions of proper business practice, not later than four weeks after delivery. To this extent the customer waives the objection of late report of defects.

§ 12 Applicable law, place of fulfilment, place of jurisdiction, suspension of the statute of limitations, language

1. The contractual relationship shall be exclusively subject to the laws of the Federal Republic of Germany. Application of the UN agreement for international goods purchase (CISG) is ruled out.

2. Our place of business shall be the place of fulfilment for all obligations arising out of the contractual relationship.

3. The place of jurisdiction, also for complaints on bills of exchange and cheques, is our place of business, unless a different place of jurisdiction is stipulated for mandatory legal reasons. The same place of jurisdiction applies if the customer has no general home place of jurisdiction or moves his place of business to abroad after signing the contract. We have the right to take legal action against the customer in all cases also at his general place of jurisdiction.

4. Notwithstanding farther-reaching statutory regulations, the suspension of the statute of limitations shall also lapse if negotiations are not continued on the substance for more than four weeks. Restoration of the statute of limitations for claims of the customer shall require our explicit written confirmation in any case.

§ 13 Replacement of invalid clauses

If it turns out that any provision in these terms of business is or becomes invalid, the validity of all other provisions or agreements shall not be affected. The faulty provision shall then be replaced by an effective agreement coming closest to the economic purpose of the faulty provision. Additionally the basic principles of Supplementary Contract Interpretation ('Ergänzende Vertragsauslegung') apply.