

STANDARD TERMS FOR SALES AND DELIVERIES

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These Standard Terms for Sales and Deliveries shall apply exclusively. Diverging terms and conditions shall not be accepted by the seller unless the seller has expressly agreed to their application in writing. These Standard Terms for Sales and Deliveries shall apply exclusively even where the seller was aware of customer's contradicting or deviating terms and nevertheless made deliveries without reservation.

The Standard Terms for Sales and Deliveries shall only apply vis-à-vis public corporations, public separate funds and enterprises as specified in § 310 para 1 of the German Civil Code (BGB).

I. Delivery

a) Unless agreed otherwise the following delivery times shall apply to deliveries within Germany: order receipt times shall be Monday through Thursday from 7.00 to 13.30 and Friday from 7.00 to 12.00. There shall be no order receipt times on Saturdays, Sundays and on public holidays.

Applicable to Germany, deliveries with more than 2,500 kg shall be made within 48 hours after receipt of the order provided receipt has been within the order receipt times. Deliveries of less than 2,500 kg shall be made within 72 hours after receipt of the order provided receipt has been within the order receipt times. Time limits shall be suspended on Saturdays, Sundays and on public holidays from 0.00 to 24.00.

Orders received shall be processed within the above delivery times. Delivery times do only have to be observed where (i) the customer ascertains distinctness of the order, (ii) the customer does not demand conditions contradicting these Standard Terms for Sales and Deliveries, and where (iii) the seller does reject the order within the delivery time.

b) The seller shall be entitled to reject processing an agreement for as long as the customer is in delay with acceptance of a delivery, with the collection of the goods, or with a payment under any agreement entered into with the seller.

c) In case of unforeseeable und unavoidable events such as collective actions, riots and other cases of Force Majeure, for which the seller does not have any responsibility, agreed time limits shall be extended, even in cases of delay, for the duration of the disruption plus an appropriate lead time provided that the disturbances have an impact on the performance of the seller. This shall also apply if these events affect suppliers or sub-contractors of the seller. The seller shall inform the customer of the beginning and end of the disruption. Where the disruption lasts for more than one month after the end of the agreed time limit the seller shall be entitled to rescind the agreement in part or completely. In case of a rescission in part, the customer shall be entitled to rescind the agreement if he is not interested in the remaining performance. The customer shall be entitled to rescind the agreement in the case of failure of notification by the seller.

d) The compliance with performance obligations by the seller shall be conditional upon correct and timely deliveries being made to the seller. To the extent reasonably acceptable to the customer the seller shall be entitled to partial deliveries or partial performance.

II. Shipment

Unless otherwise agreed the shipment of the goods shall be at seller's risk.

III. Packaging

Acceptance without complaint of the goods by the railway, shipping company or by any other carrier shall exclude any and all liability of the seller based on inappropriate packaging or loading. In addition the provisions in section XII. shall apply with regard to the exclusion of liability.

IV. Weight

The weight determined in the factory shall exclusively be authoritative.

V. Warranty

a) The seller does not give any warranty with regard to defects caused by incorrect or inappropriate handling, storage or use or which are due to non-observance of the seller's instructions on processing, application and storage.

b) Warranty claims shall only apply where the customer has observed his inspection and reclamation obligations under § 377 of the German Commercial Code (HGB). Reclamations shall be notified to the seller immediately after receipt of the goods and as long as the goods are still in the transport containers so as to enable the seller to verify the reclamation. If samples of the goods have been taken at the place of lading by a sworn sampler then these samples shall be the sole basis for determining the quality of the goods. Reclamations of obvious defects shall be barred after processing or reshipment. In case of a defect the seller shall be entitled at his choice to remove the defects or to provide replacement goods. The seller shall not be liable for extra costs incurred because the goods subject to the reclamation have been forwarded to a place different from the commercial seat of the customer without such forwarding being in compliance with the purpose of the contract.

c) The customer shall be entitled to reduce the purchase price or to rescind the agreement where repair or replacement fail. If the customer rescinds the agreement he shall not be entitled to additional damages based on the defect. If only a part of the delivery is defective the customer shall only be entitled to rescind the agreement in full if he is no longer interested in the remaining part of the goods. If the customer chooses to claim damages, the seller shall be entitled to insist that the defective goods remain with the customer, provided this is reasonable. Damages shall be limited to the difference between the purchase price and the value of the defective goods, provided the seller has not caused the defect fraudulently.

d) The right of recourse of the entrepreneur in consumer sales under § 478 of the German Civil Code (BGB) shall not be available to the customer with regard to ex gratia performance. The customer shall furthermore not be entitled to recourse with regard to performance or costs concerning its customers or third persons if and insofar as such performance or costs are based on a declaration (e.g. warranty) of the customer or on an agreement which grants claims and rights to such customers or third persons which exceed the statutory claims and rights in case of a defect.

e) The customer shall only be entitled to make his claims based on a defect within an warranty period of twelve months from delivery. This shall not apply where mandatory rules of the statute of limitation (§ 479 of the German Civil Code) provide for a later time barring of the right of recourse of the entrepreneur.

f) Unless expressly agreed otherwise, in case of a purchase based on a sample the characteristics and qualities of the samples shall not be warranted or guaranteed.

VI. Payment

Unless otherwise agreed prices shall be ex works in EURO.

Unless otherwise agreed, the invoiced amount is payable without deduction fourteen days from date of invoice. Where payment is not received within this time the customer shall be in delay of payment.

The customer shall only be entitled to set off payments where counter claims are legally binding or undisputed.

VII. Customer's Delay in Payment

In case of customer's delay in payment the seller shall be entitled to claim interest in an amount of 8 % above statutory base rate p.a. Seller's right to claim additional damages caused by delay as well as other rights and claims of the seller shall remain unaffected.

VIII. Retention of Title

The goods delivered shall remain the property of the seller ("Retention Goods") until any and all claims (including without limitation accessory claims, claims for damages) the seller has under the business relationship with the customer have been settled, and until the payment by cheques or bills of exchange has been confirmed. This shall also apply if claims of the seller are added to an account current and the balance is struck and accepted.

The customer shall be entitled to process and sell the Retention Goods in the ordinary course of business unless the customer is in delay of payment. When selling the Retention Goods the customer shall retain title vis à vis third parties until full payment of the purchase price. Pledges and chattel mortgages shall not be allowed. Claims against third persons arising from the sale of the Retention Goods or arising otherwise with regard to the Retention Goods are hereby assigned by the customer to the seller as security in the amount invoiced for the Retention Goods. The seller hereby accepts such assignment. The customer shall remain entitled to collect his claims. The right of the Seller to collect the claims shall remain unaffected. He shall, however, refrain from collecting the claims for as long as the customer meets his payment obligations from the collected amounts, does not come into delay of payment, no application for opening insolvency proceedings has been filed or no cessation of payments has occurred. Where, however, such is the case the seller shall be entitled to claim that the customer provides him with information concerning the claims assigned, the debtors of such claims and further information in that regard and that the customer provides the corresponding documentation and informs the debtors of the assigned claims about the assignment.

Processing and working up of the Retention Goods shall be made by the customer for the seller. If the Retention Goods are processed or mingled with other goods of the customer the seller becomes co-owner of the resulting new goods in the pro rata value of the invoice value of the Retention Goods and the other goods at the time of processing or mingling. Where as a result of the processing the goods of the customer are the main item the customer shall transfer partial property to the seller. The customer shall keep the goods so owned or co-owned by the seller for the seller. Besides the same rules as for the Retention Goods shall apply to the goods resulting from processing, assembly or mingling.

The customer shall immediately inform the seller about any and all judicial execution measures or other interferences by third parties in the Retention Goods or the assigned claims and shall provide the seller with the documents required for his intervention. The customer shall bear the costs for out of court efforts for release and return as well as the costs of a justified legal action where such costs cannot be recovered from the third party.

In case of breach by the customer, particularly but without limitation in case of delay in payment or in case of an application for insolvency proceedings concerning the assets of the customer having been filed, the seller shall be entitled to rescind the agreement and to claim return of the Retention Goods. The customer hereby assigns his claims against his customers for return of the Retention Goods. The seller accepts such assignment. The statutory provisions about the period of grace and its dispensability shall remain unaffected. The taking back of the Retention Goods shall be deemed a rescission of the agreement. The seller shall be entitled to realise the goods.

Upon customer's request seller shall release securities of his choice where the value of the securities exceeds the value of the claims by more than 20 %.

IX. Official Order

If after entering into this agreement official orders or amended legislations pose new requirements to the seller which concern the sale or delivery of the goods sold under this agreement changes or amendments to these terms resulting from such orders or legislation shall be deemed agreed between the parties.

X. Exclusion of Liability

These standard terms for sales and deliveries contain fully and completely the provisions applicable to seller's liability for goods and his obligations. Any and all other claims for warranty or damages as well as any and all other rights for whatever legal grounds, particularly but without limitation claims for breach of contract, for damages, for lost earnings or other pecuniary loss shall be excluded. This exclusion shall not apply to cases of a guarantee given or of a purchasing risk, for the liability under products liability legislation, for the liability from the culpable causation of damage to life, body, and health or to the breach of fundamental contractual obligations. In case of the breach of fundamental contractual obligations - and except in cases of intentional acts or omissions, gross negligence and the liability for damages to life, body and health - the seller shall only be liable for typical damages, which were reasonably foreseeable. This shall not result in a change in the burden of proof to the seller's detriment. The limitation of liability shall also apply with regard to personal liability of the employees, statutory representatives and vicarious agents of the seller.

X. Place of Performance, Jurisdiction, Applicable Law

Unless otherwise agreed the place of performance for deliveries and payments shall be Hilter, Germany. The courts at the seat of the seller's headquarters in Hilter shall have exclusive jurisdiction. The seller shall, however, be entitled to sue the customer at his general place of jurisdiction (seat of headquarters).

The agreement shall be subject to German law. The rules of the UN convention on the International Sale of Goods shall not apply.