

1. Contract Conclusion

All orders from companies as well as from legal entities of public law and public-law special funds are subject exclusively to the following terms except when agreements to the contrary are made in a particular case. Contrary terms of the Buyer are not legally effective. The Buyer accepts our terms with the issue of the order or on receipt of the shipment. An order is binding on us only after our written confirmation or actual delivery. Changes, supplements or other ancillary agreements must be given in writing.

2. Offers and Prices, Price Revisions Reserved

Our offers are not binding. All prices are quoted in Euro ex works and exclude packing, freight, postage, customs duties and VAT at the currently applicable rate. Package shipments with a net value of over € 1,500 are delivered free of packing and freight within Germany; otherwise we will bill the extra costs beyond the package freight rate. For deliveries to third parties, we charge the costs resulting from the extra labour but not less than € 20. Any return shipments must be agreed with us in advance. Return shipments for which we are not liable must be made freight paid. We charge a processing fee of 20% of the value of the goods but not less than € 30 before tax. For all orders – including call-off and multiple delivery orders – we are entitled to pass on to the Buyer any increases of material and wages between contract conclusion and delivery within the limits of and for the purpose of compensating these price increases.

3. Shipments and Transfer of Risk

Shipments, also on freight paid basis, are made at the risk of the Buyer. We are not liable for damage or loss during shipment. Shipping insurance is concluded by us only at the explicit request of the Buyer and for his account. If a shipment is delayed due to circumstances beyond our control, the risk is transferred to the Buyer as of the date at which shipping readiness is notified.

4. Payment Terms

Our claims are payable in Euro free of postage and expenses in Attendorf on presentation of invoice or of an equivalent breakdown with a cash discount of 3% for payment within 7 days or of 2% for 14 days or at 30 days net, but not later than 30 days from due date and receipt of our delivery. Thereafter, we charge annual interest in an amount of 8% above the basic interest rate. For bills of exchange and cheques, payment is considered made only after redemption. Discounts and expenses are for account of the Buyer. No cash discount is granted for payments by bill of exchange. Cash discount deductions on new invoices are not permitted while older due invoices remain unpaid. Bills of exchange or cheques are accepted only on account of performance, bills only on separate agreement. Irrespective of the maturity of bills of exchange accepted or of a deferment granted, our claims become due immediately if the Buyer fails to observe the agreed payment terms or if circumstances become known which cast doubt on his creditworthiness. In such cases, we are entitled to make deliveries only on advance payment or on supply of collateral or to withdraw from the contract and/or demand compensation after setting an adequate grace period.

5. Delivery Term, Liability and Partial Deliveries

a) The delivery term begins as soon as all details of the order have been clarified and both parties are in agreement on all terms of the transaction and the Buyer has paid a possibly required downpayment. A delivery date is considered observed when up to its expiry, the products have left the factory or shipping readiness has been advised to the Buyer.
b) If shipment has not been made by the due date and has likewise not been made within an adequate grace period set by the Buyer – whereby the Buyer is required to set a grace period also when the shipping date has been or can be scheduled on a calendar basis – for reasons attributable to us, the Buyer is entitled to withdraw from the order.

c) Compensation claims are subject to the contents of Item 7 below.

d) Force majeure or circumstances beyond our control and which prevent the execution of the order by the agreed date entitle us to an adequate postponement of obligations assumed or, if our performance is rendered impossible thereby, to withdraw from the contract in whole or in part. The same applies if the materials required by us for the execution of the order and ordered from our suppliers fail to reach us or are not received in good time for reasons beyond our control provided we promptly inform the Buyer of the non-availability and reimburse possible counterperformances of the Buyer for the services not yet rendered. Compensation claims of any kind are excluded.

e) Partial deliveries are permitted when these are usable by the Buyer within the limits of the contractual purpose and no substantial extra costs are incurred by the Buyer as a result.

6. Complaints, Warranty, Liability

a) Under Sec. 377 HGB, in a mutual commercial transaction and irrespective thereof also in other transactions, the Buyer must promptly inspect the delivered goods on receipt – in particular for obvious defects – and report possible defects – including incomplete or erroneous deliveries – promptly, or in the case of defects only detected by the Buyer thereafter, within 3 working days. Otherwise, the goods are considered approved and do not entitle the Buyer to assert any rights against us. If a complaint is justified, we are required to provide for the free repair of the delivered goods or, at our discretion, deliver a replacement. If the repair or replacement fails or is denied as being without merit or is unreasonably delayed by us, the Buyer is entitled to a reduction of the price or, except when the object of the complaint is a construction service, at his discretion, demand the rescission of the contract.

b) Compensation claims are subject to Item 7 below.

c) Claims are not valid when the defect is caused by the non-observation of operating, maintenance or installation instructions, unsuitable or improper use, incorrect or negligent treatment, natural wear, or by modifications of the goods by the Buyer or a third party.

7. Liability for Compensation (Limits and Exclusions)

a) If we are in breach of a material contract obligation instrumental to the performance and proper execution of the contract and whose fulfillment the Buyer has a right to expect, we shall be liable only for simple negligence and possible claims for compensation shall be limited to the foreseeable typical damage at the time of contract conclusion.

b) In the event of our liability for simple negligence, our liability for property damage and resulting subsequent asset damage shall be limited to such damage which is customarily and typically insurable at reasonable terms under possible third-party liability insurance or product liability insurance even when a breach of a material contract obligation was involved.

c) Indirect or consequential damage as a result of a product defect is liable to be compensated only if such damage can typically be expected when the product is used for the intended purpose.

d) In all other matters – subject to lit. f below – our liability irrespective of the legal reason is limited to compensation in particular for infeasibility, delay, defective or incorrect deliveries, breach of contract, defective contract performance and unauthorized acts, as far as any culpability exists in a given case, and limited to damage that results from grossly negligent breach on our part or from premeditated or gross negligence by our legal representatives or vicarious agents.

e) The above exclusions and limitations of liability apply equally in favour of our corporate officers, legal representatives, employees or other vicarious agents.

f) The above exclusions and limitations of liability do not apply to damage resulting from injury to life, limb or health or from negligent dereliction on our part or from premeditation or gross negligence by our legal representatives or vicarious agents.

Warranty claims or claims under the ProdHaftG remain unaffected.

8. Offset

A Buyer may set off our claims only when they are undisputed or determined with legal finality.

9. Reservation of Title

a) We reserve ownership to the product (reserved goods) until all other claims against the Buyer out of our business relationship including future claims, also from contracts concluded simultaneously or in the future, have been settled. With open accounts, reservation of title and all rights serve to secure our total payment claims including interest and costs.

The Buyer must promptly notify us of any attachments or other interventions by a third party.

b) The Buyer is entitled to process and resell the product as part of his normal trade. This power ends if the Buyer is in arrears, suspends payments or if insolvency proceedings are opened over his assets. In such a case, the Buyer may resell reserved goods only with the proviso of our ownership and must ensure that claims from a resale as per lits. e and f are assigned to us. The use of reserved goods to meet manufacturing or service obligations is likewise considered a resale. Other forms of disposal of reserved goods, in particular their use as collateral or their assignment as a security, is not permitted.

An assignment of claims from the resale of reserved goods to a third party is not permitted unless it is an assignment by way of genuine factoring reported to us and in which the factoring revenue exceeds the value of our secured claims. Our claims become due immediately on receipt of the factoring revenue.

c) The Buyer does not acquire ownership to the new product in the sense of Sec. 950 BGB as a result of any compounding or processing of reserved goods. The processing or compounding is performed on our behalf without any obligation on us. Processed and compounded products are considered reserved goods.

d) The processing, mixing or blending of reserved goods with other products entitles us to co-ownership in the new product at a ratio of the invoice value of the reserved goods to the invoice value of the other products used in them. When our ownership expires as a result of mixing, blending or processing, the Buyer assigns to us already at this time the rights to actual or potential ownership of the new stocks or products to which he is entitled to the extent of the invoice value of the reserved goods, in the event of processing at the ratio of the invoice value of the reserved goods to the invoice value of other goods used in them, and agrees to maintain them in force on our behalf free of charge. Our rights of co-ownership are considered reserved goods.

e) The Buyer agrees to assign to us by way of security his claims out of a resale of reserved goods already at this time. They serve for security purposes to the same extent as reserved goods.

When reserved goods are resold by the Buyer together with other goods, the claim from the resale shall be assigned to us at a ratio of the invoice value of the reserved goods to the invoice value of the other goods. When goods for which we are co-owners as per lit. d are resold, the share of the co-ownership that corresponds to our part of the claims shall be assigned to us. Also shall be assigned to us all other claims taking the place of the reserved goods or created in their regard as e.g. insurance claims or claims due to breach of contractual obligations or unauthorized acts.

The Buyer is revocably empowered to collect for our account claims assigned to us. In the event that the conditions for the realisation of the collateral arise, we are entitled to revoke the power of collection.

f) The Buyer empowers us to inform other buyers of the assignment as soon as he is in arrears with a payment or his asset situation deteriorates, and to collect the claims ourselves. We may demand an audit of assigned claims by our agent using the bookkeeping records of the Buyer. The Buyer must hand over to

us a breakdown of reserved goods still at hand and give us all necessary information needed to assert assigned claims including a breakdown of his claims out of the resale of reserved goods, quoting names and addresses of the Buyers.

g) If the value of the existing securities exceeds the secured claims by more than 10%, we are at the request of the Buyer obligated to release securities of our choice while safeguarding the legitimate interests of the Buyer. The value of the securities in the case of a simple or subsequent reservation of title is the invoice value at which the Buyer has purchased the goods from us; in the case of an extended reservation of ownership it is the invoice value at which the Buyer resells our goods, in each case with a valuation discount of 1/3 off the purchase price or off the nominal value of assigned claims.

h) For bills of exchange, cheques etc., payment is deemed to have been made only after redemption by the Buyer has been confirmed. Cheques are accepted only on account of performance. Payments made on presentation of a bill of exchange issued by us are considered made only when recourse against us for a cheque or bill of exchange is no longer possible. Irrespective of our further rights, any securities granted to us remain in force up to such time.

i) Due to our reservation of title, we may demand the return of the goods if we withdraw from the contract. We are entitled to withdraw irrespective of any other conditions under Sec. 323 BGB, in particular without setting a limit date, as of the point of time at which the Buyer is in arrears with payments in whole or in part. The same applies if the Buyer suspends payments or if insolvency proceedings are opened over his assets. All costs generated by the repossession of the goods shall be borne by the Buyer. We are entitled to resell the retrieved goods on the open market.

10. Catalogues, Pamphlets, Offers, Drawings and Materials

All illustrations in our catalogues, pamphlets, offers, drawings etc. are not binding. Statements of weights and dimensions in offers and drawings are only approximate. Products are manufactured out of different materials, e.g. yellow brass, red brass, copper, stainless steel, plastic, rubber and others. We reserve the right to use equivalent or improved raw materials and to make design changes in the name of progress.

11. Export Restrictions

The export of our goods including their product descriptions to the USA or to Canada is explicitly prohibited and requires our prior written consent.

12. Place of Performance, Court of Jurisdiction, Governing Law

a) The place of performance is Attendorn.

b) The court of jurisdiction is the one competent for our domicile in Attendorn.

c) All deliveries and services are subject to the laws of the Federal Republic of Germany. UN Purchase Law is explicitly excluded.

13. Saving Clause

If one or several of these conditions should be ineffective, the validity of the remaining provisions shall not be affected.

14. Data Protection

Pursuant to Sec. 19 a BDSG, we advise that the personal data of the Buyer will be stored and processed by us as part of our business relationship.

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