

# General Terms and Conditions of Trade



## 1. General Terms and Conditions

1. We deliver and render services exclusively according to the terms and conditions given below.
2. The general terms and conditions shall also be valid for any future business relationship with the customer even if this is not explicitly mentioned when concluding the contract.
3. Any adverse or deviating delivery terms and/or supplementary conditions made by the customer shall not be acknowledged and accepted by us. By accepting the goods and/or services rendered the buyer expresses agreement with the terms even if the buyer explicitly rejected them a forehand.
4. Verbal subsidiary agreements and deviating agreements must be set down in writing.

## 2. Offer, Acceptance of Order and Cancellation

1. Until acceptance of orders our offers are subject to confirmation and non-binding and subject to goods being unsold.
2. The use of standards in brochures, offers or contract-bound documents solely serves the description of goods and does not warrant or guarantee any qualities. Manufacturer information is only binding if referred to explicitly in the relevant contract.
3. Should our confirmation of order contain any deviations from the buyer's order, these deviations are reckoned as accepted by the buyer if said buyer does not object within 8 days on date of issue of the confirmation of order in writing.
4. A withdrawal from the contract is only possible according to statutory provisions or after prior approval by us. In the latter case we are entitled to charge 10 % of the order's net value as a lump sum for administration effort.

## 3. Prices

1. Prices quoted are without engagement and will be quoted as the ones valid on the respective day of delivery of the ordered goods plus the VAT according to the statutory provisions of the Federal Republic of Germany.
2. Prices are quoted in EURO and are understood ex warehouse Dachau. We will charge a lump sum for postage and packing. Should the buyer request a special type of delivery/shipment, the actual expenses will be charged and/or shipment will be effected freight forward.
3. Overhead charges from the manufacturer due to metal price fluctuations and/or surcharges in the exchange rate ratio of the agreed currency will be passed on to the buyer.
4. The minimum order value amounts to EUR 1.500,-- net.
5. The minimum sales quantity per product item is one packing unit (VPE).

## 4. Time of Delivery, Delivery and Shipment

1. Times of delivery are without engagement. In case of unforeseeable incidents like industrial action, breakdowns at our factory or at our suppliers', delays due to a lack of correct and on time receipt of our own supplies, the period of delivery shall be extended for an appropriate period. Shall delivery and /or performance be made impossible due to force majeure beyond our control we will be relieved from the obligation to deliver or perform and claims for damages are ruled out.
2. In case of default of a delivery the buyer is entitled to withdraw from the contract after the expiration of an appropriate extension of delivery time if the merchandise has not been reported ready for shipment within this extension time. In other respects the terms of paragraph 2.4 will apply.
3. Shipment is effected at buyer's risk and account. Place of performance is D-85221 Dachau.
4. As far as legal liability is concerned in this context paragraph 4.3. stipulates that if the dispatch is delayed due to negligent conduct of the buyer the advice of the merchandise as being ready for shipment equals proper shipment. The merchandise is then stored at the buyer's risk and account. The Vendor then reserves the right to charge warehousing charges of 1 % of the net commodity value per month or part thereof.
5. We shall at any rate be entitled to make partial deliveries.
6. Call orders are valid for a maximum of 12 months. After the termination of this period we reserve the right to dispatch remaining quantities or cancel remaining quantities and reverse charges for quantity discounts granted beforehand.
7. Small Orders: We reserve the right to charge expenses for small shipments under EUR 500.-- net.

## 5. Obligation to take delivery and Return of Merchandise

1. The buyer's default of acceptance entitles us to demand acceptance of the entire or partial order or to withdraw from the contract. In this case we reserve the right to claim damages for nonperformance. We are entitled to claim compensation of 30 % of the net value of the merchandise without any further proof. This does not exclude any higher claims for damages.
2. In case of faultless merchandise that was returned to us without justified reason we are entitled, but not obligated, to take returned merchandise back and credit the buyer's account with the sales price minus 10 %, but at least € 10,-- as expense for administration effort. Should the merchandise be damaged we are entitled to deduct a higher share from the credit note amount for the depreciation in value. The credit note amount can also be reduced should further transport and packing costs arise.

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The reduction for administration effort will be higher respectively lower if vendor or buyer satisfactorily proves higher respectively lower expenses. Return of shipment has to be effected free domicile packing included. The risk of transport will be borne by the party that returns the merchandise.

## 6. Payment

1. The buyer shall render payments according to the respective individual terms agreed upon. Payments will always be set against the longest-standing invoice due.
2. If expressly stated in our respective offer or invoice we will grant a discount. We can only allow discount if no active debts are due. Should the buyer fail to consider these two details concerning payment potential discount deductions must be reversed.
3. As a basic principle we do not grant any discount on order values lower than € 250,- or do not allow any sales on credit; payment is due immediately.
4. We reserve the right to proceed delivery only against cash respectively cash on delivery or cash in advance. This especially applies to buyers not known to us.
5. We reserve the right to accept cheques and bills of exchange only as payment but not instead of performance. Bill and discount charges are on the buyer's account.
6. Payments are only considered effected with the date of total availability of the invoice amount to us.
7. The buyer will automatically be in a state of default in payment without any prior reminder when our invoice amount receivable is due. We must also point out that we reserve the right to claim further compensation for all damages resulting from the state of default.
8. We will charge default interest of 9 % above the applicable discount rate of the German Central Bank based on the gross amount receivable.
9. Any right of retention of the invoice amount or any offset because of prior notice of defects or because of controversial counter claims is ruled out.
10. If the buyer does not settle the invoice amount due or gets into default in acceptance of the merchandise or if cheques/bills of exchange handed over to him are not cashed in or if we learn - after having made our offer or after completion of contract - of any facts that seem to cast doubts on the buyer's solvency or willingness to pay we will be entitled to withdraw from the contract or, optionally, claim 30 % of the purchasing price as damages for non-performance or demand immediate prepayment of the purchasing price and immediate payment of all open accounts.
11. We are entitled to charge dunning costs as reimbursement of expenses.

## 7. Retention of Title

1. We deliver exclusively under comprehensive retention of title, i. e. that all merchandise will remain our property until full payment of our total receivables resulting from the business relationship with the buyer has been made. This shall also apply if the purchasing price for certain merchandise specified by the buyer has been paid. In the case of open accounts the reserved ownership concerning the merchandise in question will be considered as potential securities to balance our account.
2. No obligation whatsoever on our part will result if the buyer processes or treats the merchandise under retention of title for us. Should the merchandise under retention of title be processed, combined, commingled or mixed with components not belonging to us, we shall own the new product in proportion to the value of the goods delivered under retention of title to the other components as of the time of processing, commingling, combining or mixing. Should the buyer acquire the sole ownership of the new product the contractual parties agree that the buyer has to concede co-ownership in the new product to us in proportion to the value of the processed, commingled, combined or mixed merchandise under retention of title and that the buyer will hold the new product in safe custody and free of charge for us.
3. The buyer shall be obligated to immediately notify us of any garnishment or any other intervention of third parties concerning the delivered merchandise or any account assigned to us due to any resale of said merchandise and the buyer shall also be obligated to notify us of any circumstances of relevant significance to maintain our claims and protect our rights. The costs of intervening to protect our rights shall be borne by the buyer.
4. The buyer shall be obligated to take out, at his own expense, appropriate insurance at nominal value against the risk of fire and theft and to verify the effect of insurance without any additional request. The buyer shall surrender all claims against the insurers to us in so far it concerns the merchandise delivered by us.
5. In case of default in payment we are entitled, according to paragraph. 6.7, to demand immediate return of the merchandise. The buyer shall be obligated to store the merchandise under retention of title separately from other merchandise, to mark or label it as our property and to abstain from any disposal. We are entitled to commercialize the merchandise freehand by selling or auctioning it without prior notification. We are entitled to refund the amount - minus a 30 % lump-sum compensation for damages - to the buyer and then take the merchandise back and place them at our disposal.
6. The buyer shall only be entitled to resell the merchandise under retention of title in the proper course of business if the buyer herewith assigns all debts or claims arising from



the resale to purchasers or third parties to us. If merchandise under retention of title - unprocessed or processed or combined with components in the sole ownership of the buyer - is sold by the buyer, the buyer will now assign all debts arising from the resale to us in full. If the buyer sells any merchandise under retention of title - after processing/combining - together with merchandise which is not owned by us, the buyer shall now assign all debts or claims amounting to the value of the merchandise under retention of title arising from the resale to us (according to the ratio existing between the seller's ownership or co-ownership). We will accept the assignment. The buyer is authorized to collect this claim after assignment. Our authorization to collect claims in our own name remains unaffected by these facts; we, however, covenant that we will not collect claims as long as the buyer fulfils his obligation of payment and other obligations arising from said transaction correctly. We are authorized to demand from the buyer to notify us of assigned claims and debts and the respective debtor, to give all details necessary for collection, to hand over all necessary documents and to inform the debtor (third party) of the assignment of claims.

7. We hereby agree to gradually release at buyer's demand the securities obtained by retention of title if the property's realizable value exceeds the debts to be secured by more than 20 %.

#### **8. Notice of Defects, Warranty and Liability**

1. The buyer has to make any complaints concerning quantity and quality in writing immediately, but at the latest within one week after receipt of the merchandise. Hidden defects have to be protested immediately after discovery.

2. We will provide warranty within the time frame of the periods of warranty and the comprehensiveness of warranty that our suppliers guarantee. Warranty claims exceeding the above mentioned are excluded.

3. Irrespective of the provisions of the preceding paragraph 8.2 we exclude any further warranty claims and shall, at our option, remedy the defect or effect a subsequent delivery or performance within a customary and appropriate period of time. Protested parts have to be returned to us on our demand and at buyer's costs. Packing, shipment or assembly of the spare parts will be at the buyer's expense and risk. We shall not be liable due to possible defects, neither for consequential or collateral damage regardless of negligence or fault. That applies also in case of unsuccessful or imperfect rectification of defects or subsequent delivery or performance; in this case the buyer is only entitled to withdraw from the contract or to abate the purchase price.

4. However, in case of any claim for damages based on contractual or legal reasons, our liability shall be limited to the claim that our insurance company has to satisfy. Liability shall be limited to the amount covered in our liability insurance cover.

5. Our warranty obligations shall be suspended as long as the buyer is in delay in payment concerning any payment liabilities to us.

6. Warrantable repairs shall only be undertaken on presentation of valid warranty documents and the appropriate bill of delivery.

7. All claims are limited to a period of 6 months after transfer of perils.

8. Product liabilities for merchandise exclusively marketed and distributed by us are excluded.

#### **9. Repairs**

1. If a cost estimate is requested before carrying out repairs, said estimate has to be requested explicitly. The expenses for the cost estimate can be charged by us.

2. In case of the lack of a proper damage report our repairs will be carried out without engagement or guarantee.

3. We reserve the right to, optionally, carry out repairs in our repair shop or commission the manufacturer or another repair shop to carry out said repairs. Shipment will be effected at the buyer's risk and expenses.

4. Payment for repairs must match with delivery of the repaired product.

#### **10. Sales Commitment**

For merchandise subject to sales commitment and/or price maintenance the particular terms of the respective manufacturer shall apply in addition to our terms and conditions. The buyer is obligated to obtain the relevant information concerning these manufacturer terms.

#### **11. Place of Performance and Jurisdiction**

1. Place of performance for both parties shall be D-85221 Dachau.

2. Both contractual partners agree that any disputes arising under this contract or in connection with it will be settled before the Amtsgericht Dachau or the Landgericht München respectively the legal place of jurisdiction. The law of the Federal Republic of Germany shall apply exclusively. The application of the UN Trade Law shall be excluded.

#### **12. Severability Clause**

If some or several of these aforementioned general terms and conditions are or become invalid, the legal validity of the rest shall not be affected. In such a case, the parties to the contract shall define a provision which comes closest to the invalid provision as regards effectiveness and feasibility. Headings are only used to give a more comprehensive view of the text and do not have any substantive legal relevance, and do, in particular, not represent any final provision.

#### **13. Data Protection**

Notice is hereby given to the customer that we will electronically save and process his business data. We will limit the collection, storage and use of the

necessary data to the minimum required in conjunction with processing and executing orders properly in accordance with the valid German Federal Data Protection Act (Bundesdatenschutzgesetz § 26 BDSG).

#### **14. Non-Traders**

These general terms and conditions apply to business transactions with buyers for whom the transaction is not part of regular commerce, apart from the following limitations:

1. Paragraph 3.1 shall only apply if the period between order and delivery exceeds four months
2. Paragraphs 8.1 and 8.2 shall not apply
3. Paragraph 6.9 does not apply in case of retention of the purchasing price for a purchased product that is defective.
4. Claims for damages according to paragraphs 4.1 and 8.3 are not excluded if damage was caused by grossly negligent conduct of our company.
5. Expenses to remedy a defect or subsequent delivery according to paragraph 8.3 will be borne by our company.
6. Paragraph 8.5 shall only apply in so far as the buyer is in delay in payments in other mutual business transactions or if the delayed payment is in no relation with the open claim.

*These general sales conditions exist in a German and an English version. In case of discrepancies or ambiguities the German version shall prevail exclusively.*

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