

# Terms of Delivery and Payment

## 1. General

These Conditions shall solely apply to all offers, deliveries and services. Also all future business relations shall be subject to these Conditions, also if not expressly included in future delivery relations. The written acknowledgement of order jointly with these Standard Terms of Delivery and Payment shall solely govern all contracts. Any deviating general terms and conditions of the Purchaser shall be held valid only if accepted by us in writing. Otherwise we expressly oppose them herewith. They shall not be binding upon us even if we do not specifically oppose them once more before or after the delivery of the goods.

At the latest, the receipt of our delivery or partial delivery by the Purchaser shall be held as implying his acceptance of these solely valid conditions. This applies also if he formally excluded in his standard conditions for purchase orders the validity of deviating conditions as we only accept orders subject to our conditions. Any insurance and customs fees shall be borne by the Purchaser. If incidental expenses, (freight et cetera) included in the price should become subject to a rise or additionally originate after sending the order acknowledgement, such additional costs shall be borne by the Purchaser.

## 2. Offers

Offers are without engagement and for immediate decision unless we expressly declare ourselves bound to them.

## 3. Prices

Prices are those indicated in the order acknowledgement plus VAT rates in force from time to time. Additional deliveries and services such as e.g. freight and packing are invoiced separately. If the Purchaser pays a share of the tool costs this does not entitle him to the tools which remain the Seller's property. Any packing requested or deemed necessary by the Seller is to be provided by the Purchaser or invoiced by the Seller at cost price. If after acknowledgement of order, price or wage increases or other price rising circumstances occur, the Seller is entitled to increase the agreed upon price correspondingly.

## 4. Passing of risk

Risk in the goods shall pass to the Purchaser when they are delivered to the person carrying out the transport or have left the store of the Seller for shipment. This applies also in case of delivery free place of destination. If dispatch is not possible due to no fault of the Seller, the risk shall pass to the Purchaser upon notification of availability for shipment.

## 5. Delivery

Partial deliveries are admissible unless otherwise agreed to expressly. Discrepancies between the quantity delivered and the quantity ordered are admissible up to +/- 10% with respect to the total contract quantity as well as to the single partial delivery. Delivery terms and dates are indicated as approximate unless expressly confirmed in writing as binding. The time of delivery commences on the day we send our definite acknowledgment of order, however not before all details of execution of order are cleared up. Any stipulated delivery period specified in the acknowledgement of order begins at the plant floor of the Seller. The observance of delivery dates is dependent on the fulfillment of the contractual obligations of the Purchaser. The time of delivery will be prolonged adequately if delays occur due to unforeseen events, especially lack of energy or raw material, strikes, lockouts or measures adopted by public authorities or delay or no availability of vendor parts. If such events hinder or delay the delivery for more than one month or cause discontinuing operations in the plant of the Seller or his suppliers, or extraordinary and not only temporary events occur beyond the control of the Seller, the Seller is entitled to terminate the contract.

The Purchaser shall also be entitled to terminate the contract in case of a delay in the Seller's delivery and the appropriate grace period granted him having been to no avail. If the Seller cannot comply with his obligations under the contract due to reasons attributable to him, the Purchaser is entitled to terminate the contract to the exclusion of any further claims, in particular damage claims.

## 6. Acceptance

If an acceptance has been agreed upon, this has to be made on the place of the manufacturing and upon advice of the Seller. Any acceptance costs shall be for the account of the Purchaser. If the acceptance of the sold goods is not made in time or complete, notwithstanding notification of goods ready for shipment, the Seller is entitled to ship the goods without the Purchaser's readiness to take up the goods or to store the goods for the account and risk of the contracting party. The goods are deemed to have been delivered according to contract in all respects the moment they are sent or stored.

## 7. Liability for defects

Claims by the Purchaser in respect of shortages in quantity or the quality of goods shall be made in writing at the latest two weeks after receipt of the delivery. If quality defects including the lack of warranted characteristics are found to be justified, we will supply a replacement at no cost and freight free the original place of destination, if the defective material exceeds 3% of the delivery volume and the defective pieces are returned. Should the delivery of the replacement fail after an appropriate period, the Purchaser is entitled to request at his choice reduction of price or rescission of the order. Any warranty for normal wear and tear is excluded from the guarantee. Only the direct purchaser has the right to indemnification and this right cannot be assigned.

## 8. Limitation of Liability

Save as may otherwise be provided hereinafter, all other and further claims of the Purchaser made against the Seller are excluded. This applies specifically to damage claims for delay, impossibility to perform, breach of additional contractual obligations, negligence in contracting and unlawful acts. We shall not be liable for damages not caused directly on the delivered goods, nor for loss of profit or other pecuniary damages of the Purchaser. The limitations of liability as aforesaid do not apply in case of intent, gross negligence of our legal representatives or executives and in case of violation of essential contractual obligations. In such a case of contravention of essential obligations under the contract we only accept liability for the reasonably foreseeable and contractually typified damage, with exception of intent of gross negligence of our legal representatives or executives. The limitation of liability furthermore does not apply in those cases where according to the law of product liability, liability is assumed, in case of defects in the delivered goods, for injury to persons and damages to privately used subject matter.

This limitation furthermore does not apply in cases of fatal injuries, bodily harm or injuries to health and lack of warranted properties if and to the extent that it was just the purpose of the warrant to protect the Purchaser against damages not caused on the delivered goods themselves.

## 9. Reservation of ownership

1. Delivered goods remain the property of the Seller up to the fulfillment of all claims including accessory claims, claims for damages and cheque and bill collection.

2. The reservation of ownership is maintained also if any claims of the Seller have been included into a current invoice and balance has been made up and acknowledged.

3. In case proprietary goods are processed by the Purchaser into other movable goods, the processing is made for the Seller however without establishing an obligation for him. The new goods become the property of the Seller. In case of transforming mixing or blending with other goods not of the Seller's property, the Seller acquires the co-property in the new goods in the proportion of the value of his proprietary goods versus the total value.

4. The Purchaser shall have the right to resell and re-process or incorporate the proprietary goods only on the basis of the following conditions and only if claims according to sect. 6 have been effectively transferred to the Seller.

5. The right of the Purchaser to sell, process or incorporate the proprietary goods in normal course of business terminates with the Seller's revocation due to a persistent worsening of the Purchaser's financial situation, at the latest with the suspension of payment or composition proceedings in his assets.

6.

a) The Purchaser herewith assigns to the Seller claims with all accessory rights resulting from the sale of the proprietary goods.

b) In case the goods were processed, mixed or blended and the Seller has thus obtained a co-property up to the value of his invoice, he is entitled to a proportion of the purchase price up to the value of the rights he holds on the goods.

c) In case the Purchaser sold his claim under the terms of a genuine factoring, the Seller's claims will be due for payment immediately and the Purchaser assigns the claim on the factor to the Seller and passes on the sales proceeds immediately to the Seller and the Seller accepts this assignment.

7. The Purchaser is entitled as long as he meets his liabilities, to collect assigned claims. The collection authority becomes void upon revocation, at the latest in case of suspension of payment of the Purchaser and after express reminder of the Seller. In this case the Purchaser authorizes the Seller to inform customers about the assignment and to collect himself the claims. The Purchaser is obliged to send to the Seller upon his request a precise list of claims due to the Seller, with names and addresses of customers, amounts of individual claims, date of invoices etc. and to give to the Seller all information necessary to assert the assigned claims, and to permit him the checking of this information.

8. In case the invoiced sales value of the security in favor of the Seller exceeds his total claims incl. accessory costs (e.g. interest, expenses) by more than 20%, the Seller upon request of the Purchaser or a third party prejudiced by the Seller's over-securing, is under the obligation to release securities, at the Seller's choice.

9. No pledging or ownership transfer of goods to which property has not yet passed, or of claims assigned will be permitted. In case of pledges, the Seller must be informed immediately and the pledge must be named.

10. If the Seller takes back the delivered goods in consideration of the reservation of ownership, the contract is cancelled only if the Seller expressly makes such a statement. The Seller may sell the proprietary goods he took back in the open market to meet his claims.

11. The Purchaser shall hold in custody the proprietary goods at no cost to the Seller. He has to insure them to the extent as is usual against normal risks such as e.g. fire, theft and water. The Purchaser herewith assigns his damage claims arising from the above mentioned type of damages against the insurers or other substitute obligors, to the Seller up to the amount of the invoiced value of the goods. The purchaser accepts the assignment.

12. All credits and the rights arising from the reservation of ownership with respect to all in these conditions stipulated special forms shall be maintained until the complete release from the contingent liabilities which the Seller had incurred in the Purchaser's interest.

## 10. Terms of Payment

Save as may otherwise be provided, the invoices of the Seller are to be paid 30 days after date of invoice without deductions. The Seller shall have the right, notwithstanding other terms of the Purchaser, to first offset payments against old debts of the Purchaser and will inform the Purchaser about the manner of the offsetting made by him. If any costs arose already, the Seller is entitled to first offset the payment against such costs, then against interests and lastly against the principal claim. A payment is only deemed to be made the moment the Seller can dispose of the amount. In case of payment by cheque, the payment is deemed to be made the moment the cheque is honored. In case of delayed payments, the Seller may charge the Purchaser interests at the rate of 8% above the basis rate as overall damage claim, beginning from the due date. It is admissible that the Seller furnishes proof of higher damages. If the Seller comes to know of circumstances involving the solvency of the Purchaser, especially the dishonouring of a cheque or any non-payment, the Seller is entitled to request the immediate payment of the total residual debt even if he accepted cheques. The Seller furthermore has the right in this case to request advanced payments or securities. The Purchaser is only entitled to offsetting, retention or reduction, also when asserting complaints or counterclaims, if the counterclaims have been validated or are incontestable.

## 11. Final provisions

Place of performance for all claims arising from the contract is the venue of the Seller. The Seller shall be entitled also to bring any actions or proceedings against the Purchaser in the courts having jurisdiction over Purchaser's location.

The contract is to be construed exclusively according to the laws of the Federal Republic of Germany with the exclusion of foreign law.

If any provision of these Terms shall be held invalid, the rules of the HGB (Commercial Code) and the BGB (Code of Civil Law) shall correspondingly apply. All other admissible provisions remain valid. The rights of the Purchaser are not transferable.