

General Terms & Conditions

1. General

Our terms and conditions shall apply to the exclusion of any others. We do not accept any conditions which conflict with or deviate from our own sales conditions except for those whose validity has been expressly agreed by us. Our sales conditions shall also apply if we supply the buyer without reservation with the merchandise ordered even though we are aware of the buyer's own conflicting or deviating conditions.

Our terms and conditions apply only to companies as defined in § 310 para 1 BGB (Federal German Civil Law Code) and are binding between the contractual parties for all future transactions.

2. Quotations

Our quotations remain without obligation; a binding contract is established only on receipt of our written order confirmation.

3. Prices

Our prices are for goods ex-works and exclude packaging which is invoiced separately. In the event of increases or decreases in the charges or fees pertaining to merchandise movements (e.g. duties, freight charges, taxes) after a contract has been concluded, we are entitled to adjust our prices accordingly provided that the changes in such charges were unforeseen at the time of concluding the contract. The same applies to unforeseen negotiated wage increases and price changes by our subcontractors which take effect after conclusion of a contract.

4. Payment

Our invoices are payable in full within 30 days net from date of invoice. If payment is received within 10 days from date of invoice, we offer a 2% discount. In the event of default we are entitled to charge default interest of 8% above the basic interest rate set by the European Central Bank. On submission of appropriate proof, we shall also be entitled to claim further damages caused by such default.

Payment by bill is permitted only if based on express agreement. Bills or cheques are accepted only as payment with a view to performance. In the event of payment by cheque or bill, the buyer is liable for any bill and discount charges. The buyer is entitled to offset claims provided his counterclaims are legally established, uncontested or accepted by us. The buyer's right of retention is restricted to his counterclaim arising from the same contractual relationship. We are entitled to offset any claims we may have against the buyer even when such claims are not yet due. In such cases we shall pay the buyer the difference in interest of 5% p.a. Differences in the method of payment (cash on the one hand, accepted bills on the other) do not preclude our right to offset.

If the buyer defaults on his payment or if justified doubts exist as to his solvency or creditworthiness, we are – our other rights notwithstanding – entitled to demand collateral or payment in advance for outstanding performances and immediately to call in all claims arising from our business dealings.

If the buyer refuses to provide collateral or to pay in advance having been given notice, we are entitled at our option to withdraw from the contract or to claim compensation for non-fulfilment.

5. Delivery Dates

Delivery times are stated by week number. Delivery dates are deemed to have been met if, prior to their expiry, the buyer has been advised that the merchandise is ready for shipment or that it has left the works. If design documentation, patterns, samples and similar are required in order to fulfil the order, delivery times do not start until these have been received.

In the event of industrial action, particularly strikes and lockouts, and in case of unforeseen circumstances beyond our control, e.g. breakdowns or delays in the delivery of essential supplies, insofar as such circumstances can be demonstrated to have a considerable impact on the delivery of the merchandise, delivery times shall be extended in line with the duration of such action or circumstances. Should the resulting delay exceed a period of six weeks, both parties are entitled to withdraw from the contract covering the affected scope of performance. No other claims apply.

Our obligation to supply is suspended if the buyer is in arrears with a payment.

Starting from the second week of a delay for which we are liable, the buyer is entitled to claim overall default damages of 1% of the value of the merchandise to a maximum of 5%. The supplier reserves the right to demonstrate to the buyer that no damages or lesser damages have resulted from the delivery delay.

If, while we are in default, the buyer extends the delivery date by an appropriate period of time and gives notice of non-acceptance, he is entitled to withdraw from the contract after the extended period has elapsed without fulfilment.

If the buyer defaults on accepting the merchandise or otherwise fails in his contributory duties, we are entitled to claim for any consequential damages including any potential additional costs. In this case, the risk of accidental deterioration or destruction of the merchandise passes to the buyer as soon as he defaults on accepting.

6. Scope of Supply

The scope of supply is determined by our written order confirmation.

We reserve the right to over- or under-supply by up to 10% of the quantity ordered.

7. Passing of Risk

Unless otherwise specified in the order confirmation, delivery is agreed to be 'ex-works'. This also applies if the transport is undertaken by us.

8. Retention of Title

Goods supplied remain our property until all claims, including any which – for whatever legal reason – may arise in the future, have been fully satisfied. This also applies to any single or all of our claims which may have been included in a current account already balanced and accepted.

The buyer is entitled, in the course of normal business, to sell on the goods in which we reserve title. This power of disposition may however be retracted if the buyer does not fulfil his contractual obligations. In this event, and especially if the buyer has defaulted on payment, we are entitled, after giving notice, to take back the goods, and the buyer is obliged to hand them over. A retraction is deemed to have been declared in the event of a failure to pay or of any application to start proceedings for a settlement with creditors or for bankruptcy proceedings concerning the purchaser's assets. Enforcement of our retention of title or distraint of goods supplied does not denote our withdrawal from the contract unless we have declared it so in writing.

In case the goods are being sold on, however, the buyer assigns to us now all claims totalling the value of the purchase price, including VAT, agreed between the buyer and ourselves which arise from his resale of the goods to his client, irrespective of whether the goods supplied are being sold on with or without further machining. The buyer remains entitled to collect the claim until and unless his power of disposition is retracted.

Nevertheless our power to collect such claims ourselves remains intact. We undertake, however, not to collect the claim ourselves provided the buyer is not in default of payment. Should this be the case, though, we are entitled to demand that the buyer inform us of the claims assigned and of their debtors, that he make available all information necessary for collection, hand over all relevant documentation and advise the (third party) debtors of the assignment.

If so requested by the buyer, we will, at our option, relinquish collateral rights provided that their value exceeds our claims by 20%.

9. Warranty – Limitation of liability

The buyer loses any right to warranty if he fails to fulfil his duties to examine the goods supplied and to notify us of any defects. Any apparent defects must be notified within six days from receipt of the merchandise. Concealed defects must be notified within eight days following discovery. The warranty is precluded in cases of unsuitable or inappropriate use, faulty installation, inappropriate commissioning of the merchandise by the buyer or by third parties, normal wear and tear, excessive stress, unsuitable working stock, alternative tools or any other damaging influences not caused by any negligence on our part.

The warranty expires one year after the passing of risk.

In the event of a defect in the merchandise, for which we are liable, the buyer, in pursuance of his rights, shall give us notice of a date by which to fulfil. We are entitled at our option to remedy or replace said merchandise. In the event of remedy, we pay in full for material, transport and labour charges but 50% only of any charges covering installation and assembly.

If we are not willing or able to fulfil, especially if such fulfilment is delayed beyond the date set for it due to reasons for which we are liable, or if remedy or replacement fail in any way, the buyer is entitled to evoke his rights concerning rescission or price reduction.

All claims for defects of the supplies or tortious actions against ourselves are excluded, irrespective of the nature of the breach, except in cases where gross negligence or wilful violation of a primary contractual obligation (cardinal obligation) might prejudice the aim of the contractual scope. In case of breach of a primary obligation our liability we shall be liable for any kind of negligence, but only to the extent of foreseeable damages and namely only up to the value of the order. Claims for loss of profit, losses, saved costs, third party claims and for any direct and indirect damage shall be in any case excluded.

The above liability limitations and exclusions shall not apply to claims basing on fraudulent actions, to product liability claims provided under German statutory law (*Produkthaftungsgesetz*) nor to damages to life, body or health. Any liability limitation or exclusion shall also extend to our employees, workers, representatives and consultants. The applicable statute of limitation shall be the one provided under par. 9 section 5, expect for claims under the German product liability statutory law.

10. Place of Performance and Legal Venue

Unless otherwise stated in our order confirmation, place of performance is Dortmund.

Legal venue is Dortmund. We are however also entitled to sue the buyer at his court of domicile.

11. Applicable Law

Any legal relations with the buyer shall be exclusively subject to German law, to the exclusion of any laws governing international trade, even though the buyer's registered office may be abroad.