

General Terms and Conditions (GTC)

I. Scope of GTC, Offers

1. The Terms and Conditions set out below shall form part of the Contract concluded with us. This also applies to Contracts of work and labour and the delivery of non-fungible goods. These General Conditions are intended to be applied to commercial transactions with entrepreneurs, body corporates organised under public law or special funds under public law. Our General Terms and Conditions shall apply to all subsequent transactions without any need of express reference thereto or Contract thereon at the conclusion of such transaction. We hereby object to any counter confirmation, counter offer or other reference by the Buyer to its general terms and conditions; any dissenting terms and conditions of the Buyer shall only apply if we have confirmed the same in writing.

2. Our offers are subject to alteration. Verbal agreements, consents, and guarantees with reference to the Contract given by our employees shall apply only if we have confirmed the same in writing.

3. In case of doubt the current version of Incoterms as amended from time to time is binding for the interpretation of individual clauses.

II. Prices

2. Unless otherwise agreed in writing, prices and conditions of our price list effective on the day of conclusion of Contract shall be applied. Any additional costs shall be born by the Buyer. Customs duties, consular charges, transportation charges, insurance premiums as well as all other additional costs shall be born by the Buyer.

2. In the case of master agreements and third-party-deals we are entitled to increase the agreed prices as much as our suppliers have increased their prices before. This only applies when there are more than three months between conclusion of Contract and delivery of goods. In cases like that, the Buyer can withdraw from the Contract. The Withdrawal Note must be sent immediately upon receiving our notification of price increase. The Right of Withdrawal does not apply for price increases in connection with agreed escalator clauses or agreed variable price surcharges.

III. Payment Conditions, Offsets

1. Our price claims are net cash amounts and payable free of any deduction within 30 days upon the invoice date unless other payment terms shall have been agreed to in writing. Payments within 14 days upon the invoice date are subject to a two per cent discount on the net price. Payment must be made in a way ensuring we have the full amount at our disposal on the date of maturity. Costs of payment transactions shall be born by the Buyer. The Buyer shall have neither right to set off, nor for retention nor reduction unless the underlying counterclaims have been conclusively determined by a court or expressly acknowledged by us.

2. If the invoice amount shall not have been settled within 30 calendar days after the date of invoice or at another due date, then we shall without the need to a separate warning notice have the right to recover default interest in an amount equalling 8 full percentage points above the base rate unless higher interest rates have been agreed to. Claims for damage caused by delay reserved.

3. If, after conclusion of the Contract, it becomes obvious that our pecuniary claim might be jeopardised by lack of solvency of the Buyer, or if there is a substantial delay in payment, or if there are other circumstances which indicate a substantial material worsening of the pecuniary conditions of the Buyer after conclusion of the Contract, we are entitled to use our rights according to § 321 BGB (German Civil Code). Then we shall have the right to declare all our claims arising from the business relationship as immediately payable.

4. However, the Buyer is only entitled to the early 2 per cent discount if all due invoices have been paid at that time. Deductions can only be based on the price of goods and exclude freight. Unless otherwise agreed in writing, cash discount periods begin at the date of invoice.

IV. Contractual Terms of Delivery

1. Unless we are liable for delays, our deliveries are executed with the reservation that we have been supplied correctly and in time by our suppliers.

2. All details about delivery times provided by us are approximate. Lead times start with the date of order confirmation, on condition that all details of the order have been clarified and all necessary obligations of the Buyer with respect to, e.g. handing over of official permits, making available of letters of credit, of guarantees or the payment of deposits have been fulfilled.

3. In order to meet the agreed delivery deadline, the moment of dispatch from the factory/warehouse is decisive. The deadline is kept even if, upon notification of readiness for dispatch, the goods are not sent within the period stipulated through no fault of ours.

4. In case of delay in delivery the Buyer shall offer a reasonable extension of deadline. The Buyer is entitled to withdraw from the Contract if the delivery has not been executed when this new deadline expires. Claims for compensation must be made according to section XI of these GTC.

V. Retention of Title

1. We shall retain full title of the goods that have been delivered until the Buyer has discharged all claims arising from the business relationship which shall include any payment balance requests and claims from refinancing or change of drawee. This also applies to payments for especially described accounts receivable. This retention of title finally expires with settlement of balance of all accounts receivable covered by this retention.

2. Processing of goods subject to retention of title is executed on behalf of us as the manufacturer in terms of § 950 German Civil Code (BGB) without binding us. The Buyer's right to process the goods delivered shall also be subject to the limitations set out in subsection V.1 above. If the goods in which we have retained title shall be inseparably assembled or mixed with goods that are third party property, then we shall acquire co-title in the new goods or the mixed stock. The proportion of title shall follow from the proportion of the invoice value of the goods delivered by us under retention of title and the invoice value of the other goods. If we should, for whatever reason, lose our rights under the retention of title, then it is hereby agreed between us and the Buyer that we shall acquire title upon processing of the goods and the Buyer shall remain custodian of the goods which shall be free of charge. Goods in which we shall acquire sole or co-title shall be considered as under retention of title according to subsection V.1 above.

3. With our written consent, the Buyer shall have the right to dispose of the goods delivered by us within the ordinary course of business. The authority granted hereunder shall cease in the cases referred to in subsections V.4 to V.6. Other acts of disposal on behalf of the Buyer are prohibited.

4. The Buyer hereby assigns to us all claims arising from the resale of the goods delivered under retention of title. These claims are used as securities just as the goods delivered under retention of title. If the goods delivered under retention of title shall be a processed good or a mixed stock, where, in addition to the goods delivered by us, only such goods exist that are either the Buyer's property or a third party property as a result of a (simple) retention of title, then the Buyer shall assign all of the claim arising from the resale. In cases where we have co-title according to subsection V.2, the Buyer assigns to us the amount representing the value of our co-title.

5. The Buyer shall be authorized to collect any receivables arising from the resale of goods. The Buyer's authority to collect shall be revoked in case of our written cancellation, or in particular if it shall be in payment default, or upon dishonouring of a B/E, or upon filing for insolvency. We may withdraw the Buyer's authority to collect, if we shall become aware of other incidents that give rise to doubts about its creditworthiness. Upon our request the Buyer is obliged to notify its clients of the assignment of claims to us and provide us with all information and documentation necessary for collection.

6. In the event of any third party action against our goods delivered under retention of title or any receivables assigned to us, the Buyer shall notify such party of our property/our right and immediately inform us about such action. The Buyer shall bear the costs of any intervention to recover goods under retention of title not reimbursed by a third party.

7. If the Buyer shall be in breach of Contract, in particular in payment default, then it shall, upon our demand, immediately return to us all goods delivered under retention of title and assign to us any repossession claims against any third party in conjunction with such goods. We are entitled to access the Buyer's premises for the purpose of recovering the goods under retention of title. Same procedures may apply if we shall become aware of incidents that give rise to doubts about the Buyer's creditworthiness. Any repossession or enforcement proceedings with regard to the goods delivered under retention of title shall not be regarded as a rescission of this Contract, unless expressly specified otherwise by us. Regulations of the Insolvency Code remain unaffected.

8. Where our claims shall be undoubtedly be secured through the assignment and retention by more than 20 per cent over the securable amount, any surplus of receivables and/or goods delivered under retention of title shall, upon demand of the Buyer, be released in accordance with our choice.

VI. Qualities, Dimensions and Weights

1. Qualities and dimensions are defined according to DIN/EN standards in force at the time of conclusion of Contract, and material lists/data sheets respectively; if not applicable, custom of trade. Reference to standards, material lists/data sheets, manufacturers' acceptance reports as well as details on qualities, dimensions, weights and areas of use are no composition specifications, assurances or guarantees (this also applies to declarations of conformity, manufacturer's declarations and registration marks such as CE and CS).

2. Decisive for the weight is our weighing. Proof of weight is our weight note. Allowances common to the German Steel Trade (commercial weights) remain unaffected. Numbers of pieces and bundles etc. stated in the dispatch note are without obligation with shipments calculated by the weight. The total weight of the shipment is decisive if there is no individual weighing of parts. Deviations from the calculated individual weights are divided proportionally among those individual weights.

VII. Approvals

1. If approvals have been agreed to, they take place at the manufacturer's site exclusively. The Buyer shall bear costs of approvals.

VIII. Dispatch, Transfer of Perils, Packaging, Delivery of Parts

1. Delivery shall start at our premises in Stassfurt/Germany.

2. We shall determine packaging, mode of dispatch and dispatch route.

3. Goods declared ready for dispatch must immediately be collected. Upon a reminder we are otherwise entitled to ship or to store the goods in our sole discretion at the Buyer's risk and expense and to immediately charge for that.

4. If, through no fault of ours, the transport of goods on the designated route or to the designated destination is impossible or significantly more difficult within the timeframe planned, we are entitled to deliver on another route or another destination. The Buyer bears subsequent additional costs. The Buyer will first be given an opportunity to make a statement on the issue.

5. The risk of the goods (including the risk of seizure/confiscation with all transactions, also with freight prepaid or franco domicile deliveries) shall pass to the Buyer upon handing over the goods to the forwarder or carrier, at the latest upon leaving our warehouse or our factory. We organise insurance only at Buyer's request and expense. Unloading remains the Buyer's liability and expense.

6. We provide for packaging, protective and/or transport equipment based on our experience at the Buyer's expense. These materials can be returned to our warehouse. We assume neither costs for return nor for disposal of packaging.

7. We are entitled to reasonable partial deliveries. Excess deliveries as well as short deliveries customary in the industry are acceptable.

IX. Call-Off Orders, Consecutive Shipments

1. When placing call-off orders with consecutive shipments, we need calls and classifications for approximately equal monthly quantities. If not available, we are entitled to classify at our own discretion.

2. When individual calls exceed the agreed total quantity of the Contract we are authorized but not obliged to deliver the excess quantity. Prices for the excess quantities will be based on prices effective on the day of the individual call or delivery.

X. Liability for Non-Conformity of Goods

1. The Buyer shall examine the goods as soon as possible after their arrival at destination and shall notify us in writing of any lack of conformity of the goods without delay within seven days from the date when the Buyer discovers or ought to have discovered the lack of conformity. Any lack of conformity that using due diligence could not have been discovered within seven days must be reported immediately, at least within the agreed or legal limitation period. In any case the Buyer shall have no remedy for lack of conformity if it fails to notify us thereof within the legal limitation period from the date of arrival of the goods at the agreed destination. It is expressly agreed that after the expiry of such term, the Buyer will not plead non-conformity of the goods, or make a counter-claim thereon, in defence to any action taken by us against the Buyer for non-performance of this Contract.

2. No liability will be assumed for lack of conformity due to subsequent causes: unsuitable or improper use, faulty assembly by the Buyer or any third party, wear and tear, faulty or negligent handling, unsuitable equipment/means of production, substitute materials, chemical, electrochemical or electrical influences (if not falling within our responsibility), inappropriate modifications or modifications without our prior consent, or maintenance work conducted by the Buyer or any third party. The technical preconditions for claims under guarantee are specified in STASSKOL-standard SKR 910001-de, applying for oscillating systems only.

3. Where goods are non-conforming and provided the Buyer having given notice of the lack of conformity in compliance with article X.1 does not elect in the notice to retain them, we shall at our option: (a) replace the goods with conforming goods, without any additional expense to the Buyer (supplementary performance), or (b) repair the goods, without any additional expense to the Buyer. If we have failed to perform our duties under subsection X.3 by the date on which a reasonable period is over, the Buyer may give notice in writing to terminate the Contract or to abate the price with regard to the non-conforming goods. If the lack of conformity of the good is insubstantial or the good has already been sold, processed or altered, only reimbursement for the defect is possible.

4. Expenses due to supplementary performance will only be paid by us if appropriate in the individual case (especially with respect to the price of the good). Expenses raised by moving the good to any other than the agreed place of delivery will not be covered by us if this is not the use stipulated in the Contract. Neither guarantee nor liability for a specific use or intended purpose will be assumed without written confirmation in our order confirmation.

5. Later than upon receiving an agreed shipment no notice of material defects (non-conformity) which is based upon defects visible at the initial inspection of the goods delivered can be accepted. If, due to negligence, the Buyer did not notice the non-conformity, we will only be responsible for compensation for goods lacking a characteristic for which we shall have expressly guaranteed or in cases of wilful misconduct on our part.

6. If the Buyer does not immediately provide opportunities for us to inspect the non-conforming goods, especially if it does not, upon request, provide the non-conforming good or samples of it for inspection purposes, the Buyer shall bear all the expenses raised by this uncooperative position.

7. Our further liability is described in section XI of this GTC. Customer's rights of recourse according to §§ 478, 479 BGB (German Civil Code) will remain unaffected.

8. Goods will be deemed to conform to the Contract despite minor discrepancies which are usual in the particular trade or through course of dealing between the parties. Content of specifications as well as an expressly agreed intended purpose substantiate no guarantee. Any acceptance of guarantee requires a written confirmation.

XI. Contractual Limitation of Liability and Limitation Period

1. Our liability for breaches of contractual and non-contractual duties, especially for impossibilities, delays, faults in initiating the Contract and tortious acts, also on behalf of our executives and auxiliary persons, is limited to wilful intent and gross negligence and covers only direct losses foreseeable at completion of Contract and typical for this type of Contract. Any liability is excluded for lost profit, stand still as well as any other consequential damage. Maximum compensation in any case is 50 per cent of the value of the respective order. Our maximum liability after a delay is 50 per cent of the delayed part of the order. No further liability will be assumed.

2. These limitations do not apply to: knowing violations and fundamental breaches of Contract which jeopardise achieving the purpose of the Contract; to culpably caused damages of life, body, and health; if and so far we have assumed guarantee for the properties of the good sold; as well as in cases of legal liability according to the German Product Liability Act. Regulations concerning burden of proof remain unaffected. The Buyer indemnifies us from third-party liability claims insofar these claims have been caused by its actions.

3. Unless otherwise agreed in writing, no action for lack of conformity can be taken by the Buyer after 12 months from the date of arrival of the goods. Liability for intent and gross negligence, culpably caused damages of life, body, and health and rights of recourse according to §§ 478, 479 BGB (German Civil Code) will remain unaffected.

XII. Place of Performance and Jurisdiction, Applicable Law

1. The place of performance for deliveries shall be the place of our business (D-39418 Stassfurt/Germany). Place of jurisdiction for all disputes related to the business relationship, including actions on bills of exchange and promissory notes, shall be the place of our business, provided that the Buyer is a general merchant, a body corporate organised under public law or a special fund under public law, or has no inland place of jurisdiction. We are entitled to take legal action against the Buyer at its own place of jurisdiction.

2. In addition to these conditions the German unharmonized law, especially BGB/HGB (German Civil Code/German Commercial Code) apply to all legal relations between us and the Buyer. United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention of 1980) does not apply.

XIII. Defects of Title

In case of defect of title we are entitled to deliver supplementary performance by rectification of the defect within two weeks upon receipt of goods. Furthermore, subsection X.2 applies.

XIV. Force Majeure Events

In the case of a force majeure event, we are entitled to delay the delivery for the time the force majeure event occurs and for a reasonable period of time needed to prepare our performance or to cancel the Contract as a whole or with regard to the part not performed because of the force majeure event. Force majeure event is any inability to supply as a result of force majeure or other unforeseen incidents outside our responsibility including, without limitation, strike, lock out, breakdown, or cease of supply from our own suppliers in spite of reservation of timely supply.

Stassfurt, 23. July 2013

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