



Sales Terms

I. General

1. The following conditions apply exclusively to all offers made by us and to all contracts concluded with us. Any price list furnished by us is to be regarded as constituting an offer. Purchase conditions of the customer are only valid with our confirmation. Confirmation is given in writing. Additional verbal agreements do not apply. Our sales conditions also apply when we, in knowledge of customer conditions contrary or in variance to our sales conditions, execute the delivery to the customer unconditionally.
2. Our offers are without commitment. Interim sale is at our discretion. A contract arises only on our order confirmation or on dispatch of the goods.
3. Our general terms and conditions of trade are only applicable to contracts with commercial parties.

II. Prices and payment

1. In so far that the order confirmation does not indicate otherwise, our prices are to be taken as Euros purely net ex-works. In particular value added tax, customs and excise duties, insurance, transport and loading, costs, as well as packaging costs are excluded. The value added tax will be applied on the day of invoice preparation and indicated separately at the rate in force.
2. We are entitled to increase the agreed prices accordingly in case of increase in supplies and raw material prices, salaries and wages, production and transport costs between conclusion of contract and delivery.
3. In so far that the order confirmation does not indicate otherwise in written form invoices are payable within 14 days of invoice date with 2 % prompt payment discount or within 30 days without discount. We will ship C.O.D. or against advance payment at our discretion.
4. The interest rate for payments delayed beyond 30 days will be 8% above the prime interest rate. We reserve the right to seek the application of a higher rate where a higher rate is justified by individual circumstances. Payments not received 30 days after receipt of an invoice shall be considered late to the extent we have not agreed to a longer or shorter payment period.
5. Bills of exchange or cheques are accepted as payment only by special agreement and only when discountable. Bank costs in particular discount, bill of exchange and stamp costs will be charged to the customer and are immediately payable in cash. Any bills of exchange or cheques accepted as payment will effect credit subject to redemption. Bills of exchange should have a validity not exceeding 3 months.
6. The customer is entitled to a credit claim only when his counter claim is legally established, undisputed or recognized by us. Further he is entitled to exercise his right to withholding monies in so far that his own claim is based on the same contract conditions.
7. To the extent a customer requests that we use packaging materials belonging to or under the legal control of the customer to fulfil our delivery obligations, the customer shall be, at its sole cost and expense, responsible for timely delivery to us of such materials in sufficient quantity and quality. The customer may return transportation packaging to our premises during normal working hours. The transportation packaging shall be clean and free from extraneous material; such packaging shall also be sorted by type of packaging material. The customer shall be liable to us for any costs we incur as a result of the customer's failure to follow these procedures. Any additional costs occasioned by our acceptance and disposal of packaging material will be itemized and invoiced separately to customer. Customer claims of delivery defects occasioned by the customer's provision of dirty, defective, or otherwise inappropriate packaging are specifically disclaimed and excluded.

III. Delivery time, acceptance and custody transfer

1. The delivery period commences only upon full clarification of all design particulars. Adherence to an agreed delivery period is subject to the customer observing the contract obligations.
2. We shall make every effort to meet agreed delivery dates. Where we are at fault in exceeding delivery dates the customer is obliged to grant us an appropriate and binding extension. After the fruitless expiry of this extension period the customer may withdraw from the contract.
3. Partial deliveries are allowed, if they are acceptable by customer.
4. The agreed delivery period is to be accordingly prolonged in case of output disruptions that cannot be remedied within a reasonable time, in particular force majeure, production disruptions, transport disruptions or delivery disruption.
5. «Ex-works» deliveries are at the risk of and to the account of the customer. If damage or loss of goods, was experienced during the movement process, the orderer shall give notice to the carrier within the time frames as stated by law (§ 428 German Commerce Code, art. 30 CMR and art. 26 WA). The same is appropriate regarding delay.
6. Where the customer so wishes the delivery can be covered by a transport insurance; all costs arising therefrom have to be borne by the customer.

IV. Retention of title

1. We remain owner of goods delivered by us until complete payment of our total demands, including later demands arising from the business relationship with the customer. Breach of contract by the customer, in particular settlement delays, entitles us to repossess the delivered items.
2. The customer is obliged to treat the delivered items carefully. In particular he is required to insure these items against fire, water damage and theft at his own cost for their original value.
3. The customer is entitled to resale the delivered items in the normal course of business; however he then assigns to us all claims to the value of the final invoice total (inclusive of value added tax) arising from this resale against his client or third party and this is fully irrespective of whether the delivered items have been resold without or after processing. The customer remains authorized to collect the claim even after being assigned. Our entitlement to collect the claims ourselves remains unaffected from this. We undertake however not to collect the claims provided the customer meets his liabilities from the agreed proceeds, is not in arrears or has suspended payments and especially no petition to open insolvency proceedings has been filed. When this is the case we can demand that the customer makes known to us the assigned claims and respective debtors, supplies all information necessary for their collection, makes available the associated documents and informs the said debtors and third parties of the assignment.



4. The processing or reconstruction of the delivered items is considered as having been undertaken by ourselves. When goods have been processed with other items not belonging to us we acquire joint ownership of the new object in the relationship of the value of the delivered goods to the other processed items at the time of processing. The same conditions as for goods delivered under retention of title apply otherwise for objects arising through processing.

5. When goods have been irretrievably mixed with items not belonging to us we acquire joint ownership of the new article in relationship of the value of our goods to the other mixed items at the time of mixing. Where the mixing results in the customer's item being regarded as the major article, it is taken as agreed that the purchaser assigns us proportional joint ownership. The resulting sole or jointly owned property shall be held in safe keeping for us by the customer.

6. We undertake to release securities belonging to us at the customer's demand provided that the value of those securities exceeds 20 % more than the claims being secured; the choice of securities to be released is ours. The value of the securities in simple retention of title is assessed according to our respective invoice amount, on claim assignment according to the customers invoiced amount from the resale. With further-processed goods the value of the securities is determined according to our price for reuse. This will be communicated to the customer in writing upon extended retention of title being made effective. Upon receipt of this communication the customer may inform us, within a period of 14 days, of purchasers who are prepared to pay a higher price than our price for reuse. Provided the payment is assured we are obliged to release the relevant secured goods.

7. In the case of cheque or bill of exchange transactions our retention of title claims in all degrees will only be dropped when the customer has complied with all his obligations to us.

8. The dropping of individual claims in a current account or the settling of a current account does not cause the retention of title claims to be withdrawn in all degrees. When the customer includes in a current account existing with his customers a claim assigned to us from a resale of goods supplied, the current account claim shall then be assigned to us in full. After clearing of the balance this claim will then be replaced by the recognized balance which shall be assigned in the amount equalling our original claim.

V. Tools, samples and similar

1. We reserve ownership and copyright on diagrams, drawings, calculations and other documents; these may not be made available to third parties. This applies particularly for any documents that are marked «confidential»; before their being passed to third parties the customer requires our express written permission. This applies equally when tools are finished on contract and for payment.

2. No liability can be assumed for the accuracy of models, samples, drawings or tools made available to us by the customer. When no definite information on product tolerances is given on drawings or orders we will manufacture according to the usual industry standards and with respect to the tolerance limits governed by the production process.

VI. Guarantee, Disclaimer of Warranty and Limitation of Liability

1. The customer's statutory guarantee rights are subject to his proper compliance with the inspection and control obligation according to § 377 HGB. Identifiable faults should be made known to us in writing without delay as required by the statutory provisions, and not later than 10 days after receipt of the goods. Date of receipt of the complaint notice is applicable.

2. We guarantee that the sold goods will be free of material defects for a period of twelve months from the date of delivery. The time period of warranty starts with the date of delivery of the goods. This period is a term of limitation and also applies to claims for consequential damages for defects provided no claims from tortious acts have been awarded.

3. Our liability for goods proven to be defective within the warranty period is limited to repair or replacement. In no case shall we be liable for incidental or consequential damages. If replacement goods also prove materially defective, the customer shall have the right to withdraw from the contract. The customer's rights under this warranty are limited to material, non-minor defects. In no event shall the customer be entitled to reduce the contract price.

4. A customer electing to withdraw from the contract after demonstrating a material defect with replacement goods as provided for above waives all rights to claim damages in tort or contract beyond the return of the contract price.

5. In the event that a customer elects not to withdraw from the contract but rather to seek damages for a failure of performance on our part, the damages to which the customer is entitled shall be no greater than the difference between the value of the defective goods and the purchase price of the goods, unless our failure of performance is caused by our intentional acts. A customer seeking damages rather than withdrawing from the contract shall retain the goods if it is commercially reasonable for the customer to do so.

6. Our product descriptions are only general descriptions. Any public statement and recommendation is no description of the specific aspects and characteristics of the specific products that are the subject of the contract.

7. The customer shall only have the right to withdraw from the contract to the extent that we have failed to cure the proven defect or provide a replacement within a reasonable period fixed for cure. The customer shall further have the right to withdraw from the contract to the extent that it is not commercially reasonable for the customer to accept cure as an effective remedy.

8. We specifically and generally disclaim, to the fullest extent allowed by law, liability for any damages not specifically permitted by this section, including but not limited to the following: We are not liable for any damages other than those to the delivered goods themselves. Thus, we are not liable for lost profits, incidental, or consequential damages. Neither the foregoing limitation of liability nor the other limitations of liability in this section are applicable in case of damages claimed for personal injury or death in case the damages arising from gross negligence or due to breaches of cardinal obligations of the contract. These limitations shall also be deemed not to apply to the extent that the customer has the right to claim damages pursuant to a breach of warranty. The liability is limited on the foreseeable typical damage but not in the cases of this section 6, para. 8, sentences 3 and 5. The burden of proof borne by the customer shall not be shifted or altered by the foregoing stipulations of this section 6, para. 8.

**VII. Joint liability**

1. An ongoing liability for compensation as in section 6 para. 4 - 6 is excluded irrespective of the legal nature of the asserted claim.
2. The provision in para 1 does not apply for claims as in paras 1 and 4 German product liability law.
3. Where our liability is excluded or limited, the same applies equally for the personal liability of our employees, workers, staff members, representatives and assistants.

VIII. Concluding clauses

1. The amount of all damages to be paid by us shall be determined by having, adequately in our favour, due regard to our economic situation, nature, scope, and duration of the business relationship, possible causative or responsible contributions by the customer according to § 254 BGB, and a particularly disadvantageous situation of installation of the parts supplied. Especially damages, cost and expenditures which shall be paid by us have to be in an appropriate relationship to the value of the supplied parts.
2. Assurances and agreements with our representatives and field workers require our express written confirmation before being effective.
3. The customer can only transfer his rights under this contract to third parties with our agreement. The same applies to assignment of claims against us.
4. In so far as the order confirmation states nothing to the contrary, Neu-Ulm is the place of performance for the mutual legal relationship.
5. Our legal relationship with the customer is governed by German law, with the exclusion of the UN-purchasing law (United Nations agreement on contracts on the International Sale of Goods-CISG).
6. For all contractual and non-contractual disputes the local and international sole jurisdiction of the Amtsgericht Neu-Ulm or the Landgericht Memmingen – chamber of commerce – will be stipulated dependent on the matter in controversy if the orderer has the status of a merchant or if the orderer's usual residence or principal place of business is not within the area of Germany. This jurisdiction excludes in particular any other jurisdiction that may be legally provided because of personal or material association. Further the customer is not entitled to initiate legal proceedings against our company before any other than the sole appropriate court in respect of counterclaim, compensation or retention. We are, however, entitled to bring charges at the place of trading of the customer or before other courts having jurisdiction for reason of German or foreign law.
7. Should one or more of the conditions be partially or completely inoperative the validity of the remaining conditions remains unaffected. When in the inoperative clause a more relevant and valid part remains, this is hereby upheld. The parties are to hereby agree on an alternative provision which comes as close as possible to the financial effect of the inoperable clauses.
8. The English version is not binding. The German version alone is valid.