

General Terms and Conditions

I. Validity of Conditions

1. Deliveries, services and quotations by the seller are carried out on the basis of these terms and conditions, exclusively. Such terms shall, therefore, also be applicable to any future business relations, even if not explicitly re-agreed upon. Taking delivery of the goods or service(s) shall, at the latest, constitute approval of these terms. Purchaser's acknowledgements with reference to his terms and conditions are herewith opposed.
2. Any agreements between the seller and the purchaser related to the execution of this contract are to be taken down in writing in this contract.

II. Quotation, Contract, Assignment

1. The seller's quotations are subject to confirmation and not binding, unless they state an explicit term. Declarations of acceptance and any orders require the seller's written (or fax / e-mail) approval to become legally binding.
2. Specifications (product characteristics), packaging, dimensions and weights or any other performance details to be binding only, if agreed upon explicitly in writing.
3. Oral collateral agreements or oral warranties exceeding the content of the written contract are subject to the seller's written approval to become valid.
4. Purchaser's assignments of rights arising from the purchase and delivery contracts with the seller are subject to the seller's prior written approval.

III. Invoicing

Invoices to be issued on the basis of the seller's prices valid at the time of delivery, plus v.a.t.

2. Establishment of weights, as authoritative for the invoice to take place at seller's place of dispatch, unless the purchaser insists on the weighing to be carried out by the railway authorities at the place of dispatch, at his expenses and once only.

IV. Payment Terms, Payment Mode

1. If not agreed otherwise, the seller's invoices are payable 30 days from the date of invoice, net without deduction. The seller is entitled – even if purchaser's terms contradict – to deduct purchaser's payments from previous debts and will inform the purchaser of the mode of deduction. In the case that costs and interest have already arisen, the seller to be entitled to first deduct the payment from the costs, then from the interest and finally from the service invoice.

2. Payment to be regarded as effected only, if the seller can dispose of the amount. In the case of cheque(s) payment to be regarded as effected only after the cheque or bill of exchange has been honoured; the purchaser to bear discount charges and any expenses in connection with the collection of the cheque amount.
3. Should the purchaser be delayed with his payment(s), the seller to be entitled to charge from the related point of time on interest in the amount of the relevant bank rates applicable for short-term credits without any necessity of putting in default
4. Should the seller become aware of circumstances putting in question the purchaser's creditability, the seller shall be entitled to invoice and accelerate the maturity of the full remaining outstanding amounts, even if he has taken cheques or bills of exchange. In this event, the seller also to be entitled to demand advance payments or provision of securities. In case that despite respective request the purchaser is not prepared to effect advance payment or provide securities for the delivery/service to be rendered, the seller to be entitled – if he has not yet delivered – to refrain from the contract.
5. The purchaser shall be entitled to deduct, hold back or reduce only – even if he files (a) complaint(s) or counterclaim(s) – if such counterclaim has been legally approved or is non-controversial.

V. Delivery and Delivery Periods

1. The seller strives at effecting deliveries a.s.a.p. There are no firm delivery periods. Binding delivery dates or periods must be agreed upon in writing.
2. This to be subject to correct and in time seller's self supply.
3. The seller to be entitled to part delivery and part performance at any time.
4. The seller shall not be liable for delayed delivery and service(s) caused by force majeure and events that may prevent the seller from delivery or make it hard for him, even if binding terms were agreed. The seller is to advise the purchaser of the beginning as well as the end of such hindering events, as far as possible. Such events are especially unpredictable disturbances of operation, traffic or dispatch, damages by fire, floods, unforeseeable shortage of manpower, energy or raw material, strikes, lock-outs, decrees, etc., also if arising at the seller's suppliers' or their sub-suppliers. They entitle the seller to delay delivery and/or service by the term of the disturbance plus an appropriate start up period or to refrain from the contract completely or with respect to that part of it that has not yet been fulfilled. In the event of partial or complete ceasing of the seller's sources of supply, he shall not be obliged to take supplies from third party suppliers. In such case the seller to be entitled to distribute the available amounts of goods under consideration of his own demands.

5. In case the disturbance lasts for longer than three months, the purchaser to be entitled – after appropriate grace period – to refrain from the not yet fulfilled part of the contract. In case the delivery period is extended or the seller becomes free of his liability, the purchaser shall not be entitled to claim compensation for damages out of this event.
6. In case the seller is liable for not keeping the agreed upon and confirmed delivery period(s), the purchaser to be entitled to delay compensation in the amount of ½ % for each complete week of delay, however, limited to a maximum of 5% of the invoice value of the deliveries/service(s) subjected to the delay. Any exceeding claims are excluded, unless the delay is due to at least seller's gross negligence.
7. The seller's keeping his delivery and service obligations is subject to the purchaser's in time and orderly fulfilment of his obligations.
8. In case the purchaser is delayed with his acceptance, the seller to be entitled to claim compensation of his damage(s). The risk of incidental deterioration and incidental extinguishments is transferred to the purchaser at the moment of acceptance delay.

VI. Dispatch, Risk Taking

1. Dispatch is arranged as per purchaser's choice either ex works or ex stock at purchaser's expense.
2. The risk of extinction, loss or damage of the goods is transferred to the purchaser at the moment of their dispatch or – in the case of pick up by the purchaser – at the moment of placing them at disposal.
3. The seller reserves the choice of the dispatch route and mode.
4. The seller will store goods not taken over at the purchaser's cost and risk.

VII. Reservation of Ownership

1. Ownership of the delivered goods is only transferred to the purchaser, when he has completely fulfilled all his obligations out of the business relation with the seller (incl. secondary claims, compensation claims and honouring of cheques and bills of exchange).
2. In the event of the reserved goods having been processed, the purchaser shall act on seller's behalf, however, without securing any claims whatsoever against the seller because of such processing. Thus the seller's reservation of ownership also covers the products that are obtained by processing the goods. In the event of the reserved goods being processed together with third party goods or mixed or combined with them, the seller to secure co-ownership of the thus obtained products. The ratio of the co-ownership being in accordance with the reserved goods' invoice value as compared with the third party goods' invoice value.

Should the goods be mixed or combined with a purchaser's main issue, the purchaser herewith to subjugate his rights of ownership of the new item to the seller.

3. The purchaser is entitled to demand the reserved goods back from the purchaser without granting grace period or refraining from the contract, if the purchaser is delayed with fulfilment of his obligation toward the seller. Taking back the goods constitutes withdrawal from the contract only, if the seller clearly confirms so in writing.
4. As long as the purchaser fulfils his obligations towards the seller in full order, he is entitled to dispose of the reserved goods in orderly way of the business. This, however, not to apply if and as far as the purchaser and his customers have agreed upon non-assignability with regard to the purchase price. The purchaser has no right of pledging, assignment for security or other charges. Upon selling on the purchaser to keep the transfer of ownership subject to full payment of the goods by his customer.
5. The purchaser herewith transfers in advance to the seller any claims resulting from the selling on of the reserved goods – incl. all secondary and security interests – in order to secure all seller's rights against the purchaser resulting from claims out of the business relation. In case that reserved goods are sold on together with other items at one total price, the transfer to be limited to the proportionate share of the seller's invoice value in the sold on reserved goods. Should the seller have a co-ownership share in the goods sold on as per paragraph 2, then the transfer to be limited to that part of the claim equivalent to the seller's co-ownership share. In case the purchaser uses the reserved goods for paid upgrading of third party items, he herewith transfers in advance to the seller his right for compensation towards the third party for above mentioned securing purposes. As long as the purchaser adheres to his payment obligations timely, he is entitled to collect claims from selling on or from upgrading by himself. He is not entitled to mortgaging, transfer or assignments of any kind.
6. In case the seller fears that the realization of his claims are in danger, the purchaser is to advise his customers of the transfer upon seller's request and to give him all required information and documents. The purchaser is to advise the seller immediately of any third party attachments to the reserved goods and the transferred claims.
7. Should the value of the securities, that the seller is entitled to, exceed the seller's claims to be secured by more than 20 %, he is obliged to release the purchaser in so far upon demand. It is the purchaser's choice to define the security to be released.

VIII. Technical Advice, Application and Processing

1. Application advice by our sales staff, be it oral, in writing or by tests, is given to the best of their knowledge, but can only be without obligation - also in respect to possible third party property rights - and shall not release the purchaser from his obligation to carry out inspections of the goods delivered by the seller with regard to their suitability for the intended processes and purposes. Application as well as utilisation and processing of the goods are out of seller's control and are, therefore, purchaser's liability, exclusively.

IX. Complaints, Warranty

1. Complaints to be accepted only, if filed in writing immediately, latest 10 days from arrival of the goods, including paperwork, samples and package notes as well as indicating the invoice number and invoice date. It is furthermore conditional that 90 % of the supplied goods are still in closed condition and available for control by the seller.
2. In the case of hidden defects the written complaint must be filed immediately upon finding the defect, but latest within five months of arrival of the goods.
3. The objected goods may be returned only against the seller's explicit written consent.
4. If the complaint has been filed orderly and legally justified, the seller is first to be given a chance for rectification of the defect and subsequent delivery, unless this is unreasonable to either of the parties. Apart from this, the purchaser is entitled to rescission or reduction.

X. Compensation

1. Rights for compensation out of positive violation of claims, out of culpa in contrahendo and tortuous act are excluded in respect to the seller as well as his vicarious agents, unless it is a matter of deliberate or careless act.
2. The seller not to be liable for indirect as well as – at the time of contract – unforeseeable damages.

XI. Applicable Court, Jurisdiction, etc.

1. German law is applicable. Application of the Uniform Law on the International Sale of Goods as well as the on the Formation of Contracts for the International Sale of Goods – both dated 17-07-1973 – as well as the UN-Convention on Contracts for the International Sale of Goods of 11-04-1980, is excluded.
2. Customary clauses for deliveries to be interpreted in accordance with the valid Incoterms.

3. Should a provision of these terms and conditions or a provision within the frame of other agreements be or become ineffective, this shall not affect the validity of all other provisions or agreements. For any ineffective provision the parties to the contract shall agree upon another provision closest possible to the economic purpose of the ineffective provision and valid.
4. Place of performance for the delivery is the place of dispatch, for payment it is Gehren.
5. Jurisdiction for both parties to be in Ilmenau.

The seller is entitled to claim his rights at the purchaser's general place of jurisdiction.

Gehren, January 2003