

## Terms and Conditions of Delivery and Payment

Version as of December 2009

### 1. Applicability of terms and conditions

Our deliveries, services and offers are subject solely to these Terms and Conditions of Delivery and Payment. These Terms and Conditions of Delivery and Payment are therefore also applicable to all future business relations, even if they are not expressly agreed upon again. These Terms and Conditions shall be deemed to be binding upon the goods or services being accepted at the latest. Counter confirmation on the part of the Customer in reference to his terms and conditions of business or purchase is hereby deemed void. Our Installation Guidelines are also deemed to apply as the sole basis for the provision of installation services.

### 2. Offer and Conclusion of Contract

Our offers are subject to change without notice and are not binding. Declarations of acceptance and all orders require our confirmation in written form or by telefax to be legally valid. This also applies to supplements, alterations or ancillary agreements.

Details contained in brochures and printed matter supplied with our offers, such as drawings, pictures, dimensions, weights or other performance data, are values which are determined to the best of our knowledge but do not become binding until specified in order acknowledgements.

Our sales staff is not authorised to conclude ancillary agreements or to give oral assurances which go beyond any written contract.

### 3. Prices

Our prices are quoted ex works and exclusive of packaging and value added tax where applicable. The minimum invoice amount is EUR 75 for goods in stock or EUR 150 for goods produced to order. The minimum value per item is EUR 25.00. In the case of increased material and production costs we are entitled to reasonably raise the agreed prices.

### 4. Tools

Tools manufactured by or for us remain our property, even if these are charged to the Customer on pro rata basis.

### 5. Delivery

5.1 The scope of the delivery is determined by our written order acknowledgement or, in the case of an offer which is valid for a specified period and is duly accepted within that period, the order itself unless an order acknowledgement has been duly sent out. Ancillary agreements and alterations must be made in writing in order to be legally valid.

5.2 Risk passes to the Customer as soon as the consignment or part-consignment has been released to the person effecting the transport thereof or when such consignment has left our warehouse for the purpose of dispatch. Transport insurance within the Federal Republic of Germany is covered by us.

Packaging is invoiced at cost and will not be taken back.

If shipment is delayed due to circumstances for which the Customer is responsible, risk passes to the Customer as from the day on which the goods are declared to be ready for dispatch.

5.3 In the case of goods which cannot be warehoused, we reserve the right to exceed or fall short of the order quantity by up to 10%. This also applies to regular goods in stock in the case of packings, AK goods and It jointings. We are entitled at all times to effect part deliveries and services.

5.4 Delivery dates or periods which can be agreed on a binding or non-binding basis must be specified in writing to be valid. The delivery period commences with the dispatch of the order acknowledgement but not before the furnishing of the documentation, permits, releases which are to be obtained by the Customer or before receipt of an agreed payment on account from the same. The delivery period is deemed to have been met if the delivery item has left the works by the end of said delivery period or notification of readiness for shipment has been given. Deadlines are binding only if the Customer has met his contractual obligations.

5.5 The delivery period shall be reasonably extended or we shall be entitled to rescind the agreement in question in the event of actions relating to industrial disputes, in particular strikes and lockouts, as well as upon the occurrence of unforeseeable hindrances which are beyond our control, in particular acts of God, to the extent that it can be proven that such hindrances have a significant effect on the production and delivery of the goods to be delivered. The Customer is entitled to rescind the agreement if the delay means that he cannot be reasonably expected to accept such delivery.

5.6 If for any reason it becomes impossible for us to deliver the delivery item, the Customer may rescind the contract. Moreover, the Customer may rescind the contract if any part of the delivery is rendered impossible or he has a justified interest in refusing acceptance of the part delivery. In all other cases, the Customer is required to pay the contractual price for the part delivery in question. This shall also apply in the event of any incapacity on the part of the supplier.

The Customer shall be entitled to the same right of rescission in the event that we are wholly or partially in default of delivery and, after expiry of a reasonable period of grace to be set by the Customer, have failed to give the Customer notice of readiness for shipment. Any further remedies are subject to the provisions contained in 6.2.2.

### 6. Guarantee

6.1 Our acceptance of liability for defects is based solely on the contents of this Section 6. Warranty claims shall become time-barred within twelve months of delivery and, in the absence of any defects which are not identifiable in spite of close inspection, shall be asserted in writing within a preclusive period of two weeks as from delivery. In other cases, written notification of defects is to be given to us immediately on discovery. Our liability is limited as follows such that all further remedies are excluded:

6.1.1 All parts proving to be defective for a reason arising prior to the passing of risk will be repaired or replaced free of charge at our discretion. Such defects must be reported to us in writing without delay. Replaced parts will become our property.

6.1.2 The Customer agrees to provide us with sufficient time and opportunity for performing all repairs or for supplying all replacements which we consider to be necessary, failing which we will not be held liable for the consequences. Only in urgent cases, i.e. threat to operating safety or to avert unreasonably high damage, in which case we are to be notified without delay, may the Customer have the defects remedied by third parties and request reimbursement of the resultant costs from us.

6.1.3 Of the costs incurred in remedying the defects or supplying replacements, we agree to bear the cost of the replacement including shipment as well as reasonable dismantling and assembly costs provided that the complaint is justified. In addition, we agree to bear the cost of the service of any of our engineers or other staff if this is reasonable in the light of the case at hand.

6.1.4 The Customer may exercise his statutory right to rescind the contract if we fail to repair the defective goods or deliver replacements within a reasonable period of time subject to due allowance for the statutory exceptions. If the goods in question are found to exhibit only a minor defect, the Customer is only entitled to demand a reduction in the contractual price. Other than this, there is no entitlement to demand any reduction in the contractual price.

6.2. Our liability is subject to the following:

6.2.1 If the goods which have been delivered cannot be used by the Customer for their contractual purpose for reasons for which we are responsible as a result of the missing or erroneous implementation of proposals or suggestions received before or after the contract is entered into or as a result of the breach of other ancillary contractual duties – particularly with respect to instructions for operating and maintaining the goods delivered, the provisions contained in 6.1 and 6.2.2 shall apply to the exclusion of all other remedies.

6.2.2 We shall be liable for all damage for any legal reason whatsoever not directly sustained by the delivered goods only in the event of wilfulness, gross negligence on the part of the owner, corporate-governance bodies or management staff, in the event of culpable injury or damage, in the event of any faults whose existence has been fraudulently concealed or whose absence has been guaranteed to the extent that under the Product Liability Act liability is incurred for injury or damage with respect to objects used for private purposes.

In the event of any culpable breach of material contractual obligations, we shall also be liable in the event of gross negligence on the part of non-management employees as well as in the event of simple negligence, except that in the latter case liability shall be limited to reasonably foreseeable damage typical of the contract in question. No other remedies shall be available.

6.3 If products of companies other than our own are used in our products, our liability shall be restricted to the assignment to the Customer of the claims held by us against our suppliers; in such case we undertake to provide the Customer with all information he might need to enforce such claims immediately on receipt of his notice of defects. In such cases a warranty on our part which goes beyond this and is subject to Sections 6.1. of these Terms and Conditions of Delivery and Payment shall only exist in so far as court action by the Customer against the supplier proves unsuccessful.

6.4 We accept no liability for damage arising from the following: inappropriate or improper usage, defective installation and/or initial operation on the part of the Customer or a third party, natural wear, defective or negligent handling, inappropriate operating material, substitute materials, defective construction work, unsuitable building ground, chemical, electro-chemical or electrical effects in so far as these are not attributable to any fault of ours.

6.5 If the Customer or any third party tampers with the goods delivered or if defective goods are processed or otherwise used or combined with third-party goods, the onus of proof shall rest with the Customer to prove that the goods already exhibited the defects upon delivery. We shall not be liable for any consequences.

### 7. Payment

7.1 Our invoices shall fall due on receipt and shall be subject to interest of 8 % in excess of the prevailing base interest rate of the European Central Bank after the due date. Notwithstanding interest payable after the due date, our invoices shall be payable within 14 days of the date of invoice less 2% cash discount or net within 30 days of the date of invoice.

7.2 In the event that the Customer falls into arrears with the payment in whole or in part of the due amount then, following a reasonable payment deadline to be set by us, we – notwithstanding our right to claim for damages caused by default – shall be entitled to rescind all contracts and agreements with the Customer which he has not yet fulfilled and to demand compensation.

7.3 In the event that the Customer falls into arrears with the payment, he shall be liable to pay a late fee at a flat rate of 10 Euros per dunning letter plus any relevant postal expenses.

7.4 If after the contract has been signed we learn of any circumstances which impair the creditworthiness of the Customer, we shall be entitled to make outstanding deliveries arising from all contracts and agreements with the Customer contingent upon advance payment or the provision of appropriate security. Should the Customer fail to meet our demand for security or advance payment within a reasonable period of time, we shall be entitled to withdraw from any contracts or agreements with the Customer which have not yet been completed.

7.5 It shall not be permissible for payments to be withheld or offset on account of any counterclaims of the Customer which we dispute.

### 8. Reserved ownership rights

8.1 Goods delivered by us – hereinafter referred to as reserved goods – shall remain our property until settlement in full of all claims against the Customer in respect of other deliveries and services; in the case of payment by bill of exchange or cheque, settlement shall be deemed to occur on the date of cashing of the same.

8.2 The processing or transformation of the reserved goods as part of normal business operations shall be permissible subject to the proviso that this – without placing us under any obligation – is effected at our request and that we are the manufacturers in the sense of Article 950 BGB (German Civil Code). Processed or transformed goods are deemed to constitute reserved goods and the rights of the Customer to them continue.

If our ownership of the reserved goods terminates due to the connection or mixing of them with other things, the Customer shall hereby assign to us a co-ownership interest in the product resulting from such connection or mixture; this co-ownership interest shall correspond to the proportion of the invoice value of the reserved goods in relation to the total value of the product resulting from said connection or mixture.

8.3 The Customer may neither pledge the delivered goods nor assign them by way of security. In the case of attachment by a third party of the reserved goods, the Customer shall draw attention to our ownership and inform us accordingly without delay.

8.4 In the event of behaviour on the part of the Customer which is in breach of contract, in particular payment default, we shall be entitled to take back the goods following the issue of a warning to this effect, in which case the Customer shall be obliged to return such goods. The assertion of reservation of ownership as well as the seizure of the goods delivered by us shall not be deemed to constitute rescission of the contract in cases in which the provisions of Consumer loan contract (§§ 491 ff. BGB) and the provisions of Postponement of payment and other financial assistance (§§ 498 ff. BGB) do not apply.

8.5 The Customer may sell or dispose of the reserved goods as part of normal business; in such case, any claims accruing to him shall be assigned to us in advance up to the amount of our total claim against him, irrespective of the legal grounds. Similarly, all claims which the Customer is entitled to as a result of insurance cover for the reserved goods shall be assigned to us.

The Customer hereby assigns to us all claims arising from the resale or insurance of the reserved goods, including any ancillary rights. If the Customer sells or insures goods or stocks as defined in Section 8.2 of these Terms and Conditions of Delivery and Payment or reserved goods together with other goods, the assignment of claims arising from resale or insurance shall only be for the invoice value of the reserved goods.

8.6 The Customer shall be entitled to collect in his own name those claims arising from resale which are assigned to us in accordance with Section 8.5 of these Terms and Conditions of Delivery and Payment. This collection authorisation may be revoked by us if the Customer fails wholly or in part to punctually meet his obligations towards us under this or any other contract or agreement, or if bankruptcy proceedings in respect of his assets are filed for or initiated, or if he becomes insolvent or if he violates his contractual obligations or if our interest in the security provided is otherwise put at risk.

8.7 In the event that the value of the existing security exceeds the total value of our claims against the Customer by more than 10%, we shall be obliged to release securities as we see fit at the request of the Customer.

8.8 If the Customer performs in advance for his Customers or grants any deferment of payment, he shall reserve ownership vis-à-vis his Customers subject to the same conditions and extent that we have reserved ownership in respect of delivery to the Customer.

### 9. Cancellation

In the event that the Customer rescinds the agreement without cause or refuses to fulfil it, we shall be entitled, notwithstanding the possibility of providing proof of greater damages from case to case, to claim damages to the amount of 100 % of the invoice amount less the expenses we have saved.

### 10. Confidentiality

All documentation – excluding advertising material – to which we grant the Customer access as part of business relations, in particular design drawings, practical reports, process descriptions and material analyses, is confidential and may not be reproduced or directly or indirectly made available to third parties without our express consent. We reserve the proprietary and industrial property rights to said documentation.

11. These Terms and Conditions of Delivery and Payment and all legal relations between us and the Customer are governed by the law of the Federal Republic of Germany. The place of fulfillment is Wolfratshausen/Upper Bavaria in Germany. If the Customer is a merchant who has been entered in the German Commercial Register or is a legal person under public law or special assets under public law, Wolfratshausen/Upper Bavaria is the place of jurisdiction for any disputes directly or indirectly arising from the contractual relationship.

12. If any provision of these Terms and Conditions of Delivery and Payment or any provision in any other agreements is or becomes void or invalid, this shall not have any effect on the validity of all remaining provisions and agreements.

### 13. Federal Data Protection Act

In accordance with Article 23 BDSG (Federal Data Protection Act) we will store the Customer's data – however only to the extent necessary to determine the order procedure and to comply with the statutory obligation to preserve commercial records. The Customer is deemed to have consented to this.

Version as of 12/2009

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