

Terms of Sale and Delivery

Our deliveries and services shall only take place on the following conditions. Other conditions of the customer shall not apply, even if they are known to us and we carry out deliveries without reservation. Our conditions shall not apply to consumers pursuant to § 13 German Civil Code (BGB). They shall also apply to all future transactions with the customer that result from our ongoing business relationship. Any arrangements between us and the customer for the purpose of executing this agreement shall be set out in this agreement in writing. Any changes or supplements to this agreement shall be made in writing.

1. Conclusion of Contract, Scope of Supply

- a) Our offer shall be non-binding, provided nothing else shall arise from the order confirmation or has been declared by us in writing. A contract shall only be deemed to exist if we have confirmed an order in writing or carry out the order. This shall also apply for agreements entered into with our agents.
- b) The information contained in brochures and catalogues, like illustrations, drawings, indications of weight and measurements, are approximations customary in the business, provided they are not expressly designated as binding.
- c) We reserve the right to retain ownership and copyright of illustrations, brochures, estimates and other documents; they shall not be made accessible to third parties. This shall particularly apply to such written documents as are marked "confidential"; before these are passed on to third parties, the customer shall require our express written consent.

2. Pricing and Terms of Payment

- a) Failing an agreement to the contrary, our prices shall apply ex works exclusive of packaging, freight, postage, insurance and respective VAT.
- b) If costs relevant to the order change significantly after conclusion of the agreement, the parties to this agreement shall agree on an adjustment.
- c) Failing an agreement to the contrary, all invoices shall become due for payment without deductions within 30 days following the date of the invoice. In case we shall have to extend the credit period, we shall be entitled to charge interest on arrears in the amount in which the bank charges us for current account credits, but no less than at least 8 percent above the basic interest rate of the European Central Bank.
- d) The customer shall only be entitled to rights of setoff, if his counterclaim has been determined as conclusive and undisputed or are accepted by us. In addition, he shall be entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.
- e) If part of the goods we have delivered are defective, the customer shall nevertheless make a payment for those goods which are undisputedly free of defects, unless a partial delivery is of no interest to him.
- f) We shall accept discount bills and duly taxed promissory notes on account of payment; if expressly agreed upon in advance; credit entries for promissory notes and cheques shall be made subject to receipt less expenses, with a value date of the day on which the equivalent sum is at our disposal.
- g) Should we be obligated to advance performance and if, after conclusion of the agreement, we come to know of circumstances which jeopardize our pecuniary claim because of a lack of the customer's financial capacity, we may, aside from legal claims based on the retention of title agreed upon in section 8, prohibit the resale and processing of the delivered goods and ask for their return or for the transfer of consequential title thereof at the customer's expense and withdraw direct debit authorization under the terms of section 9 (h). The customer shall hereby give us permission to enter his business premises in the above mentioned cases and retrieve the delivered goods. In taking back the goods, a withdrawal from the contract shall only be deemed to exist upon our express statement to that effect.
- h) In case of payment default we may suspend the fulfillment of our obligations, after a written warning notice, until payment has been received. After an appropriate period of notice we shall also be entitled to withdraw from the contract in this case.

3. Delivery Time

- a) Delivery periods shall commence with our order confirmation, however, not before all details of implementation have been cleared up and all other customer requirements are at hand. The equivalent shall apply to delivery deadlines. Deliveries before expiry of the delivery time and partial deliveries shall be permissible, unless this is unacceptable for the customer. The day of delivery shall be deemed the day of the notice of readiness for shipment, otherwise the day of shipment. Failing an agreement to the contrary, or anything else arising from the contractual relationship, the delivery time stated by us shall be non-binding.
- b) Notwithstanding our rights arising from customer default, any agreed upon delivery period or deadline shall be extended and/or shifted by that period, by which the customer's obligations are in arrears. Should the customer be in default of acceptance or culpably violate cooperation deadlines, we shall be entitled to claim any damages arising therefrom including possible additional expenses. In this case the danger of accidental loss or accidental impairment of the object for sale shall pass on to the customer at that point in time, at which he came to be in default of acceptance.
- c) Should we come to be in default, the customer may set an appropriate extension period with the express declaration that he shall reject any performance after expiry of this deadline, and may withdraw from the agreement after expiry of this deadline.
- d) Upon our request and within an appropriate period of time, the customer shall declare whether he shall withdraw from the Agreement because of delays in delivery and/or claim damages in lieu of performance, or whether he shall insist on delivery.

4. Deliveries in Installments, Long-term and On-call Agreements

- a) Unlimited agreements may be terminated at the end of the month upon prior notice of 6 months.

- b) Should there occur, in the case of long-term agreements (agreements with terms of more than 12 months and unlimited agreements), a significant change in the cost of wages, materials or energy after the end of the first four weeks of the agreement, then each party to this agreement is entitled to call for an appropriate adjustment to prices in light of these factors.
- c) Our prices are calculated based on agreed order sizes. In case no binding order sizes have been agreed upon, our calculation shall be based on agreed target quantities. Should orders fall short of the agreed order size or target quantity, we shall be entitled to increase the unit price accordingly. If the customer exceeds the quantity with our approval, he may ask for an appropriate price reduction, provided he shall give notice thereof at least 2 months prior to the agreed date of delivery. The amount of reduction or increase shall be determined based on our costing.
- d) In case of on-call delivery agreements, failing an agreement to the contrary, we shall be notified of binding quantities at least 3 months prior to the on-call delivery date. Additional costs caused by the customer through a late call or late changes to a call regarding time or quantity shall be at his expense; in this case our costing shall apply.

5. Force Majeure and Other Obstructions

- a) In cases of force majeure, such as strikes, lock-outs and government measures, we shall be entitled to postpone delivery for the period of the duration of the obstruction including an appropriate start-up period, or entirely or partially withdraw from the agreement because of the unfulfilled part thereof, no matter if the obstruction shall occur at our own business or that of a subcontractor.
- b) Unforeseeable circumstances, e.g. stoppages in operation, rejects, reworking, which shall make a timely delivery impossible despite reasonable effort, and which we shall have to prove, shall be treated as force majeure.

6. Inspection Procedures, Acceptance

- a) Should acceptance be part of this agreement, the extent and conditions thereof shall be set down by the conclusion of this agreement.
- b) Should this not occur, acceptance shall take place to the extent and according to the conditions customary for us.

7. Shipping and Passing of Risk

- a) Failing an agreement to the contrary, "ex works" (Incoterms 2000) shall apply as delivery clause. This shall also apply if we have agreed to take over transport costs.
- b) Goods reported ready for shipment shall be taken over immediately, otherwise we shall be entitled to ship these at our own discretion or store these at costs customary for the trade and at the customer's risk; we shall also be entitled to the latter if the a shipment we took over cannot be carried out through no fault of our own. One week after commencement of storage the goods shall be deemed to be delivered.
- c) Failing special instructions, the choice of means of transport and route shall be at our discretion.
- d) The risk shall pass to the customer upon surrender of the goods to the railway, forwarding agent or carrier respectively one week after commencement of storage, at the latest, however, upon leaving the factory or warehouse, even if we have taken over the delivery.

8. Retention of Title

- a) We shall retain title of all delivered goods (goods delivered under retention of title) until the customer has discharged all claims arising from the business relationship, in particular those arising from any account balance. This shall also apply when payments are made on specifically designated claims. Should the customer come to be in default, we shall be entitled to demand the surrender of the delivered goods at the customer's expense. We shall be entitled to withdraw from the agreement, if an order for the commencement of insolvency proceedings has been made in regard to the customer's assets.
- b) Any taking back of goods and/or assertion of retention of title rights shall be considered a withdrawal from the agreement only upon our express declaration to that effect.
- c) The customer shall undertake any processing of delivered goods always for our benefit. Should the goods delivered under retention of title be inseparably processed or mixed with goods that are the property of others, then we shall acquire co-title in the new goods in proportion of the invoice value of the goods and the invoice value of the other processed or mixed goods at the time of processing.
- d) If we should lose our rights under the retention of title through combining or mixing, the customer shall hereby transfer to us the ownership of the new goods to the extent of the invoice value of the goods delivered under retention of title, and shall take custody of these free of charge. Any goods in which we acquire rights of co-title shall be considered goods delivered under retention of title in the sense of letter a).
- e) The customer may sell the goods delivered under retention of title only within the ordinary course of business under his normal Terms and Conditions and as long as he is not in default, provided that claims arising from the resale of goods according to letters f) and g) shall be assigned to us. He shall not be entitled to dispose of the goods delivered under retention of title in other ways.
- f) The customer hereby assigns to us all claims arising from the resale of goods delivered under retention of title. They shall serve as security to the same extent as the goods delivered under retention of title, and we hereby accept the assignment.

g) Should the customer sell the goods delivered under retention of title together with other goods not delivered by us, the assignment of claims arising from the resale shall only apply to the amount of the invoice value of the respective goods delivered under retention of title. For the sale of goods in which we hold co-title, according to letter b), the claim shall only apply to the share of this co-title.

h) The customer shall have the right to collect receivables from the sale of goods according to letters e) and f) until withdrawal on our part. In the cases mentioned under section 8, we shall have the right to withdraw, if the customer comes to be in default, if an order for commencement of insolvency proceedings was issued or in case of suspension of payment. In these cases the customer shall immediately make known to us the assigned claims and debtors therein, make all statements necessary for collection, hand over all relevant documents and inform the debtors of the assignment. Under no circumstances shall the customer be authorized to assign these claims.

i) Should the value of existing collateral exceed the value of the secured claims by more than 20%, we shall be obligated to the release of collateral of our choice to that extent. The customer shall immediately notify us in the event of seizure or other third party encroachments.

j) Should the retention of title in this form not be fully effective for legal reasons, e.g. abroad, the customer shall bring about the security of our rights with legal effect in an appropriate way and take the necessary measures for this purpose.

9. Liability for Defects

a) Proof of a defect is incumbent on the customer.

b) We shall be liable for the faultless manufacture of parts delivered by us according to the agreed upon technical delivery provisions. The customer, particularly with regard to the intended use, shall be responsible for proper construction in compliance with safety regulations, if any, for the choice of materials and necessary test procedures, for the correctness and completeness of technical delivery provisions and the technical documents and drawings handed over to us, notwithstanding any changes we may suggest and he may approve. Furthermore, the customer shall warrant that no industrial property rights or third party rights shall be infringed based on his statements. The time of transfer of risk shall determine if the condition of the goods are in compliance with the agreement.

c) We shall not be held liable for immaterial deviations from the agreed condition, for immaterial reductions in usefulness or for defects arising from unsuitable or improper use, improper installation and/or operation and normal wear. If the customer or others carry out improper changes or repairs, we shall also not be responsible for these and the resulting consequences.

d) In case of defects, hidden defects or wrong delivery, the customer shall immediately give notice of defect in writing upon discovery of the defect, at the latest, however, on the eighth day after receipt of the goods at the agreed destination.

e) In the event an acceptance agreement has been reached according to section 6., a notice of defects which might have been discovered is excluded.

f) We shall be given an opportunity to determine the defect objected to. In urgent cases posing a danger to operational safety, or to avoid excessive damages to the customer, we shall have to determine the defect objected to immediately. Upon request, goods objected to shall be returned to us immediately. Should the customer not fulfill these obligations, or should he carry out changes to goods already objected to without our consent, he shall lose contingent rights because of material defect.

g) Upon justified on-time notice of defect we shall rework the goods objected to at our discretion or supply a faultless replacement (subsequent performance).

h) We shall guarantee the quality of cold rolls delivered by us for a period of six months after being put into service, at the most 24 months after delivery. At our discretion, we shall repair rolls which have become unusable within this time free of charge or shall credit the amount invoiced therefor or shall deliver a replacement free of charge and freight prepaid. In the event of replacement deliveries or credits we shall take into account the average use up to the time of objection, which can be derived from the records of your roll card index for the respective period.

i) Should we fail to fulfill our guaranty, or should we fail to do so within an appropriate period of time or should repairs be unsuccessful at first, the customer may then set a final deadline in writing, within which we shall have to fulfill our obligations. A deadline is not required if it is unreasonable for the customer. At his discretion, the customer may demand a reduction in price after unsuccessful expiry of the deadline or withdraw from the agreement or carry out or cause to carry out the necessary repairs himself or through others at our expense and risk. In the event that repairs were carried out successfully by the customer or others, all customer claims shall be regarded as settled upon payment of the necessary costs he incurred.

j) Any customer claims for expenses necessary for the purpose of subsequent performance, which may arise from shipping the goods to another location after delivery, shall be excluded if resulting in an increase of expenses, unless the shipment is made in accordance with the intended use.

k) The customer's legal claims under a right of recourse against us shall exist only to the extent that the customer shall have made no agreements with his buyer exceeding legal warranty claims.

l) Further customer claims shall be excluded according to the provisions of section 11.

m) If a shipment arrives in damaged condition, the recipient shall sign for the receipt of goods only with the proviso of his assertion to claim for compensation for damages incurred during transport.

n) We shall not accept responsibility for damages which can be attributed to specifications for technical drawings or delivery provisions of the customer. Without further specifications in the drawings, the accuracy of size of the rolls shall be governed by tolerances pursuant to DIN 7168, degree of accuracy

"medium". A diameter of 0.5mm below specifications shall be acceptable for the ball diameter.

10. Confidentiality

a) Each party to this agreement shall use all documents (including samples, models and data) and knowledge gained in the course of the business relationship only for the pursuit of common goals, and shall keep these confidential vis-à-vis third parties with the same due care as corresponding documents and knowledge of their own, if the other party to the agreement shall designate these as confidential or have an obvious interest in their confidentiality.

b) This obligation shall commence with the first-time receipt of documents or knowledge and shall expire 36 months after termination of the business relationship.

11. General Limitation of Liability

a) Insofar as nothing else shall arise hereinafter, other and further claims of the customer against us, no matter for what legal reason, but particularly because of a violation of duty under the law of obligations and tort, shall be excluded.

b) This limitation of liability shall not apply for compulsory liability, e.g. pursuant to the Product Liability Act, in case of intent or gross negligence by legal representatives or senior staff as well as culpable violation of vital contractual obligations. In the case of culpable violation of vital contractual obligations – with the exception of intent or gross negligence by our legal representatives or senior staff – we shall only be liable for damages which are typical for this kind of contract and are reasonably foreseeable. This limitation shall also not apply for injuries to life, limb or health and for a lack of guaranteeable condition, if and to the extent that the guaranty aims at protecting the customer from damages which did not happen to the delivered goods themselves.

c) Insofar as our liability shall be excluded or limited, this shall also apply for our senior staff, workers, employees, legal representatives and agents.

d) Damages and claims arising from material defects shall become statute-barred one year after delivery to the buyer. This shall not apply if the Law pursuant to § 479 (1) German Civil Code (BGB) (right of recourse) stipulates longer periods, as well as in cases of injury to life, limb or health, intentional or grossly negligent violations of duty on the part of the supplier, and in cases of fraudulent concealment of a defect. The legal provisions regarding tolling of the Statute of Limitations, suspension and renewal of limitations shall remain unaffected. In the case of claims for damages pursuant to the Product Liability Act, the statutory limitation provisions shall apply.

12. Place of Performance and Jurisdiction

a) Provided the customer is a businessman, place of jurisdiction shall be Dinslaken and/or Duisburg. We shall be entitled, however, to bring legal action against the customer before the courts of his place of business as well.

b) Failing anything else resulting from the order confirmation, the place of performance for our services and payment obligations shall be Dinslaken.

13. Applicable Law

Legal relations between the parties shall be governed exclusively by German Law excluding the UN Sales Convention (UNCITRAL/CISG).

14. Partial Invalidity

Should individual provisions of these Terms of Delivery and Payment be entirely or partly invalid or void, the parties to the agreement shall agree on a provision, by which the purpose and intent of the invalid or void provision is largely achieved.

15. Partnership Clause

For all compensation payments, particularly for the amount of damages, appropriate consideration shall be given in good faith to the financial circumstances of the contracting parties, the kind, extent and duration of their business relationship as well as the value of the goods.