

Terms and conditions of sale and delivery

1. General
- 1.1 These sale and delivery terms and conditions apply to all, including any future, contracts, deliveries and other services, insofar as they are not amended or excluded with our express written agreement. They expressly countermand the purchasing conditions of the purchaser. Also the latter are not recognised even if we do not expressly countermand them after we have received them. Our terms and conditions are considered to have been accepted at the latest with the receipt of our delivery or service.
- 1.2 Our offers are not binding. Agreements, in particular any verbal agreements and promises made by our sales staff, become binding only by virtue of our written confirmation.
- 1.3 The information, design schemes, illustrations, technical data, weight, measurement and performance specifications contained in prospectuses, catalogues, circulars, advertisements, price lists or in documents referring to the offer, to which we reserve for ourselves the retention of title and copyright, are binding only if their exact observance is expressly agreed upon.
2. Prices
- 2.1 Our prices are to be understood as ex-factory and do not include packing, freightage, postage, insurance, value added tax etc.
- 2.2 Our prices are based on the costing structure current at the time the contract is concluded. If, with agreement, delivery takes place more than four months after conclusion of the contract, and if in the meantime the wages/salaries have increased by more than 3% in accordance with the North-Rhine/Westphalia Metal Industry collective agreement that is applicable, we are entitled to increase the price by the same percentage in the account invoice.
3. Delivery dates, deliveries
- 3.1 Delivery dates are considered to be agreed upon only approximately.
- 3.2 The period defining the delivery date begins with the date of our order confirmation. It presupposes however that all commercial and technical questions have been clarified and that the purchaser has fulfilled all obligations incumbent on him, e.g. production of the necessary official certificates or authorisations, or completion of an initial payment. If this is not the case, the delivery period extends appropriately, unless we are obliged to assume responsibility for the delay.
- 3.3 Adherence to the delivery date is subject to the reservation that deliveries to ourselves are correct and punctual. If such a delay occurs we will communicate this to the purchaser as soon as possible.
- 3.4 A delivery date is considered to have been kept, if the whole of the delivery content has left our factory or the readiness for dispatch of the goods has been communicated.
- 3.5 We are entitled to provide partial deliveries to a reasonable extent. Increases and reductions in deliveries of up to 10% relative to the quantity agreed upon are permissible.
4. Dispatch, transfer of risk
- 4.1 In the absence of any special agreement we determine the route and means of transportation without assuming responsibility for selection of the cheapest or fastest route.
- 4.2 With transfer of the goods to the carrier or freight agent the risk is transferred to the purchaser. This is also the case when delivery is free of freightage charges.
- 4.3 If the goods are ready for dispatch and the dispatch and/or the receipt of the goods is delayed for reasons that are not our responsibility, then the risk transfers to the purchaser with his receipt of the announcement of readiness for dispatch.
5. Terms of payment
- 5.1 Payment of the purchase price must take place within the agreed period for payment without any deductions.
- 5.2 We only accept cheques and bills of exchange as payment, if this has been expressly agreed. Bills of exchange and cheques are accredited subject to receipt less outlays with validation on the day on which we have access to the equivalent value.
- 5.3 In the event of delay of payment by the purchaser we will calculate interest at a value of 8% per annum over the base interest rate. We reserve the right to claim for further damages.
- 5.4 The purchaser is entitled to his legal right to withhold payments or to proceed with counterclaims only to the extent that his counterclaims are undisputed or have been upheld in law.
- 5.5 If the purchaser does not remove an article that he has bought, or if we can require payment of damages because of default, then the claim for damages will amount to at least 5% of the purchase price. We are not obliged to provide evidence of the damages. The purchaser is however entitled to provide evidence that damages did not occur at all or were substantially less.
6. Retention of title
- 6.1 All goods supplied remain our property up to the fulfilment of all claims, regardless of the cause in law, including claims arising or conditioned in the future, also including claims arising from contracts concluded at the same time or later.
- 6.2 Production and processing of the reserved goods takes place for us as manufacturers in the sense of § 950 of the Civil Code, without placing us under any obligation. The finished goods are considered to be reserved goods in the sense of clause 6.1. In the event of processing, connecting and/or mixing of the reserved goods with other goods by the purchaser our joint ownership of the new entity is in the relationship of the account value of the reserved goods to the account value of the other goods used. If our property ceases to exist as a result of any connecting or mixing, then the purchaser is immediately to transfer to us the rights of ownership in the new entity to which he is entitled to the extent of the account value of the reserved goods, and to maintain these free of charge for us. The joint rights of ownership arising from this are considered to be reserved goods in the sense of clause 6.1.
- 6.3 The purchaser may sell the reserved goods only in the normal course of business in accordance with his normal trading conditions, and so long as he is not in default of payments, provided that the claims from the onward sale pass to us in accordance with the following clauses 6.4 to 6.6. He is not entitled to any other rights of availability concerning the reserved goods.
- 6.4 The claims of the purchaser arising from the onward sale of the reserved goods, under which also falls the fulfilment of a contract for work and services or materials, are immediately to be surrendered to us. We hereby accept the transfer. In the event of the sale of goods, in which we have proportional joint rights of ownership in accordance with clause 6.2, the transfer of claims applies to the extent of these proportional joint rights of ownership.
- 6.5 The purchaser is entitled to collect claims from the onward sale, up to our revocation that can occur at any time. The purchaser is not entitled to transfer the claims – including sales of claims to factoring banks – unless he obtains the full and final equivalent value of the claim. At our request he is obliged immediately to inform his customers of the transfer to us – insofar as we do not do that ourselves – and to give us the information and documents necessary for the collection.
- 6.6 The retention of title in accordance with the governing regulations also remains in existence, if particular of our claims are included in an on-going account and the balance is formulated and accepted.
- 6.7 In the event of behaviour by the purchaser contrary to the terms of the contract, in particular in the event of delay of payments, we are entitled to retrieve the delivered articles after an admonition, and the purchaser is obliged to return the same.
- 6.8 Our retention of title is conditioned in that with the full payment of all claims arising from the business agreement the ownership of the reserved goods transfers without delay to the purchaser and the transferred claims are the entitlement of the purchaser.
- 6.9 Concerning measures taken by a third party against the reserved goods, our joint right of ownership or claims transferred to us, or other securities, the purchaser must inform us immediately with delivery of the documents necessary for an intervention. This applies also to impairments of any other kind. Any request for invocation of insolvency proceedings concerning the assets of the purchaser entitles us to withdraw from the contract and to require the immediate return of the delivery content supplied.
- 6.10 If the value of the existing securities exceeds the secured claims in total by more than 10%, we are to that extent obliged upon the request of the purchaser to release securities in accordance with our selection.
7. Models, tools, shaping devices
- 7.1 If models, tools and other shaping devices (hereinafter described as „tools“) are made or constituted by us on behalf of the purchaser, we will charge proportional costs for these in the account, and the tools will remain in our possession. We are not obliged to hand these over to the purchaser, because of the totality of our legal rights ensuing from the business relationship with the purchaser we are entitled to a right of retention of the tools.
- 7.2 Insofar as the purchaser makes tools available to us, he is responsible for the correct design and for execution of the tools that satisfies the intended purpose. We are however entitled to request modifications. We are not obliged to check the agreement between the tools provided and the accompanying design schemes.
- 7.3 The purchaser bears the cost of maintenance, modification and replacement of the tools.
- 7.4 If deliveries are made in accordance with design schemes or other data of the purchaser, and patent rights of a third party are thereby infringed, the purchaser exempts us from all claims made by the third party.
- 7.5 Our design schemes and documents supplied to the purchaser, as well as our proposals for the advantageous fashioning and production of the products, may not be passed on to a third party and can be reclaimed by us at any time. We reserve for ourselves the retention of title and copyright of illustrations, design schemes and all other documents.
8. Claims for defects
- For material and legal defects relating to the delivery under exclusion of further claims – subject to clause 9 – we accept responsibility as follows:
Material defects
- 8.1 All those parts that are found to be defective due to a circumstance existing before the transfer of risk are, in accordance with our choice, to be either made good or replaced without defect free of charge. The establishment of such defects is to be communicated in writing to us promptly, at the latest however within a period of two weeks from the transfer of risk. Replaced parts become our property.
- 8.2 After communication with us the purchaser has to give us the necessary time and opportunity for the performance of all rework and replacement deliveries that appear necessary to us; otherwise we are released from liability for the consequences arising. Only in urgent cases where working safety is endangered and/or an unusually large amount of damage is to be prevented, about which we are to be informed immediately, has the purchaser the right to eliminate the defect either himself or through a third party, and to require from us reimbursement of the necessary expenditure.
- 8.3 From the direct costs resulting from the rework and/or replacement we will bear – insofar as the complaint is entitled – the costs of the spare part including dispatch. In addition we will bear the costs of removal and replacement as well as the costs of the necessary provision of fitters and ancillary workers required, including travel costs, insofar as no unusual charge on us hereby occurs. It is presupposed that the equipment is available without hindrance for rework at the site of the dispatch address of the purchaser.
- 8.4 The purchaser has a right within the context of the legal codes to cancellation of the contract, if we – taking into account the legal cases of exception – allow an appropriate period set by us for rework or replacement to elapse without result because of a lack of material. If only a slight defect is present, the purchaser is only entitled to a reduction of the contract price. The right to reduction of the contract price otherwise remains excluded.
- 8.5 No responsibility is accepted in the following cases in particular:
Non-observance of the operating instructions and/or the maintenance schedule, unsuitable or inappropriate use, incorrect assembly and/or commissioning by the purchaser or a third party, natural wear, incorrect or careless handling – in particular overloading – use of unsuitable consumables, chemical, electro-chemical or electrical influences etc.
We do not accept responsibility for parts that are worn out from normal use of the equipment and/or which must be replaced regularly by the user, and/or which are consumables, e.g. air filters, seals, diaphragms, pump hoses, etc.
- 8.6 If the purchaser or a third party conducts repairs inappropriately, we are not liable for the consequences arising. The same applies to modifications of the delivery content made without our previous agreement.
- 8.7 Data not provided with tolerances, as contained in catalogues and operating instructions, also advice and instructions made by our employees, are not assured properties. They are subject to the deviations and modifications usual in this industry caused by technical developments. Our instructions regarding application are drawn up with the care that is usual in this industry, but do not however relieve the purchaser from the obligation to check the equipment regarding its suitability for the purpose that is intended.
Legal defects
- 8.8 If use of the delivery content leads to the domestic infringement of commercial patent rights or copyrights, we will in principle provide to the purchaser at our expense the right to on-going use, or will modify the delivery content in a reasonable manner such that the patent right infringement no longer exists. If this is not possible within economically reasonable conditions or within a reasonable period, the purchaser is entitled to cancellation of the contract. Under the presuppositions referred to we are also entitled to a right of cancellation of the contract.
- 8.9 The obligations referred to in clause 8.8 are definitive subject to clause 9.1 for the case of patent or copyright infringement. They exist only, if
 - the purchaser informs us immediately of patent or copyright infringements asserted,
 - the purchaser supports us to a reasonable extent in defence of the claims asserted and/or enables us to execute the modification measures in accordance with clause 8.8,
 - all preventative measures including out of court settlements remain reserved to us,
 - the legal defect is not based on an instruction made by the purchaser and
 - the legal infringement was not caused by the purchaser modifying the delivery article in an unauthorised manner or using the delivery content in a manner not stipulated.
- 9.1 For damages, which did not arise within the delivery content itself, we are only liable – for whatever causes in law:
 - a) in the event of intent,
 - b) in the event of gross negligence of our agents or managerial employees,
 - c) in the event of culpable impairment of life, body, health,
 - d) in the event of defects, which we have maliciously concealed or whose absence we have guaranteed,
 - e) in the event of defects of the delivery content, insofar as there is liability according to product liability law for damages to property or person for privately used content.
- 9.2 In the event of culpable infringement of significant contractual obligations we are liable in the event of gross negligence by non-managerial employees and in the event of minor negligence, in the latter case limited to contractually typical, reasonably foreseeable, damages.
- 9.3 Further claims are excluded.
10. Limitation
- 10.1 All claims of the purchaser – for whatever causes in law – come under the statute of 12 months limitation
- 10.2 For claims for damages in accordance with 9.1 a) to e) the legal periods apply.
11. Partial inefficacy
If particular details of the above requirements should be totally or partly ineffective, then the remaining requirements remain effective. Ineffective requirements are to be replaced by such requirements that come closest to the economic intent of the contract.
12. Place of performance, place of jurisdiction, law
- 12.1 Place of performance for all our deliveries and for the payment of the purchase price is Overath-Vilkerath.
- 12.2 Place of jurisdiction for all disputes arising from the contract is Cologne. We can also sue the purchaser at his general place of jurisdiction.
- 12.3 This contract and the legal relationships arising from it are subject exclusively to German law.