→ General terms and conditions (Last updated: 07/2017)

I. General

1. All offers, supplies and services are subject exclusively to the following terms and conditions. These terms and conditions shall also apply to all future offers, supplies and services. The customer shall also submit to these terms and conditions should we perform orders at short notice which would not normally be confirmed separately by us.
2. General terms of business or purchase of the customer or third parties which deviate from these terms and conditions are hereby contradicted. Said customer's terms and conditions shall be deemed to have been contradicted even if we do not explicitly reject any such terms of business and purchase should they be received by us. Even if we refer to correspondence containing the business terms of the customer or a third party, or refer to such, this shall not be an agreement to the validity of the business terms.

II. Initiation and conclusion of contract

1. Our offers shall not be binding. Our declarations shall only be valid if made in text form or in electronic form as defined by §§ 126a, 127 BGB (German Civil Code). Declarations of any kind issued in any form (verbal, by telephone, by fax, etc.) by our employees or representatives, including all subsidiary agreements, shall only be valid if confirmed by us in text form or fully automatically.
2. Offers and purchase orders issued by the customer shall only be deemed to have been accepted by us if explicitly confirmed in text form or if fully automatic confirmation of the same is issued. If no response is made to an offer or purchase order issued by the customer, this shall not be interpreted as tacit acceptance of the same.
3. Our written or fully automatic acknowledgement of order shall be authoritative with regard to contracts concluded with the customer. Any objections brought by the customer against the acknowledgement of order or the confirmation of subsidiary agreements shall be notified to us immediately, at the latest within 2 working days of receipt of our acknowledgement. Should the customer fail to raise objections in good time, the fittings specified in our acknowledgement or order in particular – with the exception of those subject to our warranty obligations – shall not be subject to exchange and shall not be taken back by us.

III. Product properties, manufacturer specifications, dimensions, weights, quality, drawings

1. Drawings, illustrations, dimensions, weights or other performance data, including samples, drawings, data sheets and similar, as well as information in advertising material shall not substantiate an agreement on quality or condition as defined by §§ 434 Para. 1 Sentence 1 and 2, § 633 Para. 2 BGB (German Civil Code). Such specifications shall only be deemed to be binding if they have been agreed in writing. Samples shall only be deemed to be non-binding demonstration models.
2. Deviations from bindingly agreed dimensions, weights and standards of quality shall be permissible within the limits defined in applicable DIN standards or customary practice. Changes to bindingly agreed dimensions, weights and standards of quality made at the request of the customer shall only be possible if they are notified by the customer in good time such that the relevant change can be taken into account during the production process.
3. Consulting services shall be provided by our employees and representatives to the best of their knowledge. Facts and figures relating to the properties, dimensions, weights and levels of quality of our products, as well as about the suitability and application of our products for specific processes and purposes are not binding and shall not substantiate an agreement on quality or condition as defined by §§ 434 Para. 1 Sentence 1 and Sentence 2, § 633 Para. 2 BGB (German Civil Code). Any such information provided in the context of consultations shall not release the customer from the obligation to perform its own inspections and tests.We shall only be liable for any mistakes in such facts and figures in the event of intention or gross negligence.
4. The functions and properties of our products and systems as shown in test certificates, approvals or similar documents can only be expected if use is made of our original products and systems and if processing is undertaken by properly qualified specialist firms which are familiar with the recognized state of the art, particularly in the fields of metal and mechanical engineering, and which are demonstrably informed about the relevant DIN standards, industry guidelines and recommendations. The information about our produces and services provided by us in our technical documentation as well as information issued by us for the purpose of processing our products – i.e. information about design, arrangement, assembly, processing, installation, etc. – shall be intended as suggestions and ideas for properly qualified specialist firms which are familiar with the recognized state of the art and which are demonstrably informed about the relevant DIN standards, industry guidelines and recommendations. This information shall not form part or the basis of the contract concluded with the customer and we consequently make no separate charge for said information. We shall only be liable for any mistakes in such facts and figures in the event of intention or gross negligence.
5. We reserve the proprietorship rights or copyrights to all quotations and costing estimations provided by us as well as drawings, plans, data sheets, illustrations, calculations, prospectuses, catalogues, models, tools and other documents and aids provided to the customer. The customer may not make these objects as such, nor the contents, accessible to third parties without our explicit previous written permission, and may not publish them, use them personally or through third parties or reproduce them. The customer must return these objects to us in full at our request and destroy any copies made if they are no longer required by the customer in a proper business transaction or if negotiations do not lead to the conclusion of a contract.

IV. Delivery

1. Delivery periods and deadlines shall only be binding if they are explicitly agreed as such in writing. Agreed delivery periods shall commence on the date of our acknowledgement of order, however not before full clarification of all necessary details and technical issues of the order. The latter shall also apply to delivery dates.
2. If the customer does not fulfil contractual obligations, including cooperation or secondary obligations (e.g. opening a letter of credit, providing national or international certificates, approvals, releases or documents, payment of an agreed deposit or similar) punctually, we shall be entitled to appropriately extend or postpone our delivery periods and dates, irrespective of our rights resulting from the customer's delay, according to the requirements of our production process.
3. Our obligations are subject to receipt by us of correct and timely supplies. This shall only apply in the case of purchase orders placed by consumers if a specific covering transaction has been concluded and not been fulfilled by our own supplier. We shall not be held responsible for delivery delays – even where delivery periods have been bindingly agreed – resulting from force majeure and owing to events which render delivery significantly more difficult or impossible for longer than a temporary period, such as strikes, lockouts, directives issued by public authorities are not our responsibility, including if this happens to our own suppliers, even if the delivery periods had been agreed to as obligatory. Such circumstances shall release us from the obligation towards punctual fulfilment of the contract for the period they last and entitle us to postpone the delivery by the duration of the impeding circumstances plus a reasonable start-up period. Our customer shall be notified immediately should deliveries be abortive or delayed.
4. We shall be entitled to make partial deliveries as long as and to the extent that this is not unreasonable for the customer.
5. An agreed delivery period shall be deemed to have been met if the delivery item has left our business premises prior to expiry of said period or readiness for shipment has been notified to the customer and shipment has not been made at the request of the customer.
6. Should we be unable to deliver ordered goods because a supplier does not fulfil their contractual delivery obligations, we shall be entitled to withdraw from the contract with the customer. In non-commercial transactions however, this only applies if we have concluded a specific hedging transaction with the respective supplier, if we are not responsible for absence of the delivery and if the hedging transaction is a congruent hedging transaction. We shall be obliged to immediately inform the customer about non-availability of the service and shall promptly refund any return services provided by the customer.
7. Discernible defects in our deliveries and services, including delivery of incorrect quantities or the delivery of goods other than those ordered, shall be notified by the customer immediately. Defects in our deliveries which cannot be detected in the course of standard receiving inspections shall be notified by the customer immediately upon detection of such defects. In the case of transport damages, the customer shall immediately arrange for an investigation and report to be made detailing the transport damages by the responsible authorities.

V. Passage of risk, acceptance, packaging

1. The risk of ruin, loss or damage to the goods shall transfer to the customer upon handover to the customer, the shipper or freight forwarder or another third party nominated to ship the goods, but at the latest when leaving the factory or warehouse. When handing over the delivery item to the above-mentioned persons, the start of the loading process shall be decisive. This shall also apply if partial deliveries are made or we have taken on other services. If an agreement is made for the customer to collect the goods, the risk shall transfer to the latter upon provision of the goods.
2. If the delivery of our supplies and services is delayed for reasons for which the customer is responsible, we shall be entitled but not obliged to store the goods at the cost and risk of the customer at our own discretion, to take all the measures which we deem to be necessary for the purpose of preserving the goods and to issue an invoice for the same. In such cases the risk shall pass to the customer at the time that readiness for delivery has been notified to the customer. The date on which readiness for delivery is notified to the customer shall be regarded as the date of delivery to the customer. The same shall apply if goods notified as ready for delivery are not called forward within 3 working days. The statutory provisions regarding delayed acceptance shall continue to apply. We are also entitled to charge the customer for the costs incurred as a result of the delay. Should the goods be stored on our premises, the customer shall be charged at least 0.5% of the invoice amount per month. The customer is entitled to prove that damage is not caused by the delay or is significantly lower than the lump sum. Following the unsuccessful expiration of an acceptance deadline given to the customer and following prior notification, we can also dispose of the deliverable in another manner. Our statutory claims from the customer's default remain unaffected.
3. If acceptance of our supplies and services is agreed or if the customer has accepted the obligation to accept at our behest, such acceptance shall take place in our works or warehouse. The acceptance inspection and procedure shall be conducted immediately following notification of readiness for acceptance. The costs of the acceptance inspection and procedure shall be borne by the customer. If special quality regulations or a specific standard of quality of our supplies and services have been agreed, or if the customer requests that our standard articles or standard systems are processed to meet special requirements, we shall be entitled but not obliged to demand acceptance of our supplies and services from the customer. The customer shall be required to accept on request. If the customer defaults on acceptance of our supplies and services, we shall be entitled to assert the rights specified in Clause V (2).
4. If the delivery items are shipped or transported to the customer by us, we shall select the means of transport, transport route, method of shipment and shipment route at our discretion. In such cases we shall also select the carrier and/or shipping agent. Unless otherwise agreed, the delivery items shall be shipped and/or transported to the customer at the customer's cost. If the customer requests that insurance be taken out to cover transport risks, the customer shall make such request in good time and shall bear the costs of such transport insurance. Additional costs incurred as a result of special shipment requests made by the customer shall be borne by the customer. Additional costs for the reforwarding of goods requested by the customer and additional warehousing costs shall also be borne by the customer.
5. Unless otherwise agreed in writing, the delivery item shall be delivered in cartons. Unless otherwise agreed in writing, packaging costs shall be borne by the customer. Packaging will only be taken back by the supplier if specifically agreed unless the taking back of such packaging is mandated by law or by official regulations based on mandatory statutory provisions. Where packaging is taken back, reimbursement/refunding of the packaging costs borne by the buyer shall also be subject to explicit agreement.

VI. Prices, proof of exportation, settlement, collateral

1. Our prices are quoted as net prices to which currently applicable rates of statutory value-added tax in Germany or abroad shall be added. Our prices apply ex warehouse / ex works. Customs duties, consular costs, freight, insurance premiums, packaging costs and other costs relating to the implementation of the contract shall be charged separately to the customer. If, deviating from this term, an agreement is reached whereby such costs are included in the price, any increases in costs which occur after the contract is concluded shall be charged to the customer.
2. If the agreed prices are based on our list prices and the delivery is agreed to be made more than 4 months after conclusion of the contract, our valid list prices upon delivery shall apply. Deliveries made to meet call off orders placed by the customer in the framework of continuous obligations shall be subject to the list prices applying at the time the customer call off is made.
3. If the customer defaults on payment of an invoice or if we become aware of circumstances which suggest that the creditworthiness of the customer may be seriously impaired, we shall be entitled to demand immediate settlement of all current outstanding claims against the customer regardless of any payment targets which may have been granted and regardless of the term of any discounted bills. We shall also be entitled to withdraw in whole or part from current contracts. We reserve the right to make purchase orders which have not yet been performed contingent on advance payment or the furnishing of security. The costs of such collateral shall be borne by the customer in such cases.
4. We shall be entitled to demand security from the customer at any time in compliance with § 648 a BGB (German Civil Code). The usual costs for the furnishing of security shall be reimbursed in this case up to a maximum of 2 % p. a.
5. Our invoices are due for settlement within 30 days of the invoice date at no discount. Other terms of payment and prompt payment discounts shall be subject to explicit agreement.
6. If supplies and services are made within the EU the customer shall provide us with the VAT Reg. No. under which it settles acquisition tax in the EU prior to performance of a purchase order. Invoicing of cross-border supplies and services between the EU members states is subject to the valid VAT regulations of the 6th EU Directive unless otherwise regulated under national law. If value-added tax must be charged by us, the customer shall owe the applicable VAT in addition to the agreed (net) price. If a customer based outside the Federal Republic of Germany or its agent collects the goods and transports or ships them to countries outside the EU, the customer shall provide us with proof of exportation which complies with the legal VAT regulations in the Federal Republic of Germany. If such proof is not provided within 30 days of transfer of the goods, the customer shall pay the value-added tax at the tax rate applicable on the invoice amount for the relevant deliveries within the Federal Republic of Germany.
7. The customer shall only be entitled to retain payments or to offset payments with counterclaims to the extent that such counterclaims are undisputed by us or have been legally determined. The offsetting ban does not apply to a counterclaim due to a defect that is based on the same contractual relationship as our entitlement. The customer shall only be entitled to assign claims against us with our prior written consent.

VII. Retention of title

1. Our goods shall remain our property pending fulfillment of all, including future, claims, including but not limited to balance claims due to us in the context of the business relationship with the customer. The assertion of our retention of title shall not constitute withdrawal from the contract. If we assert our right to demand surrender of the goods, the customer hereby grants us the irrevocable right to repossess the goods which are our property and to enter the premises on which such goods are kept for this purpose.
2. Any treatment or processing of goods which are still our property shall be undertaken on our behalf as manufacturer as defined by § 950 BGB (German Civil Code) without this imposing any obligations on us. Should our delivery items be processed with other items which are not our property, we shall acquire co-title to the new object based on the ratio of the invoice value of the goods supplied by us to the processing value of the new item. The treated or processed delivery item or our share of the jointly owned new item shall be regarded as retained goods in accordance with Clause (1). If our delivery items are mixed or connected with other goods which are not our property, we shall acquire co-title to the new object based on the ratio of the value of the mixed or connected items to the integral item of which they form part. If processed or mixed items other than our property are regarded as the principal good and should these items be the property of the customer, the customer herewith assigns co-title to us equal in value to the value of the mixed or connected items. Items to which we hold co-title shall be regarded as retained goods as defined in Clause (1) above.
3. The customer shall be entitled to sell the retained goods in the course of its ordinary business activities. Claims obtained by the customer from the resale shall be herewith assigned to us to the value of the invoice value of the retained goods. If the retained goods are sold by the customer with other goods which are not our property, the customer shall assign the claims arising from the resale to us based on the ratio of the invoice value of our retained goods to the invoice value of the other goods. If goods which are jointly owned by us as defined by the above Clause (2) are resold, the share of the resale claim which corresponds to our share of the ownership in the goods shall herewith be assigned.
4. The assignments referred to in Clause (3) above shall be made to secure all our existing and future claims arising from the business relationship with the customer. We undertake to release the collateral security due to us at the request of the customer to the extent that the realizable value of our collateral exceeds the value of the secured receivables by more than 20 %.
5. The customer shall not be entitled to assign claims from the resale of retained goods to third parties. Claims arising from the resale of retained goods shall only be assigned to factoring companies with our explicit, prior written approval. The customer shall not be entitled to pledge the retained goods or use the same as security as long as our retention of title continues to apply. If payments are suspended, the customer shall no longer be entitled to resell retained goods, even if such goods have been processed. The customer shall draw attention to our ownership or any claims arising from the resale of the retained goods which are assigned to us and shall notify us in writing immediately if retained goods are attached or seized in any other way by third parties.
6. At our request, the customer shall notify its contracting parties that assignment has been made to us, shall provide us with the required information and surrender the required documentation. We shall be entitled to notify the customer's contracting parties of such assignment.
7. If the customer accepts payment or other forms of consideration from the resale of retained goods before the customer's liabilities to us have been settled in full, such payments or consideration shall be accepted on our behalf at the amount of claims surrendered to us. The customer shall receive such payments or consideration as our trustee.
8. The customer shall also surrender the claims to secure our receivables against him that accrue against a third party by connection of the delivery item with a property.

VIII. Warranty claims

1. Our supplies and services shall be deemed to have been provided in accordance with contract if they comply – or do not substantially deviate from – the agreed specifications at the time of passage of risk. The contractual compliance and freedom from defects of our supplies and services shall be determined exclusively according to our agreements on quality and quantity of the ordered goods. Liability for specific purpose or suitability shall only be accepted if such liability is explicitly agreed in writing.
2. If changes are made to the product supplied by us, if materials are exchanged or used which do not comply with original specifications or if materials delivered by us are not processed according to our processing guidelines, our warranty obligations shall not apply unless the customer demonstrates that none of these circumstances were responsible for such defects and that, on the contrary, the defects existed prior to passage of risk and regardless of the above circumstances. No warranty shall be assumed either in the event of unsuitable or improper use, faulty or negligent handling and/or storage and defective processing of goods supplied by us. The same shall apply to defects in and damages to goods delivered by us resulting from a failure to comply with the operating and maintenance instructions provided with all supplied products. We shall also be released from liability for the ensuing defects in the event of improper subsequent improvements undertaken by the customer or a third party.
3. In the event of complaints, the customer shall immediately provide us with the opportunity of examining the delivery items subject to complaint. The goods subject to complaint and a sample of the same shall be made available to us at no cost at our request. If unjustified complaints are made, we shall be entitled to charge the customer the shipping, handling and inspection costs at customary prices.
4. In the event of the assertion of claims for material defects to the delivered objects, we undertake and are entitled in the first instance to choose within an appropriate period of grace between the rectification of the defect and the delivery of a replacement. The Customer undertakes to allow us the time and opportunity we require for the rectification or replacement delivery which we deem to be necessary. In any other case, we will be exempted from liability for any consequences which may arise as a result.
5. Rights of recourse of the Customer against us pursuant to § 478 of the German Civil Code (BGB) are limited to the statutory scope of the justified claims for defects asserted against the Customer by third parties and assume that the Customer has complied with the duty to give notice of defects incumbent upon him in relation to us pursuant to § 377 of the German Commercial Code (HGB).

IX. General limitation of liability

1. Unless otherwise agreed in these terms and conditions, we shall only be liable for damages in case of breach of contractual or non-contractual duties, including breach of collateral duties or breach of duties prior to contract formation, in the event of intent or the gross negligence of our legal representative or agents in performance or in the case of culpable breach of major contractual duties.
2. In the event of the culpable breach of major contractual duties we shall only be liable – except in the event of intent or gross negligence of our legal representatives or agents in performance – for foreseeable damages which are intrinsic to the contract. Damage amounting to a maximum of €25,000 is deemed to be contractually typical, foreseeable damage.
3. The above limited liability provisions shall not apply to injury to life, limb or health or to damages to privately used property in accordance with the German Product Liability Act (Produkthaftungsgesetz). The statutory liability provisions shall also apply in cases of fraudulently concealed defects and infringement of expressly warranted characteristics.
4. The statutory period of limitation for all of the customer's claims due to a defect is one year, commencing with the beginning of the statutory limitation period. This does not apply if we fraudulently conceal the defect or, as an exception, have assumed a guarantee. The knowledge-dependent statutory period of limitation for compensation claims not based on a defect is one year; the non-knowledge-dependent maximum period for compensation claims is five years. In all cases, the statutory limitation of claims due to intent or gross negligence by us or our agents and upon personal injury, bodily harm or damage to health and based on the German Product Liability Act [Produkthaftungsgesetz] remains unaffected. The limitation periods for all defect claims shall be 5 years from the beginning of the statutory limitation period if the terms of § 438 Para. 1 no. 2 or § 634 a Para. 1 no. 2 BGB (German Civil Code) exist.

X. Applicable law, place of performance and legal venue, miscellaneous

1. Our legal relationships with our customers are subject to the law of the Federal Republic of Germany to the exclusion of the uniform UN Convention on Contracts for the International Sale of Goods, CIFG.
2. The place of performance and legal venue for purchase orders placed by merchants, legal persons under public law or public funds shall be Ludwigsburg. We shall, however, be entitled to bring an action at the customer's own place of general jurisdiction.
3. Should a clause in these terms of business be or become ineffective, the effectiveness of the remaining clauses shall not be affected. In place of the ineffective clause, an effective clause shall count as agreed that comes as close as possible to the original intention of the parties. The same shall apply to a loophole.
4. Data generated in connection with the business relationship shall be processed by computer and stored in file form.
5. Side arrangements, amendments and/or supplements must be made in text form. This shall also apply to a waiver of the text form requirement.