

Terms and conditions of sale and delivery

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1. Applicability

The sale of our goods and other services is based exclusively on the following terms and conditions of sale, even where we have not objected in individual cases to different terms and conditions of purchase of the ordering party, which we hereby expressly reject. The terms and conditions of sale shall be deemed accepted unconditionally by the ordering party at the latest with the acceptance of our goods or other services, even in the event of a previous objection on its part. Deviations from the terms and conditions of sale require our express prior written consent for each individual contract in order to be effective.

2. Offers

Our offers are subject to change without notice. Samples and specimen represent non-binding outline information. We reserve the right to make excess or short deliveries by up to and including ten per cent.

3. Prices

The price is calculated on the basis of the price valid on the day of delivery or performance, plus the applicable statutory value added tax, unless a different price agreement has been made. Unless otherwise agreed, the prices shall be understood as delivery of goods ex warehouse, including our standard packaging. If carriage-paid delivery of goods has been promised, this shall apply carriage-paid to the receiving station of the customer, excluding freight charges. Additional costs due to a special type of shipping requested by the customer (e.g. express consignment, overnight, air freight) shall be borne by the customer.

4. Shipping and transfer of risk

Shipment is always at the risk and, unless otherwise agreed, at the expense of the ordering party. On delivery of the goods to the shipping company, and at the latest on leaving our factory or warehouse – or, in the case of drop shipments, leaving the factory or warehouse of our sub-supplier – the risk shall pass to the ordering party; this also applies in the case of carriage paid, FOB or CIF transactions. The recipient is obliged to inspect the goods immediately after delivery for completeness and identifiable damage and to notify us of any loss or damage without undue delay.

5. Delivery

The delivery dates in our sales forms regularly cite the provisional delivery date which we aim to maintain. If a delivery date that has been expressly approved in writing and which extends beyond the original date is not met, the ordering party is entitled to provide us with an appropriate period of grace in writing. If the delivery deadline is not met by the time the period of grace expires, the ordering party is entitled to withdraw from the contract. The delivery is considered to be delivered in a timely manner when the goods have left our plant or warehouse or that of our supplier as agreed before expiry of the deadline. Circumstances or events outside of our control that make the delivery impossible or unreasonably difficult such as traffic and business disruptions, lack of raw materials or energy, strikes or lock-outs, even when they arise at our suppliers, free us from the delivery obligation for the duration of the interruption and an appropriate preparatory period. If the disruption is unlikely to be over within a reasonable period, we are entitled to withdraw from the contract in whole or in part without any obligation of subsequent delivery. The ordering party is not entitled to claim compensation. If the ordering party rejects the delivery even after expiry of a reasonable period of grace, we shall be entitled – without prejudice to other claims – to demand a lump sum of up to one quarter of the purchase price to offset our costs against a claim for compensation for loss or damage, but without proof of such loss or damage.

6. Payment

If not otherwise indicated on the invoice, the following payment terms shall apply: 2% discount if received within 14 days of the date of invoice, net within 30 days. The timeliness of the payment is based on its receipt at our unconditional disposal. If the payment deadline is exceeded or if payment is not made in full yet on time, the customer shall be in default even without the issue of a reminder. Irrespective of any other claims, we are entitled to demand default interest of 2% above the respective discount rate of the Deutsche Bundesbank from the due date. If the ordering party is in default of payment or if justified doubts arise as to its solvency, we shall be entitled to demand immediate payment of all claims against it and/or to demand security even before delivery, to withhold outstanding deliveries in respect of these and other contracts in whole or in part or to withdraw from the existing contracts. The ordering party may only offset undisputed or legally established claims or exercise a right of retention on the basis of such claims that are based on the same contractual relationship. If the customer is a merchant, the assertion of a right to refuse performance or a right of retention requires our prior written consent.

7. Property rights

The delivered goods remain our property until the purchase price and all existing or future claims arising from the business relationship with the ordering party have been paid in full. The ordering party is entitled to sell the reserved goods during the normal course of business as long as it fulfils its contractual obligations towards us. The pledging or assignment of the goods as security is not permitted. The ordering party must notify us immediately of any violation by third parties of our property rights. If the ordering party does not fulfil its contractual obligations towards us, we are additionally entitled to demand the release of the reserved goods; the ordering party has no right of possession in this respect. On purchase of the reserved goods, the ordering party assigns to us the claims against its customers arising from their resale, including all ancillary rights. It remains entitled to collect its claims assigned to us until revoked. The ordering party is obliged to inform us upon request of the amount of its claims and the names of the third-party debtors. If the reserved goods are processed, we shall be deemed to be the manufacturer and shall acquire ownership of the new object without the customer being entitled to any claims arising from this transfer of rights. If the processing takes place together with other materials, we shall acquire co-ownership of the manufactured item in the ratio of the gross invoice value of the reserved goods to that of the other materials. If, in the event of such combination, mixing or blending with another item, the latter is to be regarded as the main item, co-ownership of the item shall pass to us to the extent of the gross invoice value of the reserved goods. If the value of the securities transferred to us exceeds our total claims against the ordering party by more than twenty per cent, we are prepared at any time at the customer's request to transfer the security rights back to the customer at our discretion.

8. Information and advice

All verbal and written information on the suitability and application possibilities of our goods is given to the best of our knowledge. However, such information only represents our empirical findings, which cannot be considered a warranty and do not constitute grounds for any claims against us. In particular, the ordering party shall not be released from the obligation of checking the suitability of the goods for the intended purpose by carrying out its own tests.

9. Warranty

We must be immediately notified in writing of any complaints arising from identifiable problems, incorrect deliveries or substantial deviations in amount within 14 days of delivery of the goods. Hidden defects in the goods must be reported in writing without delay after they are discovered, or within six months after delivery of the goods at the latest. If the ordering party does not find any defects within this period, the goods shall be deemed to be approved free of defects. If the complaint is well-founded, the customer shall be entitled, at our discretion, to a claim to free rectification of the defect or, if the goods are returned, to a replacement delivery.

Missing quantities will be delivered subsequently. If the rectification or replacement delivery does not lead to success within a reasonable period of time, the customer can demand a reduction of the purchase price or, if necessary, cancellation of the contract. If the ordering party is a merchant, we will be responsible for making the decision in this matter. Claims arising from the absence of a warranted characteristic can only be asserted when a specific characteristic has been expressly warranted in writing by our management in a specific case. Otherwise, the risk of use and suitability lies exclusively with the customer. Liability shall be determined in accordance with the statutory provisions. However, we shall only accept liability for consequential damage caused by a defect if and insofar as this was covered in our warranty.

10. Compensation

Any claims for compensation on the part of the ordering party, which, irrespective of the legal basis, may arise directly or indirectly in connection with the order, delivery or use of our goods, shall remain fundamentally excluded, provided that we, our assistants or agents have not caused the damage through gross negligence or wilful intent. Where loss or damage is caused by gross negligence, any claim for compensation by an ordering party who is a merchant shall be limited to compensation of the foreseeable loss or damage. Any claim for compensation by an ordering party who is not a merchant resulting from delay or impossibility due to slight negligence shall be considered up to a maximum amount of one quarter of the purchase price.

11. Place of performance and jurisdiction

The place of performance for our deliveries is the respective place of dispatch and, as far as legally permissible, Horb-Ahldorf for our other services. The place of jurisdiction for both parties is Horb a.N., Germany.

12. Severability clause

The legal invalidity of individual provisions shall not affect the validity of the remainder of the contract. We would like to point out that we process the customer's data relating to business transactions with the ordering party in accordance with the German Federal Data Protection Act.