

Terms of Business for the Sale of Goods

§1

General – Scope of Application

- (1) Any legal business in accordance of which our goods are sold is exclusively based upon these Terms of Business; these Terms of Business shall also apply to any future business with Purchaser, with no additional express agreement being required.
- (2) We do not recognize any customer's terms of business which are opposed to, divergent from or complementary to our Terms of Business, unless we have given our express written consent to the application of such terms of business. Neither any failure to lodge opposition nor any delivery of sold goods – with or without knowledge of another party's terms of business – shall be deemed to be an acknowledgement of another party's terms of business. In any such case, the Terms of Business hereunder shall apply, too.
- (3) These Terms of Business shall apply without any restriction to any companies within the meaning of Articles 14, 310, German Civil Code (BGB). In case we sell goods to consumers within the meaning of Article 13, German Civil Code (BGB), the applicable valid legal regulations shall apply instead of any regulations that may be invalid in such case.
- (4) By concluding the sales contract or by accepting the goods at the latest, Purchaser fully agrees to our Terms of Business, including in cases where divergent terms and conditions are added to his declaration of intent aimed at concluding the contract.
- (5) If Purchaser for the first time obtains knowledge of the existence or wording of our Terms of Business within the framework of our letter of confirmation – which may also be an invoice – such Terms of Business shall be deemed to be fully accepted by the acceptance without opposition of the confirmation and/or by the acknowledgement of the invoice.

§2

Offer, Prices

- (1) Our offers for the sale of goods are without engagement and subject to confirmation unless we have expressly confirmed the binding character of such offers. Contracts will be brought about only by our express confirmation – which may also be an invoice – or by our delivery or partial delivery without any reservation.
- (2) Our offer prices are net, ex works, and in Euro, unless otherwise expressly agreed. Valid prices shall be those prices applied on the day of shipment or on the day of the forwarding of the notification of shipment ready for dispatch. Other prices shall apply only in those cases where the order confirmation mentions a fixed price and/or fixing price. The turnover tax will be charged in the legal amount applied on the day mentioned in sentence 1 and will be separately set out on the invoice. Any costs incurred for shipment and packing shall be at Purchaser's expense.
- (3) Any clerical errors or cost estimating errors shall entitle us to withdraw from the contract concluded with Purchaser if such Purchaser refuses to adjust the contract. In such case, any claims for damages of Purchaser are excluded.

§3

Terms of Payment

- (1) Payment shall be effected net irrespective of the receipt of goods, within 14 days as from the date of invoice, unless otherwise expressly agreed.
- (2) Despite any differently worded terms and conditions of Purchaser, we shall be entitled to offset any payment against any Purchaser's previous liabilities in the first instance. Any costs and interest already incurred shall entitle us to offset any payment received, in accordance with Article 367, Section (1), German Civil Code (BGB).
- (3) Payments shall be considered as effected not before we can freely dispose of such amount. Consequently, payment by bill of exchange or cheque shall be considered as effected not before the bill of exchange or cheque has been honoured. Unless otherwise agreed, any costs incurred in this connection shall be at Purchaser's expense.
- (4) Purchaser may only offset claims which are undisputed or acknowledged by us as well as claims which have been recognized by declaratory judgement. This also applies to claims on account of warranty of quality. Purchaser shall be entitled to exercise the right of retention only if his counter-claim is based on the same contractual relationship.
- (5) If Purchaser gets into arrears, we shall be entitled to charge interest as from the relevant point of time, in the amount of 8 percentage points above the applicable base interest rate. We retain for ourselves the right to assert a higher damage caused by delayed performance. Purchaser shall be allowed to prove that such higher damage caused by delayed performance has not been incurred.
- (6) If payment by installments has been agreed with Purchaser, all outstanding installments shall immediately become due and payable in one single amount as soon as Purchaser gets into arrears with the payment of one instalment.
- (7) In case of doubt in respect of Purchaser's creditworthiness – for instance, on account of dishonouring cheques, delay of payment, cancellation or reduction of the trade credit insurance limit with our insurer, payments in arrears from previous deliveries, or filing a petition for the opening of insolvency proceedings – all our claims from the contractual relationship shall become due and payable with immediate effect. In such case, we shall be obliged to furnish further services only against cash in advance or delivery against performance, at our option. In addition, we shall be entitled to withdraw fully or partially from any currently existing contract and/or ask for damages instead of performance.

§4

Delivery of Goods

- (1) Purchaser's attention is drawn to the fact that excess or short deliveries of up to an extent of 5 % are due to technical reasons. Short deliveries to that extent shall not establish any warranty of quality. Invoicing will be performed on the basis of the actual quantity delivered as determined by us upon shipment. Any complaints about the quantity of goods delivered shall be communicated to us in accordance with Article 8, Section (1).
- (2) As for the rest, the nature and scope of the delivery are based upon our offer or order confirmation, which may also be an invoice. We shall be expressly entitled to make partial deliveries if such partial deliveries are reasonable for Purchaser.
- (3) Unless otherwise agreed, the goods will be shipped at Purchaser's risk and expense. We shall be entitled but not obliged to effect insurance of the goods at Purchaser's expense and account.
- (4) Transport and other packing shall not be taken back, in accordance with the Packaging Ordinance. Purchaser shall be obliged to provide for disposal of packing at his own expense. Packing shall travel at Purchaser's risk.

§5 Delivery Periods

- (1) Any delivery periods mentioned in the offer are without engagement, unless we have expressly designated such delivery periods as binding and unless we have confirmed such delivery periods in writing. Delivery periods commence upon conclusion of contract at the earliest, but not before all technical and commercial issues have been clarified.
- (2) The agreed delivery period shall be considered as complied with if the goods have left our works or if the notification of shipment ready for dispatch has been forwarded up to the expiration of such delivery period. Compliance with the delivery period presupposes the adequate and timely performance of all contractual obligations to be fulfilled by Purchaser. As long as such obligations are not fulfilled, the delivery period shall be considered as interrupted. This stipulation particularly applies to any failure to effect down payments as agreed.
- (3) Even in case of exceeding the delivery period, Purchaser shall be obliged to accept the goods.
- (4) Unless a target date according to calendar has been expressly determined for the delivery, any delay of delivery presupposes that Purchaser grants us a reasonable extension of time of at least two weeks. Such term shall commence upon receipt of a corresponding written statement at our end.
- (5) War, force majeure, and any plant interruptions at our end or at our sub-contractors' end we are not responsible for shall give rise – even within a delay - to a reasonable extension of the delivery period or any extension of time granted, provided that the execution of the contract by us is prejudiced by such obstacles. We will inform Purchaser as early as possible about the occurrence of such circumstances, unless such circumstances are already obvious.
- (6) After the expiration without results of any extension of time granted, Purchaser shall be entitled to withdraw from the contract in respect of the part of the contract not performed yet.
- (7) We will assume liability according to legal provisions, in so far as the delay of delivery we are responsible for is due to a culpable violation of an essential contractual obligation by us; in such case, however, liability shall be limited to the foreseeable damage arising in a typical case.
- (8) As for the rest, Purchaser shall be entitled to damages only if the delay of delivery is due to intent or gross negligence from our side. Such claim shall be limited to 3% of the value of the delayed delivery per complete week of delay, and to a maximum of 15% of the value of the delivery in total. Such limitation on liability shall not apply in case of a commercial fixed-date business.
- (9) All exclusions of or limitations on liability under this Article 5 shall apply accordingly to any activity or omission by our associates, agents, and servants.
- (10) If collection by Purchaser has been agreed, Purchaser shall collect the goods within one week following the receipt of our notification of shipment ready for dispatch, otherwise Purchaser will be in default of acceptance.
- (11) If Purchaser is in default of acceptance, Purchaser shall indemnify us for all costs or damage arising out of such default of acceptance. After the expiration without results of an extension of time of at least 8 days granted to Purchaser, we shall be entitled to use for different purposes the goods prepared for collection.

§6 Retention of Ownership

- (1) We retain property in the goods delivered by us until all claims against Purchaser from this business transaction or from any earlier business transaction have been fully settled („Reserved Goods“). In case of any Purchaser's conduct contrary to the terms of the contract, especially in case of delay of payment, we shall be entitled to take back and to make use of the Reserved Goods; the proceeds of such use – less the costs of such use – shall be offset against Purchaser's liabilities. This stipulation shall also apply in case of filing a petition for insolvency proceedings in respect of Purchaser's property.
- (2) Purchaser shall be entitled to resell the Reserved Goods in the ordinary course of business. Purchaser herewith assigns to us any claims he is entitled to under such resale; we herewith accept such assignment. Purchaser shall be entitled to collect the claims for his own purposes, as long as he fulfils his obligations to pay. We shall be entitled to revoke such power in the event of delay of payment; in such case, Purchaser shall provide us with any information required for the collection of the claims, and Purchaser shall inform debtors of such assignment.
- (3) If the goods delivered by us are combined with other things in a way that such goods become an integral part of a newly created item, our property in the new item will continue to exist in the proportion of the invoiced value of goods to the value of the new item. The stipulations of the previous Section (2) shall apply to the new item accordingly.
- (4) Purchaser shall be obliged to store and mark the Reserved Goods separately. Additionally, Purchaser shall protect such Reserved Goods against damage by improper storage, theft, and other damage, with the care of a prudent businessman, and Purchaser shall insure such Reserved Goods sufficiently, in the sum of the replacement value. Purchaser herewith assigns to us any claims under such insurance; we herewith accept such assignment.
- (5) In case of attachment of or any other intervention of any third parties in the Reserved Goods and/or the claims arising from the sale of such Reserved Goods, Purchaser shall inform any such party of our property in such Reserved Goods. Additionally, Purchaser shall inform us immediately about any prejudice to our property by any third party in order to enable us to take the counter-measures required. If such third party is unable to pay back the court and out-of-court costs of such counter-measures, Purchaser shall be liable for the expenses incurred by us.

§7 Passage of Risk

- (1) Subject to the following Sections, the risk of accidental loss or of deterioration of the goods shall pass to Purchaser upon handing over and/or in accordance with the latest version of Incoterms, if agreed
- (2) If any sale by delivery to a place other than the place of performance has been agreed, the passage of the risk shall take place upon handing over of the goods to the forwarding agent, carrier, or any other natural or legal person designated for the performance of the shipment, even if the forwarding expenses are exceptionally assumed by us.
- (3) If the goods are ready for dispatch, and if the shipment is delayed for reasons we are not responsible for, the passage of the risk to Purchaser shall take place at the time of readiness for dispatch.
- (4) If the goods are to be collected by Purchaser at our end, the passage of the risk to Purchaser shall take place upon Purchaser's receipt of the notification of shipment ready for collection

§8 Liability for Material Defect

- (1) Upon delivery, the goods shall be immediately inspected by an authorized person as to correctness, completeness, and faultlessness. Any obvious defects shall be notified immediately, and any hidden defects shall be notified within one week as from the discovery of such defects. Any infringement of these obligations shall result in the immediate loss of all Purchaser's claims on account of warranty of quality. Defects of a part of the delivered products shall not give rise to any objection against the entire delivery.

(2) The criteria mentioned in our order confirmation and/or invoice shall be considered as the agreed quality.

(3) Any claims on account of warranty of quality shall become time barred within one year following the delivery of the goods. Such claims shall not be transferable to any third party. The limitation period in case of delivery recourse according to Articles 478 and 479, German Civil Code (BGB) shall not be prejudiced hereby.

(4) To ascertain our liability, the defective goods may either be inspected by us at Purchaser's end or returned to us, at our option. Any return shipment shall be performed with an indication of the item and/or batch number as well as with a description of the defect. Otherwise, the claim cannot be processed. Purchaser must neither use nor sell the delivery to which objection was made until the liability issue is clarified.

(5) In case of liability for any material defect, we will supply a free of charge replacement against the restitution of the defective goods. If the replacement delivery is a failure, Purchaser shall be entitled to reduce the purchase price or to withdraw from the contract. The due date of the purchase price shall not be affected by the notification of defect, unless we recognize such defect in writing or unless we ascertain such defect in a legally effective manner.

(6) We will assume liability according to legal provisions, provided that we have culpably violated any essential contractual obligation. As for the rest, we will assume liability for Purchaser's claims for damages only if such claims for damages are based on intent or gross negligence by ourselves or by our associates, agents, and servants.

(7) In case of violation of any essential contractual obligation, and in case of any negligent – including grossly negligent – violation of any other contractual obligations, as well as in case of damages instead of performance, our liability shall be limited to the foreseeable damage arising in a typical case

(8) We will not assume any liability for any damage that has not occurred at the goods themselves. In particular, we will not assume any liability for lost profits or other financial losses incurred by Customer. In each case, the amount of our liability shall be limited to the amount of the payment we have calculated for the delivery effected.

(9) Unless otherwise stipulated above, our liability for material defects shall be excluded.

§9

General Limitation on Liability

(1) Claims for damages, irrespective of the legal foundation they are based on shall be excluded – unless otherwise stipulated in these Terms of Business. This stipulation shall not apply if and to the extent that the cause of the damage is due to intent or gross negligence.

(2) We will assume liability according to legal provisions for any claims on account of any harm to life, limb and health, for any claims based upon the Product Liability Act, and for any claims on account of violation of essential contractual obligations, provided that we are responsible for such violation of obligations. We will assume liability for other damage only if such damage was caused by an intentional or grossly negligent violation of obligations by ourselves or by our associates, agents, and servants. In so far as our liability is limited or excluded, this stipulation shall also apply to the personal liability of our associates, agents, and servants.

(3) In each case, any possible liability for damages shall be limited to the foreseeable damage arising in a typical case. In case we are obliged to pay damages on account of simple negligence, our liability for damages on account of damage to property or persons shall be limited to the amount covered by our liability insurance.

(4) The prescription of all claims for damages shall be governed by Article 8, Section (3) of these Terms of Business, irrespective of the party against which such claims are asserted

§10

Place of Performance – Place of Jurisdiction – Applicable Law

(1) The place of performance for all liabilities under this contract shall be our place of business at Aue.

(2) The place of jurisdiction for any legal dispute arising from this contract or in connection with this contract – including legal proceedings related to bills of exchange and cheques – shall be Aue. However, we shall also be entitled to bring action against Purchaser at Purchaser's seat.

(3) All business relationships between the Contracting Parties shall exclusively be subject to the law of the Federal Republic of Germany, with exclusion of the UN Sales Convention.

§11

Other Provisions

(1) Purchaser's claims of any kind under this contract must neither fully nor partially assigned or transferred to any third party without our express written consent.

(2) Any deviation from these Terms of Business or any collateral agreements between the Contracting Parties shall require a written form in order to be valid. Any change of such written form agreement shall also be made in writing only.

(3) If one provision of these Terms of Business is or becomes fully or partially invalid, the validity of the remaining Terms of Business shall not be prejudiced hereby. In such case, the Contracting Parties undertake to make an agreement which comes as close as possible to the invalid provision, in economic terms.

(4) Purchaser agrees to our storing of data obtained under the business relationship, in accordance with the Federal Data Protection Act, and to our using such data for our own business purposes.

(5) The Contracting Parties undertake to handle as business secrets all commercial and technical details they obtain under the business relationship.