

Terms and Conditions of Delivery and Payment

1. General Provisions

1.1 All our present and future deliveries and service provisions shall exclusively be subject to the below terms & conditions. Any side agreements and amendments hereto shall be in writing in order to take legal effect.

1.2 We shall only be bound to deviating terms & conditions of the Buyer if we have explicitly accepted them in writing. Neither our failure to object to them nor any deliveries or service provisions made by us shall constitute our acceptance of Buyer's terms & conditions.

1.3 Contracts concluded by us and the buyer, which are based on the present terms & conditions for payment and delivery ("T&C") shall also generally remain in force and effect in the event individual provisions hereof should be or become legally invalid. However, the aforesaid shall not apply if adhering to the contract would constitute an unreasonable hardship for one of the Parties. The Parties shall replace invalid provisions by suchlike legally effective ones that meet the invalid provisions' initial commercial intent best as soon as possible.

1.4 We reserve without limitation our rights of ownership and exploitation of copyright in respect of our cost estimates, drawings, models, dies, templates, patterns, tools, and other production materials and documents (hereinafter referred to as "Documents"). Any disclosure to and/or use for third parties of said Documents shall be subject to our prior consent. Upon request, said Documents shall be immediately returned.

2. Prices

2.1 All prices are in Euro and plus the VAT applicable on the delivery date, unless agreed otherwise. The cover deliveries ex-works, excluding packaging.

2.2 The prices are subject to change and duty unpaid. They are calculated based on the prices applicable at the delivery date.

2.3 If goods are delivered to other member states of the European Economic Union (EU), Buyer shall have to provide us with its VAT-ID used for the respective delivery and its particular trade before the goods are being dispatched.

3. Payment Terms

3.1 Unless agreed otherwise, our invoices shall be due for payment strictly net by the end of the month (if received until the 25th of that month) or by the 15th of the following month (if received by the end of the month). If the payment term is not met, we shall be entitled to charge the applicable legal default interest.

3.2 Buyer shall only be entitled to suspend payments or set them off against possibly existing counterclaims if we have accepted such claims in writing.

3.3 If Buyer falls into arrears with payments or if our receivables are at risk due to a decline in the Buyer's creditworthiness we shall be entitled to demand immediate payment of our claims arising from this business relationship (irrespective of the term of possibly existing bills of exchange) or request respective securities. Furthermore, we shall in suchlike cases be entitled to effect outstanding deliveries only against advance payment or security.

3.4 We shall be entitled to offset all our claims towards Buyer against all claims that Buyer may have against us.

3.5 The Parties shall be entitled to agree on deviating terms for individual cases.

4. Delivery

4.1 Delivery terms and dates shall only be binding if expressly agreed in writing. 4.2 Delivery terms shall be deemed met if the receivables left the factory prior to the end of the period or if notification has been issued that the order is ready for shipment.

4.3 In the event of force majeure, actions related to industrial disputes (in particular strike and lockout), if our own suppliers fail to deliver in time, or in the event of other circumstances that are beyond our reasonable control, unforeseeable and/or we are not responsible for, delivery terms shall be extended by appropriate periods. Should such circumstances result in deliveries being impossible or unreasonable for us to execute, we shall be entitled to rescind the contract. Buyer shall be entitled to rescind the contract

if it is unreasonable for Buyer to accept the deliverables as a result of the delay. In important cases, we shall immediately inform Buyer on the presence of the abovementioned circumstances.

4.4 If we are in default with delivery, Buyer shall be entitled to demand compensation if it furnishes proof for the corresponding damage incurred. Suchlike compensation shall amount to 0.5% for every completed week of delay; however not more than 5% of the price for the deliveries that could not be commissioned for the intended purpose on account of the delay.

4.5 Both, Buyer's claims for damages due to delivery delay as well as claims for compensation in lieu of performance which exceed the limits specified under 4.4 hereof, shall be excluded in all cases of delayed delivery even if possible grace period granted to us has expired unsuccessfully. This restriction shall not apply in case of intent, gross negligence, or injury to life, body or health, where liability is mandatory; this does not lead to a change in the burden of proof to the detriment of Buyer. Buyer shall be entitled to legally rescind the contract only if we are responsible for the delay in delivery.

4.6 At our request, Buyer shall be obliged to state within a reasonable term whether it intends to rescind the contract because of the delay in delivery and/or wishes to claim damages in lieu of performance, or, alternatively, insists on delivery.

4.7 If dispatch or delivery are postponed upon Buyer's request for more than one month after the readiness for dispatch has been declared, we shall be entitled to charge Buyer the storage costs amounting to 0.5 % of the price of the delivered goods per each month commenced; however not more than 5 % in total. The Parties shall be free to proof a higher or lower storage costs.

5. Delivery and Transfer of Risk

5.1 Shipping shall be ex-works, at the expense and risk of Buyer. This shall also apply if and to the extent that the goods are dispatched using our own means of transport. Transport insurance shall only be taken out upon Buyer's request and at Buyer's expense. The delivery terms applied shall be interpreted in accordance with the Incoterms applicable on the order confirmation date.

5.2 If shipment is delayed due to circumstances caused by Buyer, the respective risk shall pass on to Buyer as soon as the readiness for shipment is being announced. After defining a reasonable period of time and its unsuccessful expiry, we shall be entitled to dispose of the goods otherwise and supply Buyer later (within a reasonably extended period of time) with new goods.

5.3 Disposable packages will be charged at cost price and won't be taken back. Other packages (like containers, box pallets, etc.) shall remain our property and are to be returned to us immediately freight prepaid.

5.4 We shall be entitled to partial deliveries to an acceptable extent.

6. Reservation of Title

6.1 Goods delivered by us shall remain our property (retained goods) until all debt claims arising from the commercial relationship with Buyer (in particular outstanding balances) are paid.

6.2 The handling and processing of retained goods shall be carried out for us as a manufacturer within the meaning of § 950 German Civil Code (BGB) without obligating us. Processed goods are deemed to be subject to goods retention of title as stated in Art. 6.1. If the goods subject to retention of title are processed, joined or blended with other materials by Buyer, we retain joint property in the new goods in the proportion of the invoice value of the reserved goods to the invoice value of the other involved goods. If the goods subject to retention of title are combined with other items not belonging to us to form a single item and if this item is to be regarded as the main item, Buyer shall assign us pro rata co-ownership in the part of said main item that Buyer owns.

6.3 Buyer shall only be entitled to sell or dispose of the reserved goods within the scope of an ordinary course of business. Buyer shall not be entitled to dispose otherwise of the goods under retention, in particular not by way of pledging or transfer as security.

6.4 Buyer hereby assigns to us its rights arising from reselling the goods under retention. The assigned claims serve as security to the same extent as the reserved goods. If Buyer sells the reserved goods along with other items not delivered by us, the assignment of claims arising from suchlike reselling shall only apply to the extent and amount of the invoice amount indicated by us for suchlike reserved goods. In case of joint ownership, the assignment shall only include the share of the claim corresponding to our joint ownership share as per Art 6.2.

6.5 Buyer's authorization to collect the assigned receivables shall only apply to the ordinary course of business and be revocable at any time. We will only make use of our right of revocation if Buyer fails to meet its payment obligations towards us or in case of other events that give rise to believe our accounts receivables might be at risk due to deteriorations in Buyer's creditworthiness. In suchlike cases, Buyer shall be obliged to immediately inform its customers on the assignment to our benefit upon our request (unless we do so by ourselves) and to provide us with any and all information and documents required for collection.

6.6 In case Buyer fails to meet its payment obligations, disposes of reserved goods without being entitled to, its financial situation significantly worsens, its bills of exchange or checks are being objected, or if Buyer itself or third parties file for insolvency proceedings against Buyer, we shall be entitled to refuse from handling and processing reserved goods and prohibit their sale. Moreover, we shall in suchlike cases be entitled to take the reserved goods in our possession and enter Buyer's premises, request useful information and inspect Buyer's account books to the extent necessary for this purpose. Reclaiming - however, not simply taking back - reserved goods shall constitute our withdrawal from the contract.

6.7 Buyer shall immediately inform us if third parties announce to or actually enforce their rights or seize the reserved goods and/or the assigned claims.

6.8 Should the total value of all security interests due to us exceed the amount of all secured claims by more than 20 %, we will - upon Buyer's request - release an appropriate share of the security interests at our discretion.

7. Material Defects

For material defects, we assume the below-specified liabilities:

7.1 Goods exhibiting a material defect within the limitation period shall, at our discretion, be subject to rework free of charge or be redelivered, provided that the cause of the material defect was already present at the time of the transfer of risk. However, any kind of rectification shall not represent any acknowledgment of Seller's claims.

7.2 Any claims resulting from material defects shall lapse within a period of 12 months. The aforesaid shall not apply if longer periods are legally required as per § 479 subp. 1 BGB (right of recourse).

7.3 Buyer shall immediately have to report material defects in writing.

7.4 If defects are notified, Buyer shall only be entitled to withhold its payments to an extent duly corresponding to the found material defects. Buyer may only withhold payments if the notice of defects given is justified beyond doubt. If the notice of defect was not justified, we shall be entitled to demand compensation from Buyer for expenses incurred.

7.5 However, Buyer shall generally grant us the opportunity for subsequent performance within an appropriate period of time.

7.6 Should repair or replacement be unsuccessful, Buyer shall be entitled to rescind the contract or reduce the remuneration; any claims for damages Buyer may be entitled to according to No. 10 shall remain unaffected.

7.7 Buyer shall not be entitled to claims for defect

- (i) if the agreed quality or properties are deviated from to a minor extent only;
- (ii) if the usability is impaired to an insignificant extent only;
- (iii) in case of natural wear;
- (iv) in case of damage arising after the transfer of risk as a result of incorrect or careless treatment and handling, excessive use, use of improper equipment, inadequate installation, or on account of extraordinary external influences which are not presupposed under the contract;
- (v) in the event of non-reproducible software bugs.

Claims based on unauthorized modifications or maintenance activities Buyer or any third party carries out on goods supplied by us by or other products adversely affecting the goods supplied by us shall likewise be excluded.

7.8 Buyer's claims for expenditures required for subsequent performance (in particular the costs of transportation, travel, labour, and material) shall be excluded if these expenditures increase because the goods delivered by us were subsequently transported to a location other than the Buyer's place of business, unless such transport is consistent with the goods' intended use.

7.9 Statutory claims under a right of recourse by Buyer against us shall not apply with respect to arrangements entered into by Buyer with its customers over and above statutory warranty claims. The extent of Buyer's claims for recourse against us shall furthermore be subject to No. 7.8.

7.10 As for the rest, claims for damages shall be subject to No. 10 (Miscellaneous Claims for Damages). Any claims for material defects that exceed or deviate from those specified under No. 7 hereof which Buyer may bring forth against us or our vicarious agents shall be excluded.

8. Industrial Property Rights and Copyrights; Defects of Title

8.1 Unless agreed otherwise, we shall only be obliged to deliver in the country of the place of performance free of any third party industrial property rights and copyrights (hereinafter: Property Rights). In the event a third party brings forth legitimate claims against Buyer based on the goods delivered by us and used as provided for in the contract infringing Proprietary Rights, we shall be liable towards Buyer within the period specified under No. 7.2 above as follows:

a) We shall - at our discretion and expense - either obtain rights of use for the deliverables, modify them so that no Property Right are being infringed, or replace them. Should this be impossible under reasonable conditions, Buyer shall be entitled to the statutory rights of withdrawal or reduction of the purchase price.

b) Our obligation to pay damages is defined under No. 10.

c) The above obligations shall only apply if Buyer does not acknowledge the existence of an infringement and defensive measures and negotiations for a settlement remain open to us. The above obligations shall not apply if Buyer fails to immediately inform us in writing on claims brought forth by third parties and said failure adversely affects our legal position. If Buyer ceases to use the deliverables in order to reduce the amount of damage or for other important reasons, Buyer shall be obliged to inform the respective third party on the fact that the discontinuation of use does not constitute the acknowledgement of an infringement of Property Rights.

8.2 Buyer's claims shall be excluded if Buyer itself is responsible for the infringement of Property Rights.

8.3 Moreover, claims brought forth by Buyer shall be excluded if the infringement of Property Rights is a result of Buyer's special requirements, usage of the goods not foreseeable by us, the deliverables being modified by Buyer, or used along with products not delivered by us.

8.4 Furthermore, Buyer's rights defined by No. 8.1 a) shall in the case of infringements of Property Rights be subject to the provisions stipulated by No. 7.4, 7.5 and 7.9.

8.5 For other defects of title, the provisions of No. 7 shall apply accordingly.

8.6 Any claims that exceed or deviate from those specified under No. 8 hereof which Buyer may bring forth against us or our vicarious agents based on defects of title shall be excluded.

9. Impossibility; Adaptation of Contract

9.1 If delivery is impossible Buyer shall be entitled to claim damages unless said impossibility is beyond our reasonable control. However, Buyer's damages shall be limited to 10 % of the value of that part of the delivery that cannot be used as intended as a result of our impossibility. This limitation shall not apply in case of intent, gross negligence, or injury to life, body or health where liability is mandatory; this does not lead to a change in the burden of proof to the detriment of Buyer. Buyer's right to withdraw from the contract shall remain unaffected.

9.2 If and to the extent unforeseeable events in the sense of No. 4.3 significantly change the deliverables' economic meaning or affect our operations, the contract shall be amended reasonably considering the principle of good faith. Should the aforesaid be economically unreasonable for us, we shall be entitled to withdraw from the contract. In suchlike cases we shall have to immediately inform Buyer on the scope thereof. The aforesaid shall also apply to cases in which it was agreed with Buyer to extend the delivery period.

10. Other Claims for Damages

10.1 Buyer's claims for damages and reimbursement of expenses (hereinafter referred to as Claims for Damages) shall - irrespective of their legal base and in particular for breach of contractual obligations and tortious liability - be excluded.

10.2 The aforesaid shall not apply when liability is mandatory, e.g. under the product liability act, in case of intent, gross negligence, or injury to life, body or health, or because of a breach of a material contractual duty. However, Claims for Damages resulting from infringement of material contractual duties shall be limited to typical contractual, foreseeable damage, unless we are liable in case of intent or gross negligence, or injury to life, body or health. The above provisions shall not change the burden of proof to the disadvantage of Buyer.

10.3 Buyer's right to claim damages in accordance with No. 10 hereof shall lapse upon the expiry of the limitation period applicable for material defect claims specified under No. 7.2.

11. Place of Performance and Jurisdiction

11.1 Place of performance shall be Kitzingen in Germany. If deliveries are made from one of our factories, establishments or the site of one of our affiliates, the place of performance for deliveries shall be that factory, establishment or site of our affiliate. The place of performance for payments shall also be Kitzingen in Germany.

11.2 The competent jurisdiction for any and all disputes arising out of and/or in relation to the contractual relationship shall be Wuerzburg in Germany. However, we shall also be entitled to file suits at Buyer's registered office.

11.3 Any and all legal relationships between us and Buyer shall be subject to the laws of the Federal Republic of Germany, whereas the United Nations Convention on Contracts for the International Sale of Goods as from 11.04.1980 shall be excluded.