



Terms & Conditions of Sale and Delivery

The following General Terms & Conditions of Sale apply to delivery transactions contracted with us, unless an alternative agreement has been made specifically and in writing with the Buyer.

- §1 General**
- (1) All of our deliveries and services, including those in the future, shall be carried out exclusively on the basis of the following General Terms & Conditions. We do not recognise the Buyer's contradictory conditions or conditions that deviate from our Terms & Conditions of Sale, unless we have expressly agreed to their validity in writing. All of the Buyer's terms and conditions are hereby rejected, including in the event that they have been communicated to us in letters of confirmation or by other means or that we supply the Buyer with goods and services without rejecting the Buyer's terms & conditions again. Our Terms & Conditions of Sale shall also apply if we make deliveries to the Buyer without reservation, in the knowledge of the Buyer's contradictory terms and conditions or terms and conditions deviating from our own. We are entitled to assign claims arising from our business relations.
- (2) Our quotations are subject to change; agreements and orders are only binding with our written confirmation, including when transactions are arranged through sales representatives.
- (3) In the case of contracts based on trade terms, such terms are subordinate to these Terms & Conditions or other agreements.
- (4) In the event of any discrepancy or ambiguity in this English version of our terms and conditions, the wording of the German version shall always take precedence and be legally binding.
- (5) Should individual provisions in these Terms & Conditions of Sale and Delivery become invalid in part or in whole, the validity of the remaining conditions remains unaffected. The parties undertake to agree a substitute clause that comes as close as possible to the legal and economic purpose of the invalid provision.
- §2 Prices, Conditions of Payment**
- (1) Our prices are understood to be ex works, plus standard-rate VAT, in accordance with the conditions that apply on conclusion of the contract.
- (2) Should costs fall or rise after conclusion of the contract, in particular as a result of collective wage agreements or increases in the price of materials, we reserve the right to alter our prices accordingly. We shall provide the Buyer with evidence of this on demand.
- (3) The Buyer does not have the right to withhold or offset payments, except in the case of uncontested or legally established counterclaims.
- (4) If the Buyer is in default of any payment obligations to us, all claims shall become due immediately.
- (5) Cheques and bills of exchange are only accepted on account of performance; bills of exchange are only accepted by special agreement, bill charges and other costs of payments shall be met by the Buyer as a matter of principle and become due for payment immediately.
- (6) Insofar as our claim for payment is put at risk as a result of circumstances that arise after conclusion of the contract and from which a significant deterioration in the Buyer's financial position comes about, we are entitled to demand payment of such a claim, irrespective of the remaining term of credited bills of exchange. Should the Buyer fall into arrears with payment in a manner that suggests that our claim may be at risk, we are entitled to take back the goods and, if necessary, to enter the Buyer's premises and remove them. In addition, we may forbid further processing of the goods supplied. This shall not apply if the arrears are not the fault of the Buyer. Seizure of the goods shall not constitute a withdrawal from the contract. In both cases, we may cancel direct debit mandates in accordance with §5 (4) and demand payment in advance for outstanding deliveries. The Buyer can avoid all of these legal consequences by providing security in the amount of the claim for payment that is at risk. We have a claim to securities of a standard type and quantity in respect of our claims, including insofar as they are conditional or fixed term. The statutory provisions concerning default on payment remain unaffected.
- §3 Delivery Periods and Dates**
- (1) Delivery periods shall begin on receipt of all the documentation required to complete the order and on punctual receipt of materials and agreed deposits, as appropriate.
- (2) If the Buyer does not fulfil his obligations to cooperate or secondary obligations on time, such as the opening of a bank credit, submission of domestic or foreign certifications, payment of a deposit or similar, we are entitled to extend our agreed delivery periods and dates in accordance with the requirements of our production process, without affecting our rights arising from default of acceptance on the part of the Buyer.
- (3) The time of shipping from the factory / warehouse shall determine compliance with delivery periods and deadlines. If the goods cannot be shipped on time for reasons that are not our fault or they are requested by the Buyer, the periods and dates of delivery shall be deemed to have been observed on notification of readiness for shipping.
- (4) Appropriate part deliveries are permitted.
- (5) Should we default on delivery, the Buyer may withdraw from the contract on expiry of an appropriate period of grace set by him in writing, insofar as the goods have not been shipped or notification of readiness for shipping has not been given on expiry of such a period. The same shall apply if delivery of the goods becomes impossible for reasons that are our fault. The seller undertakes to notify the Buyer without delay of the occurrence of any unforeseeable event, as defined under paragraph 1.
- (6) Acts of God entitle us to postpone delivery by the period for which the hindrance lasts, plus an appropriate start-up period. Acts of God include all circumstances that significantly hinder our delivery or make such delivery impossible, such as measures affecting currency and commercial policy or other measures taken by the authorities, war, internal unrest, natural disasters, accidents, strikes, lock-outs, disruptions to operation (e.g. fire, machine or tool failure, shortages of raw materials or energy) and obstruction to access, irrespective of whether these circumstances affect us or one of our suppliers.
- (7) Delivery periods and dates are only to be regarded as approximate, unless they have expressly been designated as binding in writing.
- (8) Further rights, in particular claims for compensation, are only available to the Buyer if we have acted with intent or gross negligence.
- §4 Qualities, Dimensions and Weights**
- (1) Qualities and dimensions are determined by DIN standards or material sheets, unless foreign standards have been agreed in writing. If no DIN standards or material sheets exist, European norms shall apply, and in the absence of such, standards based on commercial practice shall apply.
- (2) The weighing carried out by us shall determine quantities (weights). Proof of weight shall be provided by submission of the weighing certificate. Complaints arising from weight checks may only be made on the basis of official re-weighing completed immediately on delivery. Complaints cannot be made for deviations in weight of 2% or less.
- §5 Retention of Title**
- (1) All goods supplied shall remain our property (goods subject to retention of title) until all claims against the Buyer, including future and conditional claims, have been settled. This shall also apply if the Buyer has made payment of specially designated claims. The retention of title shall also apply until full release from contingent liabilities, in particular guarantees or notes payable into which we have entered in connection with a covering transaction for a cheque or bill of exchange in the interest of the Buyer.
- (2) Handling and processing of the goods subject to retention of title shall be carried out on our behalf as the manufacturer, as defined under §950 of the German Civil Code (BGB), without obligation on our part. If the goods under retention of title are processed, joined or combined with other items that do not belong to us, we shall acquire co-ownership of the new object in the proportion of the invoice value of the goods subject to retention of title to the invoice value of the other goods. Should our title cease to exist as a result of the joining, combination or processing, the Buyer shall with immediate effect transfer to us the rights of ownership or expectant rights to the new object or the new items in relation to the invoice value of our goods subject to retention of title and shall store them free of charge for us. The rights of ownership that come about in this way are deemed to constitute goods subject to retention of title as defined by this section.
- (3) The Buyer may only re-sell the goods under retention of title in the normal course of business and under his normal conditions of business to his customers. This shall also apply to service contracts. The claims of the Buyer against his customer arising from the re-sale of the goods subject to retention of title shall be assigned to us with immediate effect in the amount of our invoice value. In the event of re-sale after processing as defined under para. 2, the assignment of the claim from the re-sale in the amount of our invoice value shall apply to the processed goods subject to retention of title. The assignment in advance shall extend to all surrogates for the goods subject to retention of title, e.g. claims against third parties (insurance, originators of loss) for loss, deterioration or damage to the goods subject to retention of title.
- (4) The Buyer shall have the right to collect claims from re-sale until we revoke this right. We shall only make use of such revocation in justified cases, e.g. on suspension of payment, application for insolvency proceedings, cheque or bill protest, seizure or default on payment. Outstanding amounts owed to us that are received thereafter shall be deposited in a separate special account under our company name. The Buyer is furthermore obliged to identify the assigned claims and debtors and provide all information required for us to make collections. In addition, the Buyer shall provide us with copies of the associated documentation (delivery notes, invoices) and notify the third party debtor of the assignment.
- (5) Under no circumstances is the Buyer authorised to make any further transfer, pledge or assignment of our reserved rights to third parties. The Buyer shall notify us immediately of any completed or imminent seizure of the goods that are subject to retention of title by third parties and shall notify such parties of our retention of title. The Buyer shall meet any intervention costs that we incur.
- (6) If the value of existing securities exceeds the secured claims by a total of more than 10%, we are obliged to release such surplus securities on demand by the Buyer.
- (7) Should the preceding rights to retention of title be invalid or unenforceable under the law of the area in which the goods are located, security corresponding to the retention of title in that area is deemed to be agreed. The Buyer undertakes to take and comply with all measures necessary to establish and uphold comparable rights or securities.
- §6 Shipping and Transfer of Risk**
- (1) We shall determine the route and method of shipping and the carrier, unless otherwise agreed.
- (2) If transportation by the anticipated method to the anticipated place at the anticipated time is impossible for reasons that are not our responsibility, we are entitled to make delivery by an alternative method. Any additional costs that are incurred shall be met by the Buyer. In advance of this, the Buyer shall be given the opportunity to arrange transportation himself within an appropriate time.
- (3) The material is supplied unpacked and without rust protection. If customary in the trade, the goods will be supplied packed. We shall arrange appropriate packing, protection and / or means of transport based on our experience, at the cost of the Buyer. Packaging, protection and means of transport may not be returned to us, unless otherwise agreed in writing.
- (4) On release of the material to a carrier or freight forwarder, and at the latest on leaving the warehouse or supplying plant, the risk shall be transferred to the Buyer.
- (5) Customary excess deliveries or short deliveries of the agreed quantities (+/- 10 %) are permitted. For orders of small quantities, higher variations are permitted. We shall provide advance notification of these by individual agreement when the order is placed, in the form of the order confirmation.
- (6) The Buyer shall immediately request delivery of those goods which have been notified to him as being ready for shipping; otherwise we are entitled at our discretion either to ship them or to store them at the cost of the Buyer and to issue an invoice immediately.
- (7) For agreements involving repeat deliveries, release orders are to be submitted to us. If the agreed quantity is exceeded by the individual release orders, we are entitled, but not obliged, to supply the surplus amount. We may charge for the surplus at the prices valid at the time of the release order or the delivery.
- §7 Notification of Defects and Warranty**
- (1) The warranty rights of the Buyer are based on the assumption that the latter has fulfilled his obligations regarding inspection and notification of defect in accordance with §§377, 378 of the German Commercial Code (HGB).
- (2) Insofar as defects in the purchase item exist for which we are responsible, we are entitled at our discretion either to rectify the defect or to supply a replacement. In the event of rectification of the defect, we are obliged to meet all of the costs associated with such rectification, in particular transport, delivery, labour and material costs, insofar as these are not increased as a result of the purchased item being moved to a place other than the place of fulfillment.
- (3) If the rectification of the fault fails, the Buyer is entitled at his discretion to demand either a replacement or a discount.
- (4) Unless otherwise specified below, further claims on the part of the Buyer are not permitted. We therefore do not accept liability for damage that occurs to the delivery item itself; in particular, we cannot accept liability for loss of earnings or other financial losses on the part of the Buyer, for example from contractual penalties, interruption to operation, wages or other consequential damages caused by defects.
- (5) The above limitation of liability shall not apply to the breach of significant contractual obligations and claims under the Product Liability Act. Insofar as the cause of the damage is intentional or arises from gross negligence, liability shall also not be excluded. Furthermore, the limitation of liability shall not apply if the Buyer is entitled to make a compensation claim under §§ 463, 480 para. 2 BGB as a result of the absence of a guaranteed property or the malicious concealment of a fault. In this context, however, our obligation to provide a replacement is limited to foreseeable damages typical under this sort of contract. The limitation of liability applies equally to our vicarious agents and representatives. In any event, our liability is limited to the foreseeable damages that are typical under this sort of contract at the time of conclusion of said contract.
- (6) Unauthorised reworking or improper handling shall result in the loss of all rights to pursue claims for defects.
- §8 Place of Fulfilment and Court of Jurisdiction**
- (1) The court of jurisdiction is either the location of the registered office of the company or Frankfurt am Main, at our discretion.
- (2) Unless otherwise specified in the order confirmation, Altena is the place of fulfilment for all obligations arising from the contract.
- (3) The contractual relationship is subject exclusively to German law, in particular to the Civil and Commercial Codes.

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