

# General sales and delivery conditions for home and abroad

As at: March 2010

## I. Area of application

All present and future deliveries, services and all related business activities are based exclusively on these sales and delivery conditions. We only acknowledge conditions that differ from or contradict these conditions if we expressly agree to them in writing.

## II. Offer and conclusion of contract

1. Our offers are always without engagement. If the purchase order needs to be qualified as an offer in accordance with § 145 BGB [German Civil Code], we can accept the latter within four weeks.

2. This contract is only deemed to be concluded once our written order confirmation is received. Our written order confirmation is decisive for the extent of the delivery or service. Changes or additions to the contract require written confirmation on our part to be valid. Verbal statements by our personnel are only binding if they have been confirmed in writing by us.

3. Any assignment of the rights in this contract by the ordering party requires our written confirmation.

## III. Documents passed on

We retain property rights and copyrights to all documents, such as illustrations, drawings and calculations, which are passed on to the ordering party in connection with placing the order. These documents must not be made accessible to third parties. If we do not accept the ordering party's offer within the period from II. Sentence 2, these documents shall be sent back immediately.

## IV. Prices and payments

1. All prices are net prices and are ex our supplying plant, excluding packaging, loading, transport insurance and taxes or other duties, which are charged in addition. Transport insurance for transport by rail and barge is covered by us and the ordering party is charged with the premium.

2. As long as nothing else is agreed, the purchase price shall be paid within a week from notification of being ready to deliver. Late payment interest is calculated at 8 % above the relevant base interest rate. We reserve the right to enforce higher compensation for delay. Furthermore, we have the right to withdraw from the contract after an appropriate extension period of two weeks has been set and has expired. In this case we are entitled to demand a contract penalty of 1/3 of the net purchase price.

3. The deduction of cash discount requires special written agreement.

4. Representatives, travellers, salespeople etc. are not allowed to accept payments for us without special authorisation.

5. Bills of exchange and cheques are only accepted for payment.

6. If a transfer of the payment is not possible from the country, from where the payment should be made, at the time it falls due, then the ordering party must still pay the due amount into a bank in this country on time. If the amounts paid are reduced due to the deterioration of the exchange rate in a currency not agreed, the ordering party will compensate this by making a follow-up payment.

7. Any right of retention on the part of the ordering party is completely excluded. The ordering party is only entitled to offsetting rights if its counterclaims are legally established, undisputed or acknowledged by us.

## V. Delivery

1. Deliveries are ex works (EXW Incoterms 2000).

2. We undertake to observe foreign packaging, weighing and recommended regulations if the ordering party gives us exact details in time. The associated additional costs are charged to the ordering party.

3. Events constituting force majeure and other unforeseeable disruptive events such as operational problems, exceeding the delivery period or failures at upstream suppliers, transport problems as well as strikes, lockouts and official mandates, entitle us to push back the delivery by the duration of an appropriate startup period, without us thereby entering into default with our performance obligation. Furthermore we are entitled to withdraw from the contract from parts of the order not yet fulfilled, without any claims for compensation arising from this to the ordering party.

## VI. Delivery times

1. Delivery times are only binding in the sense of a fixed business understanding if we have agreed to them in writing. The start of delivery times specified by us requires that all technical questions have been fully cleared up, all approvals given, all documents provided by the ordering party, payments and securities received on time and that the latest implementation regulations have been issued. If the ordering party is late issuing the design regulations, we are entitled to decide on the implementation instructions ourselves.

2. The right to defend the lack of performance is reserved.

3. If the ordering party falls liable to default of acceptance or is guilty of breaching other duties to cooperate, then we are entitled to demand compensation for any losses arising, including any additional expenditure. We reserve the right to make further claims. If the above conditions exist, the risk of any accidental loss or accidental deterioration of the purchase object is passed onto the ordering party at the point in time when the latter enters into default of acceptance or debtor's delay.

4. If there is a failure to meet an obligation on our part and if the ordering party expressly states that it will reject the delivery after an appropriate extension time has expired, then it has the right to withdraw from the contract once the period expires. Further claims made by the buyer, particularly for compensation, for whatever legal reason, as long as a commercial firm deal has not been agreed, are excluded, unless we ourselves can be accused of malicious intent or gross negligence. If we are accordingly obliged to provide compensation, the amount of compensation is, however, limited to a maximum of 0.5 % per full week of delay, and at the most 5 % of the part of the delivery that cannot be used as a result of the delay.

## VII. Retention of title

1. The delivery remains our property until all receivables have been paid in full.

2. The ordering party is obliged to adequately insure our delivery for its replacement value for fire, water damage and theft at its own expense, with the proviso that we are entitled to the rights from the insurance contract. Corresponding documents for this shall be presented to us on request.

3. The ordering party must carry out necessary maintenance and inspection work on time at its own expense.

4. As long as the ownership has not yet been transferred, the ordering party must notify us immediately in writing if the delivered object is distrained or exposed to any other intervention by third parties. The ordering party is liable for reimbursing any intervention procedure costs, in or out of court, if the third party is not in a position to do so.

5. Any processing or alteration of the delivery by the ordering party is always done in our name and on our behalf. In this case the ordering party's reversionary interest in the delivery of the altered item continues. If the delivery is processed with other objects that do not belong to us, we acquire joint ownership in the new item in proportion to the objective value of our delivery to the other processed objects at the time of processing. The same applies in case items are mixed together. If mixing together is done in such a way that the ordering party's item is seen as the main item, it is agreed that the ordering party shall transfer proportional joint ownership to us and keep the resulting sole or joint ownership safe. To ensure our receivables against the ordering party, the ordering party shall also assign such receivables to us that accrue to it against a third party by combining the goods subject to retention of title with a piece of land; we agree to accept this assignment already.

6. The ordering party herewith assigns receivables from any onward sale to us with all ancillary rights. We also agree to accept this assignment herewith.

## VIII. Warranty

1. We reserve the right to make design changes. The details in our catalogues and brochures about weights, dimensions, speeds, freight rates, payments etc. should only be seen as approximations and are not binding.

2. §§ 377 et seq. HGB [German Commercial Code] apply for enforcing warranty claims, whereby notices of defects must be received by us at the latest within ten days after delivery; in case of hidden defects, at the latest within ten days of the defect being discovered. If the delivery objects continue to be used by the ordering party despite considerable defects, then we are not liable for any consequential losses.

3. We only give a guarantee for defects or for missing properties in the sense that we can choose to either repair the delivery free of charge or provide a free replacement for the parts acknowledged by us to be faulty. Further warranty claims are excluded.

4. The warranty period is 12 months after initial operation, but 18 months at the most after the transfer of risk. In case of commercial vehicles, irrespective of Sentence 1 the warranty expires after a total of 50,000 km or 30,000 miles (statute mile) have been travelled. The warranty period for exchanged parts ends when the original warranty period of the delivery object expires.

5. The following defects are excluded from liability:

- normal wear
- Damage and wear to trailers, semi-trailers and superstructures, which are attributed to overloading, non-use of supplied rigging devices, non-compliance of manufacturer's regulations, and defective or unprofessional maintenance or repairs.
- Damage that is attributed to faulty or improper handling, storage or transport after the transfer of risk.
- Defects to vehicles bought used

6. For purchased parts such as medical components, third party constructions, tyres, batteries, radio appliances, electrical equipment and measuring instruments, the warranty is solely limited to the assignment of all our warranty and liability claims against the upstream supplier.

7. Further claims made by the ordering party, particularly for compensation for damages of any kind, are excluded, irrespective of what legal grounds they are enforced on. This exclusion of liability does not apply in case of malicious intent or gross negligence on our part and in any cases in which we are liable for persons and material damage to privately used objects in accordance with the product liability law. It also does not apply in case of missing properties, which are expressly assured, if the assurance especially caused the buyer to protect against damages that did not occur to the delivery object itself.

#### **IX. Final conditions**

1. The place of performance for all contractual and legal claims is the location of our supplying plant.

2. The contract is subject to German law. The terms of the UN sales law are expressly not applicable.

3. All disputes arising from or in relation to this contract shall be decided before the court responsible for our headquarters. We are also entitled to bring legal action before the court responsible for the supplier's headquarters.

4. Should a condition in these terms and conditions be or become fully or partly ineffective, this shall have no impact on the effectiveness of the remaining conditions. In place of the ineffective term or the ineffective part of the term, the legally effective rule shall apply that comes closest to the intended purpose of the ineffective term.