

General Terms and Conditions

§ 1 Scope

1. The supply of products, services and quotations prepared by the Vendor shall be exclusively governed by these General Terms and Conditions. These General Terms and Conditions shall form an integral part of all and any contracts which the Vendor may conclude with any contracting party (hereinafter referred to as the "Client") concerning any products and/or services offered by the Vendor. They shall further apply to all future deliveries, services rendered and quotations made to the Client, without having to be specifically agreed each time. They shall be deemed approved upon acceptance of the offer by the Client, at the latest upon the latter's acceptance of the delivery or service.
2. The Client's Standard Terms of Business or those of any third party shall be binding only, if and to the extent they were expressly acknowledged in writing by the Vendor. A waiver of the requirement of the written form must also be made in writing. Any reference made to a document issued by the Client containing the Client's Standard Terms of Business or those of any third party or which contains a reference thereto shall not be deemed such written acknowledgement.

§ 2 Offer and Conclusion of contract

1. Quotations prepared by the Vendor shall be non-binding and subject to change, unless expressly marked as binding or they include a specific deadline for acceptance. A legally binding contract shall only come into existence if confirmed in writing by the Vendor.
2. Any supplements, amendments or side agreements to a provision contained in the contract must be acknowledged in writing by the Vendor in order to take effect.

§ 3 Prices

1. The prices and costs for packaging, delivery and additional charges stated in the Vendor's written order confirmation shall be deemed agreed, insofar as the Client's order does not include any provision thereon or if they differ only marginally from the Client's order and if the Client has not objected to the order confirmation within 3 working days or has accepted the Vendor's performance and/or provision of services – even before the objection deadline has passed – without having declared a reservation in writing or text form. In the case of significant deviations of the price or other charges, the prices and charges stated in the order confirmation shall be deemed agreed, if the Client has accepted the Vendor's performance and/or provision of services without making a reservation in writing or in text form even if the Vendor has not explicitly informed about such consequence in the order confirmation.

2. Price and charge calculations are exclusive of statutory value-added tax.

§ 4 Delivery

1. The dates and deadlines stated by the Vendor are binding only to the extent that they were expressly confirmed to be binding by the Vendor. The confirmed delivery date is "ex works", in this case ex works Remscheid/Germany.
2. The Vendor shall not be held accountable, even if delivery dates and deadlines were agreed as binding, for any delays in delivery and performance due to force majeure and other events substantially hampering the delivery or provision of services or rendering it impossible – including subsequent difficulties in the procurement of materials despite the conclusion of suitable covering transactions, disruptions of operations, strikes, lockouts, staff shortages, lack of means of transportation, official decrees etc., even if these occur at the Vendor's suppliers or their subcontracted suppliers. Such delays shall entitle the Vendor to extend the delivery period and/or service provision by the duration of the event plus an appropriate lead time or to wholly or partly rescind the contract regarding the portion thereof not yet fulfilled.
3. If such a disruptive event should continue uninterrupted for more than three months, the Client shall be entitled to rescind the contract regarding the portion thereof not yet fulfilled after setting a reasonable deadline. Furthermore, insofar as claims for damages may arise if the Vendor is at fault, § 10 shall apply.
4. The Vendor shall be entitled to make partial deliveries and render partial services.
5. If transport containers are provided by the Vendor, they shall remain the Vendor's property even after delivery and shall be returned to the Vendor no later than two months after the delivery date. After expiry of two months after delivery the Vendor shall be entitled to invoice the transport container at the prices stated on the order confirmations, but at least for the full replacement costs. The same shall apply if the transport containers and metal frames were damaged while on the Client's premises.
6. Deliveries in excess or shortfalls, if reasonable and as customary in the industry, of up to 10% of the ordered quantity shall be permitted.

§ 5 Passing of risk

1. Risks shall pass to the Client at the latest upon handover of the delivery item to the forwarding agent, freight carrier, or any other person or agent designated to carry out the shipment. This shall also apply if partial deliveries are made or the Vendor has taken over additional services, e.g. shipping. If the shipment or handover is delayed due to any circumstance attributable to the

Client, the risk of loss or deterioration shall pass to the Client as from the day on which the goods are ready for shipment and the Vendor has notified the Client to that effect.

2. After the passing of risk, the Client shall bear the costs of storage. If the goods are stored by the Vendor, the costs of storage amount to at least 0.25% of the amount invoiced for the goods to be stored per full week of storage. The right to assert and provide proof of additional or lower costs of storage are hereby reserved.
3. The consignment shall only be insured by the Vendor at the Client's express request and at the latter's expense against theft, breakage, transport, fire and water damage or damage arising from similar hazards.

§ 6 Warranty

1. Guaranteed condition and characteristics of the goods shall only encompass the condition and characteristics described in the product descriptions, specifications and markings issued by the Vendor, unless otherwise agreed.
2. The Vendor, at its own discretion, shall be entitled to replace or rework any defective goods in order to perform its warranty obligations. Reasonable deviations customary in the industry as per § 4 para. 6 shall not give rise to a complaint.
3. The Client shall be obliged to immediately inspect the delivered goods and report any defects, as per Section 377 HGB [German Commercial Code] which further stipulates the legal consequences that failure to observe these obligations shall be deemed acceptance of the delivered goods.
4. The Client shall notify any apparent damage to the delivered goods to the forwarding agent, freight carrier or other person or agent designated to carry out the shipment and ensure that such damage is documented in writing. This shall in no way affect the obligation to report any defect to the Vendor under the preceding provision § 6 para. 3.
5. The Client shall bear the burden of proving evidence of the existence of warranty claims, in particular the existence of any defect at the time of the passing of risk and that timely notice was given thereof.
6. If such notice of defect should prove to be justified, the Vendor shall make a replacement delivery within a reasonable period of time, the replacement delivery shall be invoiced and the amount for the defective goods be credited after having been returned. If the Vendor and the Client do not conduct business on a regular basis under which current account liabilities or similar accounts are offset, the credited amount shall be refunded within a reasonable period of time after inspection of the returned goods. The Client's claims arising from the transportation costs charged for subsequent performance are hereby excluded, insofar as higher costs have been incurred because the delivery items were delivered to a different location at the Client's request.

7. If the subsequent performance has failed, the Client shall be entitled to demand a reduction in price or rescission of the contract. The Client may, however, only declare rescission on condition that any partial performance already made is of no interest for the Client and/or the defect giving rise to any warranty claims is significant. Any claims for damages shall be governed by § 10 of these General Terms and Conditions.
8. The Client's warranty claims and claims for damages arising from defective goods shall become time-barred after one year following delivery of the goods, regardless of the legal basis for such claims. Such statute of limitation shall not apply to any claims arising from wilful intent or grossly negligent conduct or concerning injury to life, limb or health.
9. Insofar as the Vendor's liability has been excluded or limited in the foregoing provisions, this shall also apply to the liability of the Vendor's representatives or its other performing agents.
10. The Vendor's liability under the Product Liability Act shall remain unaffected by the above.

§ 7

Terms of payment

1. Invoiced amounts shall be due and payable within 30 days after the billing date without any deductions - regardless of the receipt of the goods and the right of complaint in case of defective goods, unless otherwise agreed in writing. Receipt of payment shall be authoritative for the date of payment. Payment by cheque shall be deemed to have been effected upon cashing such cheque. The Client shall be in default of his obligation to pay 30 days after the billing date, but no earlier than 14 days after receipt of the invoice by the Client. No reminder is required for this.
2. If the Client is in default of payment, the Vendor shall be entitled to demand interest at a rate of 8% above the statutory base lending rate valid at the time. The Vendor hereby reserves the assertion of any further claims for damages.
3. In the event of late payment, the Vendor shall be entitled to demand immediate payment of all and any outstanding amounts owed by the Client and to only make owed deliveries against advance payments or equivalent collateral. The same shall apply in the event of a decline in the Client's creditworthiness occurring after the contract was concluded or of which the Vendor becomes aware after the conclusion thereof and which may jeopardize fulfilment of the payment obligations owed to the Vendor.

4. The Client shall only be entitled to set-off, if his counter-claims have been finally established by judgement or are undisputed by the Vendor. The Client shall further only be entitled to exercise a right of retention to the extent that his counter-claim has resulted from the same contractual relationship. The Client shall, however, not be entitled to offset any bonuses without authority to do so, in the form of credit balances voluntarily granted due to certain contractual relations with the Vendor. Such set-off with bonuses can only be effected by the Vendor. The unauthorized set-off with bonuses by the Client shall constitute a breach of contract giving rise to interest claims on the Vendor's part without a separate reminder being required.

§ 8

Reservation of title

1. The Vendor will only make deliveries on the basis of the reservation of title as described in detail below. This shall also apply to all future deliveries and claims arising from any contracts concluded at the same time or later, even if the Vendor does not expressly invoke these provisions.
2. The Vendor hereby reserves title to the goods delivered by him up to the full payment of all claims arising from such sale contract. This shall also apply, if individual or all of the Vendor's claims were included in a running account and the balance was established and recognized
3. The Vendor shall further be entitled to rescind the sale contract and to take back the delivered goods, if the Client's conduct is in breach of contract, in particular if the Client is in default of his contractually agreed performance. Attachment or taking back of the delivered goods by the Vendor shall only constitute a rescission of contract, if the Vendor declares such rescission explicitly or in writing.
4. Pledging or assigning of goods by way of security are not permitted. Until such time as title to the goods has been transferred, the Client shall notify the Vendor and the third party immediately and in writing, if and when the delivered goods are seized by a third party or subject to other encroachment by a third party. Insofar the third party is unable to reimburse the Vendor for judicial and extrajudicial expenses of a legal action according to Section 771 ZPO [German Code of Civil Procedure], the Client shall be liable for any losses incurred by the Vendor.
5. The Client shall be entitled to re-sell the delivered goods in his normal course of business. The Client already now assigns to the Vendor the Client's claims arising from the re-sale of the delivered goods in the amount of the final invoice amount agreed with the Vendor (including VAT). This assignment shall also apply regardless of whether the delivered goods are re-sold without or after processing thereof. The Client shall still be entitled to collect the claim, even after such assignment. This shall in no way affect the Vendor's right to collect the claim himself. The Vendor shall not collect the claim, however, as long as the Client meets his payment obligations using the received proceeds, is not in default of payment and in particular no applications have been filed for the opening of insolvency proceedings and/or payments have not been suspended. The Client undertakes, however, to immediately inform the Vendor about any sale of the assigned claims in writing.

6. Any manufacturing, processing and/or reworking of the delivered goods by the Vendor is always effected for and on behalf of the Client. In this case, the Vendor's expectancy rights to the delivered goods shall extend to the altered items. If the delivered goods are processed together with other goods not belonging to the Vendor, the Vendor shall acquire co-ownership of the new item in proportion of the actual value of the delivered goods to the other processed items at the time of processing. The same shall apply if goods are combined. If such combination is done in such a manner that the Vendor's item is to be considered the main item, it is understood that the Client shall transfer a proportional co-ownership share to the Vendor and retain the wholly or co-owned property so created for the Vendor. The Client hereby assigns to the Vendor as collateral for the Vendor's claims against the Client any claims accruing to the Client against a third party as a result of the delivered goods having been incorporated into a plot of land; the Vendor hereby accepts such assignment already now.

§ 9 Returns

1. If the Vendor is obliged to carry out the transport, any returns – also regarding coils and metal frames – may only be performed by the forwarding agent designated by the Vendor. Deviations from this are only possible after prior agreement by phone or in writing.

§ 10 Liability

1. The Vendor shall only be liable for damages, for whatever legal reason, in all matters of fault, as described in the provisions of this § 10.
2. The Vendor shall not be liable in cases of simple negligence of its executive organs, legal representatives, employees or other performing agents, unless they involve the infringement of cardinal contractual duties. Cardinal contractual duties are duties the fulfilment of which is vital to the proper performance of the contract and therefore, the fulfilment of which the Client may rely on.
3. Insofar as the Vendor is only liable for damages based on the merits under § 10 para. 2, such liability shall be limited to damage which the Vendor could foresee as a possible consequence of a breach of contract at the conclusion of the contract or should have been able to foresee, applying the standard level of care and taking into account the circumstances that were or should have been known to him. Indirect and consequential damage resulting from any defects of the delivered goods shall not be eligible for compensation, if such damage is typically not to be expected if the delivered item is used according to its intended purpose.
4. In the case of liability for simple negligence, the Vendor's obligation to compensate for any loss, damage or injury shall be limited to the respective amounts specified in the Product Liability Act, even if an infringement of a cardinal contractual duty is involved.

5. To the extent that the Vendor provides technical information or acts in an advisory capacity and such information and/or advice is not included in the contractually agreed scope of services owed by the Vendor, such information or advice is given free of charge and with exclusion of all liability.
6. The limitations of liability contained in § 10 shall not apply to the Vendor's liability for intentional acts, for a guaranteed condition or characteristics, for any injury to life, limb or health or as provided in the Product Liability Act.

§ 11

Place of performance, legal venue, choice of law, contractual language

1. Place of performance for the mutual rights and obligations is the Vendor's place of business.
2. Legal venue for any disputes arising from the business relationship between the Vendor and the Client is, at the Vendor's discretion, the place of the contracting independent branch of the Vendor or the Vendor's place of business. The Vendor shall be entitled to take out legal proceedings against the Client at its general place of jurisdiction.
3. The contractual relationship between the Vendor and the Client shall be exclusively governed by the formal and material law of the Federal Republic of Germany, with exclusion of the UN Convention on Contracts for the International Sale of Goods.
4. The German language is the prevailing binding contractual language. If a contract is translated into several languages, the German version shall prevail, if any doubts over interpretation should arise.

§ 12

Final provisions

If individual provisions of these General Terms and Conditions are void or invalid, this shall in no way affect the remaining provisions thereof. If and insofar as the contract or these General Terms and Conditions should have any lacunae, such gaps shall be filled by such legally effective provisions which best satisfy the underlying economic purpose of this contract and the purpose of these General Terms and Conditions intended by the contracting parties, if they had been aware of such gap.