



## I. Contractual Basis

1. All offers and contracts are subject exclusively to the following terms and conditions, unless a deviating agreement is concluded. Even terms and conditions of purchase that are referred to as exclusively valid are herewith rejected; they shall on no account be valid. On receipt of the order confirmation, at the latest however on receipt of the goods or services, our Terms and Conditions are deemed to have been accepted, even if the buyer once again declares otherwise.

Our Terms and Conditions shall also apply to subsequent contracts, even if they are not referred to again. In addition and subsidiary to these, the law of the Federal Republic of Germany shall apply to the exclusion of the UN Convention for the International Sale of Goods. Requirements and effects of the retention of title according to section VII are subject to the laws of the respective location of the goods if the choice of law made therein in favour of German law is not permitted or valid.

These General Terms and Conditions of Sale and Delivery only apply in relation to companies, legal entities of public law or special funds under public law in terms of Art. 310 (1) BGB [*German Civil Code*].

2. Our offers are subject to change.

3. All agreements, in particular the terms and conditions of the Contracting Party require our written confirmation in order to be valid.

4. Statements in brochures, catalogues and other sales documents are non-binding, unless they have been declared binding in writing. This also applies to assurances of product characteristics.

5. Delivery dates are non-binding without express written agreement. We shall endeavour to meet them.

## II. Prices and Conditions of Payment

1. Prices are ex works Puderbach or Dernbach plus packaging and value added tax. Should cost factors change, we reserve the right to invoice the price valid on the day of delivery.

2. Costs invoiced for loading aids and frameworks to secure transport are credited if they are returned to us at no cost and ready for re-use. Any packaging is invoiced at cost price and is not taken back.

3. Our claims are due immediately. However, payment shall not be demanded - revocably - until the 15th of the month following delivery. In the event of default, we reserve the right to charge interest at the borrowing rate customary in banking, without a notice of default being required. We are entitled to demand immediate payment of all claims if we become aware of circumstances that in our opinion could lead to a reduction in the buyer's creditworthiness. In this case we are also entitled, without prejudice to further legal rights, to effect any outstanding deliveries only against advance payment. Furthermore, owing to our retention of title (VII.), we can prohibit the resale and the processing of delivered goods and, without withdrawing from the contract, demand their return or repossess them at the buyer's expense.

In addition, according to legal provisions we are entitled to refuse performance and - possibly by setting a deadline - withdraw from the contract (Art. 321 BGB). In the event of contracts for the manufacture of specific single items (custom made), we can declare rescission immediately; the legal provisions on the dispensability of a deadline shall not be affected.

The buyer is entitled to offset claims from previous business relationships or assert counter claims if they have been acknowledged in writing and legally determined.

4. The date quoted on our invoice is the delivery date (Art. 14 (4) no. 6 UStG [*Value Added Tax Act*]).

5. We are entitled to assign our claims from goods and services for financing purposes.

6. For deliveries and services to customers abroad, it is expressly agreed upon that all costs incurred by the supplier when asserting legal rights in case the buyer is in default of payment, as well as court and out-of-court fees are borne by the buyer.

## III. Acceptance

Should the buyer demand or we request that the goods or services be accepted, we will announce the readiness for acceptance and invite you to the acceptance procedure at the manufacturing works. If acceptance does not occur within the deadline, the goods or services shall be deemed to have been manufactured or provided in line with the contract in all aspects; we are then entitled but not obligated to dispatch. Costs incurred through acceptance are borne by the buyer.

## IV. Delivery Conditions

Events of force majeure entitle us to postpone the delivery by the duration of the disruption plus an adequate start-up period, or withdraw in full or in part from the portion of the contract yet to be fulfilled. Events of force majeure include sovereign measures, industrial action, fire and other circumstances that are not foreseeable or avoidable with economically reasonable means, which render delivery significantly more difficult or impossible, regardless of whether they occur within our company or that of one of our suppliers. After the expiration of the adequate start-up period, the buyer can set an appropriate period of grace and after unsuccessful expiration withdraw from the unfulfilled portion of the contract. Further claims do not exist.

## V. Warranty

1. The buyer must inspect the goods immediately - without prejudice to its obligations according to section III - and notify us of defects in writing within eight days. Defects not recognisable with reasonable means during inspection can still be asserted within twelve months. Should a specific inspection scope be agreed upon, this shall not apply to defects thus detected. On detecting the defect, processing must be stopped immediately. Defects common to the trade and insignificant technically unavoidable deviations do not constitute grounds for warranty claims.

2. We are entitled to disregard warranty claims without this incurring any disadvantages for us, if the buyer has not fulfilled its obligations from this business connection with the exception of that of paying for the disputed delivery.

3. In the event that we have acknowledged the defectiveness of the goods and services in writing or they have been legally determined and this affects their usability, we will, at our discretion, provide warranty through remedy, the delivery of defect-free goods or provision of a defect-free service. Remedy performed by the buyer or a third party requires our prior consent. Should our remedy fail or if it is not performed within an adequate period of time, the buyer may demand abatement or withdraw from the defective portion of the delivery.

In the event of replacement delivery, the buyer must return the defective item to us according to legal provisions. Remedy includes neither the removal of the defective item nor the re-installation, if we were not originally obligated to install.

Claims by the buyer for damages or for the reimbursement of futile expenses only exist subject to section VI and are otherwise excluded.

4. When material is provided, we are liable pursuant to point 3 only if we are guilty of intent or gross negligence. We are not liable for damages and costs that are caused by faulty material provided or inferior weld seams or that occur therein as well as for damages and costs that can be retraced to inaccurate data received from the buyer. If the material provided does not meet/contain the agreed upon conditions/characteristics and should this lead to additional unforeseen operational steps during processing, the costs thus incurred shall be invoiced after advance notice.

5. Damages that are based on the fact that certain vendor parts, which we have combined with our material, are defective shall on no account precipitate any compensation claims against us. We shall, however, assign our claims against the vendor on request.

## VI. Compensation

1. In the event of intent or gross negligence on our part or on the part of our representatives or vicarious agents, we are subject to statutory rules; this also applies to culpable violation of contractual obligations. If there is no intentional contract violation, our liability for compensation is limited to the foreseeable, typically occurring damage.

2. Liability due to culpable injury to life, limb and health as well as liability according to the product liability law remain unaffected.

3. Unless otherwise expressly stipulated above, further liability is excluded.

## VII. Retention of Title

1. All goods delivered remain our property (retention goods) until all claims we are entitled to against the buyer and companies legally associated with it, for whatever reason, have been settled.

2. Should we allow payment to be made by our presenting a bill of exchange and the buyer accepting the bill (financing bill), payment shall only be deemed made with the final discharge of the bill, so that our retention of title only expires at that point in time.

3. Processing of the retention goods is done for us as manufacturer in terms of Art. 950 BGB without this obligating us. If we thus obtain sole title - this also applies to commission processing by us - we shall transfer co-

# Terms and Conditions of Sale and Delivery

ownership shares to the previously entitled individuals, to the extent to which the value of the produced goods exceeds the invoice amount of our delivery or service. Our co-ownership shares, even if they were acquired directly, are considered retention goods. When the buyer combines or mixes the goods, we are entitled to co-ownership of the new item in proportion of our invoice amount to the value of the other goods and services. If our title expires, the buyer now already transfers to us its justified title to the new item in the amount of our invoice value and stores it for us free of charge. The co-ownership shares thus created are considered retention goods.

4. As long as the buyer is not in default, it may only process the retention goods within the normal course of business or resell them at its usual terms, provided receivables from resale, according to points 5 and 6, are actually assigned to us.

5. The buyer now already assigns its claims arising from the resale of retention goods to us. The amount of the claims is determined by the proportion of the invoice value of our resold goods or services to the value of other goods and/or services included, or of our co-ownership shares to other participants. In the event of deposits of the previously assigned receivables into a current account, contrary to contract, the respective balance claims are now already assigned to us. The assigned claims serve to secure the retention goods to the same extent.

6. Resale includes installation on land or installation connected to buildings as well as utilisation in order to fulfil other contracts for work and services.

7. Should we become aware of circumstances in terms of section II. 3. sentence 4 et seq., we are entitled to withdraw the collection authorisation. If we so request, the buyer is then obligated to inform his buyers of the assignment to us immediately and provide us with the information and documents necessary for collection.

8. Should the value of existing securities exceed the secured claims sustainably by more than 10%, we shall release securities in this respect on request at our discretion. The buyer must inform us immediately of any pledges or other third party interference.

9. Should these rights of retention of title not be legally valid where the goods are kept, the respective permissible security shall be deemed to have been agreed upon. If the buyer's participation is required here, it must take all measures necessary to establish and comply with such securities interests.

## **VIII. Statute of Limitation**

The general limitation period for claims arising from material or legal defects is one year after delivery. Should acceptance have been agreed upon, the statute of limitation begins at acceptance.

However, if the goods are a building or an object that according to its usual use was used as a building and has caused their defectiveness, the limitation period according to statutory rule is 5 years from delivery. Furthermore, special statutory rules on material surrender claims by third parties or in case of malice on the part of the seller remain unaffected.

The above limitation periods also apply to contractual or non-contractual compensation claims by the buyer which are based on a defect of the goods, unless using the normal statutory limitation would, in individual cases, lead to shorter limitation periods.

## **IX. Lien and Right of Retention**

Due to our claims from this and earlier contracts, we have a right of retention as well as a contractual lien to the materials provided that they have contractually come into our possession.

## **X. Place of Fulfilment, Place of Jurisdiction**

1. The place of fulfilment for the provision of goods and services is the delivery work, for payments it is Puderbach.

2. Place of jurisdiction is, at our discretion, the courts responsible for Puderbach or for the head office of the buyer.

Version 06/2012 (Rev.1/2016-09)