

General Terms and Conditions of Business

I. GENERAL

1. These Terms and Conditions of Delivery and Payment shall be predicated upon all our delivery contracts and shall constitute a legally binding contractual provision.
2. Any deviations from our Terms and Conditions of Sale, including the General Terms and Conditions of Business of the purchaser, shall only constitute a contractual provision if and to the extent that they are confirmed by our company in writing.

II. QUOTATIONS

1. No section of our quotations shall be binding or entail any obligation on the part of our company.
2. Upon the placement of their order the customer shall, on a binding basis, declare that they wish to purchase the ordered goods. We shall be entitled to accept the contractual offer contained in the order within two weeks of our receipt of such order. The orders placed by the customer shall only be binding upon our company to the extent that we confirm such orders in writing or dispatch and invoice the goods in question.
3. In the event that we should manufacture any goods to specifications stipulated by the customer they shall provide assurances to the effect that no third party trademark and/or design rights or any other third party rights to intellectual property, such as patent and utility patent rights as well as rights of the supplementary protection of performances by competition law, are violated. The customer shall, though their own research, ascertain that no such third party rights preclude the placement of their order, irrespective of in which country such rights are registered or enjoy protection. In the event of a breach of third party rights, the customer shall indemnify our company against any and all liability. Any claims to compensation which any third parties assert against our company in consequence of a breach of these rights shall be borne solely by the customer. This shall also encompass the indemnification of litigation expenses and legal charges.

III. PRICES

1. Our prices shall be understood to be exclusive of value-added tax, which shall be invoiced separately.
2. Our prices shall, insofar as nothing to the contrary is agreed in writing, invariably apply on an ex-factory basis.
3. Price increases in the case of freight charges and customs and excise duties which occur subsequent to order confirmation shall be borne by the purchaser. Given a change of currency or exchange rate parities in the period of time between the conclusion of a contract and delivery or partial delivery, we shall be entitled to withdraw from the contract. Likewise, we shall be entitled to invoice currency losses to our customers in the event that payments should not be credited to our account until after the agreed payment term.

4. Our prices shall not encompass any disposal costs.

IV. DELIVERIES

1. Any samples with which the customer furnishes our company shall merely constitute dimensional samples. With regard to quality and colour, such samples shall only prevail in the event of this having been expressly agreed in writing in advance.
2. In principle, only the product description contained in our contractual documents shall be deemed to constitute the nature of goods. At the same time, public comments, praise or advertising on the part of third parties shall not constitute the contractual nature of the goods. Standard deviations with regard to measurement, weight and performance details and form and colour shall not constitute grounds for complaint. The information which our company furnishes regarding the composition and/or mixing ratio of our products shall only be understood as approximate mean values and shall likewise not constitute grounds for complaint.
3. Information pertaining to the processing and application possibilities of our products, technical advice and any other details shall be furnished to the best of our knowledge, though without obligation. In view of the fact that we are not the manufacturers of the raw material we cannot guarantee the chemical, physical or other properties of our products. It shall be incumbent upon the purchaser to examine and inspect our products themselves with regard to their intended utilization.
4. Acts of God or any other circumstances arising after the conclusion of the contract, for which we are not responsible, such as in particular official measures, strikes, stoppages, transport delays or interruptions, raw material or energy shortage, terrorist acts and acts of war, the failure of manufacturing equipment and tools that have been regularly maintained, shall entitle our company to postpone delivery accordingly or, for anything other than a short-term failure, withdraw from the sales contract or any unfulfilled part of it without the purchaser being entitled to any claims to compensation. This shall also apply in the event that the above-stated hindrances should occur with a subcontractor.

V. DELIVERY PERIODS

1. Delivery periods shall commence subsequent to the receipt of all the documents which are necessary for order execution purposes and the agreed advance payments and provision of materials.
2. Insofar as our company fails to meet an agreed delivery period for reasons beyond our control (impossibility of performance), we shall inform the buyer without delay and determine at the same time a new delivery period. If the performance is still impossible within the new delivery period, we are entitled to withdraw from the contract wholly or partly; an already rendered payment is refunded immediately.

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3. The delayed delivery to us by our suppliers in particular is regarded as a case of an impossibility of performance in this sense, insofar as we have a congruent supply arrangement. Our right of withdrawal and cancellation as stipulated by law as well as the statutory provisions on the fulfillment of the contract in case of an exclusion of the obligation to perform (e.g. impossibility or unreasonableness of performance and/or supplementary performance) shall not be affected. Neither the purchaser's right of withdrawal and cancellation shall be affected.
4. Insofar as our company fails to meet an agreed delivery period, the purchaser shall be entitled to withdraw from the contract, after a suitable period of grace which they have set in writing has expired without effect. We shall be entitled to make partial deliveries if:
 - the partial delivery is suitable for the purchaser in the context of the contractual intended use;
 - delivery of the remainder of the goods ordered is ensured; and
 - the purchaser does not accrue any additional costs or material additional expenditure as a result.

With regard to invoicing and payment (see Sub-section VIII. Of these General Terms and Conditions of Business) any partial deliveries shall be deemed to constitute a separate business transaction. Under-deliveries in accordance with Sub-section IV.1 are not partial deliveries for the purpose of this Sub-section (IV.4).

5. In the case of telephone orders not involving an agreement with regard to delivery time, production batch sizes and acceptance dates we shall be able to request a binding stipulation in this regard no later than three months subsequent to the order confirmation. In the event that the purchaser should fail to fulfill such a request within three weeks we shall be entitled to set a two-week period of grace and, subsequent to its expiry, withdraw from the contract and/or claim compensation.

VI. NOTICE OF DEFECT AND LIABILITY FOR DEFECTS

1. The purchaser shall undertake to inspect the goods immediately subsequent to receipt or as soon as they themselves have acquired the power of disposal or have done so through their vicarious agents.
2. The purchaser shall undertake to ensure that the delivered goods are in order by means of examining a sufficient number of samples.
3. The purchaser shall notify our company of any defects which may obtain in writing within fourteen days. Defects to a part of a delivery may not issue in the rejection of the entire delivery.
4. Our company should be made aware in writing of any defects which were not possible to identify during the immediate examination of the goods within fourteen days subsequent to their discovery, though within the

warranty period at the latest. This shall total one year from the delivery of the goods onwards. The customer shall bear the full burden of proof for all the claim prerequisites, particularly the actual defect, the defect discovery date and the promptness of defect notification.

5. Insofar as, with regard to defects, the purchaser fails to observe the defect notification deadlines stated in Sub-section VI., No. 3 and No. 4 all warranty claims pertaining to such defects shall have expired.
6. Given justified defect notifications we shall, as we see fit, fulfill our warranty obligations by means of rectification or a replacement delivery. If we choose to deliver a replacement, the customer must return the defective goods to us if requested. In this situation the customer must label the defective goods in such a way that makes it possible to identify the product, as well as provide details about the nature of the defect as well as the time when the item was first used. Sub-section VI.10 applies in connection with the costs of making the replacement delivery. In the event of such subsequent performance being unsuccessful, the customer may (in its discretion), in principle, request a reduction in payment (redhibition) or withdraw from the contract. However, given merely minor defects, the customer shall not be entitled to withdraw from the contract. However, withdrawal shall only encompass originally packaged items which have not yet been used.
7. Claims of the purchaser for damages and/or the reimbursement of wasted expenditure shall only arise to the extent permitted by Sub-section VII. of these General Terms and Conditions of Business and are otherwise excluded.
8. Complaints issued by the purchaser shall not entitle the same to retention of the purchase price.
9. Also in case of objection, the purchaser shall be obliged to accept the goods. The purchaser shall be required to store such goods in the customary fashion until such time as our company is in a position to conduct a due investigation into the complaint. Goods in respect of which a complaint has been submitted may only be returned with our prior consent.

10. We will bear the costs necessary for the purpose of verification and subsequent performance, in particular transportation costs, shipping and handling costs, labour costs and material costs if a defect actually exists. However, if a purchaser's request to rectify a defect proves to be unjustified, we can request the purchaser to reimburse the resultant costs to us.

VII. LIABILITY

1. We accept liability for compensation for damage – no matter for what legal reason – in case of intent or gross negligence. In case of simple negligence, we are liable only
 - a.) for damages arising from injury of life, body or health.

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- b.) for damages arising from breach of a material contractual duty (a duty whose performance is basis for the proper execution of the contract and on whose abidance the contractual partner has relied on regularly and may rely on); in this case our liability is, however, limited to the compensation of the foreseeable and typically occurring damage.
2. The liabilities arising from para.1 shall not apply insofar as we have fraudulently failed to disclose a defect or we have assumed a guarantee for the quality of the goods. The same shall apply for claims of the buyer according to the Product Liability Act.
3. For machines and equipment, we shall not be liable for any damage to property caused by machines and equipment after taking-over and whilst machine and equipment are in the possession of the Purchaser. Nor shall we be liable for any damage to products manufactured by the Purchaser or to products of which the Purchaser's products form a part. If our insurance incurs liability towards any third party for such damage to property as described in the preceding paragraph, the Purchaser shall indemnify, defend and hold us harmless. If a claim for damage as described in this Clause is lodged by a third party against one of the parties, the latter party shall forthwith inform the other party thereof In Writing. Us and the Purchaser shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages lodged against one of them on the basis of damage allegedly caused by machine and equipment. The limitation of our liability in the first paragraph of this Clause shall not apply where the we have been guilty of Gross Negligence.
4. The purchaser may rescind the contract on the ground of breach of duty which is not based on a defect of the goods only if and when we are responsible for breach of duty. The purchaser's unrestricted right of termination (in particular according to §§ 651, 649 BGB) shall be excluded. Besides this, the statutory requirements and legal consequences shall apply.

VIII. TERMS AND CONDITIONS OF PAYMENT

1. Payment shall be rendered with a 2% discount within 10 days of the invoice date and receipt of the goods, or without deduction if payment is made 30 days of the invoice date and receipt of the goods.
2. The date upon which a credit is entered in one of our accounts shall prevail for payment receipt purposes.
3. The customer shall undertake to render payment for goods within thirty days of the invoice date and receipt of the goods. Subsequent to the expiry of this period of time they shall be in payment default.
4. The customer shall also be in default in the event that they should fail to render payment by a calendar payment date stipulated in the contract.
5. As an entrepreneur the customer shall, for so long as any amount is overdue, pay interest on the financial debt at a rate of 8% above the base lending rate in

force at any given time. We shall reserve the right to evidence and assert a higher incidence of default prejudice *vis-à-vis* the customer.

6. We shall not be obliged to accept bills. We shall only accept bills subject to discounting opportunities. Cheques and bills shall only be credited subsequent to encashment and assignments of claims only subsequent to payment. A claim and its due date shall remain unaffected until that time. We shall not assume any guarantee for prompt encashment or protestation. Discount, protest and collection expenses shall be borne by the customer.
7. In the event that the agreed payment term should be exceeded and subsequent to a single reminder we shall, on a cumulative basis, be entitled to the following rights:
- a.) All outstanding deliveries, including those under other contracts, shall no longer need rendering.
- b.) We shall be able to claim compensation for all resulting incidences of prejudice which we incur.
- c.) All other receivables, including those not due, shall become due for immediate payment. In addition, we shall be entitled, in this case to request advance payments for outstanding deliveries and, subsequent to the unsuccessful expiry of a reasonable period of grace, withdraw from the contract.
- d.) In the event of the payment terms being exceeded we shall reserve the right to charge interest to the amount of the standard bank debit interest.

IX. DISPATCH

1. Our performance obligation shall have been fulfilled as soon as goods have left our factory or warehouse or been surrendered to the carrier. Even in the event of our assuming the freight costs, delivery shall invariably be rendered at the purchaser's risk.
2. Insofar as the purchaser requests the conclusion of transport insurance or another insurance policy they shall initiate such conclusion themselves at their own expense.
3. In the event that the purchaser should default on acceptance, we shall be entitled to store the goods at their expense. Insofar as we store the goods ourselves, we shall be entitled to storage costs to the amount of 0.5 % of the invoice amount of the goods stored per calendar week commenced up to maximum 5% of the invoice amount. We shall reserve the right to assert higher storage costs upon the submission of proof.

X. PACKAGING

1. Our standard sales packaging shall be included in the purchase price. Should the customer request a special type of packaging or environmental packaging this shall be negotiated separately and we shall be entitled to invoice such packaging separately.

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2. In the event that, in consequence of a statutory obligation, we should be forced to take back packaging or do so voluntarily we shall be entitled to invoice the expenditure which is incurred.

XI. CREDITWORTHINESS

We are to be promptly notified in writing of any changes in ownership, company form or any other circumstances affecting the creditworthiness of the customer, particularly an existing or intended blanket assignment of all rights and claims to the benefit of third parties. To the extent that such lasting changes occur following the conclusion of the contract and prejudice our contractual counterclaim, we are entitled (in our discretion) to do either or all of the following:

- a.) To claim immediate payment or the provision of collateral for due or deferred claims stemming from all legal business transactions. This shall also apply to accepted bills.
- b.) To refuse to execute the contract, withdraw from the contract or claim compensation for non-performance until such time as an advance payment has been rendered or collateral furnished.

XII. RETENTION OF TITLE

1. We shall retain the title to the delivered goods until such time as all the receivables to which we are or will be entitled from the customer, including receivables stemming from bills, notes and cheques payable, have been settled.
2. The customer shall apprise our company without delay in writing of any pledges or other third-party encroachments. Insofar as they are not borne by any third parties the resulting intervention costs shall invariably be borne by the purchaser.
3. The customer shall invariably process or revamp the object of sale on behalf of our company. In the event that the object of sale should be processed in combination or mixed with other objects which do not belong to our company we shall acquire co title to the new object at the ratio of the value of the object of sale to the other processed objects on the processing date.
4. In the event that the object of sale should be mixed with other objects which do not belong to our company we shall acquire co-title to the new object at the ratio of the value of the object of sale to the other mixed object on the mixing date. Should the purchaser's object be regarded as the principal object the customer shall assign co-title to our company on a pro rata basis.
5. We shall, at the request of the customer, undertake to release the collateral to which we are entitled to the extent that the value of our collateral exceeds the receivables to be safeguarded by more than 20%.
6. It shall not be necessary on our part to return sieves and finedrawings produced for the customer since these shall be invoiced on a cost-proportionate basis.

7. As a merchant the customer shall be entitled to resell the goods during the ordinary course of business. They shall, at this early juncture, assign all the receivables to the amount of the invoice which they accrue vis-à-vis a third party purchaser in consequence of a resale. We shall accept such an assignment. The customer shall be authorized to collect the receivable subsequent to assignment. However, we shall reserve the right to collect the receivable ourselves as soon as the purchaser fails to duly fulfil their payment obligations and is in payment default. At our request the purchaser shall undertake to furnish our company with all the information and all the documents which are necessary for the purpose of asserting our rights vis-à-vis the purchaser's customers.

XIII. OFFSET EXCLUSION

The purchaser may only offset the purchase price claim to which we are entitled against counterclaims which are undisputed or have been established on a legally binding basis.

XIV. PLACE OF FULFILMENT AND JURISDICTION

The respective registered address of the seller (Fischbach KG) shall be agreed as the place of fulfilment and jurisdiction.

XV. TAX LAW

Insofar as the purchaser furnishes us with inapplicable information when claiming sales tax exemption for trade within the European Union, they shall bear full liability. We shall be entitled to on-charge any costs and expenditure which we incur in consequence of the establishment or verification of the customer's identification number.

XVI. CHOICE OF LAW

The laws of the Federal Republic of Germany shall, to the exclusion of the United Nations Convention on the International Sale of Goods, be the sole laws applying to the contractual relationship and all resulting legal relationships.

XVII. REFERENCE TO TECHNICAL GUIDELINES

Our Technical Guidelines, which the customer shall meticulously observe, shall additionally apply to all our delivery contracts.

XVIII. SAFEGUARDING CLAUSE

In the event that any individual sections of the sales contract and/or the above Terms and Conditions of Sale and Delivery should not be legally valid this shall have no bearing upon the validity of the remaining terms and conditions.

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Any wholly or partially invalid provision shall be superseded by a provision whose economic and legal outcome most closely approximates to that of the invalid.