



## **Terms and Conditions of Sale**

### **I. General**

1. We provide all of our deliveries and services (including (i) those in the future and (ii) consultation services) on the basis of the following terms and conditions. Any contradictory confirmation of the purchaser (particularly including any terms and conditions of sale or other general terms of the purchaser) is hereby expressly disavowed. Moreover, all deviating terms and conditions do not apply to any transaction if we object to them after we receive such terms and conditions. Our terms and conditions are deemed to be accepted upon the acceptance of our delivered goods.
2. Our offers are non-binding. All delivery contracts and other agreements are effective only upon our written confirmation. All transactions are solely governed by the content of the particular confirmation. We are not bound by any oral side agreement. Any change of or addition to any agreement (including these Terms and Conditions of Sale) requires our written confirmation to be effective.

### **II. Prices**

Any price set forth in any order confirmation is not a fixed price. Rather, our prices are based on the list prices of manufacturers that are applicable on the date of any such order confirmation. If (i) the list prices change prior to the point in time of delivery or (ii) the rebate system changes, our prices change in the same relationship. Whether an earlier or later delivery should have taken place is not relevant; the date of the actual delivery is controlling. To the extent the changes of the list prices of the manufacturers are not consistent, the change of the largest manufacturer in the State of North Rhine-Westphalia is controlling.

### **III. Delivery Periods**

1. In the event that the parties enter into contracts with successive deliveries, orders and classifications by type must be provided on a timely basis; the total quantity must be classified and ordered within the agreed term.
2. Delivery periods and delivery dates are always approximate, unless a period or a fixed date is agreed. If the parties agree to ship the goods, the delivery periods and delivery dates refer to the point in time of the transfer to the forwarder, carrier or other company assigned to transport the goods. Otherwise, the delivery periods and/or delivery dates are maintained if we provide timely notification to the purchaser that the goods are ready for shipment.



3. The following applies to any binding delivery period:  
For any transaction, if the purchaser is still obligated to (i) produce documents, approvals or other requirements or (ii) furnish a prepayment to carry out a transaction, the delivery period is postponed to the period between the despatch of our order confirmation and the furnishing of the documents and/or prepayment.  
  
The delivery period is maintained if, by the time of its expiration, (i) the delivered items are left at the factory or the warehouse or (ii) we notify the purchaser that the goods are ready for shipment.
4. Partial deliveries are permitted, to the extent reasonable for the purchaser. In any such case, each delivery is deemed to be an independent transaction.
5. If we are in default with our deliveries or a delivery is impossible (for whatever reason), the purchaser is entitled to claims to compensation (of any kind) solely in accordance with the conditions of Section IX of these Terms and Conditions of Sale.
6. If there is an event of *force majeure* or there is any other event that was unforeseeable at the time of entering into a contract (i) for which we have no influence (for example, an operational disturbance of any type, any difficulty in the procurement of materials or energy, any incorrect or late delivery by any of our suppliers, any transport delay, any strike or legal lockout) and (ii) for which we are not responsible, we are entitled to rescission if the delivery is thereby made substantially more difficult or impossible. If these obstacles are only of a temporary nature, the delivery periods are extended or the delivery dates are postponed for the duration of the hindrance, plus a reasonable time for reaction. If, as a consequence of the delay, it is not reasonable for the purchaser to accept a delivery, the purchaser can withdraw from the contract with an immediate written declaration.

#### IV. Shipment

The goods are shipped at the expense of and at the risk of the recipient, even if the prices state that the goods are free at the place of destination. If, upon ordering, the purchaser does not provide nor reserve special instructions for shipment, the shipment is to be effected according to our best discretion, without any obligation to use the cheapest or fastest form of shipment. If there is a late order or a barrier to transportation, we are entitled to (i) immediately charge the purchaser for the goods that are ready for shipment, (ii) store the goods outdoors at the risk and expense of the purchaser or (iii) transfer the goods to a forwarder. Our delivery obligation is thereby fulfilled. We cover insurance only upon the express request of the purchaser.



## **V. Payment**

1. If (i) the purchaser is in default with a payment or a cheque or (ii) a bill of exchange submitted by the purchaser is not honoured, we are entitled to carry out deliveries that are still outstanding under the particular transaction or other transactions only against prepayment or the provision of security. If the purchaser does not comply with our request for the prepayment or provision of security, we are entitled to (i) withdraw from the contract and (ii) demand compensation on the basis of non-performance.
2. We accept bills of exchange and cheques only under the reservation of clearance – that is, payable and without any obligation to observe time periods and protest. Any cheque is deemed to be paid only on the date on which we can possess the amount stated. For bills of exchange, our purchase price expires only upon the redemption by the purchaser. The purchaser bears all exchange costs. Any payment by bill of exchange requires our consent. From the outset, the use of non-negotiable bills of exchange as a means of payment is barred.

The purchaser is not entitled to (i) withhold any payment that is due based on counter-claims or (ii) offset our receivables with its counter-claims, to the extent that the counter-claims are disputed or are not determined on a legally binding basis.

## **VI. Subsequent Treatment**

Subject to the provisions of Section VIII and IX, we assume no obligation (warranty, liability) that any processing that is not undertaken in our factories takes place successfully, without any failure. As much as possible, pipes are adjusted straight according to eyesight, without any warranty for (i) true concentric running on the lathe and (ii) a bright surface after removing material that has been machined.

## **VII. Retention of Title**

1. Until (i) the payment of all of our receivables (even those in the future) regardless of the legal grounds and (ii) the complete release from all contingent liabilities that were incurred in the interest of the purchaser (particularly those from bills of exchange), our deliveries remain our property, even if the purchaser makes payments for receivables that have been specifically designated. For ongoing invoicing, the retained property applies as security for the balance of our receivables.



2. If the purchaser is in default in its payments, we are entitled to take back the retained goods or demand assignment of the purchaser's rights to recovery with respect to any third party. The waiver or the assignment of rights to recovery represents a cancellation of a contract only if we declare this in writing. After any restitution, we are authorised to utilise the goods. All proceeds (less reasonable utilisation costs) will be deducted from the liabilities of the purchaser.
3. The purchaser is deemed to engage in treatment and processing for us (without any obligation on our part), such that we directly acquire ownership under § 950 of the German Civil Code (*Bürgerliches Gesetzbuch*). In the event that the purchaser engages in processing with other goods that do not belong to us, we are entitled to co-ownership in the new items, in the relationship of the value of the retained goods to that of the other processed goods at the time of the processing. The new items that arise from the processing and/or the co-ownership thereto are deemed to be retained goods. To the extent not directly granted to us, the purchaser hereby transfers ownership and/or co-ownership to us; the purchaser shall hold the retained goods in safe custody for us.
4. The purchaser may sell our property only in the normal course of business, on its normal terms and conditions of business and only if it is not in default. It is entitled and authorised to resell the retained goods only under the condition that the receivable from such resale passes to us in accordance with Numbers 5 and 6. The purchaser is not entitled to any other act of disposal for the retained goods.
5. The purchaser's receivables from a resale of the retained goods are hereby assigned to us to secure all receivables set forth in Number 1, regardless of whether or not (i) the retained goods are subject to an agreement or (ii) they are resold to one or more customers.
6. If the retained goods (i) exist only in co-ownership or (ii) are resold with goods that do not belong to us at a uniform price, the assignment takes place only in the relationship of the fraction of the goods that belongs to us and/or in the relationship of the sales value of the retained goods to the sales value of the goods that do not belong to us.



7. Until our rescission, the purchaser is entitled to collect receivables from any resale in the ordinary course, thus, for example, not with the so-called "cheque exchange procedure". We may not make use of the right of revocation as long as the purchaser duly complies with its payment obligations under our commercial relationship. The purchaser is not entitled to dispose of such receivables for the benefit of a third party by means of assignment or any other way. If the assigned receivable is included in an ongoing account (current account), the purchaser hereby assigns the claim under the balance of the current account in the amount that corresponds to the amount of the receivables assigned to us in the balance. If interim balances are drawn and if the parties agree that the balance will be brought forward, then the receivable to which we are entitled under the preceding provision will be treated as assigned to us in the subsequent balance. Upon our request, in the event of revocation, the purchaser is obligated to provide all information concerning any assigned receivable that is necessary for collection, particularly naming customers and disclosing the assignment to customers.
8. If the value of the collateral (as a whole) that exists for us exceeds our receivables by more than 20%, upon the request of the purchaser, we are obligated to release security to such extent, at our choice.
9. The purchaser must inform us immediately of any attachment or other impairment by a third party.

#### **VIII. Warranty**

1. All goods purchased from us are to be carefully examined immediately after arrival with the purchaser. If there are any visible defects, these must be confirmed by the carrier. The goods are deemed to be approved (i) we do not receive a notice of defect within 8 days after the arrival of the goods or (ii) if the defect is not observable with immediate careful investigation, we do not receive a notice of defect in writing within 8 days of the discovery.
2. We reserve the right to commercial latitude in respect of quantities, masses and forms. Minor deviations in measuring and construction regarding shipments of samples, small harmless errors such as sand damages, minor tears, flight rust and the like are often inevitable and therefore do not justify any objection.



3. If there is any defect of the delivered goods, we are obligated to engage in subsequent performance at our choice (i.e., remedy of the defect or delivery of items that are free of defects). If our subsequent performance fails, the purchaser can, at its choice, reduce the purchase price or withdraw from the contract.
4. Claims of the purchaser are unaffected to the extent that we have assumed a warranty for the condition or durability of the delivered goods. In any such case, the contents of the warranty commitment control the extent of liability.
5. Claims based on product liability law or personal injuries are likewise unaffected.

#### **IX. Liability for Damages**

1. Our liability and the liability of our vicarious agents – regardless of the legal ground (particularly for tort claims) – are excluded. This exclusion does not apply if there are deliberate or grossly negligent actions or there is a violation of material contractual obligations.
2. To the extent that we have liability for the grounds set forth in Paragraph 1, this liability is excluded
  - a) for claims for compensation based on non-performance, if compensation for indirect or subsequent damages is demanded;
  - b) for foreseeable damages that are not typical for contracts;
  - c) for damages that can be controlled by the purchaser;
  - d) for damages that exceed the amount that is ten times the payment for our delivery.
3. To the extent that the industry of the purchaser typically insures the risk that causes any damage that occurs, our liability for gross negligence is excluded.
4. The preceding liability exclusions and limitations apply in equal extent for the benefit of our legal representatives, other governing bodies, managers and non-management employees and other vicarious agents.



## **X. Place of Performance**

The registered office of our company is the place of performance for all rights and obligations arising from the transactions. If a contract is entered into with one of our branch offices, the place of performance is at such branch office.

## **XI. Area of Jurisdiction and Applicable Law**

The area of jurisdiction for all disputes arising from all transactions is the registered office of our company. This also applies to complaints arising under bills of exchange or cheques. However, we are also entitled to bring suit at the registered office of the purchaser or, if the transaction was entered into by one of our branch offices, at the court responsible for the registered office of our branch office. The laws of the Federal Republic of Germany are applicable; the application of the United Nations Convention on Contracts for the International Sale of Goods of 11 March 1980 is barred.

Status: January 1, 2002