

General Terms and Conditions of Delivery and Payment

1 Scope

- 1.1 These general terms and conditions of delivery and payment are valid for all our contracts, deliveries and other services. These terms and conditions are not valid for contracts with consumers. Deviating terms and conditions of the Customer which are not expressly acknowledged in writing by us are not binding for us, even if we do not expressly contradict these terms and conditions.
- 1.2 These terms and conditions are the basis for all future services and deliveries, even if their inclusion is not again expressly agreed.

2 Quotations and Contracts

- 2.1 Our quotations are not binding. Concluded contracts and other agreements shall first become binding through our written confirmation.
- 2.2 The information, drawings, illustrations and technical specifications, as well as the weight, size and performance specifications contained in the brochures, catalogues, circulars, advertisements, price list or in the documentation to the quotation are not binding unless expressly designated as binding in the order confirmation.
- 2.3 We reserve all property rights and copyrights to the quotation and the attached documents as defined by 2.2. Without our consent these may not be made available to third parties, published, reproduced or used for any purpose other than that agreed.
- 2.4 Supplements, reservations, amendments, verbal undertakings or supplements to this contract shall require written confirmation from us in order to be valid.
- 2.5 The performance specifications of our quotation or the descriptions of performance set out and confirmed in writing by us in our engineering specifications are the basis for our performance.

3 Delivery Times and Delays, Force Majeure

- 3.1 The delivery times quoted in the quotation or the order confirmation are fundamentally non-binding. We shall attempt to comply with the quoted delivery times, but cannot provide any guarantee of compliance. Delivery times are first binding if expressly stated as binding in the quotation or the order confirmation.
- 3.2 Any delays in delivery due to the Customer insisting on changes to the original order, shall be at the Customer's expense. This applies also if the Customer does not fulfil his obligation to furnish information in the agreed form or fails to furnish such information on time or if the furnished information is faulty or has to be reworked. If production comes to a standstill in such cases, we can demand that the Customer bear the downtime costs incurred by us on account of the idle times.
- 3.3 In the case of force majeure and unforeseeable, exceptional and other circumstances not caused by negligence – e.g. material procurement difficulties, operational breakdowns, strike, lockouts, defects in means of transport, interventions by public authorities, power supply difficulties etc., even if these occur with the upstream supplier – the delivery period shall be extended in reasonable scope if we are hindered from the timely fulfilment of our obligation.
- 3.4 If the delivery or service is impossible or unreasonable owing to the described circumstances, we shall be not be bound by our delivery obligation. If the delay in delivery lasts longer than 2 months, the Customer shall be entitled to withdraw from the contract. The Customer can withdraw earlier if the delay in delivery is unreasonable for him.
- 3.5 If the delivery time is extended due to force majeure or if we are freed from our delivery obligation, the Customer shall not be entitled to claim damages from this. We can only plead the aforementioned circumstances if we inform the Customer promptly about such circumstances.

4 Prices and Payment

- 4.1 Our prices are net prices. Value added tax in the respective legal amount shall be added to the prices. The prices are valid ex-works and do not include costs of freight, unloading, transport and set-up.
- 4.2 We expressly reserve the right to reject bills of exchange. Cheques and rediscountable bills of exchange are only accepted on account of payment, no assumption of liability for proper presentation and protest. The Customer shall bear the discount charges for given bills of exchange and any exchange losses. Bills of exchange and cheques are credited subject to the receipt of the expenses with value date of the day on which we are able to dispose of the equivalent amount. If a cheque or a bill of exchange is not honoured, all outstanding receivables shall become due.
- 4.3 If there is a delay in our receipt of the payment from the Customer, we shall be entitled to claim annual interest in the amount of 8 percent above the basic interest rate if the Customer is a merchant. If the Customer is in arrears of payment we shall be entitled to charge interest in the amount of the respective bank interest rates for overdraft facilities, but at least 8 percent above the basic interest rate, if the Customer is a merchant. We reserve the right to claim for financing costs and other losses arising out of the Customer's arrears.
- 4.4 In the case of arrears in payment we shall be entitled to withhold delivery. The Customer shall not be entitled to withhold or to set off payments unless the counterclaims were recognized by us or have the force of law.

5 Retention of Title

- 5.1 For all receivables due to us from the business relationship with the Customer, all delivered products shall remain our property until complete payment is effected - in the case of payment by cheque or bill of exchange until it is cashed/called in and free from claims for redress.
- 5.2 The Customer shall be entitled to re-sell the products in the ordinary course of business provided he is not in arrears with the purchase price payment. The Customer shall not be authorized to extraordinary dispositions such as pledging or assigning as

security to third parties. In the case of a resale, the Customer shall assign to us herewith in advance together with all secondary rights his receivables and claims vis-à-vis his Customers as well as any other claims, including all balances of current accounts as security. The Customer shall be entitled to collect the assigned receivables. The collection authorisation shall expire if the Customer suspends his payments, files for insolvency or opens insolvency proceedings, in an out-of-court composition proceeding or in other forfeiture of assets. In this case we shall be entitled to demand that the Customer inform us about the assigned receivables and their debtors, provide us with all information necessary for the collection of the debts, hand over to us the requisite documents, and notify the debtor of the assignment.

- 5.3 Unless the Customer has our written consent he is prohibited from disposing over the resale receivables by assignment as collateral security or assignment as receivables, also by means of a purchase of receivables.
- 5.4 If the Customer so requests, we undertake to retransfer or to release the collateral security, provided the value of the collateral security given to us exceeds our claim by more than 20% in total.

6 Risk Transfer and Acceptance

- 6.1 Upon completion of performance, the product shall be inspected and accepted if this was contractually agreed. This shall also apply to any complete partial performance.
- 6.2 Once performance has been accepted, the risk shall be transferred to the Customer.
- 6.3 If the Customer is in arrears in inspecting and accepting performance, the risk is transferred to him in the period of arrears. The same shall apply if an agreed installation is interrupted for reasons for which the Customer is responsible and if we have handed over to the custody of the Customer the performance effected up to then by mutual agreement.
- 6.4 Insofar as no acceptance is required or agreed, the risk shall be transferred at the latest with the dispatch of the delivery parts to the Customer, even if there are part deliveries or we undertook to provide other performance items such as shipment costs or transport and set-up.
- 6.5 Upon request from the Customer we shall insure the consignment at his expense against theft, breakage, transport, fire or water damage as well as other insurable risks.

7 Warranty of Quality and Compensation for Damages

- 7.1 We provide a warranty on the quality of the construction and the workmanship for 12 months from the day of delivery, for multiple-shift operations for six months, i.e. if any part becomes unusable or defective during this period due to defective material or inadequate workmanship this part will be replaced by us as quickly as feasible and free of charge or repaired in a workmanlike manner. The warranty of quality does not extend to wearing parts and any damage caused by normal wear, moisture, strong heating of the rooms, other temperature or climatic influences, improper treatment, brute force, overexertion and use of non-appropriate resources or lubricants. Claims for subsequent performance, compensation for damages, price reduction or withdrawal within the meaning of sections 437, 634 of the [German] Civil Code [*Bürgerliches Gesetzbuch (BGB)*] because of obvious defects, expire upon acceptance but at the latest if the Customer does not object to such defects without delay, i.e. within two weeks of the hand-over. We will bear the expenses necessary for the subsequent performance; in particular transport, mileage, work and material costs. Notwithstanding our rights from section 275 (2 and 3) of the German Civil Code, we can however refuse subsequent performance if such performance would only be possible at unreasonable costs.
- 7.2 Instead of rectification we can also deliver a replacement. If we deliver a replacement, we can demand that the Customer return the defect part subject to the proviso of sections 346 to 348 of the German Civil Code. If the rectification is unsuccessful, if we refuse the replacement delivery or we do not provide it within a reasonable period, the Customer shall be entitled to reduce the remuneration or withdraw from the contract. A rectification shall be regarded as failed after the third unsuccessful attempt, provided a new situation does not arise in particular from the nature of the issue or the defect or from other circumstances.
- 7.3 Insignificant, reasonable deviations in the dimensions and workmanship especially for repeat orders shall not entitle the Customer to lodge a complaint unless compliance with the dimensions and colours was expressly agreed. Technical improvements and necessary technical modifications shall also be regarded as in accordance with the contract, provided these represent no deterioration in value.
- 7.4 If the Customer stipulates the use of a certain material or if he furnishes us with the material to be used, we shall not be liable for any defect or damage arising from this material that occurs with our product or leads to defects with the product to be manufactured.
- 7.5 Any claims for warranty of quality shall expire if the Customer himself or a third party makes modifications to the product or interferes with it in any way without our prior written consent.
- 7.6 Any claims to damages of the Customer arising from breach of duty, delay, impossibility of performance, positive violation of a contractual duty, fault at formation of the contract, unauthorised action, or other legal reasons are excluded insofar as the damages or the consequential damages that did not occur on the contractual item itself were not caused by wilfully or through gross negligence. The restriction of liability applies in equal scope to parties employed by us in performing a contractual obligation and to our vicarious agents.
- 7.7 We shall be liable with the value of the purchase order insofar as essential contractual obligations are violated or if the Customer files claims for damages on account of absence of a promised feature. For guarantees or claims under the Product Liability Act (*Produkthaftungsgesetz*), the restriction of liability does not apply to damages arising out of injuries to life, body or health.
- 7.8 We are not entitled to invoke the above-mentioned restrictions of liability if we have fraudulently concealed the defect or if we have provided a warranty for the quality of the product.

8 Copyright

- 8.1 We retain the copyright to and ownership of engineering drawings, 3D tool data, CAM data, electrodes, technological data as well to all other contractual services capable of being covered by copyright which we provide for the Customer. The Customer receives printed out engineering drawings.
- 8.2 The Customer can acquire licenses and rights to use through a separate contract.

9 Exclusion of Set-off, Contractual Penalty

- 9.1 The Customer shall only be entitled to set off payment of agreed remuneration against claims from us, if the counter-claim was either recognized by us or legally determined. In addition, the Customer's rights of retention are excluded.
- 9.2 We will accept contractual penalties only if these are contractually negotiated, recorded in writing and signed by us. Under no circumstances shall we be bound by contractual penalties in the general terms and conditions of the Customer. For us all contractual penalties include the rights pursuant to sections 339 ff. German Civil Code, subject to the proviso that the party seeking to derive rights from a contractual penalty undertaking must set out and prove all the requirements for this. Any contractual penalty is chargeable against other claims to damages. We reserve the right to prove that no or only a smaller damage has occurred than the contractual penalty specifies and to reduce the contractual penalty accordingly.

10 Written Form

No side agreements have been concluded. Modifications to this contract must be in written form. This shall apply equally for the cancellation of this written form clause.

11 Severability Clause

If one or more of the provisions of this contract should be invalid, this shall not affect the validity of the other provisions of this contract. In such a case the parties shall agree a new provision that comes as close as possible to the practical purpose of the invalid provision and which they would have agreed if they had recognized the invalidity.

12 Place of Jurisdiction and Applicable Law

- 12.1 If the Customer is a fully qualified merchant, a legal entity under public law or special fund under public law, the place of performance and place of jurisdiction for any dispute arising out of the contractual relationship shall be our seat.
- 12.2 The law of the Federal Republic of Germany shall apply exclusively to the contractual relationship between the parties to the contract, excluding the United Nations Convention on Contracts for the International Sale of Goods.

In the case of doubt the wording of the German general terms and conditions shall be binding.