

General terms and conditions



As of 23.01.2018

I. Scope

The contract and any business relationships with the customer are subject to these general terms and conditions exclusively. Our general terms and conditions are intended for application towards companies and consumers. Our general terms and conditions apply exclusively. We do not recognise any conditions of the customer or buyer that deviate from our General Terms and Conditions, unless we have explicitly agreed to them in text form. Our offers are not binding, except when expressly agreed otherwise. We calculate the material needed for orders placed by surface or volume non-committally. We assume no responsibility for additional or lesser demand. The contract shall only be concluded at confirmation of the offer in text form. Subsequent changes upon the buyer's request or responsibility shall be charged to the buyer additionally. Secondary conditions, amendment and deviation from these conditions must be agreed in text form.

II. Prices

The agreed prices are ex-factory and are net of the legal value-added tax, prevailing on the day of delivery. The weights, numbers of items and quantities as determined by us are determinant for the calculation, if the buyer does not forthwith object and, in any case, not later than 14 days after receipt. If, during the validity period of the agreement, our prices change across the board, whether upwards or downwards, the quantities that must still be procured, will be charged at the changed prices. In case the prices are increased, the buyer will have the right of immediately withdrawing from the agreement, though in any case not later four weeks after receipt of the notification of the price increase, by means of a statement in text form. The withdrawal will not apply to deliveries that have been made before the price increase.

The customer can only assert a right to set off or retention in case of finally determined or undisputed counter-claims. We shall have the right to wholly or partially transfer the rights and obligations from the contract to third parties.

III. Application consultancy

When we provide consultancy services, we do so to the best of our knowledge. All details and information about suitability and application of the supplied good do not discharge the buyer from conducting his own tests and experiments. That applies particularly when thinners, curing agents, paint additives or other components are mixed in that have not been procured from us.

IV. Delivery

The buyer must collect the goods on the agreed date, or – if no delivery date was agreed – immediately upon notification of the goods being available at the fulfilment location, in accordance with Paragraph IX.1. If the buyer defaults on acceptance, we will have the right, at our discretion, of dispatching the goods for account of the buyer or, if nothing else is possible, to store them – if need be in the open air. In such a case, we do not accept liability for delays, accidental impairment or loss or for damage to the goods. In the event that we are storing the goods, we will have the right of raising invoices in respect of the goods after one week has lapsed.

If it has been agreed, in deviation from Paragraph 1, that we are obliged to dispatch the goods, with any indicated delivery times being non-committal at all times, transportation will be for account of the buyer and, if no specific instructions have been given, the means of transport will be selected at our discretion. Risk passes at the moment of us handing over the goods to the haulier. Partial deliveries that are reasonable for the buyer, are permissible. Significant disruptions in operations, belated deliveries or failures to deliver by our secondary suppliers that we are not responsible for, as well as interruptions in operations on account of shortage of raw materials, energy or labour, strikes, lockouts, difficulties in obtaining means of transport, traffic disruptions, orders from authorities and cases of force majeure in our operations of those of our secondary suppliers have the effect of extending the delivery periods for the duration that the disruption persists, if they are of importance to the ability to deliver the goods. We will inform the buyer forthwith about the beginning and end of such obstacles. If it causes a delay of more than one month, both the buyer and we will have the right of withdrawing from the agreement with regard to the quantity affected by the disruption, under exclusion of claims for compensation. That does not affect the legal right of the buyer of withdrawing from the agreement in case of disruptions in delivery that we are responsible for.

If the delivery is made in returnable containers, they must be returned within 60 days from delivery, completely empty and carriage paid. Loss of and damage to a returnable container will be for account of the buyer, if he is responsible for it. Returnable containers may not be used for other purposes or for other products. They are exclusively intended for transporting the goods to be delivered. Lettering may not be removed. Disposable containers will not be taken back by us.

V. Payment

The invoice amount must be paid in full within 30 days from invoice date. Payment will only have been made on time, if we can dispose over the money with value due date on the account that we have specified. In case of delays in payment, default interest at 8 % over the prevailing basic interest rate must be paid. The right for both us and the buyer of proving that the actual damage from delay is higher or lower, remains unaffected.

Presenting a bill of exchange does not constitute a cash payment and is only permissible as payment with our prior consent. Discounting and exchange costs are for account of the buyer. Withholding and offsetting against claims of the buyer that are disputed by us, are excluded.

In case invoices are not paid or other circumstances arise that point at significant impairment of the financial situation of the buyer after the agreement has been concluded, we will have the right of declaring all our claims under the same legal relationship due for immediate payment.

VI. Reservation of title

We reserve title of ownership until the supplied goods have been paid for in full. Until all claims emanating from the prevailing business relationship with the buyer have been settled, the supplied goods remain our property. The reservation of title also remains upright, if some of our claims are included in the current invoices and the balance has been established and been accepted. In spite of payment, purchase price claims are considered not to have been settled for as long as a liability on a bill of exchange that we have assumed in that connection rests upon us, for example within a cheque exchange procedure.

Processing or mixing is done by the buyer on our behalf, without it leading to obligations for us. For the case of processing together with or mixing with other object that do not belong to us, the buyer cedes already now, by way of surety, the co-ownership of the new object in proportion to the value of the goods subject to reservation of ownership in terms of the other processed objects, and with the understanding that the buyer keeps the new object in custody for us.

The buyer has the right of disposing over the products within the normal course of business, provided that he will honour his obligations towards us under the business relationship in good time.

The buyer does already now cede to us, by way of surety, claims emanating from the sale of goods in which we hold ownership, in proportion to our share of the ownership in the sold goods. For the event that the buyer should combine or mix the supplied goods with a main object of a

third party against payment, the buyer does already now cede to us, by way of surety, his claims to compensation against the third party up to the amount of the invoiced value of the supplied goods. – We accept the cessions.

Upon our request, the buyer must give us all requisite information about the status of the goods in which we hold ownership and about the status of the claims that have been ceded to us and he must inform his buyers about the cession.

The buyer has the obligation of carefully keeping the goods that are subject to reservation of ownership in custody and to insure them, at his own expense, against loss and damage. He cedes to us in advance subsequent claims emanating from insurance policies. – We accept the cession. If the value of the sureties exceeds the total amount of our claims by more than 20 percent, we will release sureties, upon the request of the buyer but at our discretion, up to the value of the excess. The right of the buyer of disposing over the products subject to reservation of title in our favour and of collecting under the claims that have been ceded to us will be automatically revoked, as soon as the buyer ceases to make payments and/or the value of his assets disintegrates. Should those preconditions be met, we will have the right of demanding the immediate provisional surrender of all goods in which we retain ownership, under exclusion of the right of withholding and without setting additional deadlines or withdrawing from the agreement.

If reservation of title should be void under the laws of the country where the goods are present, the buyer must, upon our request, provide a surety of an equivalent value. Should he not accede to the request, we will be able to demand the immediate payment of all open invoices, without regard for any agreed payment terms.

VII. Claims for defects

The buyer must check the goods for deficiencies forthwith upon receipt. Clear deficiencies must be reported straightaway in text form, in any event not later than 14 days after receipt. Hidden deficiencies must be reported within 14 days of them becoming apparent. The reporting must be done in text form and must include an accurate description of the kind and extent of deficiency. In the case of properly raised and justified complaints, we will have the right of remedying the deficiency or of making a replacement delivery, at our discretion. In case of remedying deficiencies, all expenditure in that connection will be for our account, in conditions that the costs do not increase, because the bought object has been moved to a different location than the fulfilment location. Should we not be willing or not be able to remedy the deficiency or to make a replacement delivery or if doing so would be delayed for an unreasonable period of time for reasons that we are responsible for, or if the remediation or replacement delivery fails for other reasons, the buyer will have the right of cancelling the agreement or of demanding a reduction in the purchase price, at his discretion.

A period of limitation of 12 months from receipt of the goods by the buyer exists for claims for deficiencies, if the supplied goods have not been used for inclusion in building construction in accordance with their intended use, which would have caused their defectiveness.

In case of entrepreneur's recourse (Article 478, BGB (Bürgerliches Gesetzbuch [Civil Code])), we have the right of rejecting recourse rights of the buyer with the exception of entitlements to have new goods delivered and to reimbursement, if we grant the buyer equivalent compensation for excluding his rights. Claims of the buyer for compensation of damages are excluded, if the possibility of a settlement is not offered.

In any event, all claims are rejected if third-party materials that have not been procured from us or have not been recommended by us, have been used in a construction chemical material or if thinners, curing agents or other components have been mixed with or have been processed with our products.

We cannot accept liability in respect of setups that have been produced with our construction chemical materials, because we have no influence on whether they are properly used.

VIII. Liability

Except when otherwise agreed, all claims for compensation of the buyer against us and our employees, labourers, staff, representatives and fulfilment agents are excluded, especially claims for compensation of damage that has not occurred on the goods that have been delivered by us themselves.

The limitations on and exclusions of liability that are contained in these General Terms and Conditions, do not apply if, in cases of wilfulness, gross negligence, death and injuries to body and health, our liability is established by law on the grounds of guaranties given in terms of quality or durability or under the stipulations of product liability legislation. The same applies in case of us failing to honour our obligations, thereby endangering achieving the purpose of the agreement, although liability would then be limited to compensating typical, foreseeable damages.

IX. Fulfilment location, jurisdiction and miscellaneous

Fulfilment location for all obligations emanating from the business relationship or from the agreement is our respective point of dispatch; for payments, it is our statutory seat. The exclusive place of jurisdiction for all disputes resulting directly or indirectly from the business relationship or the contract shall be our corporate seat in Gollhofen with the proviso that we may also raise a claim against the customer at his general place of jurisdiction. This shall apply accordingly if the customer has no general place of jurisdiction in Germany or if his place of residence or common abode is not known at the time the claim is raised. The business and contractual relationships with our customer are exclusively governed by the laws of the Federal Republic of Germany. Application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG, "Vienna Convention") is excluded.

Data of the buyer are stored and processed by us only in as far as is necessary for properly implementing the contractual relationships.

This price list is valid from 16.08.2021. All previous price lists lose their validity. Errors and changes in the price list reserved.