

Terms and Conditions of Delivery and Performance

§ 1 General Information

(1) These General Standard Terms and Conditions shall apply to all of our deliveries and other services provided to customers. They are an integral component of any contract offer and contract acceptance and shall apply exclusively as far as no individual terms have been formulated by the parties.

(2) Any terms or conditions of the customer which are contrary to or deviate from our General Standard Terms and Conditions of Sale shall not be recognized. They shall not become a part of the agreement even if we carry out performance or delivery without special reservation in the knowledge of such terms and conditions. No later than the time of acceptance of the goods, the customer must accept these General Standard Terms and Conditions of Sale without reservation, even if the customer has objected to the General Standard Terms and Conditions of Sale in advance of delivery of the goods.

(3) These General Standard Terms and Conditions of Sale shall also apply to any and all future business with the customer, even if these General Standard Terms and Conditions of Sale are not expressly incorporated into future transactions.

(4) We shall only be bound to verbal agreements or any and all agreements provided to us through our representatives if and insofar as we expressly confirm such agreements in writing. This written form requirement also counts for cancellation of written form requirements issues.

§ 2 Offers / Formation of Contract

(1) In case of doubt our offers shall be non-binding. In these cases a contract shall be formed only if we confirm the customer's purchase order in writing or deliver the goods.

(2) Deviations from the purchase order in the order confirmation or the invoice become part of the contract if the customer does not contradict them in writing within 5 working days from receipt of the order confirmation or invoice. Changes, which are based on scientific or technical progress, may take place without further notice.

§ 3 Prices / Payment

(1) Our prices shall be the purchase offer price for each unit in € plus applicable sales tax (value added tax) under EXW Incoterms Saarbrücken, Germany unless agreed otherwise in writing.

(2) In case of doubt, the customer shall be responsible for all additional costs, e.g., transport, packaging, insurance, export / import permits and other permits. In case of doubt, the customer shall also be responsible for all taxes (including sales tax), duties, fees and similar charges.

(3) When a customer is in default, interest shall be paid on the claim at an interest rate of eight percentage points per annum above the respective Euro Interbank Offered Rate (Euribor) monthly average for one-month loans. However, the customer shall be entitled to prove that either no or substantially less damage has been caused as a result of the delay. Assertion of claims for higher damages shall remain unaffected. The statutory provisions with regard to the minimum interest rate shall remain unaffected.

§ 4 Delivery / Delay in Delivery

(1) The term of delivery provided in the order confirmation applies.

(2) Delivery shall be subject to proper and timely availability of raw materials and parts from our own suppliers as well as timely arrival of the raw materials and parts.

(3) In the event of delay in delivery the customer may withdraw from the agreement only if a grace period of four weeks for performance has been given to us in writing by the customer and has elapsed. Any other claims based on delay, in particular claims for damages of any kind whatsoever, may only be sought by the customer under the terms and conditions of Section 8.

(4) The goods shall be shipped at the customer's own risk. The risk shall pass to the customer when the goods are handed over for loading to the party responsible for transport (e.g. hauler, carrier, or the like) or on commencement of the loading of the goods in the event that we are responsible for transport. In any event, the risk passes to the customer on departure from the plant of the place of performance at the latest.

§ 5 Packaging / Transport / Insurance

(1) We must be informed about special requests regarding packaging, transport and insurance in a timely manner. Otherwise we will select the type of packaging and transport. Packing charges are included in the purchase price.

(2) The customer must direct complaints related to packaging and transport to the last freight forwarder immediately (without undue delay) upon receipt of the delivery or the freight documents.

(3) The customer is responsible for insurance against loss or damage of any kind.

§ 6 Notice of Defect, Rights Based on Defects

(1) Warranties are provided only if we have declared such expressly in writing under application of this provision. Without such express declaration, information in catalogues, quality data sheets and certificates, analysis certificates, etc. shall not apply as warranties within the legal meaning of the term.

(2) The customer shall be obliged to immediately examine the goods for defects, including deviations in both quality and quantity and services provided. In order to maintain any claims based on defects, any objections to the goods shall be reported to us in writing within seven calendar days after taking delivery at the latest or, in the case of hidden defects, within seven calendar days after their discovery.

Otherwise, the delivery shall be considered as approved in accordance with the agreement. Comments on delivery notes shall not be considered as notification of a defect. Transport personnel shall not be authorized to accept notices of defect.

(3) We shall not be responsible for defects or reductions of quality that are based on the defectiveness of any provided materials. We are not obliged to perform a quality control inspection of materials provided.

(4) We are not liable for defects that arise in the course of normal wear and tear, faulty maintenance, servicing of equipment by untrained/unauthorized personnel, excessive strain or gross negligence on part of user.

(5) Advice, information and suggestions we provide for processing the products are non-binding. We do not assume any responsibility for the fact that the goods are suited to a certain purpose.

(6) Claims based on defects shall be excluded in the case of insignificant deviation from the specified quality. Claims based on defects shall be excluded in the case of damage or reductions of quality which occur after passage of the risk or for which the customer may be held responsible, e.g. improper storage or transport by the customer.

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(7) In the case of proven defects, we shall provide for subsequent performance at our option by means of substitute delivery or improvement of the goods; as a rule we provide free replacement in exchange for the non-conforming merchandise. Not included are travel and accommodation expenses for on-site repair. The customer may only withdraw from the agreement or reduce the purchase price if no attempt at subsequent performance is undertaken within a reasonable grace period or subsequent performance is not possible, is refused, fails, or is unreasonable. The period for subsequent performance must amount to at least four weeks unless opposed by the customer based on the customer's reasonable interests. In case of doubt, it shall be assumed that subsequent performance has failed only after the third failed attempt at subsequent performance.

(8) Warranty rights are ruled out if the customer or a third party carries out inappropriate modifications or repairs.

(9) Any other claims, in particular claims for damages, may only be asserted under the terms and conditions of § 8 of these General Terms and Conditions of Sale.

(10) The statute of limitation for claims based on defects shall expire twelve months following delivery and/or acceptance of the goods or the commissioning of the system. For repair work we give a parts warranty or for reconditioned parts we give warranty period of 6 months. The warranty exclusively covers labour and all mechanical and electronic parts, based on repair or replacement.

§ 7 Customer's Obligation to Cooperate, Default in Acceptance / Customer's Liability for Damages

(1) The customer shall be obliged to cooperate in a timely manner and in good faith in accordance with the agreement. It is essential for carrying out the work to be performed that we or our authorized personnel may inspect and take detailed measurements and have free access to the premises of the customer at least 4 weeks prior the installation. Customer undertakes that we are duly assisted and supported by competent technical staff if necessary on site.

(2) Should the customer fail to meet its obligation to cooperate or fail to meet such in accordance with the agreement, then we reserve the right to require compensation for the damage and any additional expenditures incurred by us as a result of the customer's failure to meet its obligations under the agreement. In particular, compensable damages shall include, but are not limited to, additional travel cost and cost for personnel. We reserve the right to prove higher damages. Any other rights, in particular the right to withdraw from the agreement or to require payment of damages instead of performance, shall remain unaffected. In this case, the risk shall pass to the customer with notification of readiness for shipment.

(3) Furthermore, if the customer fails to place call-off orders in accordance with the terms of the agreement, fails to accept deliveries, or fails to cooperate as required otherwise, then we shall be entitled to afford the customer a reasonable period within which to make performance. If the customer fails to perform before expiration of the period, then we shall be entitled to withdraw from the agreement, either in whole or in part, and to require payment of damages instead of performance.

(4) Unless expressly agreed otherwise, the customer shall be responsible for obtaining any special permits, licenses (e.g. import or export licenses) or the like required for the effectuation of the purchase agreement or for execution of the contract.

(5) The customer shall be obliged to provide any and all information required and to cooperate in a timely manner as required in accordance with the agreement and/or in good faith.

(6) Insofar as the customer owes compensation for damages instead of performance, we shall be entitled to require overall payment of damages in the amount of 15% of the purchase price if the customer has not proven less damage. Assertion of claims for greater damages in accordance with statutory provisions shall remain unaffected.

§ 8 Cancellation, Liability for Damages, Product Monitoring

(1) Cancellation shall only be permissible due to a breach of an obligation not constituting a deficit if we may be held responsible for the violation.

(2) We shall be liable for damages, insofar as the other prerequisites for a claim are met, if intent or gross negligence can be imputed to us. In the case of simple negligence, we shall be liable in the event of breach of an obligation the non-performance of which makes due performance of the agreement impossible and on whose performance the customer may rely (so-called cardinal obligation). In all other respects, liability for payment of damages of any kind whatsoever, regardless of the basis for claim – including violation of mutual confidence in the preparation of contract – shall be excluded.

(3) In the case of negligence, our liability shall be limited to reasonably foreseeable damages, the occurrence of which we should have anticipated in accordance with the circumstances known to us upon formation of contract. Consequential damages caused by malfunction of the system and liability for lost profit shall be excluded in all cases.

(4) Insofar as we have assumed a warranty, the above exclusions of and limitations on liability shall not apply for damages which are to be paid in accordance with product liability law as well as damages for fatal injury, personal injury, and damage to health.

(5) The above exclusions of and limitations on liability shall also apply for the benefit of our staff, agents, and other third parties to whom we have recourse for performance of the agreement.

(6) In the relationship between us and the customer, it shall be the exclusive task of the customer to monitor any products supplied by us after they have been placed on the market (product monitoring obligation) and to respond to any hazards or risks. The customer shall be obliged to immediately notify us with regard to any and all errors, problems and/or hazards in connection with the products supplied by us. The customer shall be solely liable insofar as damage or injuries are caused by violation of the product monitoring obligation.

§ 9 Drawings / Documents / Samples

We reserve all rights of ownership and copyrights for all of the drawings, illustrations, constructions, and other documents we provide. Such documents may not be made accessible to third parties or copied without our written approval, and they must be issued to us immediately upon request (without undue delay).

§ 10 Data Protection

(1) We employ electronic data processing. To this end, we have stored only your personal data that are required for business purposes.

(2) Unless opposed by any protected interests, we shall be entitled to collect, store, process, use, and transmit information and data about customers to third parties if such is required for processing the agreement or for safeguarding our justifiable interests. In particular, we shall be entitled to transmit data for the purpose of claims collection or for outsourcing debt management.

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§ 11 Retention of Ownership

(1) We reserve the right of ownership of the delivered merchandise until complete fulfilment of all of our claims, including those already incurred and future claims against the customer from the common business relationship.

(2) The customer shall be obliged to carefully store the items for which we shall have (co-)ownership.

§ 12 Setoff / Rights of Retention

The customer shall only be entitled to setoff and rights of retention if the customer's counterclaims are accepted, incontestable or have been recognized by declaratory judgment. This provision shall also apply if the customer's counterclaim is based on the same legal relationship.

§ 13 Place of Performance, Applicable Law, Jurisdiction

(1) The place of performance for any and all performance arising out of the present agreement shall be Saarbrücken.

(2) The law of the Federal Republic of Germany shall apply to the contractual relationship to the exclusion of the United Nations (Vienna) Convention on Contracts for the International Sale of Goods (CISG) and international provisions regarding the conflict of laws.

(3) The place of jurisdiction shall be Saarbrücken. We shall also be entitled to bring an action against the customer at the customer's general place of jurisdiction.

(4) If any provision in these General Standard Terms and Conditions is or becomes ineffective or impracticable, the effectiveness of the other provisions shall remain unaffected.

motcom GmbH
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