

General Terms and Conditions of Sale

1. SCOPE OF APPLICATION

1.1 These Terms and Conditions of Sale ("Terms and Conditions") shall apply exclusively. Other terms and conditions of the Purchaser which are in contradiction or deviation shall not become part of the contract. We are hereby objecting to potential terms and conditions of the Purchaser in the event that we receive such conditions in a confirmation letter or in other ways, or we perform deliveries or services vis-a-vis the Purchaser without reservations, or we accept performances or services by the Purchaser without reservations without objecting to the Purchaser's terms and conditions again.

1.2 The Purchaser shall be deemed to have accepted the exclusive validity of these Terms and Conditions, unless he makes an express written declaration to the contrary on receipt of these Terms and Conditions.

1.3 These Terms and Conditions shall also apply in relation to all future business transactions with the Purchaser.

1.4 Any verbally agreed modifications require confirmation in writing in order to become legally valid. Any verbal amendment to this clause 1.4 concerning the requirement of written form shall be void.

2. OFFER AND ACCEPTANCE

2.1 Our offers are non-binding and subject to confirmation. An order shall be considered as accepted when it is confirmed in writing or when a delivery note or invoice has been issued by us. The data which are created in connection with the contractual relationship which exists between the Purchaser and ourselves are to be processed by means of data carriers.

2.2 Our offers cannot replace the professional planning and coordination of an expert planning engineer. Unless agreed otherwise in writing, we shall not be responsible for any planning and/or coordination tasks. The offered products and proposed execution have to be adapted to the given constructional prerequisites. The suitability of the offered products intended for the processing have to be adapted by the person responsible for the planning to the exposures of the structure in an expert manner and to be released for their employment.

3. DELIVERY TERMS; DELIVERY TIMES; DEFAULT

3.1 Acceptance of an order is subject to delivery possibilities without limitation through cases of force majeure (as defined in 3.5 below).

3.2 Loading, place of delivery

Deliveries will be made FCA (Incoterms 2010) our production plant in Essen, Dorsten or Ottendorf-Okrilla, unless otherwise agreed in writing.

3.3 Provided nothing to the contrary is agreed in writing, the delivery times mentioned are approximate and non-binding; nevertheless we make every effort to adhere to the delivery times indicated. In cases where no agreement about the delivery time has been made, the Purchaser is to arrange complete acceptance of the goods within a reasonable period.

3.4 If a binding delivery date is exceeded for reasons for which we are solely and directly responsible, the Purchaser shall first request delivery in writing and grant us a reasonable period of time, which shall be at least 14 days, to make delivery. Only after fruitless expiration of this period we shall be in default. In the event of default, the amount of compensation for damage shall be limited to 0.5%, at the most to 5%, of the value of the delayed part of the delivery for each week of delay. This paragraph does not apply to cases of intent or gross negligence on our part. Moreover, the Purchaser shall be entitled to prove that a higher damage has occurred and we shall be entitled to prove that no damage at all or only a considerably lesser damage has occurred.

3.5 Provided circumstances outside our sphere of responsibility which could not be reasonably foreseen by us at the time the contract was concluded either impede or delay our execution of the orders, we are entitled to postpone the delivery/remainder of the delivery for the duration of the hindrance or to rescind the contract completely or in part. Insofar as the Purchaser can no longer reasonably be expected to accept the delivery as a result of the delay, he is entitled to withdraw from the contract by means of an immediate written declaration. We shall be released from the obligation to perform if, for reasons of force majeure, this becomes either impossible or unreasonable. This provision applies in particular with regard to events such as: late deliveries of raw materials and supplies from our own suppliers (unless we are at fault for receiving incorrect or late delivery), strikes, lock-outs, shut-downs, work disruptions, traffic disruptions, instructions of higher authority, and indeed irrespectively of whether these incidences of force majeure occur on our premises, those of our pre-suppliers or in external businesses, on which our company depends in order to carry out its business.

3.6 For reasons relating to production, we reserve the right to make excess deliveries or short deliveries within a margin of 10 percent of the quantity ordered. The Purchaser is not entitled to reject part-deliveries unless such part-delivery is reasonably intolerable for the Purchaser. In respect of invoicing, complaints, payment deadlines etc. part-deliveries shall always be considered as individual business transactions.

3.7 Provided delivery is made to an agreed point, unloading is to take place immediately. If the Purchaser is a businessman pursuant to the German Commercial Code [HGB], any person signing the delivery note on behalf of the Purchaser shall be considered by us as being authorised to accept and confirm receipt of the goods. In the case of refusal to accept, delayed acceptance or other improper form of acceptance, the Purchaser shall owe us compensation irrespective of his obligation to pay the purchase price.

3.8 Delivery as from 2,000 kg shall take place carriage free to German site or German border (mainland), providing no other agreement to the contrary has been made.

4. TRANSFER OF RISK

The risk in the goods shall pass to the Purchaser upon delivery in accordance with the agreed Incoterm clause.

5. PACKAGING

Unless otherwise agreed in writing, the Purchaser has to bear the costs for packaging. The ownership of packaging which has been invoiced to the Purchaser and paid by him shall pass to the Purchaser upon delivery. We use the take-back system of REPASACK in terms of our take-back obligation for waste packaging in accordance with the current packaging law. We only accept the return of such packaging we have supplied. In addition, we only accept the returned packaging materials empty of residues to the collection points of REPASACK during normal business hours. The Purchaser has to bear any costs and expenses for the transport and the return of the returned packaging materials. In the event that we deliver our goods on euro pallets to the Purchaser, the Purchaser shall return the euro pallets either upon delivery of the goods or after discharge of the goods, in each case free of charge. In cases that they are not returned free of charge, we will issue an invoice to the Purchaser with the costs of the return.

6. WARRANTY REGULATIONS GOVERNING DEFECTS

6.1 The goods shall be deemed defective if the Purchaser proves that they noticeably deviate from the type, amount, and quality agreed in our written order confirmation at the time of the passing of the risk. If there is no such agreement, the defectiveness of the goods shall be assessed in accordance with the generally recognised engineering regulations (relevant standards, guidelines, test and acceptance conditions, as well as general building authority approval in the applicable cases) and the indications in the technical data sheets. The existence of deficiency in title shall be determined pursuant to Sec. 435 BGB (German Civil Code).

6.2 The Purchaser's warranty rights require that it properly fulfilled its duty to examine the goods, both under the applicable law and these Terms and Conditions. The Purchaser shall be obligated vis-a-vis us to immediately examine each individual delivery in all respects for noticeable and typical deviations, and to notify us in writing of each determined defect promptly, but at the latest 4 days after delivery. Any defect which is not discovered until later despite thorough examination shall be notified to us immediately after discovery.

6.3 Insofar as the goods have a defect for which we are at fault, we shall be obligated to provide a defect-free replacement. When remedying the defect, we shall be obligated to bear all costs required for the purpose of remedying such defect, in particular transportation, labor, and material costs, insofar as they do not increase due to the goods being delivered to a different destination than the original place of delivery. The Purchaser is not entitled to reduce the price or to rescind the contract, at its discretion, unless the replacement has failed twice and this failure is solely and directly attributable to us.

6.4 The Purchaser is to give us reasonable time and opportunity to determine the noted defect and to examine the rejected goods. The rejected goods are to be immediately returned to us upon our request; we shall assume the transportation costs if the notice of defect is justified. If the Purchaser does not give us time and opportunity to examine the rejected goods or samples thereof despite our request, it shall not be entitled to claim the defectiveness of the goods. An unjustified demand for the remedy of a defect shall entitle us to claim compensation for damages if the Purchaser could have discovered upon thorough examination that no defect existed.

6.5 We shall neither be responsible for defects caused by unsuitable or improper use of the goods by the Purchaser or third parties, normal wear and tear, faulty or negligent handling, nor for the consequences of improper changes made without our written consent or correction work by the Purchaser or third parties. The same shall apply to defects which only insignificantly lower the value or the suitability of the goods.

6.6 The presentations in brochures, advertising material, descriptions etc. are not to be considered as indications of quality. They do not constitute a warranty and/or guarantee of quality or durability. We reserve the right to make variations to such statements. Any advice rendered by us about the application of our products is given to the best of our knowledge and on the basis of our wide-ranging experience, without this involving any obligation, however. We do not accept any liability whatsoever for such courtesy consultancy given by us.

6.7 If the Purchaser accepts defective goods, although he is aware of the defects, he is only entitled to enforce claims and rights if he expressly reserves the right to do so upon acceptance of the goods.

6.8 There are no additional claims due to defects of the goods. Any recourse to competing bases of claims, in particular of a non-contractual nature, shall be excluded.

6.9 The rights and claims of the Purchaser on account of defects in the goods expire one month following rejection of the complaint by us, in the case of consumers three months following disclaiming of the defect, at the latest two years as from delivery of the goods; in the case of the goods being used in the way in which they are intended for use for a construction, not before expiry of five years. Replacement delivery shall not result in a new beginning of the limitation period.

7. ENTREPRENEUR'S RECOURSE

If the Purchaser has to respond to claims on account of a defect in the newly manufactured product, he is obliged to inform us about this immediately. He is also obliged to agree on an obligation to provide information with his customers and to oblige them to pass on such an obligation to provide information, provided they are entrepreneurs. The costs which arise

for the Purchaser in connection with fulfillment of the obligation to provide information, will be borne by us up to an amount of 20.00 (twenty) Euros per delivery.

Warranty and recourse claims of the Purchaser following sale of a newly manufactured item to a consumer through him or any other business customer are subject to the reservation that the Purchaser had complained to us about recognisable defects following receipt of the good within the time period stipulated in sub-para 6.2.

8. LIABILITY

8.1 Except for liability under the Product Liability Law (ProdHaftG), for malicious nondisclosure of a defect, due to a guarantee that we have assumed for the quality of the goods or for damage arising from culpable injury to life, limb, or health, we will only be liable to pay damages vis-a-vis the Purchaser in the case of a breach of duties arising from the contract concluded between us and the Purchaser in accordance with the following provisions without waiving the statutory prerequisites for such a liability.

8.2 We shall be liable for compensation for damage – for whatever legal reason – only in the event of culpable violation of significant contractual obligations and in the event of intentional or grossly negligent violation of other contractual obligations owed to the Purchaser. Significant contractual obligations shall mean such obligations which render, only if fulfilled, the proper execution of the contract possible in the first place and on the fulfillment of which the Purchaser regularly relies on and may rely on.

8.3 In the event of a simple negligent breach of significant obligations, our liability shall be limited to the replacement of the foreseeable, typically occurring damage.

8.4 In the event of a simple negligent breach of other contractual obligations existing vis-a-vis the Purchaser, our liability shall be limited to no more than 150 % of the value of the order under which the claim arose.

8.5 The above limitations on liability also apply in the event of violations of obligations by or for the benefit of persons for whose negligence we are responsible pursuant to statutory provisions.

8.6 Any other liability on our part in excess thereof shall be expressly excluded.

8.7 The above limitations do not involve a shifting of the burden of proof to the detriment of the Purchaser.

8.8 The Purchaser is only entitled to terminate and/or rescind the contract in cases described in sub-paras. 3.6 and 6.3 above and if we have culpably failed to fulfill our contractual obligations despite a written warning by the Purchaser and after the expiry of a reasonable period set in the respective warning.

9. PRICES

Prices quoted by us are non-binding unless they have expressly been denoted as binding. Furthermore, our price offers automatically become invalid after a period of three months unless a longer period of validity has been agreed in writing.

We reserve the right to reasonably change our prices if costs decrease or increase after the conclusion of the respective agreement, in particular based on collective wage agreements or changes in material and energy prices. We shall then be entitled to increase or reduce the price according to these changes. We shall announce this in writing to the Purchaser in good time prior to entry into effect of the changed prices. The Purchaser may terminate the agreement in writing in case of price increases, however not in case of price decreases and only within two weeks from the date when it received our announcement of the price increase.

10. PAYMENT

10.1 Our invoices are due for payment immediately following receipt, unless an arrangement to the contrary has been made in writing or has already been granted by us in the invoice.

10.2 Irrespective of sub-para. 10.1 all our claims – including deferred claims – shall become due immediately if the Purchaser goes into default with the fulfillment of other accounts payable to us following conclusion of the contract, is heavily indebted, bankruptcy proceedings have been opened concerning his assets or the opening of such proceedings has been rejected due to lack of assets, or we are aware of other circumstances which are appropriate to considerably reduce the Purchaser's creditworthiness.

10.3 In cases stated in sub-para. 10.2 we are entitled, at our own discretion, either to make further deliveries dependent on advance payments or, following the lapse of a reasonable period for making payment, to demand compensation for damages instead of the performance or to rescind the contract; we shall be entitled to return any bills of exchange which the Purchaser has submitted prior to expiry, and to request immediate payment. This shall not apply if the Purchaser is not at fault for the arrears in payments. The Purchaser can avert all of these legal consequences by providing collateral security in the amount of our jeopardized claim for payment. We have a claim for usual collateral in terms of nature and extent for our receivables, also insofar as they are conditional or restricted. The statutory provisions regarding payment default will remain unaffected.

10.4 The Purchaser shall not be entitled to offset against our claims, unless the counterclaim is undisputed or legally established. Furthermore, the Purchaser shall not be entitled to retain payments or suspend other obligations affecting it, unless we materially violate due obligations from the same contractual relationship despite a written warning, and have not offered adequate safeguarding. Sec. 215 BGB (German Civil Code) shall not apply. The Purchaser's warranty rights remain unaffected.

10.5 If the payment due date is exceeded, at the latest at the occurrence of default, we shall be entitled to charge interest in the amount of the relevant bank interest rates for overdraft facilities; at least, however, the statutory default interest will be charged. We reserve the right to claim additional damages caused by default. If the Purchaser is in default with payments with any payment obligations vis-a-vis us, all open receivables shall fall due immediately.

10.6 Bills of exchange and cheques will only be accepted on the basis of special prior agreement and only by way of fulfillment.

11. RETENTION OF TITLE

11.1 All delivered goods shall remain our property until any and all receivables have been settled by the Purchaser from the business relation, irrespective of the legal ground, including receivables arising in the future or that are conditional (hereinafter referred to as "Reserved Goods").

11.2 Treatment and processing of the Reserved Goods shall occur for us as manufacturer in terms of Sec. 950 BGB (German Civil Code) without obligating us. The processed goods shall be deemed Reserved Goods within the meaning of clause 11.1. In case of processing, compounding and mixing of the Reserved Goods with other goods by the Purchaser, we shall become a co-owner of the new goods in proportion to the invoice amount of the Reserved Goods to the other goods used. If we cease to be the owner due to compounding or mixing, the Purchaser shall already assign us the proprietary rights to the new inventory or the goods to which it is entitled in the scope of the invoice amount of the Reserved Goods at this point in time and shall store it for us free of charge and in trust. The co-ownership rights arising herefrom shall be deemed Reserved Goods within the meaning of clause 11.1.

11.3 The Purchaser may only sell the Reserved Goods in regular business dealings under its usual terms and conditions and only as long as it is not in default. The Purchaser shall not be entitled to other disposal of the Reserved Goods, in particular a repeated transfer of ownership, pledging, or assignment of our retention rights to third parties.

11.4 The Purchaser's receivables from its buyers from the resale of the Reserved Goods shall already be assigned to us in the amount of the invoice amount of the Reserved Goods at this point in time. This shall also apply in the case of a resale after processing within the meaning of clause 11.1.

11.5 We hereby accept the assignments. The assignment in advance shall also extend to all substitutes for the Reserved Goods, e.g. receivables from third parties (insurance, injuring parties) due to loss of or damage to the Reserved Goods.

11.6 The Purchaser shall be entitled to collect receivables in trust from the resale until our revocation, which shall be admissible at any time. We shall only use the right of revocation in justified cases, such as suspension of payment, request to open insolvency proceedings, announced pledging, or default of payment. At our request, the Purchaser is obligated to immediately notify its buyers of the assignment to us – unless we do so ourselves – and to give us the information and documents required for collection.

11.7 In the event of an occurred or impending pledging or other impairment of our Reserved Goods by third parties, the Purchaser is to immediately notify us in writing and to label our property of which we retain the title as such.

11.8 If the value of existing securities should exceed the secured receivables in total by more than 10%, we shall upon written request of the Purchaser insofar be obligated to release securities at our own choice.

11.9 If the above-mentioned rights to retention of title are not valid or enforceable under the law of the territory where the Reserved Goods are located, the security corresponding to the retention of title in this territory shall be deemed as agreed. The Purchaser undertakes to take and to collaborate in all required measures which are necessary to subordinate and retain comparable rights or securities.

12. INTELLECTUAL PROPERTY RIGHTS

With regard to cost estimates, offers, drafts, drawings, and other documents, we reserve the right of ownership and the intellectual property rights; third parties may only be granted access thereto upon our prior written consent. Drawings associated with offers and other documents shall be returned upon request.

13. CONFIDENTIALITY

All of the data that accrues during the process of initiating business contact and thereafter, such as, e.g. shipping data, must be treated as confidential and not passed on to any third parties.

14. ARBITRATION AND APPLICABLE LAW

All disputes arising out of or in connection with the contractual relationship between us and the Purchaser or its validity shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS) without recourse to the ordinary courts of law. The place of arbitration is Frankfurt/Germany. The number of arbitrators is one (1). The language of the arbitral proceedings is English.

The contractual relationship between us and the Purchaser shall be exclusively governed by German law to the exclusion of its conflict of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

For the interpretation of the usual commercial contract clauses the INCOTERMS (2010) shall apply.

15. PARTIAL INVALIDITY

Should any individual provisions of these Terms and Conditions of Sale be or become ineffective, this shall not affect the validity of the remaining provisions. The parties hereby agree at this point in time to replace any invalid provisions with effective provisions which come as close as possible to achieving the economic purpose intended by the parties.

