

# General Terms and Conditions of Delivery and Payment

## 1. General

1. All deliveries and services provided to our customers, hereinafter also referred to as "the Buyer", are subject to the following Terms and Conditions of Delivery and Payment ("Terms") solely. The Terms also apply to all future deliveries and services, even where future contracts entered into do not explicitly refer to them.

2. Any terms and conditions of purchase and any general terms and conditions of the Buyer are expressly opposed herewith. Such other terms and conditions will not be binding upon us even if we do not explicitly reject them upon entering into a contract.

## 2. Catalogues / Offers / Orders

1. Our offers are subject to change without notice. The provision of a price list does not constitute an offer.

2. Any specifications made by us with regard to a product provided hereunder, its intended purpose, etc. (including without being limited to dimensions, weights, use values) are approximations only; they are descriptions or designations and do not constitute a warranty.

All illustrations of any nature and all figures stated in our catalogue, including with regard to the execution, dimensions, and colour of the products indicated therein, are not binding. We reserve the right to make technical and design modifications.

3. Orders are not binding on us unless acknowledged by us or filled by us by shipment of the goods.

We reserve the right to make modifications that serve the purpose of technical progress subsequent to receipt and/or acknowledgement of an order; provided, however, such modifications are appropriate and reasonable in each individual case.

The Buyer and/or any person in charge of planning the relevant order shall verify that the specifications and technical data provided in any catalogues, brochures, or other written documentation, or on electronic media, or in any drawings, sketches, proposals, or similar, are suitable for the intended application.

4. We reserve all copyrights and property rights to illustrations, drawings, calculations, and other materials. This also includes any written materials that are designated "confidential". The Buyer may not disclose said materials to third parties except with our express written consent.

## 3. Quantities of Delivery, Period of Delivery

1. The specified periods of delivery are approximate dates only. Firm deals are binding only if expressly agreed upon. Delivery periods begin from the date on which the acknowledgement of order is sent. The beginning of the delivery period given by us depends on the resolution of all technical questions and on the punctual and proper fulfilment of the Buyer's obligations. A delivery period is deemed to have been met if the goods have been shipped from our facility or that of the sender before the expiration of that delivery period.

2. Deliveries are subject to our own punctual and faultless receipt of supplies. We shall not be answerable for delayed, omitted or non-

conforming deliveries insofar as such delayed, omitted or non-conforming deliveries are attributable to our own suppliers without any fault on our part. We shall notify the Buyer immediately of any delays in delivery.

3. In the event of any delays in delivery caused by force majeure, riot, strike, lockout, raw material shortage, or equipment failures for which we are not responsible and which affect us or our providers, the period of delivery is extended by not less than the period of time required to remedy the disruption to the extent that the disruption affects the production or delivery of the delivery item. We shall notify the Buyer as soon as possible of the beginning and end of such events. In the event of a permanent breakdown caused by force majeure, riot, strike, lockout, raw material shortage or any breakdown for which we are not responsible, or in the event that we have, through no fault of ours, failed to receive the supplies ordered from our supplier, the Buyer and we are also entitled to rescind the entire contract or parts thereof, excluding all claims for damages. In the event of rescission, any payments made in advance shall be immediately reimbursed. The party to the contract intending to rescind the contract in accordance with the provisions herein above shall do so giving two weeks' notice of termination. A permanent breakdown within the meaning of this paragraph is assumed to have occurred if the disruption continues for more than five weeks.

4. Reasonable part shipments are permitted. Part shipments are billed on the basis of the value of each part shipment and shall be paid by Buyer in accordance with the terms of payment.

5. In case of supply of piece goods, underlengths and overlengths of plus or minus 10% are permitted.

A cable may be supplied subdivided into several sections for technical production reasons or for commercial reasons. Underlengths and overlengths customary in the industry must be accepted by the Buyer in case of customised orders.

6. The Buyer shall bear the transport risk in all cases even if goods are delivered postage prepaid by way of exception. Insurance is taken out only if requested by the Buyer and at the Buyer's expense only.

7. Damages for delay in delivery may be claimed against us only in accordance with the provisions in Article 7.3 herein below.

## 4. Prices

1. All prices are subject to a CU surcharge, which means that copper is additionally calculated according to the daily rate.

2. All prices are subject to any applicable customs duties and taxes, including without limitation VAT.

3. Except as otherwise agreed, all prices are ex works (Bielefeld) exclusive of packing, freight and other shipping costs. In the event of direct shipment or special procurement, the same terms apply ex supplier's works.

4. In exceptional circumstances where delivery freight prepaid is agreed, the prices stated by us are based on the freight charges and additional charges payable at the time the offer is made. In the event that these costs change, we have the right to adjust the prices appro-

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priately.

5. If a delivery period of more than four months has been agreed and our costs rise in the meantime due to higher prices for materials, manufacture, assembly, staff, delivery, and similar items, we are entitled to charge the Buyer in accordance with such increase of costs.

## 5. Payment

1. Our invoices are payable immediately and without deduction. The same applies to invoices for part shipments in accordance with Article 3.4 herein above. No deductions may be made that have not been agreed upon. If a discount has been agreed, the discount period is based on the date of invoice unless expressly provided otherwise. The discount period is deemed to have been complied with if the sum of money owed has been credited to our bank account on or before the last day of the discount period.

2. If the Buyer is in default of payment, the Buyer shall pay 12% interest on the arrears, however not less than the legal interest rate in accordance with section 288 II of the German Civil Code (BGB). Where the interest payable in accordance with the foregoing sentence is higher than the legal interest rate, the Buyer may at its option submit evidence that any default of payment has caused no damage or less damage than alleged. We reserve the right to assert claims for higher damages caused by default of payment.

3. If the Buyer defaults on payment – for whatever legal reason – all receivables shall become payable immediately.

4. If the Buyer suffers a major deterioration in its financial circumstances, thus putting at risk any claims we may have against the Buyer, we are entitled to request cash in advance or reasonable security. This applies also in the event that such circumstances exist before the making of the contract but only become known subsequently. If, notwithstanding notification of default and a reasonable extension of the original term on our part, no advance payment or security is provided within the period of extension set by us, we are entitled to cancel the contract or to claim damages instead of performance.

## 6. Offset and Right of Retention

The Buyer is not entitled to offset claims against counterclaims or assert a right of retention unless said offsetting or counterclaims are based on the same contract or on section 320 of the BGB or unless said claims are undisputed or have been finally decided by a competent court of law.

## 7. Claims Arising from Defects / Claims for Damages

1. The Buyer shall carefully inspect any designs and goods in process submitted to the Buyer for inspection and to notify us of any defects. Notification of defects must be given in writing. Any performance based on the Buyer's release will be deemed to be compliant.

2. Any subsequent performance on our part will be performed either by rectifying the fault or by replacing the goods, as we deem fit. The provisions of section 377 of the German Commercial Code

(HGB) are not affected insofar as the sales of goods law applies. That means, without limitation, that any complaints are excluded to the extent that the relevant goods have been processed although they have obvious defects.

Minor variances in quality, colour, width, weight, configuration or design do not constitute defects. Neither do variances customary in the trade constitute a defect unless delivery strictly conforming to the sample has been agreed upon.

Replaced parts become our property. In the event that we have to rectify any defects, we shall bear all costs and expenses necessary for such rectification, including but not limited to costs of transport, travel, work, and materials; provided, however, that such costs are not increased by moving the purchased goods to a place other than the place originally agreed on.

In addition, the Buyer has the right to pursue any other legal remedies available and to cancel the contract and to reduce the purchase price provided that the relevant legal requirements have been met. Claims for compensation are subject exclusively to the following provisions.

3. In the event of negligent breach of a material obligation (fundamental breach of contract) on our part, our liability for damages is limited to compensation up to the amount of the typical and foreseeable damage incurred, unless otherwise provided herein below. Material obligations are those obligations the fulfilment of which is of the essence for the proper performance of the contract and the observation of which the Buyer may rely on in the due course of business and also those obligations the violation of which endangers the purpose of the contract.

The Buyer is entitled to assert claims for damages against us up to the statutory amount and according to the terms of the law where said claims are based on:

- injury to life, body or health, if caused by intentional or negligent breach of obligation on the part of ourselves or any of our legal representatives or agents; or
- intentional or grossly negligent or fraudulent breach of obligation on the part of ourselves or any of our legal representatives or agents; or
- the law on product liability, or
- violation of an obligation arising from a supply risk that we have assumed or a warranty that we have given.

Any other compensation claims asserted against us, our legal representatives or agents are excluded, whatever their legal grounds may be.

The legal provisions regarding the burden of proof apply.

## 8. Statutory Limitation of Claims Based on Defects

1. Any claims asserted by the Buyer for quality defects expire by limitation within one year unless:

a) the product delivered by us is an item that is integrated into a building in accordance with the intended use of such item and has caused a defect in such building; or

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b) the claims are claims for reimbursement for expenses under section 479 of the German Civil Code (BGB); or

c) the defect is due to intentional breach of duty on the part of ourselves or any of our legal representatives or vicarious agents.

The cases listed in paragraphs (a), (b) and (c) and any compensation claims are subject to statutory periods of limitation. The same applies to claims that are based on a warranty that we have given or on a supply risk that we have assumed.

The legal provisions on suspension, interruption and recommencement of the statute of limitations apply.

2. In case of defects in title the provisions in Article 8.1 apply mutatis mutandis.

## 9. Retention of Title

1. We reserve the right of ownership to all goods delivered by us ("Reserved Goods") until full payment of the purchase price.

Further, we reserve the right of ownership to all reserved goods delivered by us until all our claims resulting, for any legal reasons whatsoever, from the relevant contract and also from any contracts entered into at a later date, have been paid.

2. The Buyer is entitled to process and resell the goods in the ordinary course of business, provided that the Buyer is not in default regarding the Buyer's obligations towards us and does not suspend its payments. More specifically, the following provisions apply:

a) No act of processing or finishing of the Reserved Goods shall be binding upon us in our capacity as manufacturer of the goods pursuant to section 950 of the BGB. The act of processing or reworking the Reserved Goods does not grant the Buyer the right of ownership to the new goods.

If the Reserved Goods are processed, commingled, combined or amalgamated with any other items, we acquire co-ownership in the resulting new item according to the relation between the invoice value of our Reserved Goods and the total value of the new item.

The provisions applicable to the Reserved Goods apply equally to any co-owner's shares created under the foregoing provisions.

b) The Buyer hereby assigns to us all claims from any resale or other disposal, including from any contract for the supply of goods and services with all ancillary rights; said assignment also covers any co-ownership that we have acquired, to the amount of our invoice value, from the processing, commingling, or combining of Reserved Goods. To the extent that the Reserved Goods have been processed, commingled, combined or incorporated, such assignment entitles us to a primary fraction of the claim from the resale corresponding to the proportion between the invoice value of our Reserved Goods and the invoice value of the item.

If the Buyer sells the Reserved Goods together with other goods supplied not by us but by a third party, the Buyer hereby assigns to us a first-ranking share in the claim from the resale in the amount of the invoice value of our Reserved Goods.

If the Buyer sells this claim within the scope of a factoring transaction, the Buyer hereby assigns to us the substitute claim against the

factor.

If the Buyer places the claim from the resale under an open account relationship with the Buyer's customer, the Buyer hereby assigns to us the Buyer's claims from the open account relationship in the amount of the invoice value of the Reserved Goods.

c) We hereby accept the above assignments.

d) The Buyer has a right of resale only if the Buyer also reserves its legal ownership until full payment of its claims from the resale has been effected.

e) The Buyer has the right to collect any claims assigned to us until we revoke such right. The right to collect claims ceases automatically upon the Buyer's default in payment or suspension of payments by the Buyer or if the Buyer suffers a material deterioration in its financial circumstances, thus putting at risk any claims we may have against the Buyer. In such cases we have the Buyer's permission to notify customers of the assignment and to collect the claim ourselves.

f) The Buyer shall submit to us, upon our request, a detailed list of the claims due to the Buyer, including the names and addresses of the customers, the amount of each of the claims, the invoice date etc. and shall provide us with all information and documents required for the assertion of the claims assigned to us and permit us to verify the information provided.

g) The Reserved Goods or the claims assigned must not be pledged or transferred by way of security. The Buyer shall notify us immediately of any order of attachment, specifying the name of the attaching creditor.

h) Any sums of money received by the Buyer on the basis of claims assigned to us must be separately deposited to our credit until remitted.

3. If the value of the security due to us exceeds the total of our claims against the Buyer by more than 10%, we shall release the exceeding amount at the Buyer's request.

4. We are entitled to use at our discretion any Reserved Goods taken back for our satisfaction.

5. The Buyer shall hold the Reserved Goods in safe custody for us. The Buyer shall take out reasonable insurance against the usual risks such as fire, theft, and flooding with regard to the Reserved Goods. The Buyer hereby undertakes to assign to us any claims for compensation due to the Buyer from any insurance agency or other obligors for damage of the type stated above, to the amount of our claims. We hereby accept the above assignment.

## 10. Place of Performance / Place of Jurisdiction / Applicable Law

The place of fulfilment is at our registered seat.

If the Buyer is a fully qualified merchant within the meaning of commercial law or a legal entity in public law or a special fund or if the Buyer has no general place of jurisdiction within Germany, the place of jurisdiction is at our registered seat. We are entitled to take legal action against the Buyer at the Buyer's general place of jurisdiction. The laws of the Federal Republic of Germany that are applicable to German contracting parties apply exclusively. The application of the uniform UN sales convention (CISG) is excluded.

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