

## **Terms of payment and delivery for deliveries and services ex works Limburg**

### **I. General, scope**

1. The performance of our deliveries, services and offers is solely based upon these terms of payment and delivery. They are an integral component of all contracts, which are concluded between us and the customer, concerning terms of deliveries and services. We will not recognise any contrary conditions or conditions which deviate from these terms of payment and delivery, which may be presented by the customer, unless we have previously explicitly expressed ratification of the validity thereof in writing. Our terms of payment and delivery terms also apply when we are aware of contrary or deviating conditions, presented by the customer, and we perform the delivery or service for the customer without reservation
2. All agreements, which are reached between us and the customer concerning the execution of a contract, are put in writing within this contract. During running business relations, these terms of payment and delivery are at all times subject to the basis of the individual contracts, even if the contractual partner has not been explicitly informed of this in each individual case. If contractual alterations are made to any of the following individual conditions or if any of those conditions should become ineffective, the validity of the remaining regulations remains unaffected.
3. Our terms of payment and delivery apply solely toward companies in terms of § 310 para. 1 BGB (German Civil Code).

### **II. Tender, tender documents, copyrights**

1. An order made without the previous award of a tender is only valid as being accepted when we have given our written confirmation. Unless something else should ensue from the confirmation of contract, our tenders are without engagement. Our selling price quotation, presented prior to conclusion of contract, is subject to confirmation until the contract is concluded. Products on offer are subject to prior sale.
2. As far as our offer refers to documents, such as catalogues, pictures and drawings, statements on weight and measurement, specifications are only approximate authoritative indications, unless they are defined as being explicitly binding. They are not warranted characteristics. We reserve the right to perform modifications which may benefit technical advance.
3. We reserve all property and copyrights as well as patent rights and other industrial property rights or corresponding usage rights for cost estimates, drawings and other written documents, which we hand over or provide in any other manner for the customer. The customer requires our explicit written agreement before passing these documents on to third parties.

### **III. Scope of delivery**

Our written confirmation of contract is authoritative for the contents and scope of delivery and for our liabilities. Supplements and alterations require written confirmation to be provided by us.

### **IV. Price and payment**

1. Unless something else should ensue from the written confirmation of contract, our prices are applied in euro EXW - ex works Limburg (in accordance with Incoterms 2000), in inland plus the respective current statutory value added tax.
2. Unless something else should ensue from the written confirmation of contract, our invoices are due to be paid without withholding within 30 days from the date of invoice. The statutory rules regarding the consequences for delay of payment are applied.
3. Cheques will only be taken in on account of payment; payments by note are not accepted. Where necessary, the incurred bank charges are to be borne by the customer. The accounts receivable are only accepted as being amortised upon encashment of the currency.
4. The customer is only entitled to set-off rights when the customer's counterclaims are determined to be legally binding, when they are beyond controversy or when they are recognised by us. Provided that a right of retention exists, payments from the customer are only permitted to be withheld, until the settlement of the counterclaims is performed, to the extent which is in an appropriate rate in relationship to the counterclaims.

### **V. Delivery period/delay in delivery**

1. The delivery time is determined by the agreements of the contractual parties. The delivery dates are not considered to be binding, unless we have explicitly agreed that they are binding with a written confirmation thereof.
2. The compliance with delivery time is subject to the premise that all commercial and technical questions between the contractual partners have been cleared and that the customer has fulfilled all incumbent obligations, for instance, supply of parts or documents which are to be provided by the customer or the performance of a payment on account. If this is not the case, the delivery time will be prolonged accordingly. This does not apply if we are responsible for the delay. The compliance with delivery time is subject to the reservation of rights to a correct and timely self-delivery.
3. The compliance of delivery date is valid when the delivery item has left the works before the expiration of delivery date or when notification of readiness for shipment has been issued.
4. If the customer should be in default in accepting the delivery of goods or should the customer intentionally violate other obligations to co-operate, we then have the right to claim compensation for any incurred damages in this respect, including any possible additional expenditure. Rights remain reserved for more extensive claims. In this case, the risk of an accidental perishing or an accidental deterioration of the goods/delivery item comes under the responsibility of the customer at this point of time, due to the customer running into default in accepting delivery or in debtors delay.
5. We cannot be held responsible for any delivery and service delays caused by force majeure and which are due to events that, not only temporarily, complicate or render our delivery or service impossible - in particular among these things are strikes, lock-outs, official directives etc., even if they occur among our suppliers or their sub-suppliers -, even with obligatory agreements on terms and deadlines. They entitle us to postpone the delivery or service for the duration of the hindrance plus an appropriate start-up period or to be able to partially or completely withdraw from the contract due to the unfulfilled part; possible customer compensation claims do not exist for such withdrawals. The

aforementioned circumstances are also not within our scope of responsibility when they are created during an already existing delay. We will inform the customer about the beginning and end of such hindrances as soon as possible. If the hindrance should last longer than a period of three months, the customer is entitled to withdraw from the contract, after an appropriate period of grace, in consideration of the not yet fulfilled part. If the delivery time is prolonged or if we should be released from our obligation, the customer has no right to derive compensation claims herefrom.

6. The customer has the right to withdraw from the contract without setting a time limit, if the complete performance becomes impossible for us before the passing of risk. Furthermore, the customer may also withdraw from contract, with regard to the unfulfilled part, when at the time of placing an order the fulfilment of part of the delivery becomes impossible and the customer has a justifiable interest in refusing the partial delivery. If this is not the case, this means that the customer must pay the apportionable contractual price of the partial delivery. The same applies to inability to perform. Section X.2 applies to compensation claims. If impossibility or inability of performance should occur during the acceptance delay, or if the customer is solely or very predominantly responsible for these circumstances, the customer remains compelled to counter-performance.
7. If, due to our own fault, we should find ourselves in a situation of delayed performance and the customer should suffer damages as a result, then the customer has the right to claim a flat-rate compensation for default with the exclusion of any further claims. It amounts to 0.5% for each full week of the delay, but, at the most, to a total of 5% of the value of the respective part of the total delivery, which cannot be utilised within the prescribed period of time or in accordance to contract as a result of the delay. The aforementioned limitation of liability does not apply to cases of intent or gross negligence. It also does not apply if a commercial transaction for delivery by a fixed date has been agreed upon and the customer is able, due to the default, to assert that the customer's interest in the fulfilment of contract is cancelled. If, while we are in default - under consideration of the legal exceptions - the customer should grant us an appropriate period of time for performance and this period of time is not complied with, the customer has the right, within the scope of legal regulations, to withdraw. Further claims from default in delivery are exclusively determined in accordance with section X.2 of these conditions.
8. If the shipment should be delayed, due to customer request, the costs incurred by storage, however, at least 0.5% of the invoice amount for storage at our plant, will be charged for each month, beginning one month after the ready for shipment notification. However, we are entitled, after the setting and expiration of an appropriate time limit, to dispose of the delivery item for ulterior purposes and subsequently to deliver to the customer with an appropriately extended delivery period.

## **VI. Passing of risk and acceptance**

1. Unless something else should result from the confirmation of the contract, agreement is made that delivery is to be ex works Limburg. According to customer request, the delivery will be insured at the customer's expense against theft, breakage, loss during shipment, fire loss and water damage as well as various other insurable risks.
2. If the shipment is delayed or is not performed, due to circumstances for which we cannot be held responsible, the risk is herewith passed on to the customer from the day of the ready for shipment notification, however, we are obliged to effectuate the insurances at the customer's request and costs, when this is required.
3. Partial deliveries are permissible, unless the partial delivery is objectively not of any interest to the customer. Thereby, each partial delivery is valid as an independent commercial transaction.

## **VII. Reservation of proprietary rights**

1. We reserve the right to ownership of the delivery item (privileged goods) until all claims arising from the business relationship on conclusion of the contract have been fulfilled (including claims arising from follow-on orders, repeat orders and spare part orders). The privileged property acts as a security for the settlement claim on the invoice outstanding. In cases of breach of contract on the part of the customer, in particular cases of default of payment, we are entitled to claim back the delivery item. Redemption or seizure of the delivery item on our part does not entail any withdrawal from the contract unless this is explicitly stated by us in writing. Following redemption of the delivery item we are authorized to sell the latter. The proceeds from the sale – minus the selling costs incurred – will be offset against the liabilities of the customer toward us. In the event of insolvency proceedings we are entitled to withdraw from the contract and claim immediate redemption of the delivery item.
2. The customer is obliged to treat the delivery item with care; in particular, he is obliged to sufficiently insure these items, at the customer's own expense, at replacement value, against fire, water, breakage, theft and various other risks. If any maintenance and inspection work should prove to be necessary, the customer must perform this in a timely manner and at the customer's own expense.
3. The customer may not pledge or transfer ownership of the delivery item by way of security until it has been fully paid for. In the event of seizure or any other third party interventions, the customer must immediately notify us in writing, so that we can file a complaint in accordance with § 771 ZPO. If the third party is unable to indemnify us for the costs of legal or out-of-court proceedings against said third party, the customer is liable for the amount outstanding.
4. The customer is entitled to resell the delivery item in an orderly course of business, unless the customer should be in default of payment. At the conclusion of contract, the customer transfers all rights, which arise from the resale of the delivery item to a recipient or third party, by way of security, to us and indeed irrespective of the fact that the delivery item is subject to resale with or without subsequent treatment. Even after transfer, the customer remains authorised to collect the receivables. Our authority to collect the receivables ourselves remains unaffected therefrom; however, we are obliged to refrain from doing this provided that the customer does not run into default of payment and particularly when no application for the opening of insolvency proceedings has been made. Should the latter be the case, we are entitled to call on the customer to notify us of the claims ceded and the parties liable, supply all details required for the

recovery of the claims as well as the applicable documentation, and inform the parties liable (third parties) of the rights ceded.

5. The processing and transformation of the delivery item via the customer is always carried out on our behalf. If other items that do not belong to us are involved in the processing of the delivery item, we will acquire co-ownership of the new item in accordance with the value of the delivery item at the time of processing in relation to that of the other items processed. The same provisions apply to the processed item as to the item delivered subject to the reservation of property rights.
6. If the delivery item is inseparably processed together with other items, which do not belong to us, we acquire the co-ownership of the new object depending on the value of the delivery item and the value of the other inseparably processed item at the point of time that the amalgamation occurred. If the amalgamation is performed in such a way that the customer's item is considered to be the main item, the agreement that the customer is to proportionately transfer co-ownership to us applies. The customer holds the thus arisen sole or co-ownership in custody for us.
7. We undertake to release the securities which we are entitled to, at the customer's request, insofar as the realisable value exceeds the securities of the receivables to be secured by more than 10%; the choice of the securities to be released is incumbent upon us.

### **VIII. Uncertainty exception**

If, after conclusion of contract, it should become evident that our entitlement to payment should be at risk due to lack of performance capability, we can determine an appropriate time period within which the customer has to provide a security. After the unsuccessful expiration of the time period, we are entitled to withdraw from the contract. This also applies if we are not obliged to perform in advance, but we must carry out the performance of preparatory acts for the order. Agreed upon delivery dates are prolonged in this event, to the equal amount of time which elapsed between our set time period and the performance of security.

### **IX. Deficiency claims**

For material defects and defects of title of the delivery, we perform warranty, with the exclusion of any further claims - except for section X - as follows:

1. All parts are to be subsequently improved, free of charge, or to be replaced without flaws which prove to be faulty as a result of a circumstance occurring before the passing of risk. We must be immediately notified in writing upon the identification of such faults. Part replacements become our property.
2. The customer has to give the necessary time and opportunity, after agreement with us, for the execution of all subsequent improvements and replacement deliveries, which we consider to be necessary, otherwise we are released from the liability of any results occurring therefrom. Only in urgent cases which concern the risk of operating safety or in order to avoid disproportionately great damage, of which we must be notified immediately, is the customer entitled to correct the fault himself or to have the fault corrected via a third party and to demand the required expenditure therefor from us.
3. We bear the costs of the replacement item including shipment - as far as the objection is proved to be justified - of the proximate costs incurred by subsequent improvement or replacement delivery. Furthermore, we bear the appropriate costs of the assembly and disassembly as well as, in the event that this can be reasonably demanded in individual situations, the costs for the provision of required service and support staff for instance, as long as no disproportionate charge is incurred to us by this. We only accept costs for improvement or replacement performances carried out abroad which are proportionate to the rate of costs which would incur for improvement or replacement nationally. Additional costs must be borne by the customer.
4. The customer is entitled, within the scope of legal regulations, to withdraw from the contract, if we - under consideration of the legal exceptions - allow an appropriate set time period for the improvement or replacement delivery, due to a material defect, to elapse fruitlessly, if the subsequent fulfilment should fail or become impossible or the execution thereof should be unacceptable for us. If there should be an insubstantial fault, the customer is only entitled to a reduction of the contractual price. The entitlement to a reduction of the contractual price otherwise remains excluded. If the customer should choose to claim compensation for failure of subsequential fulfilment, the delivery item remains with the customer, provided that this is acceptable to him. The compensation is limited to the difference between the purchase price and the value of the defective material. This does not apply if we caused a default in the performance of contract in a deceitful manner.
5. No warranty is assumed for the following particular cases: Incorrect product selection, inappropriate or incorrect usage, faulty assembly or commissioning by the customer or a third party, natural wear, faulty or negligent treatment, maintenance not carried out accordingly, inappropriate lubrication, incorrect design, negative chemical, electrochemical, electrical and other environmental influences - provided they do not lie within our scope of responsibility.
6. If the customer or a third party performs subsequent improvement in an inappropriate manner, there is no liability on our part for the consequences thereof. The same applies to modifications performed on the delivery item without having previously obtained our agreement on the matter.
7. In the event of our default of claims, we will release the customer from violation of national industrial property rights or copyrights concerning the delivery object, by providing the customer with the fundamental entitlement of further utilisation of the delivery item or that we modify the delivery item in a manner that is acceptable to the customer, at our expense, so that the property right default no longer exists. If this is not possible in regard to economically appropriate conditions or within an appropriate time period, the customer is entitled to withdraw from the contract. We are also entitled to withdraw from the contract under the aforementioned preconditions. Furthermore, we will release the customer from claims of the property rights owner which are determined to be beyond controversy or legally binding. Providing we have delivered the delivery item in accordance with the drawings, models, designs or other documents given to us by the customer, the customer assumes warranty to ensure that the patent or property rights are not violated

by third parties and, in the event of compensation claims, the customer must indemnify us or immediately release us from all associated claims made by third parties. The obligations mentioned in this section only exist if the customer immediately informs us about asserted claims for property right violations or copyright violations, the customer supports us in an appropriate scale with the fending off of the asserted claims or enables us to perform modification measures in accordance with section IX.7 all measures for fending off including out of court settlements remain reserved, the defect of title is not based on an instruction made by the customer and the infringement of rights was not caused by the fact that the customer modified or utilised the delivery item in a manner that is contrary to the accordance of contract, the infringement of rights is solely attributed to the construction of the delivery item without any connection or utilisation with other products. The limitations of liability from section X are applied respectively for the event of property right or copyright violations. Immediately after the handing over, the customer must inspect the delivery item within the limits of an orderly course of business and, if a fault should show, the customer must immediately notify us about it in writing. If the customer does not comply with this obligation, the delivery applies as being accepted. If a fault should show up later, notification of the fault must be made in writing immediately after the discovery thereof, otherwise the delivery will also apply as being accepted.

## **X. Liability**

1. If, due to our own fault and as a result of default or defective performance of the suggestions and advice, which are carried out before and after the conclusion of contract, or due to the violation of other contractual collateral obligations - in particular the instructions for operation and maintenance of the delivery item -, the delivery item cannot be utilised by the customer according to contract, the regulations from sections IX and X.2 apply respectively with the exclusion of any further claims.
2. We are only liable for damages, not occurring directly to the delivery item itself - based on whichever legal grounds -, in cases of intent, gross negligence by the holder/the executive body or an executive employee, intentional harm to life, body or health, for faults which we fraudulently conceal or for the absence of which we have guaranteed, for faults to the delivery item, providing that liability applies in accordance with the Product Liability Act for personal injury or material damage to privately used objects. In cases of intentional violations of essential contractual obligations we are also liable for gross negligence by non-executive employees and for simple negligence, but only limited to the contractually typical, reasonably predictable damages. Section V.7 applies to the compensation of delay damages in the case of delay in delivery. Any further claims, in particular for loss of profit or for other kinds of financial losses, are excluded.

## **XI. Statute of limitations**

All customer claims - based on whichever legal grounds - become statute-barred in 12 months. The legal time limits apply for compensation claims in accordance with section X.2. They also apply to the defect of a product or for delivery items, which corresponding to their usual utilisation were utilised for a product and caused the defectiveness thereof.

## **XII. Software utilisation**

Providing that software is included within the scope of delivery, the customer will be granted a non-exclusive entitlement to utilisation of the delivered software including the documentation. It is entrusted for the sole purpose of utilisation on the designated delivery item. Utilisation of the software on more than one system is prohibited. The customer may only duplicate, adapt, translate or convert the software from the object code to the source code within a legally permitted scope (§§ 69 a ff. German copyright law).

The customer undertakes not to remove the manufacturer's specifications - particularly copyright notes - or to make alterations thereof without previously obtaining specific agreement from the supplier. All other rights on the software and the documentation, including copies, remain with the supplier or rather with the software supplier. Granting of sublicences is not permitted. In the event of a sale of the delivery item, the customer is entitled to transfer the software, which is delivered together with the delivery item, including the documentation therefor, to the purchaser.

## **XIII. Applicable law, place of jurisdiction**

1. For all legal relationships between us and the customer from within the country, the governing law of the Federal Republic of Germany applies exclusively therefor as well as for any legal relationships between parties from within the country. The UN sales convention applies to all international legal relationships.
2. All - contractual and extra-contractual - disputes from the or in connection with the contracts, for which the application of these terms of payment and delivery are provided, will be finally decided in accordance with the arbitration tribunal of the German Chambers of Industry and Commerce in Frankfurt am Main, with exclusion of the jurisdiction of a court. The arbitration tribunal comprises of three arbitrators and for disputes with an amount involved in the case of less than 5,000.00 EUR of one arbitrator. The location of the arbitration proceedings is Frankfurt am Main, the language of the arbitration proceedings is German. However, we are entitled to also raise a complaint before the state courts, whereby, our headquarters will be agreed upon as the place of jurisdiction; this also applies when the customer has no place of jurisdiction within Germany or the residency or customary habitation are unknown. Additionally, we are also entitled to raise a complaint against the customer before his general place of jurisdiction. At the customer's request, we are already pre-procedurally obligated to execute our aforementioned right to choose between arbitrary proceedings and tribunal proceedings within an appropriate period of time which is set by the customer otherwise the jurisdiction of a court is applied.
3. If a regulation from within these conditions or a regulation from within the scope of our other agreements should be or become ineffective, the validity of all remaining regulations or agreements remain unaffected. The contractual parties are obliged to replace the ineffective regulation with a regulation that is as economically similar to the ineffective regulation as possible. The complete contract remains valid even when individual cases of ineffective regulations arise.