

Terms and Conditions of Sale and Delivery

Our terms and conditions of sale and delivery below shall apply exclusively to traders pursuant to Section 1 of the German Commercial Code and to legal entities under public law or special funds under public law that are traders within the meaning of the German Civil Code.

Our delivery and payment terms and conditions, which our customer declares acceptance of by placing an order, shall apply exclusively and also to future transactions, even when not expressly referred to but received by the purchaser in the case of an order confirmed by us. In the event of the order being placed contrary to our delivery and payment terms and conditions, our delivery and payment terms and conditions shall also apply even if we do not object. Variations shall therefore only apply if they have been expressly acknowledged by us in writing. Any conflicting prohibition of assignment shall not be acknowledged.

Our sales staff and system consultants only have the power to conclude contracts and are not authorised to conclude verbal subsidiary agreements or provide verbal assurances beyond the scope of the written sales contract. In particular, they do not have the power to issue warranty declarations or guarantee specific characteristics without our written authorisation. All agreements between us and the purchaser for the purpose of fulfilling this contract shall be binding when set out in writing.

1. Scope of the Delivery Obligation

Our quotations are subject to change and prior sale unless otherwise expressly stated. We hereby reserve the right to make changes for the purposes of technical advancement, providing such changes are reasonable for the purchaser.

2. Prices and Payment Terms and Conditions

Unless otherwise agreed, our prices shall not include packaging, transport insurance, freight or assembly/installation costs.

In the case of delivery or execution periods of 4 months or less from conclusion of the contract, the prices stipulated in the contract shall apply. In the event of longer delivery periods being agreed upon, we shall charge the prices applicable on the date of delivery provided that the price increase is appropriate and reasonable for the purchaser pursuant to Sections 315 and 316 of the German Civil Code. Where we have reserved the right to adjust prices in the event of fluctuations in exchange rates, we shall be entitled to charge the goods at the exchange rate in force on the date of delivery.

Unless otherwise agreed, our invoices shall be payable upon delivery of the goods without any deductions.

Our claims against certain buyers have been assigned to BFS finance GmbH, Verl, as stated in the invoice in any given case. In this case, payments can only be made to BFS finance GmbH in satisfaction of debt. The bank details can be found on the invoice.

Cheques or bills of exchange shall only be accepted as conditional payment. We hereby expressly reserve the right to refuse bills of exchange. Discount and bill of exchange charges shall be borne by the purchaser and shall be payable immediately. In the case of cashless payments, the time of credit to our account shall be decisive in determining the timeliness of the payment.

Any discounts or payment reductions granted shall be subject to full and timely payment within the payment term. They shall lapse in particular if the purchaser is in arrears with a payment due under the business relationship, in full or in part. In such cases, all outstanding receivables under the business relationship shall become due immediately.

If, after being notified that the goods are ready for dispatch, the purchaser fails to accept the purchased item(s) or to supply the forwarding instructions and/or the delivery address, or to meet its payment obligations or to provide an agreed security, even following expiry of a grace period, we shall be entitled to refuse to fulfil the contract and to demand compensation on the grounds of non-fulfilment or to withdraw from the contract. Notwithstanding our right to claim a higher damage actually incurred, we shall be entitled to claim 20% of the sale price as compensation on the grounds of non-fulfilment without providing proof. The onus shall be on the purchaser to prove that no damage, or less damage, was incurred.

The statutory interest on arrears shall apply in case of late payment. The right to assert claims for additional compensation shall remain reserved.

3. Retention of Title

The goods supplied shall remain our property until such time as our claims against the purchaser under the business relationship, including interest on arrears and legal costs, have been paid in full. The buyer shall have the revocable right to resell the reserved goods in the ordinary course of business. Upon conclusion of the underlying contract in any given case, the buyer shall assign to us all claims, including future claims, which accrue to the buyer from the resale. If we have a current account arrangement with the buyer pursuant to Section 355 of the German Commercial Code (Handelsgesetzbuch - HGB), the advance assignment shall also refer to the recognised balance. If reserved goods are reworked or are combined or processed with items owned by the purchaser or by third parties, the purchaser hereby assigns any claims arising from the resale to us in full, or in the case of joint ownership with third parties, not less than the value of the reserved goods, together with all ancillary rights. We hereby accept the assignment. The purchaser undertakes to provide us with full and prompt information, upon request, regarding the status of any assigned claims and the identity of any respective third-party debtor and agrees to provide access to its sales documentation where necessary.

The purchaser shall have the revocable right to collect such claims even after the assignment. Our entitlement to collect the claims ourselves remains unaffected. We hereby undertake however not to assert said entitlement provided that the purchaser fulfils its payment-related and other obligations (obligation to provide information and duty of disclosure) correctly.

The purchaser shall proceed with any treatment or processing of the reserved goods on our behalf without this giving rise to any obligations on our part. Where the reserved goods are processed, combined, mixed or blended with other goods not belonging to us, we shall acquire the resulting share of joint ownership of the new item in the ratio of the value of the reserved goods to the other goods processed at the time of the processing, combination, mixing or blending. Where the purchaser acquires sole ownership of the new item, he hereby grants us joint ownership of the new item at the aforementioned ratio and shall safeguard this interest at no cost to us.

At the purchaser's request, we shall be obliged to release the reserved goods as soon as and insofar as the value of any existing securities exceeds the amount of the outstanding claims by 20%.

If retained goods are seized or confiscated, or otherwise accessed by third parties, the purchaser shall be obliged to notify us immediately and avert the risk. Where necessary and relevant, the purchaser shall be required to transfer its claims to us. The purchaser shall be required to reimburse us for any costs incurred by us in connection with releasing or claiming back the goods and shall hold us free and harmless against the same.

At any time, in particular in the event of the purchaser acting in breach of contract or late payment, we shall be entitled to take back the reserved goods and the purchaser shall be obliged to hand them over. We shall be entitled to assert the rights to segregate or to assert the claim for counter-performance in insolvency proceedings where the fulfilment of our claim by the purchaser is at risk, in particular, in the event of insolvency proceedings being applied for or initiated in relation to its assets. In such cases, the purchaser shall be obliged to provide information about the whereabouts of the reserved goods. The purchaser hereby waives its right of ownership in this respect and we hereby accept said waiver. Our repossession of the reserved goods – provided that the German Instalment Purchase Act does not apply – shall not constitute withdrawal from the contract.

Withdrawal from the contract shall not be required in order to assert retention of title (unless the buyer is a consumer which is excluded under these T&C in any case).

4. Delivery Term

Whether binding or non-binding, delivery dates or delivery terms agreed upon must always be stipulated in writing.

Force majeure, strike, war, the inability to perform through no fault of our own or on the part of our suppliers, shall extend the delivery term by the duration of the hindrance.

After failure to adhere to a non-binding delivery date or a non-binding delivery term, the purchaser may ask us to deliver within a reasonable period of at least two weeks. Only once this grace period has passed without any satisfactory result shall the purchaser be entitled to invoke its statutory rights.

5. Transfer of Risk

Risk shall pass to the purchaser as soon as the consignment is handed over to the party responsible for transport or once the consignment has left our company for dispatch, irrespective of whether or not the dispatch is taking place from the place of fulfilment and who will bear the shipping costs. If the goods are ready for dispatch and the dispatch or acceptance is delayed for reasons not attributable to us, then the risk shall pass to the purchaser upon receipt of the notice of readiness for dispatch. The goods are always insured against transportation damage at the purchaser's expense unless instructed otherwise by the purchaser.

6. Packaging

Packaging shall be charged at actual cost and reusable packaging shall be charged proportionately.

Packaging shall be non-returnable except where reusable packaging identified as such by us is used. Such reusable packaging must be returned or sent back to us by the purchaser at no cost to ourselves. Insofar as the Packaging Ordinance also includes an obligation to take packaging back, the purchaser shall take care of this in full and shall hold us free and harmless from this in every respect.

7. Installation

If a fixed fee is not agreed upon in writing for the costs of assembling and installing the purchased item, then this will be charged at the applicable hourly rates plus daily allowances and travel expenses in accordance with the valid price list. Travel time shall be deemed working hours. It must be possible for the installation to be completed in one single operation without hindrance. Additional work or waiting time will also be charged in accordance with the price list, even where a fixed fee has been agreed upon, except where such work or time has been caused by us.

8. Warranty for Defects, Liability

8.1 We hereby provide a guarantee against defects under the following conditions. The purchaser shall always be obliged to examine the goods supplied immediately and to report any obvious defects to us in writing immediately but no later than within two weeks of delivery. We shall be entitled to reject any notices of defects received after this time. Any late notices of defects accepted as a gesture of goodwill shall also not give rise to any claims for the future even if we have not expressly pointed this out. Hidden defects must be reported immediately following their appearance. The purchaser shall be required to keep the defective item ready for inspection by us or our authorised representatives during normal business hours.

Stand-alone devices shall comply with the FTZ/A regulations. If statutory, official or other company regulations or safety standards also apply, the purchaser shall be responsible for compliance therewith.

8.2 In the event of a defect in the purchased item that is attributable to us, we shall be entitled, at our own discretion and for the purposes of supplementary performance, to either rectify the defect or deliver a replacement. In the event of rectifying the defect, we shall be obliged to bear all expenses required to remedy the defect, in particular transport costs, infrastructure costs, labour and material costs, providing such costs have not been increased due to the purchased item being taken to somewhere other than the place of fulfilment. In the event of a replacement delivery, we must be granted a reasonable delivery term. Any further liability during this supplementary performance is hereby excluded with the exception of liability for personal injury which we shall be liable for in accordance with clause 8.5. The purchaser may only invoke the other rights listed in Section 437 of the German Civil Code if supplementary performance has failed or where further attempts on its part would be unreasonable.

8.3 If we are unwilling or unable to rectify the defect or deliver a replacement, in particular where this is delayed beyond a reasonable period for reasons attributable to us, or where rectification of the defect or the replacement delivery fails in some other way, the purchaser shall be entitled, at its own discretion, to either withdraw from the contract or demand an appropriate reduction of the purchase price.

8.4. Unless otherwise stated below, any other claims by the purchaser – for whatever legal reasons – are hereby excluded. We shall therefore not be liable for damages not caused to the delivery item itself. In particular, we shall also not be liable for lost profit or other financial losses on the part of the purchaser.

8.5 The foregoing exclusion of liability shall not apply where claims for damages are based on wilful acts or gross negligence on the part of our management personnel or executive bodies or our vicarious agents. It shall also not apply in the event of an assurance of properties that includes the risk of consequential damages and where the damage that occurred is based on its absence. Our duty to compensate shall be limited however, even in these cases, to foreseeable damage. For damages arising from injury to life, limb or health our liability shall be unlimited where such damage is based on the negligent breach of an obligation on our part or the grossly negligent or intentional breach of an obligation by a legal representative or vicarious agent.

8.6 If we negligently breach a material contractual obligation, our duty to compensate for damage to property shall be limited to the compensation payment under our product liability insurance. This shall also apply in particular for damage caused by a breach of obligations before or during the contract negotiations, or following conclusion of the contract, and namely for fault in selecting the means of transportation or transport route. Upon request, the purchaser may view our policy. Our duty to compensate shall be limited however, even in these cases, to foreseeable damage. Our duty to compensate, over and above the framework set out in clauses 8.4 and 8.5, is also hereby excluded insofar as this is legally permissible.

8.7 Warranty claims shall become statute-barred within 12 months from the transfer of risk. This period shall also apply to claims for compensation for consequential damages caused by a defective product providing no claims are made for tortious acts.

Where we are obliged to deliver a replacement based on the foregoing provisions and/or statutory regulations, the purchaser shall be required to compensate for any additional value compared with the original delivery due to technical improvements, except where the product improvement does not provide the purchaser with any objective advantage.

9. Transportation Damage

If the goods are delivered by a freight forwarder, by rail or by post, the goods must be examined immediately upon arrival. Any damages must be immediately reported in writing to the railway, post office or the relevant freight forwarder and the seller. Where possible, complaints must be made upon delivery. A freight forwarder must have the damage report in its possession on the 6th day following delivery at the latest. The purchaser shall be responsible for complying with these obligations.

10. Transfer of Receivables and Claims

The Purchaser may not transfer its contractual rights to third parties without express consent. We shall be entitled to transfer claims ensuing from our business relationships.

11. Severability Clause

In the event of one or more of these terms and conditions of sale or other agreements being invalid or null and void, the validity of the contract and the remaining contractual terms and conditions of sale shall not be affected.

12. Place of Jurisdiction / Choice of Law

The place of jurisdiction shall be the registered office of our company in accordance with our wishes.

The contractual relationship shall be subject to German law only. Application of the UN Convention on Contracts for the International Sale of Goods is hereby excluded.