



General Terms and Conditions - Sale

(Status: September 2020)

I. General information

(1) Our offers and services are provided exclusively according to these terms and conditions. The customer's terms and conditions shall only be valid if they are accepted by us in text form. Individual agreements made with the customer in individual cases (including collateral agreements, supplements and amendments) shall in all cases take precedence over these terms and conditions. A written contract or our written confirmation shall be decisive for the content of such agreements. Neither our silence with regard to the sending of terms and conditions nor the execution of an order by us shall be deemed as acceptance. The customer's terms and conditions shall also not be effective insofar as they do not contradict our terms and conditions or concern points not regulated by us.

(2) At the latest with the acceptance of our goods or services, the customer accepts these conditions. These terms and conditions shall only apply to entrepreneurs within the meaning of Section 14 BGB (German Civil Code), as well as legal entities under public law and special funds under public law.

(3) These terms and conditions shall also apply in their respective version as a framework agreement for future contracts for the sale and/or delivery of movable goods with the same customer, without us having to refer to them again in each individual case, nevertheless we will inform the customer of changes within our terms and conditions without undue delay.

II. Offers, orders

(1) Our offers are subject to change. Orders placed by the customer are only binding for us after confirmation in text form. Our order confirmation is decisive for the content and scope of the contract. Additional agreements, changes, additions, etc. require our express confirmation.

(2) The customer is aware that in the case of custom-made products more than the number ordered is produced in accordance with industry standards in order to be able to deliver the number of faultless products ordered, taking into account the usual rejects. Since the number of faultless products is not foreseeable, we reserve the right to deliver more or less than 10% of the ordered quantity if we can only produce a certain number of workpieces due to given production processes and technological procedures. We shall inform the customer of this immediately - in any case before the start of the special production - and, if necessary, point out his obligation to pay additional remuneration in the event of over-delivery. In these cases, the customer is obliged to accept the goods. If the number of pieces produced deviates by more than 10% above the quantity ordered, we will inform the customer immediately. The customer is then free to accept the entire quantity produced or only the quantity produced increased by 10%. If the number of pieces produced deviate by more than 10% below the quantity ordered, we will also inform the customer immediately. The customer is then free to accept the



actually produced quantity or to insist on production up to the ordered quantity. In the latter case, we will immediately produce the missing quantity.

(3) The customer shall assume responsibility for the information incumbent on him and for the parts to be provided by him.

(4) We reserve the unrestricted property and copyright exploitation rights to cost estimates, drawings, proposed solutions and comparable documents (hereinafter referred to as "Documents"). Documents may only be made available to third parties with our prior consent. Documents must be returned to us immediately if a contract is not concluded. We may make documents of the customer available to third parties in order to make enquiries about these deliveries in connection with the customer's order or to transfer deliveries to the customer.

III. Delivery times and partial delivery

(1) The delivery times/dates for deliveries and services (delivery periods) announced by us are always only estimates. This shall not apply if a fixed delivery period has been expressly promised or agreed. Promised or agreed delivery dates are calculated from the date of order confirmation, in the case of delivery against advance payment from the date of receipt of payment, but at the earliest from the mutual clarification of all facts required by us for the fulfilment of the order and the fulfilment of the obligations incumbent on the buyer (e.g. complete provision of any documents to be provided, payment of an agreed deposit). In case of subsequent requests for changes or additions by the buyer, the delivery time will be adjusted accordingly.

(2) Unless otherwise agreed, a fixed delivery period shall be deemed to have been observed if the delivery item has left the factory by the time of its expiry or if readiness for dispatch has been notified.

(3) The delivery period shall be extended appropriately if our deliveries or services are delayed as a result of circumstances for which we are not responsible, including operational disruptions for which we are not responsible, strikes, lock-outs or traffic or other concretely unforeseeable obstacles for which we are not responsible and which occur at our premises, insofar as such obstacles demonstrably have a considerable influence on the completion or delivery of the delivery item. Circumstances for which we are not responsible shall also include incorrect or untimely delivery by one of our suppliers, provided that we are not responsible for such circumstances and had concluded a congruent hedging transaction with the respective supplier at the time of conclusion of the contract with the customer.

The above paragraph shall also apply in each case to a grace period set by the customer for delivery if this has not yet expired.

If the extension of the delivery period significantly changes the cost situation on which we based the relevant offer, or if the provision of the service is unreasonable for us in any other way, we shall be entitled to withdraw from the contract to the exclusion of claims for damages.

(4) If there is a delay and the customer grants us a reasonable period of grace with the express declaration that he will refuse acceptance of the performance after expiry of this period and if we do not comply with the period of grace for reasons for which we are responsible, the customer shall be entitled to withdraw from the contract.



(5) The customer may also withdraw from the contract to the exclusion of further claims if performance becomes finally impossible for us. The same shall apply in the event of initial inability to perform. He may also withdraw from the contract if the performance of part of the delivery becomes impossible for us and he has a justified interest in refusing a partial delivery. In all other cases, the right of withdrawal is limited to the affected part, if such a limitation of the right of withdrawal does not affect the rest of the contract upon objective assessment.

(6) Every withdrawal must be made in text form.

(7) We are entitled to make partial deliveries, as far as this is reasonable for the customer.

(8) All promises of delivery received by us are subject to the reservation of timely and complete supply to ourselves. If we do not receive a timely or complete delivery ourselves, we shall inform the customer thereof without delay. In this case, we are entitled to withdraw from the contract and will reimburse the customer for all amounts already paid.

IV. Prices

Contracts are concluded exclusively on the terms, prices and discounts stated in our order confirmations. If the delivery date is postponed by more than two weeks without this being our responsibility, the delivery price will be calculated at the prices and discounts applicable on the day of delivery in accordance with the price/discount list valid on the day of delivery. If - e.g. in the case of deliveries based on a framework agreement - no order confirmation is issued for an order, the delivery price shall be calculated at the prices and discounts applicable on the day of delivery in accordance with the price/discount list valid on the day of delivery.

Value added tax will be invoiced separately at the rate applicable on the day of delivery.

V. Shipping, packaging, transfer of risk

(1) Shipment shall be made under the conditions stated in the order confirmation, otherwise to the German receiving station at the risk of the customer, whereby we shall determine the forwarding agent or carrier. This shall also apply if and insofar as dispatch is effected with our own means of transport. House freight, all freight costs as well as any additional charges, express goods additional costs etc. shall be borne by the recipient. Shipping instructions of the customer are only binding if they have been agreed in writing.

(2) If the loading or transport of the goods is delayed for a reason for which the customer is responsible, we shall be entitled to store the goods at our reasonable discretion at the cost and risk of the customer, to take all measures deemed suitable for the preservation of the goods and to invoice the goods as delivered.

(3) Containers, lattice boxes, cassettes and pallets do not become the property of the customer; they must be returned to us free of charge. Wooden crates, cardboard boxes and disposable packaging will be charged at cost price and will not be taken back; they become the property of the customer.

(4) In the event of damage in transit, the customer must notify us immediately.



(5) The risk shall pass to the customer when the goods are handed over to the forwarding agent or carrier, but at the latest when the goods leave the factory or warehouse.

(6) If a customer who is resident outside the Federal Republic of Germany or his representative collects goods and transports or dispatches them to the outside territory, the customer must provide us with the export certificate required for tax purposes. If this proof is not provided, the customer shall pay the VAT rate applicable to the delivery within the Federal Republic of Germany.

VI. Terms of payment

(1) The order confirmation is decisive for the payment modalities.

(2) An invoice shall be deemed to have been received within three (3) days of dispatch, unless the customer proves otherwise. The corresponding amount shall be transferred in the contract currency without any further deductions to one of the accounts indicated on the invoice in such a way that we can dispose of the amount on the due date.

(3) Even without a reminder, the customer shall be in default at the latest 30 days after receipt of the invoice.

(4) If the customer is in default of payment to us or if other facts subsequently become known which give rise to justified doubts about the customer's willingness or ability to pay, we shall be entitled to make our payment claim immediately due and payable. The same shall apply to costs incurred, for services and for goods in process or finished but not yet delivered. Deferrals granted for other deliveries/invoices shall not apply. Outstanding deliveries and services need only be carried out against prepayment or security and we can withdraw from the contract and claim damages for non-performance after the fruitless expiry of a reasonable grace period.

(5) The buyer can avert the legal consequences mentioned in the previous clause 4 by providing security in the amount of our endangered payment claim.

(6) The customer shall not be entitled to withhold payments or to offset any counterclaims unless these are recognized by us, undisputed, legally established or do not exist on the identical contractual basis on which we assert claims.

(7) In the event of non-compliance with payment targets, deterioration in the financial situation of the customer or if new circumstances become known which give rise to justified doubts as to the creditworthiness of the customer and the fulfilment of our payment claims, we may demand advance payments or security in an appropriate amount before further deliveries are made.

VII. Retention of title

(1) We reserve title to the delivered goods until all claims, regardless of their legal basis, have been settled (goods subject to retention of title).

(2) The customer is only entitled to process, transform, combine and mix with other items within the scope of his ordinary course of business.



(3) The processing or alteration of goods subject to retention of title is always carried out for us as manufacturer in the sense of Section 950 BGB (German Civil Code), without any obligation on our part. The treated and/or processed goods shall be deemed to be goods subject to retention of title within the meaning of clause 1.

(4) If the goods subject to retention of title are processed, combined or mixed with items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the invoice value of the goods subject to retention of title to the other processed items at the time of processing. If the goods subject to retention of title are to be regarded as the main item, we shall acquire sole ownership (Section 947 para. 2 BGB).

(5) If goods delivered by us are combined or inseparably mixed with other movable objects to form a uniform object, and if the other object is to be regarded as the main object so that our ownership is extinguished by combination, processing or mixing, it is deemed to be agreed that the customer shall transfer co-ownership to us in proportion to the invoice value of the goods subject to retention of title, in the case of processing in proportion to the invoice value of the goods subject to retention of title to the invoice value of the other goods used, provided that the main object belongs to him, which we hereby accept. This shall apply accordingly to any expectant right of the customer. Our co-ownership rights or expectant rights shall be deemed to be goods subject to retention of title within the meaning of clause 1.

(6) The customer shall keep the property or joint property safe for us free of charge. The same applies to the new item as to the goods subject to retention of title. In the case of a current account, the property subject to retention of title serves as security for the balance claim to which we are entitled.

(7) As long as the goods are subject to retention of title, the customer is revocably entitled to resell them in the ordinary course of business to the exclusion of other dispositions, provided the claim arising from the resale is assignable. The customer will resell the goods under reservation of title if the third party purchaser does not pay immediately.

(8) In the event of resale, the customer hereby assigns to us all claims arising from such resale, which we hereby accept. They shall serve as security to the same extent as the goods subject to retention of title within the meaning of item 1. As long as the customer meets his payment obligations, he is authorized to collect on our behalf. Upon request, he must provide us with the information necessary for collection, hand over documents, inform the debtors of the assignment and issue us, at his expense, with publicly certified documents on the assignment of the claim. We are authorized to notify the third-party debtor of the assignment of the claim on behalf of the customer.

(9) In the event of resale of our goods with third-party goods, the customer's claim against his customer shall be deemed assigned in the amount of our invoice amount. In the event of resale of goods in which we have a co-ownership share, a part of the claim corresponding to our co-ownership share shall be assigned to us. We accept the assignments in each case.

(10) The installation of the goods subject to retention of title in land or buildings and their use for the performance of other contracts for work and services or contracts for work and materials shall also be deemed to be a sale in the above sense.

(11) The right to resell and to collect claims expires in the event of cessation of payments, but in particular if the customer (own application) or a third party files for insolvency, even without express revocation on our part.



(12) In the event of default in payment, uncertainty of the financial situation or deterioration of the financial situation of the customer and if this indicates a risk to the realizability of a not inconsiderable part of our claim, the customer shall be obliged to surrender the goods subject to retention of title at our request. We are entitled to enter the customer's premises for this purpose, if necessary. The taking back as well as the seizure of the goods by us shall only be deemed to be a withdrawal from the contract in the case of an express written declaration. In the event of seizure or other interventions by third parties, the customer shall notify us immediately.

(13) The reservation of title and the securities to which we are entitled shall apply until complete release from contingent liabilities which we have entered into in the interest of the customer. At the request of the customer, we shall release securities of our choice, provided that their realizable value exceeds the amount of the claims to be secured by at least 10%.

(14) In the event of access by third parties - e.g. by way of execution - to the goods subject to retention of title, the customer must point out our ownership and inform us immediately. Any costs arising from the impairment of rights shall be borne by the customer, insofar as compensation cannot be obtained from third parties. Upon request, the customer shall provide us with information on the stock/disposal/processing/conversion/combination of the goods subject to retention of title. Otherwise, the customer is not entitled to pledge the goods subject to retention of title or to assign them as security.

VIII. Warranty and other liability

(1) The following provisions shall apply to our warranty and other liability for defects in delivery or performance, including incorrect deliveries and services. If our contractual performance also includes assembly or assistance with assembly or if it is an independent repair order or other contractual work services, the following terms and conditions shall also apply to any assembly or repair or other work services.

(2) Deviations in dimension, weight and quality are permissible in accordance with DIN or the applicable practice. The weights are determined by our calibrated scales and are decisive for invoicing. Proof of weight is provided by presentation of the weighing report. If individual weighing is not customary, the total weight of the shipment shall apply in each case. Differences from the calculated individual weights shall be distributed proportionately among them.

(3) Unless otherwise agreed, we provide warranty in accordance with the respective state of the art at the time of transfer of risk.

(4) Any liability for a specific purpose or a specific suitability shall only be assumed insofar as this has been expressly agreed; otherwise the risk of suitability and use shall lie exclusively with the customer. Agreed specifications or an agreed purpose of use shall not constitute a guarantee; the assumption of a guarantee shall require a written agreement.

(5) We do not assume any warranty for damages resulting from unsuitable or improper use, incorrect assembly, commissioning, modification or repair not carried out by us, incorrect or negligent handling and natural wear and tear. The same applies to parts provided by the customer.



(6) The customer must examine the received goods immediately after receipt. Warranty claims shall only exist if defects are notified immediately in writing; hidden material defects must be notified immediately after their discovery. The immediate notification of defects requires that it is sent at the latest within seven (7) working days after delivery or - if the defect is a defect that was not recognizable during the inspection - at the latest within five (5) working days after discovery of the defect. After an acceptance inspection has been carried out, the notification of defects which could be detected during an acceptance inspection is excluded.

If the customer fails to carry out the proper and timely inspection and/or notification of defects, our warranty obligation and other liability for the defect concerned is excluded, unless we have fraudulently concealed the defect or acted in tort.

(7) In the event of complaints, the customer shall immediately give us the opportunity to inspect the goods complained about; upon request, the goods complained about or a sample thereof shall be made available to us at the customer's expense. In the case of justified complaints, we shall bear the freight and handling costs, the costs of dispatch to the original place of delivery and the costs of dismantling and installation by the customer, insofar as these are reasonable; in the case of unjustified complaints, we reserve the right to charge the customer for the inspection costs. Additional costs arising from use at a location other than the place of delivery shall be borne by the customer, unless the use at the location other than the place of delivery is in accordance with the intended purpose and was known to us.

(8) The warranty is based on our choice - taking into account the interests of the buyer - of repair or replacement of the defective product or part (supplementary performance). We shall be entitled to make two attempts at rectification within a reasonable period of time. If the rectification of defects has also failed after the second attempt, the Buyer may withdraw from the contract or reduce the purchase price. In the case of an insignificant defect, however, there is no right to withdraw from the contract. The rights of the customer to claim damages and reimbursement of futile expenses due to the defectiveness of the goods shall be determined in accordance with Section IX.

(9) If the products supplied by us are repaired or modified without our cooperation or if maintenance or installation instructions are not observed, our warranty and other liability shall expire unless the defect is not attributable to this.

(10) Only in urgent cases of danger to operational safety and to prevent disproportionately large damage does the customer have the right, after notifying us, to remedy the defect himself or have it remedied by third parties. We shall reimburse the customer for the costs incurred in this connection to the extent that they would have been incurred by us if we had carried out the rectification of the defect. We shall be liable for rectification of defects or replacement deliveries in the same way as for the original delivery or service until expiry of the warranty obligation applicable to the original delivery or service, but at least for a period of one year from completion of the rectification of defects or provision of the replacement delivery or service. The customer is obliged to give us the opportunity to rectify the defect within a reasonable period of time. If neither a repair nor a replacement delivery is made, the customer is entitled to withdraw from the contract after expiry of a period of grace of at least 5 working days to be set in writing. This right of rescission shall also exist in the event of impossibility or inability of replacement delivery by us. In all cases of justified notices of defects, claims beyond the claim to rectification of defects or replacement delivery, such as claims for damages, tort, impossibility, delay or non-performance, are limited in accordance with the provisions of Section IX.



(11) If the delivered item cannot be used by the customer in accordance with the contract as a result of culpable violation of secondary contractual obligations - in particular of operating and maintenance instructions - we shall likewise only be liable to the extent of Section IX.

(12) We are only liable for advice and calculations if a special fee has been agreed in writing.

Documents prepared by us within the scope of a consultation or calculation are made exclusively in connection with the purchase of our products; they are prepared for this purpose only, are to be treated confidentially and may not be used for other purposes without our prior written consent and may not be made available to third parties, not even in part. Our advice and calculations are based on the specifications given to us and our assumptions. Our assumptions take into account the risks that were recognizable for us on the basis of the specifications provided. However, the results of our advice and calculations do not constitute a guarantee of quality or durability in the legal sense. The suitability is to be checked independently by the client. If the consultation or calculation should be part of a supply agreement, the liability regulations agreed there apply.

(13) Warranty claims are subject to a limitation period of 12 months - except in the case of intent. Sections 478 and 479 BGB (German Civil Code) as well as statutory mandatory longer limitation periods shall remain unaffected. The assertion of warranty and other claims shall have no influence on the payment obligation of the customer, who shall only have a reasonable right of retention with regard to the defective performance (installation and removal costs, shipping costs, procurement of replacement).

IX. Liability for damages

(1) Limitations of liability and statute of limitations do not apply insofar as we are held liable for damages due to culpable violation of contractual and non-contractual obligations in the case of damage to life, body or health in any case and in the case of other damages only in the case of intent or gross negligence of leading vicarious agents. We shall only be liable for damages which have not occurred to life, body or health and which are based on gross or simple negligence of non-executive vicarious agents if an essential contractual obligation has been violated. As far as there is no intentional or grossly negligent breach of contract, the liability for damages is limited to the foreseeable, typically occurring damage.

In the case of services, contract manufacturing, finishing etc. our liability is limited to the agreed remuneration.

Claims for damages arising from mandatory statutory liability, in particular under the Product Liability Act, shall remain unaffected by these provisions.

(2) In the event of non-compliance with the delivery deadlines, the customer shall only be entitled to the statutory rights if he has set a reasonable deadline for delivery, together with the declaration that he will refuse acceptance of the performance after expiry of the deadline; after the unsuccessful expiry of the deadline, the claim for performance shall be excluded.

(3) In the event of default, we shall be liable in accordance with clause IX for the damage caused by the delay as proven by the customer. We shall inform the customer immediately of the duration of the delay in delivery. After becoming aware of the duration of the delay in delivery, the customer must inform us immediately of the amount of the expected damage caused by the delay. If the expected damage caused by the delay exceeds 10% of the value of the quantity affected by the delay in delivery, the customer is obliged to make immediate efforts



to make a corresponding covering purchase, if necessary to make use of covering purchase opportunities proven by us and to withdraw from the contract for the quantity affected by the delay in delivery; the proven additional costs of the covering purchase and the damage caused by the delay in the meantime will be reimbursed by us. If the customer does not comply with his obligations to minimize damages, our liability for the proven damage caused by delay is limited to 20% of the value of the quantity affected.

X. Confidentiality obligations and damages

The customer may use documents and drawings provided to the customer as well as constructive services and proposals provided by us for the design/replacement of parts supplied by us only for the intended contractual purpose and may not make them accessible to third parties or make them the subject of publication without our consent. The customer must obligate group companies, vicarious agents and other third parties included in the contract accordingly to maintain secrecy. If the customer violates one of the above confidentiality obligations, he forfeits a contractual penalty of € 10,000.00 for unauthorized disclosure to third parties, € 5,000.00 for lack of security against unauthorized inspection/use and € 2,500.00 for lack of obligation of employees to maintain confidentiality. The customer has the right to prove that we have not incurred any damage or that the damage incurred is less than the contractual penalty; conversely, we reserve the right to prove higher damage.

XI. Place of performance, place of jurisdiction, applicable law

- (1) The place of performance for all deliveries and services is 08427 Fraureuth.
- (2) Place of jurisdiction for all disputes arising from the contractual relationship is Zwickau. We are, however, also entitled to file a lawsuit at the place of business of the customer.
- (3) The legal relations in connection with this contract shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the conflict of laws rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG) as well as the legal provisions referring thereto.

Spindel- und Lagerungstechnik Fraureuth GmbH
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