

Delivery and payment conditions

Version as of September, 2004

A. General conditions

I. Closure of contract

1. These conditions apply exclusively. We do not recognize contradictory conditions of the buyer, or conditions different from our own, unless we have agreed to their validity in writing. These conditions also apply if we execute delivery to the buyer without reservation, while knowing of contradictory conditions of the buyer or conditions different from our own.
2. All agreements made between us and the buyer for the purpose of fulfilling this contract must be made in writing. Changes or additions to the contract must be made in writing.
3. Our conditions apply only to companies in the sense of § 14 para 1 BGB, legal persons under public law, and public-law special funds.
4. Insofar as the buyer is a company, these conditions also apply to all future business resulting from our continuing business relationship.
5. Our offer is subject to confirmation, insofar as not otherwise stated in the order confirmation and we have not explicitly stated otherwise in writing.

II. Drawings, samples, models, and templates

Drawings, samples, models, calculations, and templates prepared by us or by third parties engaged by us remain our property, unless otherwise agreed. Any transmission to third parties may be made only with our previous written approval.

III. Prices / payment conditions

1. Unless otherwise agreed, our prices apply "ex works" (Incoterms 2000), without insurance, including usual packaging and applicable VAT. Special packaging will be invoiced at our cost. Costs for special testing and costs for special shipping types requested by the buyer are at the expense of the buyer. Our prices are, unless explicitly otherwise agreed, not fixed prices. In particular, we retain the right to invoice the price applicable at the time of delivery for any agreed delivery period of over four weeks.
2. Payment must be made without discount in such a way that we have access to the funds by the day payment is due. The buyer may charge only uncontested or legally determined stipulations; the buyer has no right to withhold payment, insofar as it related to the same contractual relationship.
3. If the buyer is in arrears, we retain the right to charge interest in the amount of eight percent over the current prime rate.
4. If we are obligated to predelivery and if we become aware, after conclusion of the contract, of circumstances that imply a significant worsening of solvency of the buyer, then we may require at our discretion either security within a reasonable timeframe, or partial payment upon each delivery. If the buyer is unable to comply with this requirement, then we retain the right, in the absence of any other legal right, to terminate the contract.

IV. Securities

We have the right to decide on the type and scope of usual securities for our payment requests, and also on their conditions and timeframes.

V. Retention of ownership

1. We retain ownership of goods delivered until all payments from the business relationship with the buyer are received, or, if the buyer has a running account, until settlement of the recognized balance. In case of behavior on the part of the buyer contrary to this contract, particularly in the case of delay in payment after a deadline is set, we retain the right to repossess the delivered goods. This does not apply if the buyer has already requested insolvency proceedings or insolvency proceedings have commenced which make an immediate repossession of the delivered goods on our part illegal. After repossession of the delivered goods, we have the right to resell them; the proceeds of resale -- less the costs of resale -- will apply to the buyer's outstanding obligations. The resale regulations of any insolvency proceedings remain unaffected.
2. The buyer is obligated to care for the delivered goods properly. In particular, the buyer is obligated to protect them from fire, water, and theft damages at the buyer's cost, and to insure them at a sufficient replacement cost. Insofar as maintenance and inspection work is required, the buyer must perform it on time at the buyer's cost.
3. In the case of garnishments or other actions on the part of third parties, the buyer must notify us immediately in writing. The buyer guarantees us the legal and out-of-court costs of any necessary lawsuit as per § 771 ZPO (third-party dispute claim.)
4. The buyer has the right to resell the delivered goods in the process of normal business. However, the buyer assigns us now all payments receivable in the amount of the final contract amount (including VAT) of our payment demands, which

payments accrue to the buyer from the further realization against the buyer's customers or third parties, and in fact independently of whether the delivered goods are sold without or with further processing. The assigned payments receivable also include a recognized balance or, in the case of insolvency of the buyer's customer, a "causative" balance.

The buyer remains empowered to collect these payments even after this assignment. However, we have the right to collect the payments ourselves, if the buyer no longer complies with payment obligations from the collection, is in arrears with payments, or has requested an insolvency proceedings, if a third party has made such a request, or payments have been discontinued. In these cases we may require the buyer to inform us of the assigned payments and their payers, supplies us with all information necessary for collection of the required amount, and informs the payers (third parties) of the assignment. Collection of the payments by us is, however, not possible insofar as it is forbidden by insolvency law.

5. The processing or use of the delivered goods by the buyer is performed for us. If the delivered goods are processed along with goods not belonging to us, then we retain co-ownership of the new goods in relation to the value of the delivered goods to the other processed goods at the time of processing. For the goods resulting from such processing, the same conditions apply as for goods delivered subject to retention of ownership.
6. If the delivered goods are inseparably mixed with items not belonging to us, then we retain co-ownership on the new items in relation to the value of the delivered goods to the other mixed goods at the time of mixture. If the mixture is performed in such a manner that the buyer's item is regarded as the main item, then it is agreed that the buyer transfers to us proportional ownership. The buyer retains for us the property or co-property produced in this manner.

B. Execution of delivery

Delivery period / delivery dates

1. Delivery periods begin with the date of our order confirmation, but not before full clarification of all details of the order; the same applies to delivery dates.
 2. If the buyer fails to comply punctually with contractual obligations -- including side or incidental obligations -- such as opening of a credit account, provision of domestic or foreign permits, provision of prepayment or similar, then we retain the right to delay our delivery period and dates -- without affecting our rights with regard to payment delay on the part of the buyer -- corresponding reasonably to the requirement of our production process.
 3. Compliance with delivery periods and dates is determined by the time goods are shipped from our plant. If through no fault of our own the goods cannot be shipped on time, the delivery periods and dates will be regarded as fulfilled upon notification of delivery readiness.
 4. If we are hindered in the fulfillment of our obligation due to occurrence of unforeseeable events relative to us or our suppliers, and which we could not have avoided with all due caution in the specific case, such as war, intervention of higher authority, internal unrest, natural disasters, accidents, other operational interruptions and delays in the delivery of necessary operational materials or ingredients, the delivery time will be delayed by the period of the hindrance and a reasonable start-up time. If the delivery becomes impossible or improbable due to the hindrance, we may withdraw from the contract; the buyer has the same right if receipt of the goods is no longer possible due to the delay. A hindrance not foreseeable by us in the sense of this paragraph would in any case include strikes or lock-outs.
 5. The withdrawal right pertaining to the buyer or to us from paragraph 4 applies only to that part of the contract not yet fulfilled. We retain the right to partial deliveries, as long as these do not constitute an obvious conflict with the buyer's interest.
 6. If the buyer annuls this contract for reasons for which the buyer is responsible, or denies delivery for reasons for which the buyer is responsible, then we have the right, if we do not insist on fulfillment of the contract, to payment of damages due to non-fulfillment in the amount of 10% of the contractual value, including costs for return (particularly freight, intermediate storage, stallage). Besides cancellation costs, the buyer must pay individually for any specially produced parts, particularly tools and forms, and repay any payments made by us to third parties engaged for fulfillment of the contract.
- #### II. Shipping and risk assumption
1. In the absence of explicit instruction by the buyer, we have the right to determine the type of shipping and the means of transport, as well as the shipper or freight carrier.

2. If the loading or transport of the goods is delayed for a reason for which the buyer bears responsibility, then we have the right to store the goods at our discretion at the cost and risk of the buyer, to take all measures we deem necessary for preservation of the goods, and to invoice the goods as delivered. The same applies if goods declared ready to deliver are not picked up within 4 days. Legal requirements regarding delay of acceptance are unaffected.
 3. Insofar as customary in the trade, we deliver the goods packed. All Euro-pallets and boxes must be returned by the buyer to our delivery location at the cost and risk of the buyer. We retain the right to invoice the buyer for the replacement price for pallets and boxes if these are not returned to us within 4 weeks from receipt by the buyer.
 4. In case of transport damages, the buyer must immediately request a police report from the responsible authorities.
 5. Insofar as not otherwise agreed in writing, delivery is "ex works" (Incoterms 2000). Risk, however, in case of our delivery "to receipt", is transferred to the buyer upon release of the goods to the shipper or freight carrier.
- III. Dimensions / weights / quality etc.**
1. Variation in dimension, weight, quality, failure rate, item count, etc., is permissible per DIN or the applicable practice.
 2. We assume no warranty for the chemical stability or physical properties of raw materials we process.
 3. Trade-customary over- or underdeliveries of up to 10% are permissible. In the absence of counterproof supplied by the buyer, the dimensions, weights, and item counts determined by our shipping department apply for invoicing.
- IV. Tooling / special production**
1. Insofar as not explicitly otherwise agreed, particularly for goods which are produced to supplied drawings, samples, or models, we assume no warranty regarding their suitability for their intended purpose.
 2. Insofar as goods, tools, or forms are fabricated to the specifications of the buyer, the buyer holds us harmless from claims by third parties resulting from the following of these specifications. For the suitability of the goods, forms and tools to be fabricated by us, their deterioration, or their failure, as well as for the complete or partial impossibility or other inability to fulfill a task, we assume no warranty, insofar as these conditions affect the following of specifications from the buyer. In the case of complete or partial impossibility or inability to fulfill a task, we are freed from the remaining contract, and corresponding to Paragraph B I 5. sentence 1, we have the right to cancellation. In this case, we retain the right to payment for the portion of work completed, and repayment of outlays not reflected in said payment.
 3. The price for forms and tools also includes the cost of one-time prototyping, but not the cost of further testing and processing systems and changes, insofar as these are requested by the buyer. Any additional prototyping for which we are responsible is at our cost.
 4. Insofar as not otherwise agreed, we retain ownership of forms and tools fabricated for the buyer by us or by third parties at our request, even if the buyer partly participated in the fabrication costs. Forms and tools are only used for orders from the buyer, as long as the buyer complies with all payment and delivery acceptance obligations. We are only obligated to replace these forms and tools at our cost if they are required for fulfillment of a production quantity insured by the buyer. Our obligation to keep forms and tools expires 2 years after the last delivery fabricated using the tools or forms in question. The buyer is to be correspondingly notified previously.
 5. If it is agreed that the buyer shall become owner of the forms or tools, ownership is transferred to the buyer only after complete payment of the purchase price for the tool or form. If the production of a minimum item count and/or a particular timeframe for production with this tool / form has been agreed, then until the occurrence of this event we retain the right to its exclusive use. We will label the tool/form as external property and have the right to maintain and insure it at the buyer's cost.
 6. If the buyer provides his own forms or tools or such purchased as in para. 5, then regarding their storage – and noting the limitation of warranty in Section C – we assume responsibility only for such care as we take with our own property. The costs of maintenance and insurance are carried by the buyer. Our responsibilities regarding safe-keeping expire if, after conclusion of the contract and corresponding request, the buyer does not pick up the forms or tools within a reasonable period of time, but at most within 4 weeks. In this case, we have the right to store the tools or forms, or to return them, at the cost and risk of the buyer.
- V. Call orders**
- In case of call orders – absent agreement otherwise – we retain the right to cancel the uncalled amounts at most 12 months after placement of the order, or to require receipt and payment from the buyer, or optional damages due to nonfulfillment. Further legal rights are unaffected by this.

VI. Defect claims

1. Defect claims by the buyer presume that the buyer has inspected the goods immediately after delivery and has reported any visible defects immediately after the inspection, or hidden defects immediately after discovery, in writing to us, with specific description of the defect (§ 377 HGB).
2. We must have the opportunity to inspect the alleged defects on the spot. The inspection must be performed by us immediately if the buyer claims an interest in immediate correction.
3. Defect claims on the part of the buyer are void if only insignificant variation from the agreed suitability or only an insignificant deterioration of usability exists.
4. All our specifications are only descriptions of services and are not guarantees or guaranteed properties, insofar as not otherwise explicitly agreed in writing.
5. If the buyer claims, for reasons for which we bear no responsibility, the existence of a defect for which we do bear responsibility, then we have the right to invoice the buyer for resulting reasonable costs for correction and/or determination of the defect.
6. We can charge the buyer for additional costs for outlays required for the purpose of correction, particularly transport, shipping, work, and material costs, insofar as the outlays are increased by delivery of the goods to a different location than the delivery address.
7. We have the right at our discretion either to correct defects or to deliver a non-defective item.
8. Defect claims, particularly object defect claims, expire 12 months after delivery, unless we knowingly concealed or caused the defects through gross negligence. This applies also for any guarantees given by us or binding on us, insofar as not otherwise agreed. If legal expiration periods of over two years apply for defect claims, these take precedence. Likewise, the legal periods for any return claims apply as per § 478 BGB. These expiration periods also apply to damages resulting from defects, insofar as these were not caused by unauthorized handling. If correction is required due to defective performance, then the expiration of the defect claim is limited to the period until the correction, and is not renewed after that time.
9. For the applicability of damage and replacement claims, Section C of these conditions apply.
10. Insofar as not otherwise agreed, we are only obligated to delivery in the country of the delivery address, free of the rights of third parties.

C. Damage replacements

1. The applicability of damage replacement for defects and damages resulting from defects is excluded if the defects are not our fault.
2. **Damage claims and replacement claims on the part of the buyer, regardless of legal basis, particularly due to the failure to fulfill obligations** due to and in connection with the encumbrance relationship, due to encumbrance before or during the conclusion of the contract, and due to unauthorized action, are excluded, insofar as nothing else hereinafter applies. The foregoing does not apply for claims per §§ 1, 4 of the Product Responsibility Law, in case of deliberate act or gross negligence, injury to life, limb, or health, due to transfer of a guarantee for the presence of a suitability (suitability guarantee) or in case of negligent failure to fulfill significant contractual obligations. In case of simple negligence, our responsibility is in any case limited to the foreseeable and typical damages. In no case do we assume responsibility over and above legal requirements. Changes to the burden of proof are not connected to the regulations in this Section C.
4. The expiration of claims between us and the buyer is determined by B.VI.8, insofar as claims other than those proceeding from the Product Responsibility Law are involved.

D. Other

- I. **Law to be used**
For all claims from and connected to this contract, German law applies with the exception of UN purchasing law.
- II. **Place of fulfillment and jurisdiction**
Place of fulfillment is the seat of our corresponding delivery location. Jurisdiction is exclusively in Bonn, insofar as the buyer is a business. We also have the right to sue the buyer in his own jurisdiction.

Packaging type: 1 = box; 2 = carton; 3 = package; 4 = small package; 5 = crate; 6 = container; 7 = wagon; 8 = sack; 9 = pallet; 10 = ring; 11 = partial load; 12 = not packaged