

1. Scope of application

The following terms and conditions shall apply exclusively to all of our sales, deliveries and services including service contracts, the supply of non-fungible goods and advice and recommendations provided to companies, public legal persons and public trusts, unless specific deviations have been agreed in individual cases. We shall be bound by differing terms and conditions or confirmations of the purchaser only if and to the extent that we have expressly agreed to these in writing. In particular, a lack of response on our part to differing terms and conditions of this kind is not to be interpreted as acknowledgement or acquiescence to such differing terms and conditions. We hereby expressly object to differing terms and conditions or confirmations of the purchaser.
 2. Conclusion of the contract, scope of delivery, divergences
 - 2.1 Our quotations are not binding to us. The purchaser is bound to his order for four weeks. An order is only deemed to have been accepted if we have confirmed it in writing or have dispatched the goods.
 - 2.2 Collateral agreements, warranties and all other agreements are only effective if they have been expressly confirmed by us in writing.
 - 2.3 The purchaser is responsible for the accuracy of the documentation supplied by him, especially for the accuracy of patterns and drawings.
 - 2.4 Any specifications, drawings, illustrations and service descriptions contained in the catalogues, price lists and documentation relating to the offer are to be considered as approximations customary in the industry. We reserve the right to make changes to the quality, appearance and colour that are customary in the industry and the material if this is unavoidable as a result of the raw material availability or for technical reasons. No guarantee is made on adherence to specific weights, dimensions and quantities; we reserve the right to make variances that are customary in the industry.
 - 2.5 References to norms, similar technical regulations, technical specifications, descriptions and illustrations of the goods to be delivered are only a description of the service and do not constitute a guarantee of the quality and condition of the goods. Specific characteristics of the supplied goods are guaranteed only if we have expressly confirmed this in writing.
 - 2.6 Foam material products may be subject to variation in the size of the pores and the occurrence of individual larger pores, so-called contraction cavities.
 3. Prices
 - 3.1 All prices are deemed to be in Euros, including customary packaging and excluding Value Added Tax.
 - 3.2 If customary in the trade, the goods will be supplied packaged. We will provide packaging, protective material and/or transport aids in accordance with our reasonable discretion. They are to be returned to our warehouses. We will not be responsible for the purchaser's cost of returning or disposal of the packaging.
 - 3.3 If prices are not specified or are only specified with the proviso "current list prices", the list prices valid on the day of delivery will be charged. However, this only applies to delivery periods of more than 2 months and for price adjustments up to 4%; prices will only be increased in line with the terms quoted in clause 3.4. If the price adjustments are higher than this, the prices must be renegotiated. In the absence of such an agreement, the purchaser is entitled to withdraw from the contract.
 - 3.4 If, after agreeing the contract, extraneous expenses such as procurement costs, manufacturing, freight, assembly, and insurance costs or other government levies and charges (e.g. customs duties, import and export levies) are introduced or increased, we shall be entitled to add such additional charges to the agreed price.
 4. Delivery periods
 - 4.1 Binding delivery deadlines and periods must be expressly agreed in writing.
 - 4.2 Delivery periods start with the receipt of our order confirmation by the purchaser, but not before all details concerning the execution of the order have been clarified and all other requirements to be met by the purchaser, particularly relating to documentation, authorisations and licences, are in place and the agreed payment has been received; this also applies to delivery deadlines.
 - 4.3 Deliveries before the end of the delivery period are permissible. The delivery date is deemed to be the date of notification that the goods are ready for dispatch, otherwise it is the day on which the goods are dispatched. We are entitled to make partial deliveries.
 - 4.4 If the delivery is delayed because of our fault, the purchaser is obliged to set an appropriate period of grace of at least 2 weeks. If this period of grace passes without delivery of the goods, the purchaser is entitled to withdraw from the contract provided that the goods have not been declared ready for dispatch on expiry of the period of grace. Claims for damages and incurred expenditure – for whatever reason – are subject to the terms of clause 11 of these conditions.
 - 4.5 We are not deemed to default in delivery in case the purchaser himself has delayed fulfilling his obligations to us, including those from other contracts.
 5. Force Majeure and other impediments
 - 5.1 Our commitment to delivery is subject to the proviso that we are correctly and punctually supplied ourselves. If we receive goods or services from our suppliers that are not correct, or are not in good time or if we do not receive them at all, for reasons for which we are not responsible, or in the event of instances of force majeure, we are entitled to extend the delivery period by the duration of the impediment or we may partially or completely withdraw from the contract for the part that has not been fulfilled. Force majeure covers strikes, lock-outs, official intervention, shortages of energy and raw materials, transport bottlenecks, operational problems for which we are not responsible, e.g. due to fire, water and equipment damage and other impediments that, when viewed objectively, we are not responsible for arranging. The above terms shall also apply if the circumstances described occur after we have fallen into default with the performance of our obligations.
 - 5.2 If a binding delivery deadline or period is agreed but the said delivery deadline is delayed due to the events stated in clause 5.1, the purchaser can request us to declare, within two weeks, whether we wish to withdraw or set an appropriate subsequent period of grace. If we do not make this declaration, the purchaser is entitled to withdraw from the part of the contract that has not been fulfilled.
 6. Shipping and transfer of risk
 - 6.1 Insofar as different terms are not agreed in writing, we will ship the goods uninsured, at the purchaser's risk and expense. We reserve the right to select the transport route and means of transportation. For express or urgent shipments, the excess charges will be borne by the purchaser. No refund will be made in the event of collection by the purchaser.
 - 6.2 In the absence of any other agreement, the risk is transferred to the purchaser when the goods to be delivered are handed over to the purchaser, the shipping agent, the carrier or any other organisation charged with the transportation of the goods, at the latest however when they leave the factory, warehouse or branch. This also applies if we have arranged shipping. Transport damage is to be immediately recorded on the delivery note and confirmed by the carrier, or, if the goods are transported by rail or post, the railway or postal company must confirm the transport damage for validation of claims for damages. We will only arrange shipping insurance on special request, and the costs will be borne by the purchaser.
 - 6.3 The purchaser must call off all goods that are ready for dispatch and due for delivery immediately. If goods that are ready for dispatch are not immediately called off and accepted without delay, we are entitled, at our discretion, to ship the goods ourselves or store them at the risk and expense of the purchaser.
 - 6.4 The return of ordered and correctly delivered goods is excluded. In exceptional cases, return of goods may occur after prior written agreement.
 7. Notification of defects

The purchaser or his appointed recipient must examine the goods immediately after receipt. On discovery of defects, the processing and modification of the defective goods must stop with immediate effect. Visible defects – including the absence of quality guarantees – are to be reported immediately in writing, at the latest within 7 days of receipt of the goods. Hidden defects are also to be reported in writing immediately, at the latest within 7 days of their discovery. If the purchaser neglects to report defects in good time and in the correct manner, the goods are deemed to have been accepted. The time that we receive the notification is the determining factor as to whether it is received in good time.
 8. Liability for defects
 - 8.1 In the event of justifiable notifications concerning defects we are obliged either to subsequently fulfil the order either by delivering defect-free replacement goods or by making subsequent improvements. If we supply non-defective goods for the purposes of correcting the deficiency, the defective good becomes our property, with the purchaser storing the defective goods for us. Disposal, further processing or transferring the defective goods to a third party is only permissible if we have provided our written permission. We are entitled to refuse to remedy a deficiency in accordance with the terms of the law.
 - 8.2 If we fail in our obligation to remedy deficiencies, the purchaser may withdraw from the contract or reduce the price, at his discretion, after setting us a reasonable period of grace, unless this is not required by the applicable statutory provisions. If the purchaser withdraws from the contract, he is not only liable for deterioration, damage and the denial of benefits of use, resulting from his own usual duty of care, but also for all cases for which he is responsible.
 - 8.3 Further claims for damages and expenses from the purchaser due to, or with regard to defects or damage resulting from defects, irrespective of the reason, are only recognised in accordance with the terms in clause 11.
 - 8.4 Our liability for defective goods shall lapse if the goods we deliver are not defective, i.e. especially when defects are due to incorrect use, defective or careless treatment, natural wear and tear or interference on the item by the purchaser or a third party, or if the purchaser or third party has disregarded our information relating to dimensions, storage or processing of the goods. Furthermore, the purchaser is obliged to carry out examinations, at his own expense, to ascertain that the goods are suitable for the intended purpose; otherwise our obligation to provide a warranty shall lapse.
 - 8.5 Without prejudice to §§ 438 Sub-section 1 No. 2, 634 a Para. 1 of the German Civil Code (BGB), guarantee claims against us for delivery of defective goods shall fall under the statute of limitations at the latest one year after delivery of the goods to the purchaser or to the delivery location specified by the purchaser.
 - 8.6 In the event of concealment of a defect in bad faith or the assumption of a quality guarantee, the purchaser's claims are subject exclusively to the applicable statutory provisions.
9. Payment conditions
 - 9.1 Deliveries of goods are to be paid for at the latest on the due date as detailed in the invoice without deductions for postage or expenses; if there is no date, they are to be paid for within 30 days of the invoice date, without any deductions. An agreed discount only ever relates to the invoice value excluding freight, and requires the complete settlement of all obligations by the purchaser at the time of the discount. Insofar as not otherwise agreed, the discount periods will commence from the invoice date. After the invoice's due date, interest is charged for due and late payments. The day of payment is deemed to be the date on which we receive the payment or it is credited to our account. We reserve the right to assert additional damages if payment is delayed.
 - 9.2 We only accept cheques by special agreement and only on account of payment. Credit notes for cheques are issued on proviso of receipt, and are valid from the day that the funds are released to us.
 - 9.3 If payment conditions are not met or circumstances are notified that create doubt as to the purchaser's creditworthiness at our commercial opinion, including such facts that already existed when the contract was signed but of which we were not aware or should have been aware, all claims from the business relationship, irrespective of the maturity of any received and credited bills of exchange, become due for immediate payment. Notwithstanding any other statutory rights we are entitled in such cases to request pre-payment or the provision of acceptable guarantees for outstanding deliveries and if an appropriate subsequent period passes unsuccessfully for the provision of such guarantees, to withdraw from the contract or to make claims for damages. In addition, we are entitled to prohibit the further sale or processing of the goods that we own or co-own; we may request their return to us or grant co-ownership at the purchaser's expense.
 - 9.4 The purchaser only has a retention or offsetting right in regard to such counter-claims that are undisputed or have become legally binding.
 10. Reservation of title

All goods delivered to the purchaser shall remain our property (Reserved Property) until all claims are met, especially also the relevant balance claims arising from the business relationship (balance retention). This condition shall apply to claims arising and conditional in future, e.g. from acceptance bills of exchange, and also if payment is made for specifically designated claims. This balance retention ends finally with the payment of all claims still open and covered by the balance retention at the time of payment.
 11. Exclusions and limitation of liability
 - 11.1 For all claims directed to us for damages and expenses due to breach of duty for which we are responsible, no matter the legal basis, we are liable for cases of minor negligence only if the duties infringed endanger the purpose of the contract. Otherwise liability for minor negligence is excluded.
 - 11.2 In the event of liability in accordance with clause 11.1 and for liability for which we are not responsible, we may only be held liable for typical, predictable damage. The purchaser is not permitted to assert claims for other expenditures.
 - 11.3 The purchaser is responsible for deciding on the utilisation of the goods or other services supplied by us. Insofar as we have not agreed to specific characteristics and product suitability for a contractually agreed use in writing, any technical application advice shall not be binding. Furthermore, we are only liable in accordance with clause 11.1 for advice provided or not provided that does not relate to the characteristics and usability of the product supplied.
 - 11.4 The liability exclusion according to clauses 11.1 – 11.3 applies equally to our official bodies, legal representatives, managing and non-managing employees as well as to other vicarious agents.
 - 11.5 The terms of clauses 11.1 – 11.4 do not apply if claims are made in line with the Product Liability Act if there is liability for injury to life, limb or health, for undertaking a characteristic guarantee or deliberately concealing a fault.
 - 11.6 All claims for damages and expenditures against us lapse 12 months after delivering the goods; in the case of liability under tort from awareness thereof or grossly negligent unawareness of the circumstances on which the claim is made or the person who is liable. This does not apply to deliberate actions and the cases described in Clause 11.5.
 - 11.7 If the end user of the goods is a consumer, the statutory provisions shall apply to the lapsing of any recourse action by the purchaser against us.
 12. Intellectual property rights
 - 12.1 We reserve the ownership rights and copyrights on all cost estimates, drafts, drawings and other documentation. They may only be provided to third parties with our consent. Drawings and other documents that are part of the quotations must be returned to us on our request or if no order is placed.
 - 12.2 If the production of the goods according to the customer's drawings, samples, or other information violates the protective rights of third parties, the purchaser must indemnify us for all claims. In particular, we are not obliged to verify pre-drawn documents, including existing commercial copyrights owned by third parties.
 13. Tools/moulds

Insofar as not agreed otherwise, only proportions of the cost of tools or moulds will be reimbursed proportionally and separately from the goods produced. By paying the proportion of the cost of tools/moulds, the purchaser has no claim to these; rather they remain in our possession and ownership.
 14. Place of performance, place of jurisdiction and applicable law
 - 14.1 The place of performance for all contractual obligations is Bad Wildungen. The place of jurisdiction for any disputes, including cases arising from the bill of exchange and cheque process, shall be at Bad Wildungen. However, we are also entitled to pursue claims at the general court of jurisdiction that covers the purchaser.
 - 14.2 The law of the Federal Republic of Germany applies to all legal relationships between us and the purchaser; excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).
 15. Partial ineffectiveness

If individual provisions of this contract should prove to be ineffective, the remaining clauses remain effective in full. In place of the ineffective provisions, another clause that comes as close as possible in legal terms to the purpose of the ineffective clause is to be used.