



1 Exclusive validity of the Terms and Conditions of Sale, contents of contract

- 1.1 These General Terms and Conditions of Sales shall be the sole basis of our deliveries, even if we do not expressly contest conflicting conditions and terms of purchase.
- 1.2 Agreements deviating from the contents hereof shall only be effective if we have confirmed them in writing.
- 1.3 Our quotations shall be subject to change; your orders shall not be binding on us until we have confirmed them in writing. If approval by the authorities is required for the export of our items or services and if this approval is not granted, the contract shall expire without any right of claim. Our quotations shall apply to the country in which you have your principal place of business. You shall be liable to us, our staff and all persons employed by us for the performance of our obligations, for all detriment and liabilities resulting from the use of the item of delivery outside this country.
- 1.4 If individual provisions of these General Terms and Conditions of Sale become invalid either in part or in whole, the validity of the remainder of the contract shall not be affected.

2 Prices and price quotations

- 2.1 In so far as no contrary agreement exists, our prices shall be quoted FCA Oberkochen in accordance with INCOTERMS 2000.
- 2.2 Our prices do not contain VAT; this shall be paid additionally by you, in so far as the delivery is subject to VAT. You are obliged to assist in a suitable manner in the relevant tax collection procedures and furnish the required documentation. Costs incurred for any attestation or legalization of commercial documents, as well as customs duties and all charges, fees and taxes levied outside the Federal Republic of Germany shall be borne by you. In the case of deliveries which include customs duties or other charges, the specified price shall be based on rates valid at the time of the quotation. Actual costs will be charged.
- 2.3 If your order is not made in EURO (€), we shall be entitled to demand that, in the event of currency fluctuations, the exchange rate valid at the time of our quotation continues to apply.

3 Terms of payment

- 3.1 Unless otherwise agreed, payment shall be made by irrevocable letter of credit to be opened in our favour shortly after receipt of our order confirmation and to be confirmed by the Deutsche Bank AG Heidenheim (Federal Republic of Germany). The letter of credit must be denominated in EURO (€). The "Uniform Customs and Practice for Documentary Credits" (ERA 500, 1993 edition) of the International Chamber of Commerce (Paris) shall supplement these Terms and Conditions. All costs and charges arising from the opening and maintenance of the letter of credit shall be borne by you.
- 3.2 You shall not be entitled to make any deduction (e.g. taxes, fees).
- 3.3 For the purpose of determining its timeliness, a payment shall be deemed to have been made when we are able to dispose freely of the amount credited to our account. In the case of cheques and bills of exchange the possibility of payment and entry in our account must be given according to the usual order of business. All costs and expenses resulting from the discounting and submission of cheques and bills of exchange shall be borne by you.
- 3.4 If the transfer of payments is not possible on the due date from the country from which the payments are to be made, you shall remit the equivalent of the owed amount on the stipulated date of payment to a bank in this country, placing it exclusively at our disposal.
You shall subsequently compensate for any deterioration in the exchange rate of the nonagreed currency in which the payments have been made.

- 3.5 If you fail to meet your payment obligation in whole or in part, we shall be entitled to demand interest on arrears on such delayed payment at an annual rate equivalent to the EURIBOR-rate plus five (5) percent from the contractual payment date until the actual payment date, notwithstanding the possibility of claiming for greater actual damage and without prejudice to other rights.
- 3.6 Your obligation to pay shall only be deemed to have been fulfilled when we are able to dispose freely of the invoiced amount, and there is no reservation of payment.
- 3.7 We may set off any claims we have against you resulting from your default in payment against claims for payment which you may have against us.
- 3.8 You may only set off claims which are either uncontested by us or which have been adjudicated and are final and non-appealable. You may only assert your right of retention if you are entitled to uncontested and adjudicated counterclaims within the context of this contract.
- 3.9 In the event that your financial circumstances should deteriorate after the signing of this contract, we shall be entitled to refuse the services incumbent upon us until our claim has been paid or until security has been provided for claims not yet due.

4 Terms of delivery

- 4.1 All delivery dates and dates of implementation (hereinafter referred to as "terms of delivery") shall require written agreement.
- 4.2 The terms of delivery shall commence on the day when you receive our written order confirmation (date of conclusion of contract). However, under no circumstances shall it commence before clarification of all technical details, the timely receipt by us of all data to be supplied by you, the granting of the required approvals and permits, your observance of the agreed terms of payment and the fulfilment of your (collaborative or anticipatory) obligations which are all preconditions to the performance of our obligations. If these preconditions are not met in a timely manner, the terms of delivery will be appropriately extended. The terms of delivery shall be deemed to have been complied with when, within the terms of delivery, the items leave our factory or you have been advised that the items are ready for shipment.
- 4.3 If we are unable to comply with the terms of delivery because of industrial disputes or other unforeseeable events beyond our control, including but not limited to shortages of material or energy, or incorrect or late deliveries (despite the careful choice of suppliers), and if the non-compliance could not be prevented by due care and diligence, the terms of delivery shall be extended by the duration of the hindrance plus an appropriate start-up period. If you can demonstrate that such an extension of the terms of delivery cannot be reasonably accepted by you, you shall be entitled to cancel the contract, provided that it has not yet been fulfilled to an extent exceeding 50% of its total value. No further claims shall be admissible.
- 4.4 If you can prove that you have suffered damages due to the delay on our part, you may exclusively claim damages to a maximum of 0.5% of the price of the undelivered items for every full week of the delay, but under no circumstance more than 5% of the aggregate value of the undelivered items. Indemnification shall always be limited to the foreseeable damage.
- 4.5 If we are responsible for any delay in delivery, you may cancel the non-performed portion of the contract after the expiration of a reasonable extension granted in writing. You shall only be entitled to damages due to non-performance if the delay has been caused by gross negligence; otherwise, liability for damages shall be limited to 50% of the damage caused. Indemnification shall always be limited to the foreseeable damage.

5 Shipment, risk of loss

- 5.1 Unless otherwise agreed, we shall select the route and mode of transportation.
- 5.2 The risk of loss of or damage to the items shall be passed on to you in accordance with the agreed delivery terms of INCOTERMS 2000.
- 5.3 If the dispatch, collection or delivery is delayed or becomes impossible for reasons beyond our control, we shall notify you accordingly and grant you a reasonable amount of time for removal of the items. Upon expiration of this period, we may store the items in our warehouse or elsewhere at your cost and risk. Upon such storage, our contractual obligations to deliver shall be deemed to be fulfilled, and the risk shall pass on to you.
- 5.4 Delivery may be made in partial shipments.

6 Notice of defects and damage in transit

Obvious defects (also damage in transit when our own means of transportation are used), incorrect shipments and shortfalls in delivery quantities shall be reported to us immediately, in any event not later than 14 days after receipt of the items. If we do not use our own means of transportation, the damage caused in transit shall be claimed from the carrier within the special period of time applicable in this case. Otherwise, the goods shall be deemed to be complete and in conformity with the contract.

7 Reservation of title

- 7.1 We shall reserve title to the delivered items ("the secured goods") until full payment of all claims against you within the context of the current and future business relationship between us.
- 7.2 You shall be entitled to resell the secured goods in the ordinary course of business on condition that, for the purpose of security, you assign the claims from the resale, including all secondary rights, to us now to the value of the amount billed by you. With the right of revocation, we empower you to collect the claims assigned to us in your own name for our account. You may only pledge the secured goods or transfer their ownership by way of security after obtaining our consent.
- 7.3 If the secured goods are processed with other objects, we shall be considered as the manufacturer, and shall be entitled to co-ownership of the resultant product in the ratio of the secured goods to the new good. In this case you shall hold the goods in safe custody for us free of charge. If you proceed to sell the new good, Article 7.2 shall then apply.
- 7.4 In the event of compulsory execution measures by third parties, you shall inform us immediately and collaborate in implementing measures for the protection of our secured goods. All costs incurred to prevent access and to re-acquire the object of sale shall be borne by you, in so far as they cannot be collected from third parties.
- 7.5 We may revoke the power of collection pursuant to Article 7.2 if you do not meet your financial obligations in a proper way or if there is a deterioration in your financial conditions. In this case, we shall be entitled to demand the provisional surrender of the secured goods at your expense, without exercising the right to rescind the contract and without allotting a reasonable period for performance to be made.
At our request, you shall undertake to make the assignment of claims known to your customers, and to provide us with the information and data required for us to assert our rights towards your customers.
- 7.6 You shall undertake to store the secured goods in a proper way, to insure them against normal risks at your expense and, at our request, to supply us with evidence that an insurance policy has been concluded. Right now you shall assign your insurance claims to us to the value of the secured goods.
- 7.7 If reservation of title is not permitted by the law of the country to which the items are delivered, we shall be entitled to demand other equivalent security which meets the requirements of your country. You shall inform us immediately if third parties assert claims which endanger our title to the secured goods.

8 Testing and acceptance

- 8.1 Our prior consent shall be required for tests to be performed in your presence or in the presence of your representative and for special tests; we shall be entitled to bill you with the costs incurred by the tests.
- 8.2 If an acceptance test is planned for the item delivered, it shall be conducted in our factory. Acceptance will be deemed to have been given if you do not raise any objections before the end of test. Acceptance may not be refused because of minor defects, although acceptance does not relieve us from our obligation to remedy said defects.
- 8.3 If you waive an agreed acceptance test, or do not attend the test in spite of timely notification, the test conducted by us shall be deemed to be an acceptance.
Additional costs resulting from the delay of such tests for reasons beyond our control shall be borne by you.

9 Warranty

- 9.1 We warrant that the products shall be free from defects in material and workmanship. If you report to us in writing any failure of the products to conform to the warranty within the warranty period, we shall undertake to either replace or repair the product at our option at no additional cost. If we are not in a position to do so, you shall be entitled to demand a reduction in the purchase price. If we do not reach agreement on the extent of the reduction, you may demand the cancellation of sale (rescission of contract) for the goods in question.
- 9.2 If you report any failure of the products pursuant to Article 9.1, we may demand, at our option and at our expense, to have the defective component or equipment sent back to us or to an address designated by us for repair of the defect and subsequent return to you, or to have the defect repaired by a service engineer on your premises after the required permits and releases have been granted. If the repair work is performed outside the Federal Republic of Germany, we shall only pay the costs which would have been incurred if the repair had been conducted in our factory in the Federal Republic of Germany.
Furthermore, you shall also assist our service engineer to the best of your ability in order to prevent any avoidable delay of the repair work.
- 9.3 Product properties shall only be deemed to be warranted in the legal sense if they have been guaranteed to you in writing. The properties displayed by samples or the properties described in catalogues, product literature and instruction manuals shall not be construed as warranted properties. In the event that warranted properties should not be present, you may, in the ordinary course of business, only demand damages for non-performance in the case of typical and foreseeable damage, unless the warranty is intended to fulfil the purpose of safeguarding you against more extensive damage.
- 9.4 The warranty period totals 12 months after the date the risk of loss passes on to you, also for claims concerning compensation for consequential damage. If, in addition, installation and start-up have been agreed, the warranty period shall commence on the date of equipment start-up; in any event, the warranty period shall terminate 15 months after the risk of loss has been passed on to you.
- 9.5 You shall notify us immediately of defects which appear. You shall do everything in your power to keep the damage to a minimal extent.
- 9.6 You shall grant us the time for and the opportunity of the removal of defects required by us at our qualified discretion. If you refuse this, we shall be relieved of our obligation to remove the defect. We shall only be obliged to remove defects if you fulfil the contractual obligations incumbent upon you. In particular, the agreed payments must be made in accordance with the conditions stipulated; you may only withhold payments to an extent commensurate with the defects that have occurred.
- 9.7 Defects resulting from normal wear and tear (especially in consumable parts) or from mishandling shall not be covered by this warranty. Our warranty obligation shall terminate if the products are modified or repaired by you or by third parties not authorized by us.
- 9.8 The running of the warranty period shall be interrupted by measures implemented to remove defects.

9.9 The following provisions shall apply to software:

We warrant that the software delivered to you corresponds to our program specifications, provided that it has been installed in our corresponding systems and in accordance with our instructions.

Software defects shall only include defects which can be reproduced at any time. We shall undertake to remedy software defects which substantially impair use in accordance with the contract, at our option and depending on the extent of the defect, either by installation of an improved version of the software or by providing advice as to how such defects can be eliminated or their effects avoided.

9.10 All other and further claims, whether arising by contract or by statute, shall be excluded, especially claims for damages which do not directly affect the products (consequential or indirect damages). This shall not apply to the extent that we are statutorily liable for intentional conduct, gross negligence or lack of warranted fitness for purpose.

10 Industrial property rights and copyrights

10.1 We shall indemnify you for claims resulting from infringement of industrial property rights or copyrights, unless the design of the object delivered originates from you or unless you have modified the object delivered or used it in a manner other than that specified. This shall require that you notify us immediately in writing of such claims and that all defences and measures used to reach a settlement out of court be left to us. The indemnity obligation shall be limited to the value of the foreseeable damage.

Under these conditions we shall generally obtain for you the right to continue to use the product.

If this proves impossible under economically reasonable conditions, we shall undertake, at our expense and at our option, either to modify or to replace the product so that it no longer infringes the rights or to take the product back and reimburse you for the purchase price paid to us, adjusted to take into account the age of the product.

10.2 It shall not be permitted to

- remove our trade mark from the goods
- affix your trademark to our goods
- change the external appearance of the goods to the effect that you or a third party appear to be the manufacturer of the goods.

10.3 We reserve title and copyright to cost estimates, drawings and other documents supplied by us; they may only be made available to third parties with our prior consent. Drawings and other documents relating to quotations shall be returned to us immediately upon request if no order is placed with us.

11 Rights concerning software

You shall be granted a non-exclusive, non-transferrable license to use programs, related documentation and subsequent amendments for the envisaged operation of the products with which the programs are supplied. You shall not make them available to third parties without our prior consent. Copying, with the exception of a backup copy, shall not be permitted. Source programs shall only be made available by us by separate written agreement.

12 Liability and claims for damages

12.1 In any event, if the delivered product does not conform as agreed, then the limitations of available claims stated in this Article 12 will apply.

12.2 For any other damages not directly related to the delivered product, we will only be liable in case of:

- intentional or gross negligence of our corporate bodies or corporate executives,
- culpable infringement of life, body and health,
- defects which we have concealed fraudulently or for which we have guaranteed the absence,
- defects of the delivery item, as far as we are liable regarding the Product Liability Act for personal injury or damages on property of private used objects.

12.3 In case of culpable infringement of essential contractual obligations we are also liable for gross negligence of employees and for slight negligence, in the last case limited to the typical contractual, reasonably foreseeable damages.

12.4 Our liability pursuant to product liability legislation of the EU and the obligatory statutes of other states relating to personal injury and property damage to privately used objects resulting from defects in an object supplied shall remain unaffected hereby.

12.5 In the event that we supply you with software, we - including our employees and our vicarious agents and partners - shall only be liable for the loss or modification of data caused by defective programs if you have fulfilled your obligation to perform a data backup at adequate intervals, but at least once daily.

13 Export license

If you wish to export our goods, you shall bear the costs and the responsibility for obtaining the required export or re-export license pursuant to the laws of the respective country.

14 Place of performance, place of jurisdiction and application law

14.1 Place of performance shall be Oberkochen (Federal Republic of Germany).

14.2 The law of the Federal Republic of Germany shall apply for all contractual obligations, with the exception of the agreement of the United Nations dated April 11, 1980 concerning the international sale of goods.

14.3 At our choice, the courts responsible for us in the Federal Republic of Germany or the courts responsible for your registered office shall have jurisdiction.