



General Terms and Conditions Sale and Delivery

(May 2007)

§ 1 Offer and acceptance

- a) Our offers are made subject to change. Orders are only binding for us when and insofar as we confirm them in writing or have begun with their execution. Alterations, amendments and verbal collateral agreements also require written confirmation.
- b) Supplementary terms to identification such as "about", "as delivered before", "business as usual" or similar additions refer exclusively to the quality or quantity of the goods in our offers, but not to the price. Such specifications in orders will be understood accordingly by us and if necessary a confirmation is intended accordingly.
- c) Amounts are always considered to be approximate. Safety-related and completion-related deviations of 10 % below or above shall be considered as contractual. Deviations of quantity are fully taken into account for the buyer at the invoice sum.

§ 2 Purchase price and payment

- a) In principle, our prices do not include the legal value added tax. The calculation is based on the quantity or weight determined by us or our supplier. The calculation may however be based on the quantity or weight determined by the recipient, if the determination has been made by use of a calibrated scale and if the goods have been transported at our risk and if this has been agreed upon.
- b) The purchase price is payable net at delivery of the goods unless otherwise agreed upon.
- c) We reserve the right to claim maturity interest of 5 % above the base interest rate of the Deutsche Bundesbank from the due date on.
- d) In case of delay default interest of 8 % above the base interest shall accrue. We reserve all rights to claim further damages.
- e) Bills of exchange and checks will only be accepted on account of performance; they are regarded as payment after they have been honoured. Standard bank expenses shall be borne by the buyer.
- f) The buyer shall be entitled to offset only insofar as his counterclaim is acknowledged, undisputed or assessed in a legally binding judgement. Merchants may withhold the purchase price because of material defects until we have decided whether the claim is justified; moreover only if the buyer provides sufficient security. Non-merchants may not withhold the purchase price because of material defects resulting from a contract different to the one from which the outstanding purchase price originates.
- g) If the buyer falls behind with the payment of one of our bills in an amount significant for the business relationship – 20 % of the invoice sum of one month, averaged over the 12 months before being behind schedule -, all our claims of the business relationship will become due immediately, irrespective of any possible acceptance of bills of exchange. We are then entitled to demand cash payment prior to a potential additional delivery. If the default in payment is not resolved within a reasonable extension of time, we are entitled to withdraw from the contract or to demand compensation due to non-performance. This applies in particular to stipulated follow-up transactions still to be executed. Should facts become known to us revealing that the buyer is no longer creditworthy, we are entitled to demand cash payment prior to the delivery of the goods, even if something else was previously agreed upon, as well as to declare our demands due.

§ 3 Delivery

- a) The agreed delivery times and dates are always considered to be approximate if no fixed date is expressly agreed upon.
- b) For deliveries which do not touch our plant (drop business), delivery times and dates shall be met, if the goods leave the supplier in good time that, considering normal transport times, the delivery reaches the recipient in time.
- c) Events caused by force majeure, which also include restrictions subject to public law, strikes and lockouts, entitle us to withdraw from the contract. In such cases, compensation due to non-performance or default is excluded. This also applies to late delivery by our supplier, for which we are not to blame. We are obliged to inform the buyer of such events without delay. The buyer is then equally entitled to withdraw from the contract.
- d) If we fall behind with the delivery, the buyer is entitled to set a reasonable extension of time and to withdraw from the contract after unsuccessful expiration of this extension. The buyer may only demand compensation for non-performance after the unsuccessful expiration of the extension of time, if the delayed delivery is caused by intentional or grossly negligent conduct of our legal representative or of one of our vicarious agents.

§ 4 Shipping and acceptance

- a) Transport risks from the point of delivery on shall always be borne by the buyer, also for carriage free deliveries or free deliveries ex works, unless the transport is carried out with our own vehicles from our plant or warehouse.
- b) In case of collection from the point of delivery, the loading of the vehicle and the observance of statutory regulations regarding the transport of hazardous material are incumbent upon the buyer or his agents.
- c) Unloading and storing the goods is always up to the buyer.
- d) In case of delivery in tank vehicles and demountable tanks, the recipient shall provide for the flawless technical condition of his tanks or other storage containers and bears full responsibility for connecting the filling connection to his collection system. Our obligation is limited to handling the vehicle's equipment.
- e) If our employees help unloading or discharging beyond this and, by doing so, cause damages to the goods or other damages, they merely act at the risk of the buyer and not as our vicarious agent.
- f) The aforementioned regulations apply accordingly for the delivery by third-party carriers, insofar as the buyer's liability can be deduced from their conduct. Third-party liability will remain unaffected.

§ 5 Packaging

- a) Insofar as our deliveries are made in rented packaging, these shall be sent back to us, emptied and in perfect condition, by the buyer at his cost and risk, or, where applicable, shall be returned free of charge with our vehicle against receipt at the latest within 4 weeks after reaching the buyer.
- b) If the buyer does not meet the obligations specified in letter a) in time, we are entitled to charge a reasonable fee for the time exceeding 3 months and, after setting a deadline of no avail for returning, to demand the replacement price crediting the aforementioned fee.
- c) The attached labels may not be removed, returnable packaging may not be exchanged and may not be filled with other goods. Regardless of fault, the buyer is liable for depreciation, interchanges and loss. Findings upon receipt at our company are decisive. Usage as a storage container or transfer to a third party is forbidden unless otherwise agreed upon in advance.
- d) In case of delivery in tank wagons, the buyer is responsible for fastest emptying and freight paid return to us or the indicated address. If the buyer is responsible for an extended demurrage at his company, the accrued fee for the tank wagon shall be borne by him.

§ 6 Title retention

In principle, we only deliver according to the following terms of sales and delivery. The exceptional application of other conditions, especially the customer's conditions of purchase, requires explicit acknowledgment on our part. The Law of the Federal Republic of Germany applies under the exclusion of the provisions of the convention of the United Nations concerning contracts for the international Sale of Goods. (CISG from 11/04/1980 in the version which is currently in force)

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a) **The title to the goods will only be transferred to the buyer after complete payment of the purchase price and all other liabilities, including future liabilities from the business relationship with us. This also applies without prior withdrawal and when payments are made in respect of specifically designated liabilities. In case of current account, the reserved property is considered to be security for the balance claim. The title is passed to the buyer at the latest when we indisputably do not have any claims against the buyer any more.**

b) As long as the buyer meets his obligations to us in due form, the buyer is authorized to further usage of the conditional goods in the ordinary course of business, provided that his claims resulting from resale as stipulated in letter e) are assigned to us.

c) Should the buyer fall behind in payments even after an extension of time, we are entitled to reclaim the conditional goods without another extension of time and without declaration of cancellation. For the purpose of revocation we are entitled to enter the buyer's company if necessary.

d) Processing or conversion of the conditional goods is carried out on our behalf without putting us under any obligation. We are considered the manufacturer acc. to § 950 BGB (German Civil Code) and acquire ownership of the intermediate and end products in relation to the invoice value of our conditional goods to the invoice value of the third-party goods; in this respect, the buyer keeps safe in trust and free of charge for us. The same applies to combination or mixing of conditional goods with third-party goods in accordance with §§ 947, 948 BGB.

e) As security for all our claims, the buyer herewith assigns to us any claims arising from reselling conditional goods to third parties. If the buyer sells goods of which we only have partial ownership acc. to letter d), the buyer assigns to us his claims against third parties in the corresponding partial amount. Should the buyer use conditional goods within the scope of a contract of work (or similar contract), the buyer assigns to us corresponding (wage) claims in the amount of the invoice value of our goods used for this purpose.

f) In the normal course of business, the buyer is authorized to collect claims from the further use of conditional goods. Should we have specific reasons for concern that the buyer does not or will not properly meet his obligations to us, the buyer shall upon our request disclose the assignment to his customers, refrain from any disposition regarding the claims, give us all required information about the stock of goods owned by us and the claims which have been assigned to us and deliver the documents for the assertion of the claims assigned to us. We shall be informed immediately about any third-party access to the conditional goods and the assigned claims.

g) If the value of our securities exceeds the total claim against the buyer by more than 10%, we are obliged upon request of the buyer to release securities according to our choice.

§ 7 Warranty rights, inspection and objection requirements of the buyer

a) In case of material defects including the absence of warranted qualities, we are liable to merchants and legal entities under public law in accordance with the statutory provisions for cancellation of contract, reduction or replacement, if in addition to the statutory provisions the following conditions are fulfilled:

1) The buyer shall inspect the goods and their packaging immediately upon delivery according to the customary conventions. If the goods are delivered in packages, the buyer shall additionally inspect the labeling of each package to check the compliance with the order. If the goods are delivered in tank wagons, which do not remain at the buyer's, he has to check the mandatory shipping documents in regard of compliance with the order. Above that, the buyer shall check the contractual quality of the goods by sampling before draining the tank.

2) Detected deficiencies acc. to letter a) must immediately be notified to us in writing.

3) If the buyer omits the respective inspection or if the buyer does not immediately notify detected or detectable defects, the buyer forfeits his warranty rights regarding detected and/ or detectable defects. The same applies in case of an erroneous incorrect delivery, even in case of a deviation so significant that an acceptance of the goods by the buyer must have been considered as excluded.

4) In case of a hidden defect the buyer must give notice immediately after the detection of the defect. Otherwise the goods are considered to be approved in this respect. The complaint about a hidden defect is in any case excluded 8 weeks after receiving the goods. A claim for replacement due to incorrect delivery will remain unaffected.

b) In case of material defects including the absence of warranted qualities, we are liable to non-merchants in accordance with the statutory provisions for cancellation of contract, reduction or replacement, if in addition to the statutory provisions the following conditions are fulfilled:

1) A non-commercial buyer has the same obligations to examine and inspect as a merchant (see above letter a) no.1). Yet, the requirements for sampling are not determined by merchantability but by the buyer's expectable knowledge based on his commercial position.

2) Detected defects acc. to letter a) must immediately be notified to us in writing. Apart from that, defects shall be notified in writing within 6 months. Above that, the statutory provisions §§ 437/ 475 BGB are applicable.

3) If the buyer omits the respective reasonable inspection or if he misses the notice periods which are valid for him, the buyer forfeits his warranty rights with respect to detected and/ or obvious defects.

§ 8 Liability for consequential damages and other damages

a) For damages at the buyer's legal assets including his property resulting from defects of the purchased goods, erroneous incorrect delivery or defective packaging, we are liable as follows:

1) As far as damages could have been avoided by adherence to the buyer's obligation to check, any kind of liability of us to merchants and legal entities under public law is excluded, unless the damage is reducible to intentional conduct of our legal representatives. Under the same condition, any liability of us to non-merchants is excluded, unless the damage is reducible to intentional or gross negligent conduct on our part.

2) As far as damages occur despite adherence to the buyer's obligation to check, we are only liable to merchants and to non-merchants for intentional or gross negligent breach of contract.

b) Regardless of the cause of liability, we are only liable for damages other than the above regulated damages, if they have been caused by an intentional or gross negligent act by us or by one of our vicarious agents.

c) **We are not liable for the suitability of the goods for the buyer's intended purposes. Regarding application technological consulting, information or advice etc. we are liable for culpable erroneous consulting, information or advice only if it is given in writing.**

d) **All claims regarding this § 8 prescribe half a year after the act causing the damage, tort claims excluded.**

§ 9 Final provisions

a) The place of jurisdiction is our headquarters.

b) Should any of the aforementioned provisions be or become invalid, valid provisions which come closest to the economic intent of this contract take the place of the invalid provisions, reasonably protecting mutual interests and statutory law.