

General terms and conditions of ordering

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General terms and conditions of ordering

1. Conclusion of contract / written form / changes

1.1 We order on the basis of our 'General terms and conditions of ordering'. Other conditions will not form part of the contract unless they have been expressly agreed. Should we receive deliveries or services without making explicit objection this shall not under any circumstances be taken to mean that we had accepted your terms and conditions of supply.

1.2 Orders, agreements and changes shall not be binding unless made or confirmed by ourselves in writing. Agreements made verbally or by telephone have no legal validity unless subsequently confirmed in writing. The same applies to informal verbal understandings or changes in the contract.

Orders, release orders and also any changes or additions to them can also be made, if we so desire, by remote data transmission in the form of emails or faxes, for example.

Written communication should be made only with the purchasing department.

1.3 No remuneration will be granted for visits or for preparing offers, projects and so on.

1.4 In the case of materials (substances, preparations) and objects (such as goods, parts, technical equipment, uncleaned empty containers) which might, on account of their nature, properties or condition, be a source of danger to human life and health, to the environment or to property and which therefore as specified by the relevant regulations require special treatment as regards their packing, transportation, storage, handling and waste disposal, you will with your offer provide us with a fully filled-out safety data sheet in accordance with Article 14 of the Hazardous Substances Ordinance [GefStoffV] and also the correct Accident Procedures Sheet (Transportation).

In the case of changes in materials or in the legal position you will provide us with updated data sheets and information sheets.

1.5 We shall be permitted to call for changes in the object of the agreement even after conclusion of the contract provided this can be reasonably expected of you. In this modification of the contract, both sides will give appropriate consideration to its effects, particularly as regards increased or reduced costs and also delivery dates.

1.6 Without our previous written agreement you shall not be entitled to pass the order on to third parties either entirely or significant parts thereof. If we do agree to this, you will still remain responsible for fulfillment of the contract.

2. Confidentiality

2.1 You are required to treat conclusion of the contract as a confidential matter and may not mention business connections with ourselves in any publication, such as advertising material or reference lists, without our previous written consent.

2.2 The parties to the agreement undertake to treat as business secrets all commercial or technical details which have become known to them through the business relationship unless this information is already public. Subcontractors shall be subject to the corresponding obligation.

2.3 Should one of the contractual parties become aware that information which should be kept secret has got into the possession of unauthorized third parties or that confidential documentation has been lost he will inform the other contractual party of this without delay.

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3. Prices / shipping / packing

- 3.1 The agreed prices are fixed prices exclusive of the applicable sales tax. Unless agreed otherwise, costs of packaging and transportation as far as the delivery address specified by ourselves or the place of use are included in the prices, as are customs formalities and customs duty.
- 3.2 A delivery note must be included with every consignment and this will show an accurate breakdown of the consignment by type, quantity, our article number and, if applicable, weight. Our order number and if applicable project designation must be quoted on delivery notes, consignment notes (waybills), invoices and all correspondence .
- 3.3 We will accept only the quantities or number of items we ordered. Over- or underdeliveries and partial deliveries are not permitted unless by previous arrangement with ourselves.
- 3.4 Shipping will be at your risk. You will therefore bear the risk of any deterioration including accidental destruction up until delivery at the delivery address we specified or at the place of use.
- 3.5 Your obligation to take back packaging will be based on the relevant statutory regulations. Goods must be packed in such a way as to prevent damage during transportation. Packaging material should only be used to the extent necessary for achieving this objective. Only environmentally friendly packaging materials should be used.

4. Billing / payment

- 4.1 Following delivery of goods or rendering of services, invoices must be submitted to ourselves separately in proper form together with all corresponding documents and data. Invoices improperly submitted will be deemed as not received by ourselves until the time when this has been rectified.
- 4.2 Following full fulfillment of all contracted supplies and services your claim to payment becomes due less 2% discount after 14 days or is due net after 30 days.

All payments will be made in the means of payment of our choice.

Payment will be made subject to the proviso that the contract has been properly fulfilled and that prices and calculations are correct. In the event of a defective delivery we shall be entitled to retain a reasonable amount of the payment until the order has been properly fulfilled.

If within two years of final payment we detect mistakes in the billing or mistakes in the billing documents and inform you of the same, you shall be obliged to repay us the excess amounts paid. You shall not be entitled to assert the defense of loss of enrichment. Should we avail ourselves of this right, any mistakes in our favor will be offset against the claim for reimbursement. The time limit does not apply to any claims on our part relating to tortious acts.

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5. Due dates / delay / force majeure

5.1 The agreed dates are binding. Compliance with the delivery date or the term for delivery is defined in relation to the arrival of the goods at the place of reception or use specified by ourselves. Timely performance of the service is defined with reference to the completion of your service in a form capable of acceptance or of handover of your work, including the handover of all documentation required by statutes or ordinances or contractually agreed, such documentation to be in the German language, unless otherwise agreed, including, for example, approvals, test certificates, declarations of conformity, operation and maintenance instructions, lists of spare parts, user manuals.

5.2 Should you realize that an agreed date is at risk you must inform us of this without delay in writing, giving the reasons for the delay and stating the anticipated length of the delay. In such cases you will take all necessary steps to comply with the agreed delivery date or for only a minor time delay to occur. You will inform us about what steps you have taken in the individual case and what steps you still have to take.

Notification of an anticipated delay will under no circumstances change the agreed date.

5.3 Should you fall into delay you will be liable on the basis of Para. 7 of these terms and conditions.

5.4 If the agreed date cannot be complied with for reasons for which you are not responsible, then, following unsuccessful completion of a reasonable deadline extension granted by ourselves, we shall be entitled as we see fit either to claim compensation for damages for non-performance or to procure a substitute from a third party or to withdraw from the contract.

5.5 You cannot plead the non-arrival of necessary documents, data, provisions or the like which should have been delivered by ourselves unless you had given notice of this in writing and did not receive the same within a reasonable period.

5.6 Force majeure releases the contractual partners from their contractual obligations for the duration of the disturbance or difficulties and to the extent of its effects. The contractual partners undertake to provide the required information without delay within the limits of what can reasonably be expected and to accommodate their obligations in good faith to the changed circumstances.

Should the delay caused by force majeure or by labor disputes result in the supplies or services becoming no longer usable by ourselves - taking economic aspects into consideration - then we shall be wholly or partially released from the obligation of receiving or accepting the supplies or services ordered and in this regard entitled to withdraw from the contract.

5.7 In the case of deliveries before the agreed time we reserve the right to return the goods at your expense. If goods which have been delivered early are not returned they will be kept in our own storage facilities at your cost and risk until the delivery date.

In the case of early delivery we reserve the right to make payment only on the agreed due dates.

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6. Guarantees / assurances / warranty

6.1 You guarantee and make assurance that all supplies and services are state of the art and satisfy the relevant legal requirements as also the regulations and guidelines of public authorities, employers' liability insurance associations and industrial associations. Furthermore you guarantee and make assurance that the supplies and services are not encumbered with the rights of third parties and that you have unrestricted right of disposal. You assure us of the use of materials fit for the intended purpose, proper design or construction type and implementation, faultless functioning, achievement of the agreed performance under the agreed conditions.

Should deviations from these requirements be necessary in individual cases you will need to obtain our written consent. Your warranty obligations will not be qualified by this consent. Should you have reservations regarding the type of implementation we require you must inform us of this in writing without delay.

6.2 You undertake to employ environmentally friendly products and processes in your supplies and services as far as is economically and technically feasible, even in the case of subcontractor supplies or services or additional services provided by third parties.

6.3 In the case of contracts of sale and contracts for work done and materials supplied, we will notify you in writing without delay regarding any unresolved deficiencies in the deliveries as soon as they have been detected within the context of an orderly conduct of business. Our notification will always be deemed immediate when given within two weeks of arrival of the delivery at our premises. Within two weeks of their detection we will notify you of any deficiencies detected subsequently.

6.4 During the warranty period you must correct any defects or deficiencies in the supplies or services which have been notified, these also including failure to reach guaranteed figures and failure to meet special performance requirements. These corrections must be made upon request without delay and free of charge, including all ancillary costs, and at our choice may take the form of remedying the defects or of supplying replacements. These ancillary costs will in particular include the costs which arise during troubleshooting, removal of the faulty part and installation of the replacement part, and also the costs of examination by an expert and transportation costs.

If reworking or the supply of replacements is not possible or is unsuccessful or if it is delayed or withheld beyond a reasonable period of time specified by ourselves in writing, we shall be entitled to avail ourselves of legal rights to cancellation of the contract or to reduction in the contract price.

We expressly reserve the right to claim for damages. This also applies to claims for damages on account of non-performance.

6.5 Should you culpably fail to meet your warranty obligations within a reasonable period of time specified by ourselves, we shall ourselves be permitted to take the necessary measures at your cost and risk - irrespective of your warranty obligations - or have these measures taken by a third party.

In urgent cases we can, following consultation with your, carry out reworking ourselves at your cost and risk or have it carried out by a third party. Should it not be possible to consult you first, we will initiate the necessary measures immediately and notify you of this without delay and without this affecting your guarantee obligations. We can then charge the necessary expenses to yourselves. The same will apply if there is a threat of unusually high losses.

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- 6.6 The warranty period is 2 years. It commences with the handover of the delivery item to ourselves, or to a third party we have appointed, at the place of reception or use which we specified.

The warranty period for spare parts is 2 years following installation or entry into service.

- 6.7 From the day on which notification of a defect is received the period of limitation will be suspended until the defect has been corrected or you decline to correct it.

For reworked or replaced parts the warranty period restarts on the day on which reworking is completed or when reworked parts are returned or when replacement parts are delivered.

- 6.8 Warranty claims become barred 6 months after correction of defect complaints within the warranty period but not before its end.

- 6.9 Your sole responsibility will not be curtailed by the official approval of documents or by our supply or approval of drawings, calculations or other technical documents. The same applies to our directives, suggestions and recommendations unless you make objection to them in writing.

- 6.10 If a defect cannot be corrected immediately on account of operational circumstances, you are required to implement provisional improvements without delay provided this does not result in excessive additional costs. Final correction of defects must be carried out as soon as operational circumstances permit.

- 6.11 As a special performance requirement you guarantee that your supplies and services are suitable for use in railborne vehicles and electrically powered buses.

7. Liability

- 7.1 Should your supplies or services be encumbered with defects or deficiencies, should you have infringed ancillary contractual obligations of care, safe-keeping, information or other obligations or not have complied with contractually agreed dates (breach of contract), you will be liable to us for the losses thereby arising without further evidence needing to be provided other than evidence of an objective infringement of obligation, of the causal circumstances relating to the losses which occurred and the amount of the loss.

- 7.2 Should your liability according to legal provisions depend upon you being responsible for the breach of contract you can release yourself from this liability by furnishing evidence of your blamelessness. You are responsible for fault or negligence on the part of your vicarious agents or on the part of your suppliers in the same way as for your own fault or negligence. You cannot release yourself from liability by furnishing evidence that your vicarious agents or own suppliers were properly selected and supervised.

- 7.3 Should claims relating to breaks in production and/or loss of profits arise on the basis of a breach of contract as defined in Para. 7.1, we will not assert these claims unless you are responsible for gross negligence or malicious intent.

Any compensation claims for the reimbursement of the costs of measures required to prevent or reduce added production difficulties and / or downtimes will remain unaffected by this restriction of liability. Claims arising from a statutory definition of a liability in tort or liability regardless of fault will also remain unaffected.

The aforementioned liability restriction will not apply in the case of insurance cover from insurance policies held by yourselves.

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- 7.4 The liability provisions mentioned in Paras. 7.1 to 7.3 apply correspondingly to your compensation claims against us.
- 7.5 Should you be liable, you will release us from all claims on the part of third parties without the restrictions mentioned in Para. 7.3.
- 7.6 If on account of infringements of official safety regulations or due to domestic or foreign product liability regulations or legislation we are held liable for a deficiency in our product which can be attributed to your goods, we shall be entitled to demand compensation from you for this loss provided it was caused by products supplied by yourselves. This loss also includes the costs of a precautionary recall of products.
- 7.7 You must hold a liability insurance policy which provides adequate cover. You should insure yourself to a reasonable extent against all risks relating to product liability including product recalls. On request you will furnish proof of possession of the corresponding insurance.
8. Quality management
- 8.1 At our request you will set up and / or provide proof of the existence of a quality management system (such as DIN EN ISO 9000 ff) and /or environmental protection management system (quality management, for example). We reserve the right to check the effectiveness of this quality management system on the spot.
- If the type and scope of tests and inspections and of the testing equipment and methods has not been firmly agreed we are prepared at your request and within the limits of our knowledge, experience and means to discuss the tests and inspections with you so as to ascertain what level of testing and inspection technology will be necessary in each case.
- 8.2 Irrespective of this you must constantly check the quality of the delivery items.
9. Industrial property rights
- 9.1 You guarantee and assure us that all supplies and services are not encumbered with the industrial property rights of third parties and, in particular, that patents, licenses or other industrial property rights are not infringed by the delivery and use of the delivery items nor that patent applications of third parties which have made available for inspection are not infringed upon acceptance of performance.
- 9.2 You will release us and our customers from the claims of third parties arising from any infringement of industrial property rights and will also bear at the first time of asking all costs arising in this connection.
- 9.3 We are entitled at your expense to obtain approval from authorized persons for using the delivery items and services in question.
10. Termination of the contract
- 10.1 If you cease to make payments or if a provisional insolvency administrator is appointed or insolvency proceedings instituted with regard to your assets we shall be entitled to refuse performance of the contract fully or in part and to demand compensation on account of non-performance.

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In the event of insolvency either impending for you or having actually occurred, we shall be entitled to effect a reasonable retention of security for the duration of the warranty periods applicable in each case.

- 10.2 We are entitled to terminate the contract entirely or in part at any time. In such a case you will always be entitled to full remuneration for those supplies or services you have already delivered and also for costs caused by the contract and which can no longer be avoided. Any claim to a proportion of profits shall be limited to no more than 3% of the remaining value of the order.

In the case of termination of the contract for serious and weighty reasons you will be entitled to full remuneration for those supplies or services you have already delivered and also for costs caused by the contract and which can no longer be avoided; claims going beyond this cannot be entertained. A serious and weighty reason exists when we for compelling legal, economic or operational reasons have no further interest in the performance of the contract and / or when a considerable deterioration has occurred in your financial circumstances.

This does not affect the possibility of canceling the contract on the basis of general legal regulations (for example, in the event of delay, of misperformance, and so on). Here you will only be entitled to remuneration for such deliveries or services which we find economically utilizable. We reserve the right to assert claims for compensation.

11. Partial invalidity

Should individual parts of these 'General terms and conditions of ordering' be legally invalid this shall not affect the validity of the remaining provisions.

- 12 Assignment of claims

Claims may only be assigned with our previous written agreement.

- 13 Place of performance / place of jurisdiction / applicable law

13. Unless expressly agreed otherwise, the place of performance for the supply obligation is the shipping address or place of use specified by ourselves.

The place of performance for payments is any place where we maintain an account at a financial institution.

- 13.2 The language of the contract is German. Should the contractual partners use a different languages, the German formulation will have priority. All correspondence and other documents and papers will be written in the German language unless otherwise agreed.

- 13.3 The place of jurisdiction is Düsseldorf. We do however reserve the right to assert our claims at any other permissible place of jurisdiction.

- 13.4 The regulatory provisions of the Federal Republic of Germany will apply in addition but excluding the provisions of the UN Convention on Contracts for the International Sale of Goods of 11.04.1980.