

Agreement general terms and conditions

1. Main provisions of agreement

The terms listed below are applicable to all our offers, order confirmations, shipments and sales. While making an order the customer accepts terms of sales in full. Terms and conditions of the customer that differ from our terms of sales shall not be valid. Counter-confirmations from the customer referring to his or other conditions shall not be accepted. Should the parties come to an agreement which is different from these terms of sales it must be confirmed by both parties in writing. The present terms and conditions of an agreement shall apply to any further orders, additions and supplements to orders and do not require a new ordering process.

2. Proposal and conclusion of agreement, prices

Our proposals require no commitment. Statements of accepting a proposal and all orders take effect only upon written confirmation on our part (order confirmation). Shipment time and terms are subject to p.4.

Drawings, designs, dimensions, weight or other parameters are subject to execution only if agreed upon in writing. Deviations from the sample in structure and color are allowed if that complies with quality standard and is suggested by the nature of the material used.

The prices quoted do not include VAT and are valid throughout three months after the presentation of proposal unless otherwise indicated. The determined price is mentioned in the order confirmation, plus VAT. Extra shipments and services shall be counted separately.

3. Executive documentation

Documentation and drawings needed for execution of the product must be provided to us in a timely manner and free of charge. The customer is responsible for correctness of specified measurements.

Our drawings, calculations and other documentation may not be published, duplicated or used for the purposes other than those specified in the agreement. This documentation must be returned to us upon the first request unless agreed otherwise.

4. Shipment, transfer of risks, terms of delivery

Partial shipments and partial rendering of services are allowed on our part if applicable in terms of our liabilities to customers.

Unloading in the place of delivery shall be done by the customer. At the time when the order is handed over in the place of delivery all risks transfer to the customer. If the customer fails to accept the product on time we have the right to demand compensation for the resulting damage. Should acceptance of the product be delayed all risks of its occasional wear and tear and spoiling transfer on the customer.

The terms of shipment that we specify are binding only if they were agreed in such way. Timely and proper execution of obligations on the part of the customer is a condition for fulfilling obligations on shipment and services. This applies especially to timely provision of the order execution approval on the part of the customer.

Unless otherwise stipulated by the agreement, the term of shipment is counted from the time when the order execution approval is received after confirmation of the order, but not earlier than all the documents necessary for the order execution are provided, and all essential details are defined, if such decisions are taken by the customer. If pre-payment from the customer does not come within the time defined by the agreement, shipment of the product may be postponed by the period counted from the day of delay of prepayment till the day of its arrival (p.5). Agreed date of shipment – the same rule also applies to fixed dates - shall be shifted by the period equal to the time between the agreed date when all documents and information were supposed to be provided or the day of giving such notice, and the day of actual arrival. Respective rule shall also apply regarding the period of time between the expired date of pre-payment and its actual arrival (p.5).

Delay in fulfillment of obligation shall start from the moment of written request. The customer is obliged to accept the product, and only after expiration of certain reasonable term he has the right to withdraw from agreement. Definition of the time period is not required only if a fixed term of shipment was agreed. Likewise, in case of a firm deal the customer retains the right to demand fulfillment of obligations from the provider. § 376 of Commercial Code does not apply.

Should deliveries and services come with delay due to circumstances of insuperable force or events which make the shipment extremely difficult or impossible for us, such as strike, lockout, state regulations, traffic congestion or other transportation delays during shipment of the product, even if they occur with our vendors or their subcontractors, we will not be responsible for the agreed terms and dates of shipment that are binding. Such circumstances give us the right to postpone the shipment of the product and provision of a service by the period preventing us from the execution of services, and add reasonable time for preparation, or as a result of unfulfilled part of obligations withdraw from the agreement in full or in part. If circumstances which prevent from fulfillment of obligations last for more than two months, after providing a reasonable delay time the customer has the right to withdraw from the agreement due to unfulfilled part of obligations. In case if the period of shipment is extended or we are discharged from our liabilities, the customer cannot put in a claim for damages to us. We can refer to the above-mentioned circumstances only if we notified the customer immediately.

We may refrain from fulfilling obligations to the customer if we have requests to the customer coming from the agreement arrangements, even if they have a different legal basis.

5. Terms of payment

We have the right with no substantiation to request 100% prepayment for the order during the time when, or after the order is received, and define the terms of payment. Failure to observe the terms of payment gives us the right to refrain from fulfillment of obligations until respective refrain from are fulfilled by the other party, and influences terms/dates of delivery (p.4). Advance payment may be required for partial shipment or partial execution of services.

Payments shall be executed from the moment when the bill is received, unless otherwise defined in writing, without granting discounts.

In accordance with p.3 of §286 of the Civil Code of Germany payment is deemed overdue on the 30th day after the bill or other similar payment document was received and the term for fulfillment of obligations has come. In accordance with § 315 of the Civil Code of Germany we have the right unilaterally and with substantiation of delay to define shorter relevant terms of payment.

The customer can set-off only indisputable or legitimate cross-demands or use the right to refrain from fulfilling obligations before the obligations are fulfilled by the other party. Such right of refusal to fulfill obligations cannot be used with regard to earlier deals concluded with this business partner. Payment can be withheld for the reason of defects or other reclamations only after reclamation is presented to us in writing.

6. Warranties

Customer must check the product immediately as it is received and prior to installation. Any defects found should be reported in writing no later than within one week after the arrival of the product. The defects not found within this period after thorough checking should also be reported to us in writing as soon as they are discovered.

Should any defects be found, and in order to ensure customer's right of checking and reclamation of the goods we either eliminate the defects or replace the product. Minor faults concerned with deviations from certain properties, or insignificantly impaired service-ability do not give customer the right to advance a claim to us for elimination of defect. Therefore, instead of elimination of the defect we can offer reduction in price.

The customer has the right for reduction in price or termination of agreement only in case if the defect could not be eliminated, or the customer set us sufficient term for elimination which elapsed with no result. The term given for elimination of defects must be fixed in writing with description of defects. Until the customer expressly refuses from further services, we can start eliminating the defects even upon the expiration of the set term. Claim for indemnification of damage can be advanced only in accordance with law provisions if such damage is caused by negligence or deliberate violation of obligations on our part, on the part of our lawful representative or assistant, and also if such damage falls within the scope of responsibility stipulated by law on quality of manufactured products. Other warranty claims of the customer are excluded, regardless of their legal basis.

The warranty period equals one year from the day when the product arrives to the place of delivery. The warranty period for the product used at the venue under construction and causing its defects, equals five years.

Claims concerning the defects of the product can be advanced by the customer only. This right cannot be transferred to another person.

7. Clause of ownership right reservation

Until all current and future requests of any legal basis that we have with regard to the customer are fulfilled, we retain guarantees that can be waived upon our demand and choice, if their amount exceeds the amount of requests by more than 30%.

The product remains our property. Its elaboration and transformation is allowed only to us as a manufacturer. If as a result of installation we lose the right of ownership, an agreement is signed stating that the right of ownership for the part of the whole structure of the customer is transferred to us proportionally (in accordance with billed amount). The customer stores our property free of charge. The product in our ownership will subsequently be referred to as the product with the right of ownership retained by the seller.

The customer has the right to elaborate and sell this product in a duly manner with the right of ownership retained by the seller, as a part of his commercial operations, if there is no payments overdue to us. Transferring of the product as a pledge or collateral is not allowed. All requests arising from re-selling or on a different legal basis shall be fully ceded to us by the customer in order to avoid risks. We vest the customer with the power to receive money on those requests on our account and on our behalf. The powers to receive money can be waived if the customer does not fulfill his payment obligations in a duly manner.

In case of an attempt by third persons to collect the product with the right of ownership retained by the seller the customer must indicate our ownership of the product, and inform us about it immediately.

Should the customer take any actions in breach of the agreement, in particular, concerning delay of payment, we have the right upon termination of the agreement to collect the product with retained right of ownership, or require cession of the right to hand out an item of the customer to third persons.

8. Liability

Claims for damages, regardless of the type of the breach of liability, including breaking of law, are excluded if no purposeful intent or negligence were found in the actions. In case of breach of liabilities we are responsible for any negligence.

Should there be any grounds to bring to responsibility, such responsibility will be limited with anticipated damage alone. Claims caused by lost profit, expenses saved on indemnification of damage to third persons, and as a result of indirect damage and further losses cannot be advanced, except for cases when one quality trait guaranteed by us is designed to protect the customer from such damage. The customer assumes obligations on permanent service of received product.

Should a case of insurance occur as a result of petty negligence, our duty of compensation for harm to health and material damage is limited to the amount of € 2M, and property damage linked with that is limited to the amount of € 100.000 (in accordance with the amount of insurance coverage for liability insurance), even in the situation of breach of liabilities.

Limitations and exclusion of liability mentioned in pp. 1 and 2 do not pertain to claims arising from malicious intent on our part, or to cases of incurrance of liability for guaranteed quality traits of the product, claims in accordance with the law on responsibility for quality of products, as well as damage linked with corporal injuries, causing harm to people's life and health.

In case of exclusion or limitation of our liability the same applies to our departments, officers, employees, representatives and assistants.

9. Place of performing obligations, jurisdiction, applicable law.

The place of performing obligations and the only place for consideration of disputes on the issues of shipments/rendering services and payment, as well as the place for settling all arising disputes is the city of Würzburg. We also have the right to file a lawsuit in customer's jurisdiction. For settlement of disputes solely German law shall apply, except for the UN Convention on Contracts for the International Sale of Goods.

10. Severability cause

Should certain provisions of agreement with the customer, including these General terms and conditions of Agreement, lose effect or possibly lose effect in full or in part, this does not repeal legal effect of all other provisions. The provision that became invalid in full or in part should be replaced with another provision that comes closest in terms of its economic effect to the one which is no longer in force.