General terms and conditions for deliveries and services

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1. General

1.1 All of our offers, order confirmations, deliveries and services are based on these general terms and conditions for deliveries and services. Any changes, supplements or contradicting terms and conditions require our explicit written confirmation.

1.2 Our terms and conditions are deemed to be accepted at the latest upon the receipt of our goods or services.

2. Offers

2.1 Our offers are non-binding. Any documents enclosed with the offer, such as catalogues or brochures, are only roughly applicable provided they are not explicitly marked as binding. We reserve the rights of ownership, sample rights, copyrights and other industrial property rights on estimates, diagrams and other documentation; they are not allowed to be made available to third parties. Supply and service agreements shall only be concluded if we have confirmed them in writing.

3. Scope of the contractual obligations

3.1 The written agreement signed by both parties is authoritative for the scope of the contractual obligations; if there is no written agreement, our written order confirmation shall be authoritative. The issue of an invoice is deemed to be an order confirmation. Retrospective changes and side agreements must be made in writing to have effect.

4. Prices

4.1 Our prices are non-binding. They are quoted for the quantities offered or confirmed and do not include VAT; for ex-works services, the costs for delivery, insurance and packaging are excluded. VAT is charged based on the rate valid on the delivery date, any other taxes and customs charges are not included, and are therefore to be assumed by the Buyer.

4.2 The prices we charge are based on the prices valid on the delivery date. If there is an increase in the prices valid upon the conclusion of the contract of more than 6%, the Buyer can withdraw from the contract within 5 days of being notified of the price increase. This does not apply to long-term delivery relationships, which have been executed and charged as partial deliveries for reasons which are due to the Buyer. We are permitted to invoice the Buyer the costs for test parts, samples and tools which are required for the production of test and series parts.

5. Transfer of risk

5.1 The risk is transferred to the Buyer as soon as the goods – or in the event of partial deliveries: the delivered parts – leave our site, an external warehouse or, in the event of direct deliveries of goods we have not produced directly, the warehouse of a sub-contractor. If the delivery is delayed by conditions which are due to the Buyer, the risk is transferred to the Buyer on the date of the notification that the goods are ready for delivery; we can insure the goods at the request and expense of the Buyer.

5.2 The delivered items have to be accepted by the Buyer regardless of its warranty rights from section 11, even if they show signs of defects.

6. Delivery and services

6.1 The agreement of deadlines and dates upon the conclusion of the contract has to be made in writing; the same applies to any retrospective agreement or change. The observance of a delivery deadline requires the on-time receipt of all the documents, parts and details required for processing the order as well as the performance of contractual or legally-due advance payments of the Buyer. If the delivery is due, the delivery date shall be the date on which the goods are transferred to the responsible transport person.

6.2 Partial deliveries and services are permitted within the specified delivery period. The delivery and performance period shall be extended suitably in the event that actions are required, after the conclusion of the contract, due to labour disputes, in particular strikes and lock-outs as well as if unexpected hindrances occur like fire, flooding, extreme weather conditions, accidents, official interventions, material shortages, delays to supplies or other cases of an inability to perform on our side or by our sub-contractors, which is not our fault. If the agreed delivery or performance period is exceeded by more than 6 months as a result of the afore-mentioned hindrances to delivery or performance, the Buyer is permitted to withdraw from the contract.

6.3 In the event of a culpable default or inability to deliver, the Buyer is permitted to demand compensation. In the event of slight negligence the liability is limited as follows: for each week or part thereof of the delay the compensation shall amount to max. 0.5% of the value of the respective part of the total delivery or service, which could not be used on time or contractually as a result of the delay. The claim for compensation in the event of slight negligence is limited to a maximum 5% of the afore-mentioned value.

6.4 Any other compensation claims of the Buyer are excluded in all cases of delayed delivery, even after the expiry of any grace period set by us. This does not apply in the event that liability is mandatory for wilful intent, gross negligence, a violation of key obligations to ensure the contractual purpose or an injury to life, limb and health.

6.5 The right of the Buyer to withdraw after the unfruitful expiry of a suitable grace period set by us remains unaffected by this.

6.6 If the delivery is delayed on the request of the Buyer, we are permitted to store the goods at the Buyer's expense.

7. Acceptance

7.1 If the Buyer does not accept the goods, we are allowed to set the Buyer a written grace period of two weeks, declaring that after the expiry of this period the acceptance of the goods or service will be rejected. After the unfruitful expiry of the grace period we are permitted to withdraw from the contract and demand compensation due to non-fulfilment. A grace period is not required if the Buyer has finally and irrevocably rejected the acceptance. If we demand compensation, this shall amount to 10% of the purchase price or the remuneration for services. The amount of compensation should be set at a higher or lower level if we can prove more damage was incurred, or the Buyer can prove less damage was incurred.

8. Call-off orders

8.1 Call-off orders are to be accepted by the customer, in the event of doubt at the latest within 12 months after the order was issued, and have to be paid in full.

8.2 If a better value graduated price scale has been agreed based on the total released quantity, we are permitted to adjust the price according to the quantity scale, if the Buyer does not accept the total quantity on time for reasons that are its fault.

8.3 After the expiry of the deadline for a call-off order we are permitted to withdraw from the contract after setting a grace period for the Buyer in writing due to the quantity not yet accepted, and to demand compensation due to non-performance.

9. Payment

9.1 For orders from Germany, our invoices are payable within 30 days without deductions. For orders from other countries we deliver against advance payment.

9.2 Payment is only deemed to have been made once we have access to the money. Payments made by cheque are only deemed to have been received once they have cleared. Any costs associated with the collection of cheques shall be borne by the Buyer. In any event, the cashing of a bill of exchange requires our prior approval.

9.3 If the Buyer does not provide a special information or notification, payments shall be charged to the oldest outstanding invoice.

9.4 The Buyer can only offset with claims which are not contested by us or have been legally established. The Buyer cannot assert a right of retention against any due payment claims of ours, based on other orders or legal relationships.

9.5 If payment is not made within 30 days of the receipt of the invoice, we will charge the customer legal default interest at 8% above the respective base rate of interest from the start of the default.

9.6 This does not exclude the possibility to provide evidence of greater damage.

9.7 If the Buyer is behind with its payments for authorised claims of ours, we are allowed to postpone the performance of our obligations until the payment of the arrears has been effected.

9.8 If the Buyer culpably fails to fulfil its payment obligations, we are permitted to demand the immediate payment, in cash, of the total remaining due amount or, as a precaution, to demand the temporary hand-over of the delivered goods, even if we have accepted cheques. Furthermore, if there are still goods to be delivered or services to be performed, we are permitted to demand down-payment or an extra security.

9.9 If we assert our right to make partial deliveries or perform partial services, the Buyer is obliged to pay for the supplied part of the goods or the part of the services performed according to the afore-mentioned payment conditions.

10. Retention of title

10.1 The goods we deliver remain our property until all our claims have been met – or in the event of payment by cheque or bill of exchange until the payment has cleared.

10.2 Any processing or transformation is done solely for us as the manufacturer, although without any obligation. If our co-ownership expires due to a linking or other legal provisions, it is hereby agreed that the Buyer's co-ownership of the item shall be transferred to us based on the respective share of the invoice value. The Buyer shall grant us the co-ownership free-of-charge.

10.3 The Buyer is, however, permitted to sell the goods subject to the retention of title. The claims of the Buyer against third parties as a result of this shall be assigned to us in full and with all ancillary rights.

10.4 In the event that third parties have access to the goods, the Buyer has to indicate that the goods are our property and has to notify us immediately. Any costs and damage are to be borne by the Buyer. The pledging, assigning as security or any other use of the goods subject to the retention of title, which could affect our rights, is excluded.

10.5 If the Buyer acts in a manner which violates the contract, thereby considerably endangering the value of the goods as a collateral object, we are permitted to take back the goods after sending a warning, and the Buyer is obliged to hand over the goods. The assertion of the right of retention as well as the pledging of the delivered goods by us do not equate to a withdrawal from the contract, as long as the Customer Credit Law [Verbraucherkreditgesetz] does not apply.

10.6 If our total claim due to the retention of title and/or assignment is secured, without doubt, to more than 120%, we will release any securities which exceed this, at our discretion, on the request of the Buyer.

10.7 If the Buyer does not fulfil one of the obligations arising from the retention of title, any outstanding residual balance at this time shall be due for payment immediately.

11. Warranty

11.1 Minor insignificant deviations or changes from the catalogues or samples, or previously delivered goods, are not deemed to be defects. The details about the delivery items and services in our catalogues, brochures and price lists merely represent descriptions, markings and guidelines and should not be seen as guarantees. The guarantee of characteristics or the exclusion of trade-standard deviations has to be explicitly agreed in writing for each individual case.

11.2 The Buyer is obliged to immediately examine the goods we've delivered and to report any errors, extra or missing quantities immediately. Before the series processing of our goods it has to be checked that a suitable quantity is free of defects and suitable for further processing. Defects have to be notified to us as soon as they are detected in writing, with a thorough description and stating our order number. In the event of clear defects, the notification period shall amount to ten days from delivery. The assertion of warranty claims for defects not notified on time is excluded.

11.3 For defects to the delivery or service, which also includes the lack of explicitly assured characteristics, we are liable to the exclusion of any further claims, although notwithstanding the claims of points 6 and 12, as follows:

11.4 Defect parts which turn out to be unusable or have considerably limited usability within one year of the delivery due to a defect which occurred at the transfer of risk – in particular due to defective construction, bad components or defect design – shall be either, at our discretion, rectified by us free-of-charge or a new delivery shall be made. To be able to make the necessary improvements or replacement deliveries, the Buyer has to grant us a suitable deadline and the option to perform the improvement or replacement delivery. Rectifications of defects and repairs shall be performed on site or at our factory, at our discretion. Any applicable transportation costs shall be borne by us, whereby the sender is obliged to select the best value form of delivery. The Buyer can demand defect rectification somewhere else than our factory, if, under consideration of justified interests, the interest of the Buyer in defect rectification on-site are predominant and the Buyer bears the extra costs compared to the defect rectification at the factory. If the defect rectification on-site leads to a considerable limitation of the damage incurred compared to a defect rectification at our factory, we shall bear a suitable amount of the extra costs incurred.

11.5 Our warranty only applies to defects which occur under the intended contractual operating conditions and intended use. We assume no liability for improper installation, cleaning or handling by the Buyer, for the use of unsuitable cleaning or operating materials or for normal wear and tear. The same applies if improper alterations, cleaning, maintenance work or other interventions are made by the Buyer or a third party.

11.6 If the defect rectification fails, the Buyer can withdraw from the contract or demand a suitable reduction in the purchase price, at its discretion. Any further claims of the Buyer against us or our vicarious agents, in particular claims for compensation for damage which is not incurred on the delivery item itself, are excluded, if we are accused of normal negligence. The exclusion does not apply in the event of wilful intent, gross negligence, the violation of a key obligation to achieve the contractual purpose and in the event of an injury to life, limb or health. The claims of the Buyer from points 6 and 12 remain unaffected.

12. Liability to the Buyer

12.1 Our liability for compensation due to contractual, contract-like, criminal or other legal grounds is excluded, subject to the claims of the Buyer stated in points 6 and 11. This does not apply if it concerns an injury to life, limb or health, if the violation is based on wilful or grossly-negligent behaviour by us or our vicarious agents, or if it concerns the violation of a key obligation for the fulfilment of the contractual purpose. In the latter case the liability for normal negligence is restricted to compensation for the typical, foreseeable contract damage.

12.2 This liability regulation also applies to verbal and written consultation performed by us as well as to tests and other actions and services to check the intended purpose of use.

12.3 The liability as per the Product Liability Law [Produkthaftungsgesetz] is neither restricted nor affected by this clause.

13. Right of withdrawal

13.1 If there is justified doubt in the ability of the Buyer to pay, or in their credit worthiness, after the order confirmation has been sent, we are permitted to demand either payment in cash or a security before the delivery of the goods. If the Buyer does not meet this demand for security, we are allowed to withdraw from the contract and demand compensation for our work.

13.2 The Buyer is not entitled to a contractual right of withdrawal without an explicit agreement. If the Buyer is granted a right of withdrawal or if we agree to the termination in an exceptional case, the following termination fees have to be paid by the Buyer:

Number of calendar days between the written order confirmation and the termination	Percentage of the price
Up to 3 days after receipt of order	30% of the list price
From the 3rd day	100% of the order value

14. Applicable law/place of jurisdiction

14.1 The law of the Federal Republic of Germany applies exclusively.

14.2 The application of the harmonised law about the international purchase of moveable items and the harmonised law about the conclusion of international purchase agreements for moveable items as well as the harmonised UN Convention of the International Sale of Goods, are excluded.

14.3 In all disputes which arise the lawsuit is to be filed to the court which is responsible for our company headquarters or for the branch office performing the delivery, if the Buyer is a registered trade, a corporate body under public law or a special fund under public law.

14.4 We are also permitted to file a lawsuit at the Buyer's headquarters.

15. Invalidity of clauses

15.1 If individual provisions of these general terms and conditions for deliveries and services are invalid or become invalid due to a contract amendment, the validity of the rest of the clauses of the general terms and conditions, the contract as well as these general terms and conditions for deliveries and services remain valid for both parties.

15.2 The contract partners are obliged to agree a new provision which comes as close as possible to the purpose of the invalid provision.

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