

The following terms apply to all purchase agreements and contracts for work and materials concluded between us and our contractual counterparts that are businesses (hereinafter referred to as "Purchaser"), as well as to our offers, even if we do not expressly refer to them in an individual case. Derogations from this general rule are only binding upon us where we expressly confirm them in writing. The Purchaser's terms of purchase shall not be binding upon us, even where we do not expressly object to them.

1. Offer and contract formation

Our offer is subject to change with respect to the price, amount, delivery period and our ability to make delivery until the order is confirmed in writing. Side agreements are only effective if they have been confirmed by us in writing.

2. Scope of delivery

The scope of delivery is specified in the order confirmation with binding effect. With respect to goods that are customised we are allowed to make excess or short deliveries differing from the quantity ordered by up to 10%.

3. Deliveries and delivery periods

The delivery period shall start on the date when all details of the order have been clarified, but not until the contractual duties to be fulfilled by the Purchaser by that time have been fulfilled. The delivery deadline shall be deemed complied with if the goods have left the warehouse when the deadline is reached or, where shipping is delayed due to reasons for which the Purchaser is responsible, if the notification that the goods are ready to ship is made within the delivery period agreed. Compliance with the delivery period is subject to the condition precedent that we receive correct and timely deliveries from our suppliers. Timely and appropriately sized partial deliveries are permissible and may be billed separately.

If force majeure events, industrial actions or other events that are beyond our control, regardless of whether they are experienced by us or our sub-suppliers, keep us from complying with our duty to deliver the goods, the delivery shall be extended by the duration of the disruption. We are obliged to inform the Purchaser immediately of such events as soon as we become aware of them. If it becomes impossible to deliver the goods because of such an event or if the subsequent delivery creates an undue burden for either of the parties, both parties are entitled to rescind the agreement. If performance is delayed or if it is no longer possible to deliver the goods ordered due to reasons for which we are responsible, the Purchaser is entitled to rescind the agreement in accordance with the statutory provisions. Claims for damages are subject to the provisions in Section 12 of these Terms of Sale.

If the Purchaser is in default of acceptance, we are entitled to charge the Purchaser a fee for storing the goods for each week of default at a flat rate of 1% of the invoice value per week, with a total of 5%. Should a new customs declaration become necessary due to the delay in acceptance, we are entitled to charge 250.00 € net for the additional customs declaration.

4. Prices

Our prices are quoted ex warehouse, exclusive of the statutory value-added tax. Packaging costs, loading costs, customs fees, etc. shall be borne by the Purchaser.

5. Shipping / passing of the risk

Goods are dispatched and shipped at the expense and risk of the Purchaser. The risk shall pass to the Purchaser when the goods leave our premises. Where the dispatch is delayed due to the Purchaser's conduct, the risk shall pass, and the purchase price shall become due, when the Purchaser is notified that the goods are ready to ship. We are duly registered under the registration number DE 4365 6203 496 62 with the Central Packaging Register (Packaging Register LUCID) in accordance with §§24ff VerpackG (German Packaging Act) pursuant to § 9 para. 1 and para. 2 sentence 1 VerpackG. Within the scope of recurring deliveries, we are entitled to fulfil the obligation to take back packaging pursuant to § 15 1 1 VerpackG also only with one of the next deliveries.

6. Payment terms

Invoice amounts must be paid within 30 days of the date of invoice without any deduction. If we grant any discounts, they may not be deducted from any new invoices as long as older invoices for which payment is due have not been paid yet.

For periods during which the Purchaser is in default of payment or during which payments due are deferred we will charge the default interest at the statutory rate and the statutory flat-rate default fee in the amount of 40.00 € without prejudice to any further claims for damages. Where it becomes apparent after the conclusion of the agreement that our claim for payment is at risk due to the customer's inability to perform and where we have fulfilled the obligations owed by us in return, all of our outstanding claims become due immediately. In this event we are entitled to only make outstanding deliveries against payment of cash or the provision of a security. This does not affect any further statutory claims. The Purchaser has the right to withhold payments, or to offset counterclaims against them, only in so far as the Purchaser's counterclaims either are in a reciprocal relationship (§ 320 BGB) to the claims asserted by us, are legally established, undisputed or recognized. This does not apply to counterclaims of the Purchaser which directly seek rectification or to reverse a transaction - owing to a defect we have not corrected, or are unable to correct, by means of remedial performance - and which are based on the same contractual relationship as our claim to payment.

7. Retention of title

We will retain the title to the goods delivered until all outstanding payments due to us under the business relationship, including incidental costs and interest, are settled in full. This also applies until the checks for such payments have cleared. For current accounts, the goods subject to retention of title shall secure our claim to the outstanding balance. Goods subject to retention of title shall be processed and treated on our behalf without creating any obligations for us.

If our goods are processed, combined or mixed with other goods that do not belong to us, we are entitled to a co-ownership interest in the new items based on the ratio of the invoice value of the goods subject to retention of title compared to the value of the other goods processed at the time when they are processed, combined or mixed. Where the Purchaser becomes the sole owner of the new item, it already now assigns the co-ownership interest in the new item to us based on the ratio of the invoice value of our goods subject to retention of title compared to the value of the other goods processed at the time when they are processed, combined or mixed and it shall hold the new item in custody for us with the due diligence of a prudent businessman.

The goods delivered, irrespective of whether they are unprocessed or have been processed or combined or mixed, may only be resold by resellers in the ordinary course of business subject to retention of title, and only if the receivables resulting from the resale pass to us. The Purchaser must not pledge or assign goods subject to retention of title as collateral or agree to a prohibition of assignment or an assignment without our consent in the context of factoring. Where execution is levied in respect of the goods subject to retention of title or where our rights are prejudiced by third parties in any other way, the Purchaser must notify us without undue delay. The Purchaser hereby assigns to us in advance all receivables to which it is entitled now or will be entitled later from the resale or on any other legal ground with respect to the goods delivered by us as of the time when they accrue. We accept the assignment. The value of the goods shall be deemed our invoice amount plus a surety surcharge of 10% which is not applied, though, where the rights of third parties conflict with it. If our goods are resold after they have been processed, combined or mixed or if the new item resulting from the processing, combination or mixing is resold, the claim against the Purchaser's customer in the amount of the invoice value of our processed, combined or mixed goods shall be assigned.

This also applies if our goods are sold after they have become an essential component of another item by combining or processing them with other items not belonging to us. If the value of the collateral provided to us exceeds our claims by more than 10 % in total, we have a duty to release collateral (to be selected at our discretion) at the Purchaser's request. Once all outstanding payments due to us under the business relationship have been settled, title to the goods subject to retention of title and the receivables assigned shall pass to the Purchaser. The Purchaser is authorised to collect the purchase price on our behalf until we revoke this authorisation. The Purchaser has a duty to notify its customers of the assignment at our request and to provide the information and documents that are required for exercising our rights vis-à-vis the respective purchaser.

8. Liability for defects

The Purchaser's warranty rights are predicated on the assumption that the Purchaser, where the Purchaser is a businessman ("Kaufmann"), has duly satisfied its obligations to inspect the goods and to give notice of defects pursuant to Section 377 of the German Commercial Code (HGB). If the suspicion of a not only completely insignificant defect arises with regard to delivered goods, the Purchaser is obligated to notify us immediately of the existing suspicious facts, even if further examinations must be carried out in order to verify the defect. Any breach of this obligation shall result in the Purchaser's liability for damages, unless the Purchaser is not responsible for such breach of obligation.

The Purchaser is not entitled to base complaints on excess or short weight due to foundry technology reasons. If there is a defect, we can remedy the defect or provide a replacement, at our option. If the Purchaser asserts claims for defects, it must give us the opportunity and the time required to review the complaint.

If the item is defective and if the Purchaser has incorporated said item into another item or attached it to another item in accordance with its nature and type of use, then we – should a claim for subsequent performance be asserted against us – are entitled to choose within a reasonable period of time whether to compensate the Purchaser for the work required to remove the defective product and to install or attach the rectified product or the defect-free replacement product (work), or to carry out this work ourselves or have this work carried out at our expense (self-performance). If we fail to exercise this right within a reasonable period of time, it shall be deemed forfeited. If we opt for self-performance, the Purchaser shall be entitled to specify a reasonable period of time for such performance. Where said time period expires without results, the Purchaser is entitled to carry out the work itself or have it carried out. In this case, our right to self-performance shall be deemed forfeited and the Purchaser may carry out this work at our expense. Our right to object to the kind of subsequent performance due to its disproportionate expense pursuant to Section 439 (4) of the German Civil Code (BGB) remains unaffected. Where this does not apply, we must reimburse the Purchaser for the required costs incurred for the work.

Claims for defects pursuant to Section 437 BGB shall become time barred twelve (12) months after the date of delivery. No warranty is given for used products. The limitation period in the event of a delivery recourse according to §§ 445 b, 478 BGB shall remain unaffected by the provisions of the two preceding sentences. Claims for damages based on defects shall not be affected by this. The statutory warranty period shall apply to these, including claims for damages arising from the fact that we are in default with a rectification of defects requested by the purchaser and owed by us.

9. Returns

Returns that are not based on a statutory claim may only be made with our express consent. The return delivery must be made free of carriage charges. We reserve the right to deduct an amount of at least 30% of the net value of the goods when we credit the purchase price to compensate for the costs incurred with every return. The Purchaser is free to prove to us that the loss incurred by us due to the return is smaller.

10. Catalogues

The images in our catalogues and brochures are not binding for the actual execution. We reserve the right to change the construction style where this is advisable for technical reasons and does not impair the contractual purpose. Derogations from the measures and weights specified are permissible where they do not jeopardise the contractual purpose or the quality.

11. Copyright

We reserve the proprietary rights and copyrights with respect to catalogues, images, drawings, samples, and other documents. They must not be made available to third parties without our consent and must be returned without undue delay upon request. If an order placed with us infringes upon third party patent, design or trademark rights due to drawings or models submitted to us, all responsibility shall lie with the Purchaser which shall be liable for any resulting damage and loss of profits incurred by us, as the supplier, and shall indemnify us against any claims brought against us by third parties unless it is not responsible for the infringement.

12. General liability

Claims for damages of any kind against us and our legal representatives and vicarious agents are excluded, except in the case of intent or gross negligence or the breach of an material contractual duty. "Material contractual duties" are duties whose fulfilment is essential to the proper performance of the contract and upon whose fulfilment the Purchaser regularly relies and may regularly rely. Our liability is limited to the reasonably foreseeable damage typically incurred with this type of contract provided that only simple or gross negligence is involved.

The foregoing limitations of liability do not apply to injuries to the life, body or health of a person or in cases of liability under product liability law.

The Purchaser's claims for the reimbursement of expenses pursuant to Section 284 BGB are waived to the extent that a claim for damages in lieu of performance is excluded pursuant to the foregoing provisions. The statutory burden of proof is not affected by the provisions of this clause.

13. Place of performance, venue, applicable law, miscellaneous

The place of performance for the delivery and for the fulfilment of warranty claims is the respective supplying plant, the place of performance for payment is our registered office.

The legal venue for all disputes with businessmen, legal entities under public law, special funds under public law or persons who do not have a place of general jurisdiction in Germany is exclusively the city in which our registered office is located. However, we are entitled to also, at our option, bring a suit against the Purchaser in the court having jurisdiction over the area in which its registered office is located.

If the Purchaser is domiciled outside the European Economic Area (EEA) and the European Free Trade Association (EFTA), all disputes arising in connection with the contracts concluded under these General Terms and Conditions shall instead be finally settled in accordance with the Rules of Arbitration of the German Institution of Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit e.V.). (DIS) under exclusion of the ordinary legal process. The place of arbitration shall be Hamburg, the language of the proceedings shall be German. In taking evidence, the arbitral tribunal shall be guided by the usual practice in proceedings before German state courts. The defendant is entitled to file a counterclaim before the arbitration court. Procedural principles of common law, such as in particular the so-called document production, shall not apply directly or mutatis mutandis. Insofar as one party may have to reimburse the other party for legal fees in connection with the arbitration proceedings, these shall be limited to the costs billable under the German Lawyers' Fees Act (RVG). German law applies to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

We store the data generated in the context of the business relationship in accordance with the legal regulations

HEROSE GMBH

