

Conditions of Sale

1. Scope of application, tenders, formation of contract

- 1.1 The following General Conditions of Sale apply to persons who at the time of this contractual agreement are either employed or self-employed and to lawyers engaged in public law or in another special public law capacity. Our supplies and services will be based on the following conditions, and no other conditions will apply. They will be deemed to have been accepted by you at the latest when you receive our acknowledgement of your order. We do not recognize the conditions or stipulations of the customer if these do not conform with our General Terms and Conditions of Sale, save as they are particularly accepted by us in writing. Our General Conditions of Supply and Terms of Payment still hold good even if we supply the customer without reservation, and despite having been informed of the conditions or stipulations of the customer that diverge from our own General Conditions of Supply and Terms of Payment. Moreover, our General Conditions of Supply and Terms of Payment will apply to all business contracted with the customer in the future. Our offers never commit us in any way. If an order is to be qualified as an offer to conclude a contract pursuant to paragraph 145 BGB (German Civil Code), we may accept this inside of four weeks. Claims for damages arising from the rejection of an order are not admissible.
- 1.2 Illustrations, drawings, specifications, details as to weight, performance and dimensions etc. are not to be taken as final and binding. They will constitute warranties (as is the case with provisions of samples and/or patterns) only if they are described as such by us, and in writing. We reserve the right to undertake technical modifications, and these will not need to be approved by the customer. We give application-related advice to the best of our knowledge on the basis of our information and experience. All details and information on the suitability and use of our goods are, however, non-binding and do not release the customer from undertaking its own examinations and tests. The customer is responsible for the compliance with statutory and official regulations when using our goods.
- 1.3 We retain rights of ownership and copyright in respect of illustrations, drawings, costing computations, programs stored on data carriers etc. These documents and/or data carriers, and the data stored on them, must not be made accessible to third parties. This applies especially to documents and/or data carriers that have been classed as confidential. The customer must first obtain our written permission before he passes them on to third parties.
- 1.4 Orders will commit us only after we have confirmed them in writing. Moreover, all other agreements not made in writing (verbal, telephonic, telegraphic, per telex or per data transmission and/or through electronic mailbox) will require our written confirmation.
- 1.5 The acceptance of the order and the confirmation of order are made subject to the provision of cover by our trade credit insurance company. In case the trade credit insurance company reduces or cancels the coverage during the ordering phase, we may withdraw from the contract.

2. Prices

- 2.1 Unless otherwise agreed, our prices are ex works Scholze Germany GmbH and exclude turnover taxes, freight, packing, customs duties and fees, etc.
- 2.2 In the case of all increases in material or labour costs which occur after the conclusion of the contract until the performance of the order, the contracting parties shall have the right to demand negotiations on an adjustment of the price.
- 2.3 The goods shall be shipped on account, at the risk of the customer. If the goods are transported by the supplier's own vehicles and staff, the supplier shall only be liable for gross negligence on the part of its employees.
- 2.4 In the absence of any specific agreement, payment shall be made in cash with no deduction, free branch office of payment of the supplier, as follows:
One-third after receipt of confirmation of order,
One-third as soon as the customer is informed that the major components are ready to be dispatched and the remaining amount inside of a further month.

3. Modality of payment

- 3.1 Our invoices shall become payable within 10 days – from the date of the invoice - with no deduction. If the period for payment is exceeded, we shall be entitled to charge interest to the amount of 8 percentage points above the base rate of the Bundesbank (Federal Bank), i.e. per annum as of the date payment was due to be made. Should we be able to prove a greater loss caused by a delay we shall be entitled to claim this amount. However, the customer shall be entitled to prove to us that we have not suffered any loss at all, or just a very slight one, as a consequence of the delay in payment.
- 3.2 Cheques and bills for conditional acceptance will be received as payment only after they have been honoured. Any discount, and bank interest, shall be to the account of the customer. We cannot guarantee prompt presentation an lodging of protest.
- 3.3 If the customer delays payment all claims, even if these are deferred and/or bills accepted for collection, will become immediately due. If it comes to light or through other circumstances (dishonoured bills or cheques, suspension of payments, bankruptcy petition etc.) that the credit worthiness of the customer is dubious, then we shall also be entitled to make further supplies or services dependent on advance payments or lodging of security. Should the customer continue not to pay despite demands so to do, or he is not willing to pledge collateral, we will be entitled to refuse to honour the contract, to demand compensation for failure to perform or to cancel contracts, where supplies / services still remain to be effected.
- 3.4 Provided we agree with the customer that payment of the purchase money obligation is to be by way of cheque or bill of exchange, then any retention of title will embrace a discharge by the customer of the bill accepted by us, and our credit entry of the cheque will not cancel said retention.
- 3.5 The customer may only offset claims if these are valid in law or have been accepted by us. The customer may only establish a lien on goods if this is based on claims connected with the contract.

4. Delivery time

- 4.1 The customer must meet his obligations in due form and without delay if our conditions of supply are to be satisfied. Delivery dates and time allowed supply goods are targets only, save as nothing to the contrary has been expressly agreed. All technical aspects must be clarified first, and the customer must correctly and promptly meet all of his obligations, before the time determined for delivery may commence. This particularly includes the receipt of all documents due from the customer, also of licenses, clearances, and the timely clarification and approval of plans, respecting the agreed terms of payment, in particular the receipt of an agreed down payment, lodging of security or of any letter of credit. Should these conditions not be met at the proper time, the time for delivery will be appropriately extended.
- 4.2 Should the contract be amended later on, whereby the delivery time is affected, then the latter will be extended by an appropriate amount. The same applies to deliveries in areas outside of the FRG, should the procurement of domestic or foreign official or nonofficial

certifications need more time. Number 9 below will apply to late delayed deliveries caused by force majeure etc. We make it a proviso that our sub-suppliers supply us correctly and at the right time. Part deliveries are in all cases permissible as long as this is feasible; a part delivery shall be regarded as a separate business transaction. We reserve the right to exceed or fall short of the ordered volume by 10 % at the most.

- 4.3 The time allowed for delivery shall have been kept to if the goods leave our factory before it runs out, or their readiness to be dispatched has been duly notified to the customer. Should we overshoot delivery dates the customer shall be entitled to grant us a reasonable respite in writing, with a warning that he might refuse the delivery. If said respite runs out without result the customer shall be entitled to cancel the contract. The customer shall then be entitled to claim damages for breach of contract, i.e. to the order of the loss envisaged, but only where the delay was due to deliberate intention or gross negligence.

5. Passing of the risk, dispatch of the goods, packaging, deliveries by installment

- 5.1 Delivery will be »ex works«, insofar as nothing to the contrary is specified on the confirmation of order.
The risk will devolve on the customer when the goods have left the works, this is also the case when delivery is made in installments, or when we have agreed other services such as dispatch costs or delivery and installation. If acceptance of the goods has to be certified, this document is valid for the transfer of risks. This certificate must be made out immediately at the stipulated acceptance time and if this is not possible, after communication about the willingness to accept. The purchaser may not refuse acceptance of the goods if a discovered fault is not serious. If this dispatch or the acceptance of the goods is delayed or does not take place, due to circumstances which are not our fault, the danger of risk is transferred to the purchaser from the day of notification about dispatch or willingness to accept. In particular the risk will pass over to the customer if the consignment or delivery is held up at the request of the order, or on account of reasons for which he is answerable, on the day of readiness for shipment, or where serviceable goods have been consigned or collected. If the customer so requests we will insure the goods or their storage, but the expense of this will be for the account of the customer.
- 5.2 So long as the customer wants packaging/overwraps returned these will be returned at the place of performance mentioned in the contract (Number 11). The expense of the return transport and/or the self-chosen disposal shall be borne by the customer. Reusable packaging shall be handed over to the customer on loan only. The customer shall then be obliged to return same in a proper condition, and at his own expense.

6. Acceptance/Provision of material

- 6.1 It shall be the duty of the customer to forthwith accept any work performance rendered by our factory. The customer cannot refuse to accept giving mere trivial grounds. We are willing to grant a reasonable time for submitting statement of acceptance, but after this time has expired the work done by us will count as having been accepted.
- 6.2 If we so request, it shall be the duty of the customer to accept the goods as part consignments. If the customer puts the item of work into service and/or otherwise uses it, this shall be tantamount to his having accepted the work, except as the carrying out of a trial operation has been expressly agreed with the customer by way of separate agreement.
- 6.3 Where the customer gives us designs, production specifications, models, materials etc. for the purpose of executing the order, he will assure us that he has scrupulously checked these over, especially as to their suitability for the purpose. If the customer provides us with materials for machining, he will assure us that he has checked their quality, workmanship and suitability before handing them to us. In particular, the customer will certify that he has assiduously done his duty to inspect materials obtained from third parties. Should the item produced by us be faulty due to poor materials furnished to us, and/or machining has not been successful because of defects that are hidden in the materials, we will be entitled to demand the agreed compensation, but taking account a saving in expenses.

7. Demands due to defects/faults

The purchaser's demands on our guarantee preclude that he has fulfilled his obligations to check the goods and to report faults in accordance with §§ 377, 376 HGB (German Commercial Code). The purchaser must check the following details in particular at acceptance of the goods at the agreed place or on the purchaser's premises: Number of items, dimensions, composition and perfect condition. If faults have been noticed, these must be listed in writing and must be reported to us in writing immediately, at the latest within eight days after receipt of the goods. Any faults which cannot be detected, even if the goods are carefully examined, must be reported immediately after they have been found and a complaint must be issued immediately in writing. The contractual condition of the goods at the time when they leave our works or stores is crucial.

With these points taken into account, we provide our guarantee for material damages and legal issues regarding delivery with the exclusion of further demands – subject to section 8 – as follows:

- 7.1 To repair or replace all imperfect items free of charge at our discretion if the faulty condition occurred before the transfer of risk. Detection of such faults must be reported to us immediately in writing. Replaced parts become our possession.
- 7.2 Guarantee obligations do not apply in cases of incorrect assembly, improper first operation or use by the purchaser and/or by someone authorised by him, neither in cases where the instructions (forexample operating instructions) regarding handling, maintenance and care have not been observed, alterations or repair work has been carried out incorrectly, if the machine was installed in unsuitable rooms, if parts manufactured elsewhere have been used, or other external influences have caused damages. Natural wear and tear is also excluded from any liability obligations. We do not carry any guarantee for damages caused after the transfer of risk, be it damage on the paint work, especially if this was caused by careless handling during transport, storage, assembly, operation and the like and/or if damages are due to natural wear and tear.
- 7.3 For all improvements and replacements which we consider necessary the purchaser is obliged to provide us with the necessary time and give us the opportunity; otherwise we are dispensed from any liability for the consequences. Only in urgent cases of danger to operational safety or prevention of disproportional damages, of which we must be informed immediately, is the purchaser entitled to deal with the fault himself or have the fault removed by third persons and to demand from us replacement of the incurred costs.
- 7.4 Of the costs incurred through improvement or replacement of parts we shall – as far as the complaint is recognised as justified – carry only the cost of the replacement part. For parts manufactured elsewhere our liability is restricted to transfer of liability rights which we might have against the supplier of parts from another manufacturer.
- 7.5 The purchaser has the statutory right to withdraw from the contract if we – taking into account cases of statutory exceptions – let the reasonably allowed time limit pass without fulfilling our obligation to improve or replace parts made from faulty materials. If it is only a matter of a minor defect, the purchaser's rights are restricted to a reduction of the contractual price. In all other cases the purchaser does not have the right to reduce to contractual price. Any further rights are discernible from Section 8 No. 2 of these conditions.

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7.6 No guarantee is given in the following cases in particular: Inappropriate or unsuitable application, faulty assembly, improper operation by the purchaser or third parties, natural wear and tear, wrong or careless handling, inappropriate maintenance, unsuitable operating media, inadequate building work, unsuitable building ground, chemical, electro-chemical or electrical influences – as long as we cannot be held responsible for these.

7.7 If the purchaser or a third party makes improvements, we cannot be held liable for any consequences. The same applies to alterations on the delivered item without our prior agreement.

7.8 Faults involving statutory rights: If the utilisation of the delivered item leads to transgression of trade rights or patent rights nationally, we shall at our cost procure the right to further use for the purchaser or modify the contractual item for the purchaser in a reasonable way to the effect that violation of intellectual property no longer exists. If this is economically not feasible or not possible within a reasonable time, the purchaser will have the right to withdraw from the contract. Under the here named conditions we shall also have the right to withdraw from the contract.

7.9 Our obligations listed in Section 7.8 are subject to Section 8.2 in cases of violation of intellectual property and patent rights.

These exist only if

- he purchaser informs us immediately of notification about violation of intellectual property or patent rights
- the purchaser supports us to a reasonable degree in defending demands or makes modifications in accordance with Section 7.8 possible
- we reserve the right to all defence measures including agreements outside the law courts and
- the transgression of the law was not caused through alterations to the contractual item by the purchaser himself or through an application which was not in accord with the contract.

7.10 For cases of manufacturing manpower contracts the following special conditions apply in addition:

If during the work process materials become unusable through no fault of ours, we would expect to be reimbursed for the cost of these materials by the purchaser. If we are to be blamed for inadequate work, we take the obligation upon ourselves to cover labour costs incurred up to this moment in time and to make improvements. If the materials become unusable through our fault, we shall rework the contractual item. The purchaser is again obliged to provide the material without charge. Any other demands from the purchaser are excluded, in particular claims for indemnity of any kind, including such damages to materials which were not provided by the purchaser or to items which were manufactured from such materials. We do not consider ourselves liable for transgression against third parties in connection with this contract. The supply of materials is the responsibility of the purchaser.

8. Liability

8.1 If the contractual item cannot be used by the purchaser because of our fault due to neglect or faulty execution of proposals and consultancy before or after signing of the contract or due to other contractual subsidiary duties - in particular instructions for the operation and maintenance of the contractual item – excluding further demands from the purchaser – the regulations of Section 7 and 8.2 respectively apply.

8.2 For damages which have not occurred on the contractual item itself, the supplier is liable – for whatever reason – only

- a) in the case of deliberate action
- b) in the case of gross negligence by the owner/the institutions or employees in position of responsibility
- c) in the case of guilt with regard to damage to life, body or health
- d) in the case of defects which we have deliberately hidden or the non-existence of which we have guaranteed
- e) in the case of faulty contractual items as far as liability applies in accordance with the product liability law for personal or material damages on privately used items.

In case we are liable because of minor or gross neglect of our contractual duties, we can be held liable only up to the contractual limit of typical, reasonable, predictable damage. If we neglect one of our contractual duties seriously, our obligation to replace materials or reimburse damages to persons to the degree of the replacement value covered by our product liability insurance. On demand, we are prepared to allow the purchaser insight into our insurance policy.

Any further demands are excluded, in particular those demands for damage to property including lost profits.

8.3 We do not undertake any procurement risk. Should it come to light after the finalizing of the contract that the contractual item cannot be manufactured or only under unreasonable actual or financial circumstances be made available, the purchaser's rights are limited to withdrawal from the contract excluding any other and further demands. The contract is only finalized provided we receive supplies. We will have the right to cancel the order, if our purchasing department is faced with unreasonable price increases, if our suppliers are unable to deliver or if a supplier files for insolvency.

8.4 Limitation of time

All rights by the purchaser – no matter for what legal reasons – are null and void after 12 months. For claims to damages in accordance with Section 8.2 a) – e) the statutory time limits apply. They also apply to faulty buildings and delivered objects which were used for building purposes in the usual way but nevertheless causing its inadequate state.

8.5 Use of software

- As far as software is contained in the delivery package, the purchaser is given permission to use this software including accompanying documentation. It is included for use in connection with the contractual item. The software must not be used on more than one system.
- The purchaser may only duplicate, re-work or translate the software, or re-engineer the object code to the source code the software within the realm of the law (§§ 69a ff. UrhG). The purchaser commits himself not to remove manufacturer's details – in particular Copyright annotations – without our prior explicit agreement.
- All other rights on the software and the documentation including copies remain with us or the software supplier. It is not permitted to grant sub-licences. This is against the law.

8.6 Advisory activity

The supplier owe the customer (buyer) with regards to advisory activity i.e. front end engineering studies, conceptual design studies, project support etc. only for such case, if this technical advice has been ordered by the customer (buyer) in a written format. In case of a written order for advisory activity the conditions according to articles 7 and 8.2 shall fully apply.

9. Force majeure, strikes, lock-outs

9.1 Should unforeseeable and extraordinary circumstances prevent us from meeting our obligations despite our taking every care and diligence, no matter whether these happenings occur at our place or that of a sub-supplier, for example a general lack of labour, strike, lock-out, interruptions/breakdowns, transport difficulties, lack of essential raw materials, mobilization, war, riot etc., we shall be entitled, even within a delay in delivery, to extend the delivery periods by an appropriate amount. We will advise the customer as soon as possible of the beginning and the end of such events.

10. Retention of ownership

10.1 We retain ownership of the goods supplied by us, until such time as all payments have been received from the customer in respect of the business deal. If running payments are made, the retention of title will serve as security for the balance that is owed to us. The retention relates to the acknowledged balance, and will apply even if the customer pays money in respect of specific accounts only. Should the customer behave in a manner wayward to the contract, in particular, if he is late in paying, we shall be entitled to retrieve our property. If we so retrieve our property this shall not mean that we are cancelling the contract, though this will be the case if we have expressly said so. If we issue an attachment on the goods, this will be tantamount to withdrawing from the contract. Once we have taken the goods back we shall be entitled to make use of them, and the indebtedness of the customer will be reduced by proceeds of realization, less any reasonable expenses.

10.2 It shall be the duty of the customer to look after the goods, in particular it shall be his duty to insure them against fire, water and theft, at replacement value, and at his own expense. Should work of maintenance and inspection be necessary, the customer must do this without undue delay, and for his own account.

10.3 The customer must immediately advise us in writing of any seizures of other interventions by third parties, so that we may lodge a complaint pursuant to paragraph 771 ZPO (German Code of Civil Procedure). As soon as the third party is not able to reimburse us our legal and extra-judicial expenses for a suit per paragraph 771 ZPO (German Code of Civil Procedure), the customer will be liable to us for our loss.

10.4 The customer shall be entitled to re-sell the goods in the ordinary course of his business; however, he hereby assigns to us here and now all accounts receivable adding up to the final figure on the invoice (incl. VAT) which become due to him from his customer or third party resulting from said re-sale, and no matter whether the goods were re-sold before or after being further worked. The customer shall remain empowered to collect this debt, even after he has ceded it. Our authority to collect the debt ourselves shall not however be thereby diminished. We do however undertake not to collect the debt for as long as the customer meets his obligation to pay from the proceeds he collects, he is not in default of payment, and, in particular, he does not file a petition for commencing bankruptcy or reorganization proceedings, or for as long as there is no commercial failure (suspension of payments). However, should this be the case, we shall be entitled to demand that the customer makes known to us the accounts receivable that are ceded and the debtors in question, that he gives us all information to enable us to collect, hands over the relevant documents and advises the debtor (third party) of the cession.

10.5 The customer will re-work or re-compose the goods always for us. If the goods are re-worked with other materials not our property we shall acquire co-ownership of the new item in pro rata to the value of the goods compared with the value of the other materials that are processed at that time. As regards the product produced by said re-processing, the same things apply as for the goods supplied subject to reservation.

10.6 If the goods are inseparably worked with other materials that are not our property, we shall acquire co-ownership of the new item in proportion to the value of the goods compared with the value of the other materials at the time of composition. If the composition is such that the customer's item counts as the main item, then it is agreed that the customer assigns his co-ownership to us. The customer will always vouchsafe our sole/co-ownership interests.

10.7 As collateral to meet our claims on him, the customer will assign to us his claims on a third party resulting from mingling the goods with a property. Without any other declaration being needed, the customer hereby also assigns to us all of his security rights that he has on his clients, i.e. in ratio of the value of the claims and rights assigned to us within the purview of the extended retention of title; but if this is not possible, the customer will give us a proportionate share in inner relationship. This particularly applies to the rights of the customer on his business clients of being entitled to demand that a trust mortgage on a building site be granted.

10.8 We hereby undertake, if the customer so asks, to release the securities to which we are entitled, provided the value of our securities exceeds the collateral claims by over 20%. We will decide what securities we release.

10.9 Payments which are effected against the sending of a bill issued by us and accepted by you shall only be regarded to be made when the bill has been honoured by you and we are thus released from the bill liability, meaning that the agreed reservation of title and also the other reservation rights shall continue to be applicable at least until the honouring of the bill in our favour.

11. Place of fulfilment, venue, governing law

11.1 The place of fulfilment is Scholze Germany GmbH.

11.2 Only the Amtsgericht (Local Court) Frankenberg (Eder) or the Landgericht (Regional Court) Marburg (Lahn) will be the court competent to settle disputes resulting from the respective contracts and from the business relationship - including complaints relating to bank drafts and cheques. The same venue holds if the customer has no general venue at home (FRG), relocates his domicile or habitual abode from home (FRG), or his domicile or habitual abode is not known at the time the action is filed.

11.3 All legal relations with the customer shall be governed solely by the law of the Federal Republic of Germany - any local transfer into another law system would not be accepted -. If the text of the contract and documents is couched in different languages, the German version will be the authentic version where doubts of interpretation exist.

11.4 This contract will not be governed by the uniform laws dated 17.7.1973 governing the international purchase of movable property and governing the concluding of international contracts of sale regarding movable property and the UN convention dated 11.4.1980 regarding contracts covering international sale of goods (UN mercantile law BGBl 1989 II p. 588).

12. Partial invalidity/scope of validity

12.1 The full or partial invalidity of one of the above clauses will not detract from the validity of these General Conditions of Supply and Payment Terms, or the contracts entered into based on these. Contracts that have already been signed will be performed based on a lawful ruling which follows most closely the original economic intention.

12.2 These Conditions of Sale replace all other earlier terms of business.