

General Terms and Conditions of Sale - Germany (Deutsch)(June 2004)

I. General

The legal relations between us and Orderer shall be subject exclusively to the Terms and Conditions of Delivery set forth herein and to any other written agreements. The present Terms and Conditions of Delivery shall also apply to any future business relations, even in case the parties do not expressly agree on them anew. Orderer hereby acknowledges the binding effect of the present Terms and Conditions of Delivery. The parties have not entered into oral collateral covenants. Written form shall be mandatory for any subsequent changes and modifications. The written form can be replaced by fax, but not by the electronic form pursuant to § 126 a of the German Civil Code (BGB) or the text form pursuant to § 126 b BGB. Any purchase terms and conditions or any other general terms and conditions upon which an orderer bases its order shall not form an integral part of the agreement even if we have not explicitly objected to them in any particular case.

II. Offer

1. Our offers shall be non-binding. Contracts shall not be deemed as concluded until written confirmation of order has been submitted by us. Our written confirmation of order, including its written annexes, shall exclusively specify the scope of our performance. Any collateral covenants and modifications thereof shall not take binding effect until submission of our written confirmation.
2. Any documents pertaining to our offer such as illustrations, drawings, specifications in terms of weight and dimensions, models or designs shall be deemed as approximate only unless explicitly designated as contractually binding. Any information and technical consultation, including any operating and servicing instructions, provided or rendered prior to or following conclusion of agreement shall be furnished or performed to the best of our knowledge. They shall take binding effect only if we declare such binding effect in writing.
3. With regard to designs, cost estimates, drawings, documentations and similar information of tangible or intangible nature – including their submission in electronic form –, we hereby reserve our title and copyrights; they may not be made accessible to any third party without our prior written approval.

III. Order

Written form shall be mandatory for any delivery agreements (order and acceptance) as well as their modifications and supplements. Any delivery call-ups – including call-ups by electronic data communication – shall be regarded as orders within the meaning of the present Terms and Conditions of Delivery. Our sales staff is not authorized to enter into oral collateral covenants or make any oral representations exceeding the contents of the written agreement.

IV. Prices and Payments

1. All prices quoted shall be ex-works prices exclusive of packaging, loading and value added tax (VAT) as applicable at any given point of time:
 - a) In the event of deliveries within the European Union, Orderer, for the purpose of evidencing his exemption from payment of value added tax, shall communicate his VAT identification number in due time prior to the date of delivery specified in the agreement. In case Orderer fails to effect such communication in due time and in complete form, the value added tax rate as applicable at the relevant point of time shall be invoiced and deemed as owed by Orderer.
 - b) In the event of deliveries outside the European Union, we shall be entitled to subsequently charge the relevant value added tax amount, should Orderer fail to submit to us the relevant evidence of export shipment within a period of one month following the respective shipment.
2. Payment of the invoiced amount shall, also in case of partial deliveries, be effected to our relevant payment office promptly and without deductions of any type after receipt of invoice. Payments shall be made by bank remittance or check, whereby payment by check shall be accepted on account of performance only. Bills of exchange shall also be accepted only on account of performance and only after prior agreement. Agreed payment obligations shall not be deemed as met until the relevant equivalents have been credited to our account without any reservations. Any discount, collection and any other bank charges shall be borne by Orderer. The reservation of ownership as stipulated in Section VIII hereof shall be retained until checks or bills of exchange accepted on account of performance have been finally credited to our account.
3. In the event Orderer fails to comply with agreed payment periods, he shall be considered in default of payment without further notice. In case payment periods have not been stipulated, payments of Orderer shall fall due upon receipt of our invoice; in such case, Orderer shall be deemed as in default of payment 10 days after receipt of invoice without any further notice.
4. Orderer may exercise rights of retention or set off only if his relevant counter-claim is confirmed by a non-appealable judgment or uncontested.

V. Delivery Dates and Periods

1. Delivery periods shall commence upon dispatch of order confirmation . In the event Orderer is still required to obtain documents, permits or approvals, provide information about technical details or effect an agreed-upon advance payment, the delivery period shall not commence until such point in time on which Orderer has complied with such requirement.
2. Unless otherwise stipulated, the delivery period shall be deemed as observed if, within the agreed delivery period, the consignment has left the plant or the Orderer has been notified of the readiness for shipment.
3. The delivery period shall be reasonably extended in the event of *force majeure*, measures in the context of labor disputes, particularly strikes or lockouts, unrest, official measures, as well as upon the occurrence of other unforeseeable, unavoidable and grievous events which are beyond our sphere of influence, to the extent such hindrances verifiably and substantially influence the completion or delivery of the object of delivery. This shall also apply in the event such circumstances affect our suppliers.

Nor shall we be held responsible for the aforementioned circumstances if they arise during the course of any previously existing delay. In important cases, we shall notify Orderer of the commencement and end thereof without undue delay. Such circumstances shall entitle us to postpone the relevant delivery or performance for the period of such hindrance, extended by a reasonable start-up period, or to rescind the agreement in whole or in part for the yet unfulfilled portion.

4. Compliance with our delivery and performance obligations requires the timely and proper fulfillment of the Orderer's obligations.

VI. Default in Delivery

In the event Orderer incurs damage due to any default for which we are responsible, Orderer shall be entitled to demand default compensation. For each full week of delay, such default compensation shall amount to a maximum of 0.5%, however, in total, to no more than a maximum of 5% of the value of the parts not delivered in due time. Any damage beyond such amount shall only be compensated in the events set out in Section X hereof.

VII. Dispatch and Passage of Risk

1. Unless otherwise stipulated, dispatch shall be made at our discretion. Partial deliveries shall be permissible.
2. The risk shall pass to Orderer upon dispatch of delivery, even in the event partial deliveries are made or in the event we have assumed other performances, e.g. shipment expenses or exportation. At the express written request of Orderer, we shall undertake to insure the shipment at Orderer's expense against theft, breakage, transport, fire and water as well as any other insurable risks.
3. Irrespective of his rights under Section IX hereof, Orderer may not refuse acceptance of delivery in the event of minor defects or quantity deviations.
4. In the event dispatch or acceptance is delayed or omitted as a consequence of circumstances for which we are not responsible, the risk shall pass to Orderer on the day of notification of readiness for dispatch or for acceptance, respectively. We undertake to take out insurance policies requested by Orderer at Orderer's expense.
5. In the event dispatch is delayed at Orderer's request, Orderer shall, starting one month after notification of readiness for dispatch, be charged for the costs incurred for storage; at least for 0.5% of the value of the goods stored for each full month. Agreed payment obligations of Orderer shall not be prejudiced thereby. After granting a reasonable time period and the unsuccessful expiry of such time period, we shall be entitled to dispose of the good to be delivered in a different fashion and to supply Orderer within a reasonably extended period.

VIII. Reservation of Ownership

1. We retain title to all goods delivered by us until all claims against Orderer arising from the business relation have been satisfied. Any goods to which we hold title shall hereinafter be referred to as "Reserved Goods". The forgoing stipulation shall also apply in the event we have incorporated some or all claims into a current invoice and the balance thereof has been drawn and acknowledged. Claims shall not be deemed as settled until the amount of such balance has finally been credited to our account.
2. We shall be entitled to insure the delivered goods at Orderer's expense against theft, breakage, fire, water and other damage, unless Orderer has verifiably concluded such insurance policies himself.
3. In the event of attachment as well as seizure or any other third-party intervention, Orderer shall be obligated to make reference to our title and notify us of such event without undue delay. To the extent such third party is not obligated or for any other reason not prepared to reimburse us for any in- and out-of-court expenses incurred in this context, Orderer shall be held liable for such expenses.

Orderer shall be entitled to resell and reprocess the delivered good within the course of ordinary business, provided Orderer is not in default. Orderer shall not be permitted to make other disposals, particularly to pledge or assign the delivered object by way of security. As of now, Orderer, for security purposes, hereby assigns to us to the full extent any claims and all related ancillary rights arising from any resale or any other legal ground with respect to the Reserved Goods; we hereby accept such assignment. Notwithstanding the assignment and our right of collection, Orderer shall be entitled to make collections as long as Orderer fulfills his obligations vis-à-vis us and does not experience a deterioration of assets. At our request, Orderer shall be obligated to disclose to us any information about assigned claims which is required for collection purposes, to deliver any required documents and to notify debtors of the assignment.

In the event Reserved Goods are resold together with other goods, the advance assignment agreed upon hereinabove shall apply only in the amount invoiced for such Reserved Goods which are resold together with other goods.

4. In the event goods delivered by us are assembled or inseparably mixed with other goods to form a uniform item and if such other item is to be viewed as the main item, the parties hereby agree that Orderer shall, without charge, transfer to us joint property on a *pro rata* basis, to the extent the main item belongs to Orderer. Orderer shall keep such joint property in safe custody on our behalf. Incidentally, the provisions applicable to Reserved Goods shall apply *mutatis mutandis* to the item arising from such assembly or mixture.
5. We hereby undertake to release collaterals to which we hold title, insofar as the value thereof exceeds the unpaid portion of the claims to be collateralized by more than 20%.
6. In the event of breach of contract on the part of Orderer, particularly in the event of default of payment, we shall be entitled to rescind the agreement and to take back Reserved Goods following our granting of a reasonable period of time. Orderer shall be obligated to return any Reserved Goods.

IX. Warranty

1. In the event of defects as to quality and title, we shall provide subsequent performance as follows:
 - a) Should defects become apparent within 12 months from initial vehicle registration, however, no later than 18 months after shipment of our goods, which verifiably result from any circumstance which occurred prior to passing of risk pursuant to Section V of the present Terms and Conditions of Delivery, we shall, at our discretion, provide for subsequent performance either by delivering goods free of defects or by remedying defects. Any notification of defects pursuant to Sections 377 and 378 of the German Commercial Code (HGB) shall be submitted in writing. We reserve title in any parts involved in the substitution procedure, to the extent substituted parts were subject to retention of title.
 - b) Warranty claims shall not arise from any damage which occurred for reasons specified hereinbelow and which is not attributable to our fault: normal wear, improper interventions or repair work made by Orderer or third parties, unsuitable or improper use, faulty operation, assembly or commissioning, faulty or neglectful treatment, incorrect maintenance, use of unsuitable tooling/replacement materials, harmful environmental conditions unknown to us, chemical, electrochemical or electrical influences unknown to us, as well as changes made on the delivered object without our approval.
 - c) Orderer is obligated to grant us such time and opportunity required for subsequent performance. In the event we are not given such opportunity, we shall not be liable for any consequences resulting therefrom. Only in urgent cases in which operational safety is put at risk and/or in order to prevent excessive damage – of which we shall be advised immediately –, Orderer shall be entitled to remedy the defect himself or to cause the defect to be remedied by third parties, and to claim from us reimbursement of expenditures necessarily incurred by him.
 - d) Provided the complaint is justified, we shall bear the costs directly incurred as the result of subsequent performance. In the event delivery/assembly places are located outside the Federal Republic of Germany, the total costs to be borne by us shall be limited to the amount of the order value.
 - e) In the event Orderer is to be partly held responsible for the cause of (a) defect(s) or the cause of (a) defect(s) is partly attributable to Orderer, in particular because of non-observance of his duty to prevent and to reduce damage, we shall, after subsequent performance, be entitled to claim damages being equal to the share for which Orderer is held responsible.
 - f) At his option, Orderer shall be entitled to rescind the agreement or to demand contract price reduction, in the event subsequent performance in the form of subsequent delivery or rectification of defects – taking into account statutory exceptions – fails. Provided the defect is of minor importance, Orderer shall only be entitled to contract price reduction.
 - g) In the event of repairs and other services, Orderer, contrary to the aforementioned provisions, shall be entitled to contract price reduction within the framework of legal provisions, if – in consideration of statutory exceptions – a reasonable period which we were granted during our default to effect perform-

ance has expired unsuccessfully. The right to contract price reduction shall be exercisable also in any other cases of failure to remedy a defect. Orderer shall only be entitled to rescind the agreement, in the event Orderer can prove that the repair, despite reduction, is of no interest to Orderer.

2. Any other warranty claims (including in particular compensation for damage which has not occurred on the delivered goods itself) shall arise exclusively under the conditions set out in Section X of the present Terms and Conditions of Delivery.

X. Liability

1. We shall be held liable, also in the event of damage resulting from breach of duty in contract negotiations, irrespective of the legal ground (including in particular compensation for damage which has not occurred on the delivered good itself), only in case of intent, negligent breach of material contractual duties, gross negligence on the part of bodies or executives, negligent injury of life and/or body and/or health, fraudulent non-disclosure of defects, breach of quality and/or durability warranties, as well as personal injury and damage to property, insofar as liability is incurred for privately used objects in accordance with the Product Liability Act.
2. In the event of any breach of material contractual duties, we shall be liable for any act of negligence. In the event of slight negligence, our liability shall be limited to the reasonably foreseeable damage typical in such type of contract.
3. Purely pecuniary damage shall not be compensated for if it is disproportionate to the amount of the order value.
4. Any further liability – irrespective of the legal grounds –, including in particular the compensation of damage which has not occurred to the delivered good itself, shall be excluded.
5. We shall not be liable for the consequences of defects for which no warranty claims arise in accordance with Section IX Subsection 1 Letter b of the present Terms and Conditions of Delivery.

XI. Property Rights

We shall not be held liable, if delivered goods have been produced according to drawings, models or any other similar descriptions or information provided by Orderer and if we are unaware or, in connection with the products developed by Orderer, cannot know that property rights are being infringed upon thereby. In any such event, Orderer shall release us from any third-party claims.

XII. Limitation

1. Warranty claims of Orderer shall be subject to a limitation period of 12 months from passage of risk. After expiry of such term, rescission of agreement on the grounds of (a) defect(s) shall be precluded as well.
2. Any other claims of Orderer – irrespective of the legal grounds – shall be subject to a limitation period of three years from the point of time of their coming into existence .

3. In the event of granted warranties as well as claims asserted under the Product Liability Act, the statutory provisions shall apply instead.
4. As regards the commencement of limitation periods – except for cases covered by Section XII Subsection 2 hereof –, the statutory provisions shall be applicable.

XIII. Place of Performance and Jurisdiction

1. The place of performance for all services and deliveries rendered by us shall be the operating plant charged with the execution of the respective agreement.
2. The City of [■], Germany, shall be the exclusive place of jurisdiction for all disputes arising from this contractual relation, provided Orderer is a merchant, a legal entity or a special fund under public law. We reserve the right to commence an action at Orderer's legal place of jurisdiction.

XIV. General Provisions

1. In the event used goods are sold, any warranty claims shall be precluded, unless we fraudulently concealed a defect in the goods to be sold or assumed warranty for the quality of the goods.
2. Any taxes, charges and duties in connection with the performance outside the Federal Republic of Germany shall be borne by Orderer and, as the case may be, repaid to us.
3. Orderer shall provide at Orderer's expense the permits and/or export and import documents required for his use of the products.
4. In the event Orderer suspends payments or in the event insolvency proceedings are requested against Orderer's assets or in the event other circumstances become known which are suited to reduce the creditworthiness of Orderer, we shall be entitled to rescind the agreement with regard to the unfulfilled portions.
5. In the event any provision of the present Terms and Conditions of Delivery and the further agreements made is or becomes invalid, such invalidity shall not affect the validity of the remaining provisions of the present Terms and Conditions of Delivery. The parties shall be obliged to replace any such invalid provision by a stipulation which most closely achieves the economic purpose of such invalid provision.
6. The laws of the Federal Republic of Germany shall exclusively govern the order and its processing; the applicability of the UN Convention on Contracts for the International Sale Of Goods (CISG) shall be excluded.