

Heute GmbH & Co. KG Engineering Works – Germany

Terms of Delivery and Payment

I. Validity of Terms

1. All our deliveries, services and quotes are effected exclusively on the basis of the trading conditions stipulated below. These also apply to all future business relations with the contracting party, even if not expressly re-stipulated. The said terms are deemed to have been accepted at the latest upon taking receipt of the merchandise or availment of services.
2. Buyer's counter-acknowledgements with reference to its trading or purchase conditions are herewith ruled out.
3. Our terms of delivery and payment are only deemed to apply to enterprises as defined in Section § 310, Paragraph 1 BGB (Civil Code).

II. Quotes and Conclusion of Contracts

1. The period of validity applicable to all quotes is 60 days. Contracts are not deemed to materialize until we have accepted the same in writing.
2. Drawings, illustrations, dimensions, weights or other performance data are only deemed to be binding if and where this has been expressly stipulated in writing.
3. Our sales personnel are not authorized to conclude any verbal subsidiary agreements or to give any verbal assurances extending beyond the contents or scope of the written quote.

III. Prices and Terms of Payment

1. The governing criterion for price quotations and commencement of any deadline period is our confirmation of order. Additional deliveries and services are invoiced separately on the basis of supplementary quotes.
2. All prices are subject to additional payment of statutory value added tax valid at the time of delivery and – unless stipulated otherwise – are valid ex-stock excluding packaging, this being invoiced separately.
3. Unless stipulated otherwise, all invoices are due and payable at the latest on the 15th of the month following delivery without any deductions whatever. Despite any provisions of the buyer to the contrary, we are entitled to appropriate payments first to settlement of the buyer's previous debts. If and where charges and interest have arisen or accrued, we are entitled to appropriate payments first to settlement of the said charges, then to the accrued interest and finally to the prime obligation. We will notify the buyer concerning the nature of the appropriation thus implemented.
4. Payment is not deemed to have been effected until we are free to dispose of the amount concerned. In the case of cheques, payment is not deemed to have been effected until the cheque has been honoured.
5. In the event of the buyer defaulting, we shall be entitled to charge interest amounting to 8 per cent above the applicable basic rate of interest with effect from the time of such default. This shall not affect our rights to claim additional damages.
6. Should we become aware of circumstances casting doubts on the buyer's credit standing, especially in the event of a buyer's cheque not having been honoured or the buyer having suspended payments, we shall be entitled to accelerate maturity of the entire balance due, even if we have already accepted any cheques. In such cases we shall be additionally entitled to demand prepayment or security.
7. The buyer is only entitled to offsetting rights if buyer's counterclaims have been recognized by declaratory judgement (res judicata), are undisputed or have been recognized by us. Moreover, retention rights can only be exercised by the buyer to the extent of buyer's counterclaim being based on the same contractual relationship.

IV. Periods of Delivery and Performance

1. Delivery periods and deadlines are only deemed to be binding if these have been expressly stipulated as such and confirmed in writing.
2. In the event of any delivery period or deadline merely being of a non-binding nature, the buyer shall not subject us to initial default before four weeks exceeding such entitlement, submitting a written statement to that effect.
3. Moreover, a precondition for observance of our obligation to meet any delivery commitment is due and proper performance of the buyer's obligations. Rights of defence pertaining to lack of, or non-performance of the contract remain reserved.
4. In the event of the buyer failing to accept delivery or performance or culpably violating any other duties to effect cooperation, we shall be entitled to claim compensation in respect of damages incurred including additional expenses, if any. We reserve the right to assert further claims.
5. Where conditions prevail under No. 4, risk of accidental perishing or loss or unintended deterioration affecting the object of purchase is deemed to pass to the buyer at the point of time buyer fails to accept delivery or performance or has become involved in debtor's delay.
6. We assume liability in accordance with the statutory provisions if and where the underlying contract of purchase and sale forms a fixed-date transaction as defined in Section § 286, Paragraph 2, Subparagraph 4 BGB or Section § 376 HGB (Commercial Code). We also assume liability in accordance with statutory provisions if and where the buyer is entitled to assert cessation of buyer's interest in further performance of the contract due to any delay in delivery for which we are responsible.
7. Moreover, we assume liability in accordance with statutory provisions if and where such delay in delivery results from any violation of contract, for which we are responsible, due to malice aforethought or gross negligence on our part; blame attaching to any of our representatives or vicarious agents is deemed to be imputable to us. We also assume liability in accordance with statutory provisions if and where such delay in delivery for which we are to blame results from culpable violation of any essential contractual obligation; however, in that case liability to effect compensation is deemed to be limited to the occurrence of foreseeable damages of a typical nature.
8. We are entitled to effect partial deliveries and part performance at any time.

V. Reservation of Ownership

1. Up to the complete satisfaction of all claims (including all balance claims on current account) owed to us by the buyer – now or in future and no matter on what legal grounds – we are entitled to demand security as specified below, which we will release on request and at our own option if the value thereof constantly exceeds such claims by more than 10%.

2. All merchandise remains our property. Any processing or transformation thereof is deemed to be effected on our behalf as the manufacturers, however without any liability on our part. If our (co-)ownership becomes extinct as a result of blending, it is agreed here and now that the buyer's (co-)ownership of the united products shall pass to us in terms of value (invoice value). The buyer is obliged to manage our (joint) property free of charge. Merchandise on which we are entitled to (co-) ownership is hereinafter referred to as property subject to reservation.

3. Unless in default, the buyer is entitled to process and sell the property subject to reservation in the ordinary course of business. Pledging or transfer by way of security is prohibited. By way of security, the buyer agrees, here and now, to assign all claims in their entirety to us (including all balance claims on current account) arising from resale or any other legal grounds (insurance, tort) of the property subject to reservation. Subject to revocation we authorize the buyer, acting on its behalf, to collect all debts or claims assigned to us for our account. Such powers of debt collection may only be revoked if the buyer fails to meet its financial obligations.

4. In the event of any third-party seizure of the property subject to reservation, in particular by court bailiffs, the buyer undertakes to draw attention to our ownership rights and to notify us in writing without delay so as to enable us to file suit in pursuance of Section § 771 ZPO (Code of Civil Procedure). If any such third party is not in a position to reimburse us with the judicial and extrajudicial costs incurred in filing suit pursuant to Section § 771 ZPO, the buyer will incur liability for the ensuing loss sustained by us.

5. In the event of any contract-breaching conduct on the part of the buyer – in particular default in payment – we shall be entitled to take back the property subject to reservation or, if need be, to demand assignment of the buyer's claims against any third party for the return thereof. Our taking back of the object purchased implies revocation of the contract. After taking back the object purchased we shall be authorized to exploitation of the same; the proceeds obtained from exploitation will be appropriated to the buyer's liabilities – less reasonable and proportionate exploitation costs.

VI. Passing of Risk

1. Risk is deemed to pass to the buyer as soon as the consignment has been surrendered to the person forwarding the same or has left our warehouse for the purpose of dispatch. In the event of dispatch being or becoming impossible through no fault of our own, risk is deemed to pass to the buyer as soon as notification of readiness for dispatch has been given.

2. Option of carrier is deemed to be our task.

VII. Warranty, Liability

1. Claims asserted by the buyer in respect of defects presume that the buyer has met the required obligations in due form pertaining to inspection and notice of complaint pursuant to Section § 377 HGB. All notifications of defect must be made to us by a statement delivered in writing.

2. In the event of any object of purchase proving defective, we shall be entitled to effect subsequent performance – at our own option – by removing such defects or delivering a new product free of defects.

3. In the event of subsequent performance proving unsuccessful despite our having undertaken three remedial attempts, the buyer shall be entitled, at buyer's own option, to demand rescission of contract or reduction of the purchase price.

4. We assume liability in accordance with the statutory provisions if the buyer has asserted claims for compensation resulting from malice aforethought or gross negligence on our part or any of our representatives or vicarious agents.

5. We also assume liability in respect of simple negligence if, as a result thereof, we culpably violate any essential contractual obligation; in that case, however, liability to effect compensation is deemed to be limited to foreseeable damages of a typical nature.

6. Liability in respect of culpable injury to human life, body or health remains unaffected thereby; this also applies to compulsory liability in pursuance of the Product Liability Act or any guarantees that may have been granted.

7. Except as otherwise herein provided, all other form of liability is ruled out.

8. The limitation period pertaining to claims arising from defects is fixed at 12 months, calculated from the passing of risk.

VIII. Joint and Several Liability

1. Any liability for compensatory damages other than that provided for under VII – regardless of the legal nature of the claim asserted – is ruled out. This applies in particular to claims for compensation resulting from negligence in contracting, other breaches of duty or claims in tort for property damage compensation pursuant to Section § 823 BGB.

2. Limitation according to No. 1 also applies if the buyer claims reimbursement of inutile expenses in lieu of compensation.

3. In as far as compensatory liability is ruled out or limited on our part, this also applies to personal compensatory liability of our salaried and non-salaried staff, employees, representatives and vicarious agents.

IX. Applicable Law, Place of Performance, Legal Venue, Written-form Requirements, Safeguarding Clause

1. The Law of the German Federal Republic is deemed to apply to all business conditions and legal relations between us and the buyer. Application of the UN Convention on Contracts for the International Sale of Goods is ruled out.

2. The place of performance and legal venue in respect of all obligations resulting from this contract is deemed to be the registered domicile of our company. Where the buyer is a merchant as defined in the Commercial Code, Solingen/Wuppertal is deemed to be the sole legal venue governing all disputes arising from the contractual relationship.

3. Any alterations or amendments to these terms and conditions are required to be made in a written agreement between us and the buyer in order to render the same valid in law. This also applies to the said stipulation governing such written form.

4. In the event of any provision in these trading conditions or in connection with other agreements being or becoming invalid, the remaining provisions or agreements shall not be affected thereby.