

1. GENERAL

- 1.1 The following terms and conditions shall apply for our deliveries and performances, including information, advice and repairs. Terms and conditions of the buyer that contradict or deviate from our terms and conditions shall not be accepted, unless we have given our explicit written consent to their application. Deviating agreements shall apply respectively for a specific contract only and not for subsequent contracts, unless an explicit agreement to the contrary is made.
- 1.2 All agreements, subsidiary agreements and contractual amendments require the written form. This shall also apply for any nullification of this written form clause.

2. INFORMATION AND ADVICE

Information and advice regarding our products shall be provided on the basis of our previous experience. The values indicated in this respect, in particular also performance details, are calculated average values. Suitability checks of the goods delivered and the observance of processing regulations shall not be rendered dispensable by information or advice. Verbal information is non-binding. Point 10 of the present terms and conditions shall apply with regard to any liability.

3. OFFER AND CONCLUSION OF CONTRACT

- 3.1 Our offers are without engagement. A contract of delivery or any other contract shall only come into force if we have confirmed the customer order or the other order in writing or have delivered the goods.
- 3.2 Samples and specimens are non-binding viewing samples. In the event of purchase on the basis of samples and/or specimens, we reserve the right of deviations that are normal for the branch of industry or are within the scope of normal production. No guarantee of quality or durability is associated with the delivery of samples or specimens, unless this is laid out explicitly in the order confirmation.
- 3.3 Provided no explicit agreement to the contrary is made, information published by us in catalogues, brochures and other publications in text or picture form (e.g. descriptions, illustrations or drawings) is a conclusive indication of the quality of the goods delivered by us and their possible use. Other manufacturer's information is not binding. Our information does not constitute any guarantee of durability or quality and conforms to our current level of knowledge. We shall not be liable for successful use.

4. PRICES

- 4.1 The prices agreed in writing shall apply.
- 4.2 All prices are net prices excluding turnover tax which, in the event of transactions subject to turnover tax, the buyer must pay in addition in the respective statutory amount.
- 4.3 Provided nothing has been agreed to the contrary, the buyer shall bear packing costs over and beyond the normal commercial packing, subsidiary charges, public charges and customs duties in addition. The taking back and remuneration of special packing material shall only be made on the basis of a separate agreement. Obligations of the seller to take back, exploit and dispose of as per the Battery Ordinance shall remain unaffected.

5. DELIVERY

- 5.1 Delivery periods (deadlines) shall begin with the date of our order confirmation, however not before receipt of any down payments agreed and not before clear clarification of all details of the order, subject to the provision of the necessary certificates and/or provision of all necessary documents. The delivery period shall be considered adhered to if the item has left our factory or our warehouse by the expiration or readiness for dispatch has been notified in cases where the goods cannot be dispatched on time without culpability on our part.
- 5.2 In cases of periods and delivery deadlines not explicitly marked in the order confirmation as "fixed", the buyer can, following exceeding, set us an appropriate period of grace for delivery/performance. We cannot be in default until expiration of this period of grace.
- 5.3 Periods and deadlines shall be extended by the period by which the buyer fails to fulfil his obligations towards us without prejudice to our rights from delays in payment by the buyer.
- 5.4 The right to make correct and on-time self-delivery is reserved.
- 5.5 Unforeseeable, extraordinary events for which we are not responsible, such as industrial disputes, operational disturbances, official measures, transport disturbances or other cases of force majeure, irrespective of whether these events occur in our company or with our suppliers, shall release us from the obligations from the respective contract; hindrances of a temporary nature, however, only for the duration of the hindrance plus an appropriate start-up period. If, as a result of events of this nature, delivery is subsequently rendered impossible or unreasonable for one of the parties, both parties shall be entitled to withdraw from the contract.
- 5.6 Our liability for default damage concerning a slightly negligent violation of obligations, is excluded, unless the violation of obligations leads to injury to life, limb or health. No alteration of the burden of proof to the disadvantage of the customer is associated with this ruling.

- 5.7 We are entitled to make partial deliveries provided these are reasonable for the buyer. Partial deliveries can be invoiced separately.

6. DISPATCH AND PASSING OF RISK

- 6.1 Provided nothing to the contrary has been agreed, delivery shall be made ex-works. If one of the INCOTERMS has been agreed as terms of delivery, the version valid at the time of conclusion of the contract shall be applicable.
- 6.2 If the goods are dispatched to a location other than the place of performance at the request of the buyer, the buyer shall bear all costs resulting from this. We shall be entitled to the right of choice of the means and route of transport and of the transport company. The buyer must notify us of transport damage immediately upon receipt of the goods, in writing and indicating the form and scope of the damage. Insurance of the goods against transport damage, loss during transport or breakage shall only be taken out at the express request of the buyer and shall be for his account.
- 6.3 In the case of delivery ex-works, dispatch and transport shall, in all cases, be for the risk of the buyer. This shall also apply if delivery is made from the warehouse of a third party (transfer orders) and for the return delivery of goods or empties (re-usable transport packing). The risk shall pass to the buyer as soon as the consignment has been handed over to the person performing the transport or has left our warehouse for the purpose of dispatch, or, in the event of delivery ex-works, has left our factory. This shall also apply for partial deliveries.
- 6.4 Should dispatch of the delivery be delayed for reasons for which the buyer is responsible, or if the buyer himself is responsible for transport of the goods, the passing of risk shall be with notification to the buyer of availability for dispatch. Following unsuccessful expiration of an appropriate period of grace, we are entitled to dispose of the delivery in an alternative manner or to supply the buyer with an appropriately extended deadline.
- 6.5 In the event of delivery free house/warehouse, the risk shall pass to the buyer as soon as the goods have arrived at the stated delivery address ready for unloading. This shall also apply for partial deliveries. Unloading must be made without delay and correctly with a sufficient number of personnel and unloading means to be provided by the buyer. Waiting times shall be charged by us in accordance with the normal procedure for our branch of industry. Should the journey to the place of destination fail for reasons that are within the scope of risk of the buyer, the risk shall pass to the buyer upon failure of the travel. This shall also apply in the event of unjustified refusal of acceptance by the buyer. Point 6.4 shall apply accordingly.

7. PAYMENT

- 7.1 Payment must be made in the currency of invoicing and must be made free from postage and charges. Payment must only be made to the payment points indicated by us. Bills of exchange and cheques shall only apply as payment following honouring and shall only be accepted following prior written agreement and without any obligation for on-time presentation and protesting.
- 7.2 Provided nothing to the contrary has been explicitly agreed, payment must be made within 30 days from the date of the invoice. In the event of exceeding of periods for payment, we shall be entitled to demand interest at a level of 8 percentage points p.a. above the basic rate of interest (Section 247 BGB (German Civil Code)).
- 7.3 The offsetting of counterclaims by the buyer is only admissible if these counterclaims are undisputed or have been determined as legally binding. In cases of defects the buyer can, at the most, withhold three times the expense of subsequent fulfilment. In the event of the right of withholding being exercised, the buyer shall be obliged to provide us with security in the amount of the partial amount not paid. At our discretion this security shall be provided by means of a bank guarantee or through depositing with a Notary Public of the buyer's choice.

8. RETENTION OF TITLE

- 8.1 We shall retain title to all goods delivered (conditional commodities) until such time as all claims, irrespective of their legal ground, have been settled, including claims resulting in future or conditional claims from contracts concluded simultaneously or subsequently. This shall also apply if payments are made against specially designated claims. Should points of reference apply that justify the assumption of inability to pay on the part of the customer or imminence of such, we shall be entitled to withdraw from the contract without setting a deadline and to demand handing over of the goods.
- 8.2 Processing and treatment of the conditional commodities shall be performed for us as manufacturer in the sense of Section 950 BGB (German Civil Code) without obliging us. The processed good shall apply as conditional commodity in the sense of point 8.1. In the event of combining or mixing of the conditional commodity with other goods by the buyer, we shall be entitled to joint ownership of the new item in the ratio of the invoice value of the conditional commodity to the invoice value of the other goods used. Should our ownership expire

through combination or mixing, the buyer hereby assigns to us henceforth the ownership rights to the new inventory or the new item to which he is entitled in the scope of the invoice value of the conditional commodity and shall safe-keep this for us free of charge. The joint ownership rights thus resulting shall apply as conditional commodity in the sense of point 8.1.

- 8.3 The buyer is only entitled to sell on the conditional commodity, to process it or to combine it with other items or to install this in any other manner (hereinafter also referred to briefly as "onward sale") within the scope of correct business operation and provided he is not in default. Any other disposal of the conditional commodity is inadmissible. Pledging or other access to the conditional commodity by third parties must be notified to us without delay. All costs of intervention shall be for the account of the buyer if these cannot be collected from third parties (opponents of the third party action against execution) and the third party action against execution has been made justifiably. Should the buyer grant his customer deferred payment of the selling price, he must retain title to the conditional commodity with respect to the customer subject to the same conditions as our retention of title to the delivery of the conditional commodity; however, the buyer is not obliged also to retain title with respect to the claims against his customer which do not arise until a later date. In other cases, the buyer is not empowered to make onward sale.
- 8.4 The claims of the buyer from the onward sale of the conditional commodity are hereby assigned henceforth to us. They shall serve as security in the same scope as the conditional commodity. The buyer is only entitled and empowered to make onward sale, if it is assured that the claims resulting to him from this shall pass to us.
- 8.5 If the conditional commodity is sold by the customer together with other goods not supplied by us at an overall price, the assignment of the claim from the sale shall be made in the amount of the invoice value of our respectively sold conditional commodity.
- 8.6 If the assigned claim is included in a current account, the buyer hereby assigns henceforth to us a part of the balance whose amount corresponds to this claim, including the final balance from the current account.
- 8.7 Until such time as revoked by us, the buyer is empowered to collect the claims assigned to us. We are entitled to make revocation if the buyer fails to fulfil his payment obligations from the business relation with us correctly or if we become aware of circumstances that could result in a major deterioration in the creditworthiness of the buyer. Should the preconditions for the exercise of the right of revocation apply, the buyer shall, at our request, notify us immediately of the assigned claims and their debtors, provide all information required for collection of the claims, hand over to us the corresponding documents and notify the debtor of the assignment. Apart from this, the buyer is not authorised to assign the claims, not even on the basis of our authorisation to collect.
- 8.8 Should the nominal value (invoice amount of the goods or nominal amount of the rights to recover debts) of the security available to us exceed the claims secured by more than 20 percent in total, we shall, at the request of the buyer, be obliged to release securities in the corresponding amount at our discretion.
- 8.9 Should we assert retention of title, this shall only apply as withdrawal from the contract if we explicitly declare this in writing. The right of the buyer to possess the conditional commodity shall expire if he fails to fulfil his obligations from the present contract or from another contract.

9. LIABILITY FOR DEFECTS

- 9.1 We shall not be liable for incorrect or unsuitable use, in particular incorrect storage, excessive stress, incorrect assembly or incorrect use by the buyer or third parties, natural wear and tear, incorrect and negligent treatment and handling, in particular through non-trained personnel.
- 9.2 The buyer is obliged to examine the goods delivered carefully for completeness and correctness immediately upon arrival, even if samples or specimens have been sent beforehand. The delivery shall apply as accepted if no notification of defects is received by us in writing, by telex or facsimile within 10 days from receipt of the goods at the place of destination or, if the defect was not recognisable during a correct examination, within 10 days of its discovery. This shall also apply for over-deliveries. If an over-delivery is not notified within 10 days of receipt of the goods at the place of destination, it shall apply as accepted. Our field sales force employees are not authorised to receive complaints regarding defects and quantities.
- 9.3 Should the buyer accept defective goods although he recognises a defect, he shall only be entitled to the claims and rights for defects if he reserves the right to these upon acceptance as a result of the defect.
- 9.4 In the event of delivery of defective goods that are not sold on to a consumer, the following shall apply in addition to points 9.1 to 9.3:
- a) In the event of a justified complaint regarding defects, the buyer shall initially only be entitled to subsequent fulfilment which we shall provide exclusively through delivery of a defect-free item. If the subsequent fulfilment has failed or the deadline set is unreasonable for the buyer (Section 440 BGB (German Civil Code)) or dispensable, because
- (1) we conclusively refuse subsequent fulfilment,
- (2) we do not make subsequent fulfilment at a contractually determined time or within a specific period and the buyer has, in the

contract, tied his continued interest in performance to the on-time provision of the performance or

- (3) special circumstances apply which, under consideration of the interests of both parties, justify immediate withdrawal (Section 323 paragraph 2 BGB (German Civil Code)), the buyer shall be entitled to the immediate right to reduce the selling price or, at his discretion, to withdraw from the contract and to demand compensation for damages instead of the performance or compensation for all futile expenditure in accordance with point 10.
- b) The expenditure required for the purpose of subsequent fulfilment, in particular transport, travel, work and material costs, shall be borne by us. This shall not apply if the expenditure increases because the item has been brought to a place other than the place of residence or the commercial premises of the buyer following delivery, unless this bringing conforms with the intended use of the item.
- c) We shall be liable for 1 year, beginning with delivery, for claims of the buyer as a result of defects. Liability for legal defects as per the statutory provisions shall remain unaffected. Liability for damage caused by defects shall be based on point 10.
- d) The assignment to third parties of claims of the buyer as a result of defects is excluded. In the event of complaints regarding defects, payments of the buyer may only be withheld in a scope that is in an appropriate relation to the defects claimed.
- 9.5 In the event of delivery of defective goods that are sold on to a consumer, the following shall apply in addition to points 9.1 to 9.3 and the statutory provisions on recourse of the buyer (Sections 478, 479 BGB (German Civil Code)):
- a) If a claim is made against the buyer as a result of a defect to the goods delivered by us, he is obliged to inform us of this without delay. He must impose a corresponding obligation on his customers if these are entrepreneurs. The costs incurred by the buyer as a result of the fulfilment of the obligation to inform shall be borne by us up to a maximum amount of € 20.00 per defective delivered item. We reserve the right to fulfil the claims asserted against the buyer by the customer by way of self-dealing. In this case, fulfilment of the claims of the customer shall apply as fulfilment of any claims of the buyer.
- b) The expenditure required for the purpose of subsequent fulfilment, in particular transport, travel, work and material costs, shall be borne by us. This shall not apply if the expenditure increases because the item has been brought to a place other than the place of residence or the commercial premises of the buyer following delivery, unless this bringing conforms with the intended use of the item.

10. LIABILITY FOR COMPENSATION FOR DAMAGES

- 10.1 We shall be liable for damage from injury to life, limb or health in accordance with the statutory provisions.
- 10.2 Apart from this, our liability from the violation of obligations and our extra-contractual liability is limited to intentional conduct or gross negligence. In this respect, liability for gross culpability of our employees, staff and simple vicarious agents is excluded.
- 10.3 Excepted from point 10.2 is the violation of fundamental contractual obligations (cardinal obligations). In this case, we shall also be liable for own culpability, as well as for the culpability of our employees, staff and simple vicarious agents, even in cases of slight negligence.
- 10.4 Liability is limited to contract-typical damage, with whose occurrence we had to reckon at the time of conclusion of the contract on the basis of the circumstances known to us at that time.
- 10.5 Farther-reaching liability is excluded, irrespective of the legal ground. In particular, we shall not be liable for a lack of economic success, loss of profits, indirect damage, consequential damage from defects and damages from claims of third parties.
- 10.6 The above liability rulings shall apply likewise for claims for compensation for futile expenditure (Section 284 BGB (German Civil Code)).
- 10.7 Irrespective of the legal ground, claims for compensation for damages against us shall become statute barred 2 years from the statutorily regulated start of the period of limitations, at the latest, however, from the delivery of the item.
- 10.8 No reversal of the burden of proof to the disadvantage of the buyer is associated with the above rulings.
- 10.9 Claims for compensation for damages under the Product Liability Law shall remain unaffected.

11. PLACE OF PERFORMANCE, PLACE OF JURISDICTION, APPLICABLE LAW

- 11.1 Place of performance for all reciprocal obligations is Düsseldorf.
- 11.2 Exclusive place of jurisdiction for all disputes with merchants is Düsseldorf. We are, however, entitled to take legal action against the buyer at his statutory place of jurisdiction.
- 11.3 The relation between us and the buyer shall be subject to German Law with the exception of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the rules of international private law.
- 11.4 Should individual provisions be invalid or lose their validity as a result of circumstances occurring at a later date, the validity of the other provisions shall remain unaffected.