



GENERAL TERMS AND CONDITIONS

1. Conclusion and subject of contract

1.1. These terms and conditions are exclusively applicable. Customer's terms and conditions and conditions of purchase are hereby explicitly objected to. Deviating agreements are subject to seller's explicit written consent.

1.2. Seller's offers are on principle subject to change and without obligation until conclusion of contract. Customer shall be bound to his order for eight weeks as from receipt thereof by seller. A contract is concluded if seller confirms acceptance in writing or carries out the delivery within said term.

1.3. In the interest of further technical development the right of changing quality and design is reserved also after acceptance of the order, as far as this is reasonable for the customer.

2. Prices

The prices and terms of delivery agreed at the moment of concluding the contract are valid, plus statutory value added tax (VAT).

3. Payment / default in payment

3.1. Payments are to be made within the agreed terms. In case of international transactions and first deliveries seller is entitled to demand payment in advance or opening of a letter of credit.

3.2. Orders for payment and cheques shall be accepted only on the basis of special agreement and in payment, invoicing all collecting charges. In case of orders for payment, payments shall be considered to have been made on entry of the credit on the account, in case of cheques at the moment of honouring.

3.3. In the event of default in payment, dunning charges at the sum of 5.00 € shall be invoiced for the first reminder, 10.00 € for the second reminder and 20.00 € for the third reminder, plus interest of 10% and VAT. Said costs are to be increased or reduced if seller proves a higher charge or if customer proves a lower charge.

3.4. If customer is in delay with one payment, all other receivables on the part of seller fall due immediately for payment. In addition, payment in advance can be demanded for performances not yet rendered.

3.5. Seller shall have the right to apply customer's payments at first to former debts, irrespective of differing regulations on the part of customer. In the event that costs and interests have already been incurred, seller shall be entitled to apply the payment at first to the costs, then to the interests and finally to the principal claim.

3.6. Customer is only entitled to set off against seller's claims if customer's counterclaim is undisputed or ascertained to be final and absolute. A right of retention on the part of customer exists only if the mutual claims result from the same contractual relationship.

4. Delivery

4.1. Dates and times of delivery have to be fixed in writing. Delivery times start running on conclusion of the contract.

4.2. At the end of six weeks after non-observance of a not binding delivery date or delivery time, customer shall have the right to request seller in writing to supply within an adequate period of time. By this reminder seller is in delay. In the event of delayed performance seller shall be liable according to the statutory regulations, as far as intent or gross negligence on the part of seller, of the person employed for performance or its representative is concerned. In other cases of delayed performance, seller's liability for damages shall be limited to 5% of the value of the delivery in addition to the performance and to 10% thereof instead of the performance. However, in case of culpable breach of essential contractual obligations, the liability shall be limited to the foreseeable damage which is typical of the contract. Customer's claims in excess of this are excluded, even after expiry of an additional time to perform which has possibly been granted to seller. Said limitation is not applicable to liability for impairment of life, body or health.

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4.3. In the event of non-observance of binding delivery times or dates seller shall be in default even as from that moment. In that case customer's rights are defined by item 4.2.

4.4. In case of force majeure, riot, strike, lockout and considerable breakdowns beyond seller's responsibility the above dates and times shall be extended by the period of time caused by said irregularities.

4.5. Details included in descriptions, which were valid on conclusion of the contract, are subject of the contract; these are not meant to be guaranteed qualities but rather as standard to ascertain the subject matter of the contract to be free from defects, in accordance with Nj 6.

4.6. Seller has the right to make partial deliveries.

4.7. As far as the delivery is impossible, purchaser has the right to demand indemnification as defined by the law. However, purchaser's claim to indemnification in addition or instead of the performance or for useless expenses shall be limited to 10% of the part of the performance which cannot be used due to the impossibility. Purchaser's claims in excess of this due to impossibility of the delivery are excluded. This limitation does not apply as far as liability is concerned as a result of intent or gross negligence or due to impairment of life, body or health. Purchaser's right to cancel the contract shall not be affected by this.

5. Passing of risk / shipment

5.1. In case the customer is merchant, juristic person or special fund under public law, customer's registered seat is the place of performance; otherwise the customer has the right to examine the subject matter of the contract at the agreed place of acceptance within a term of eight days as from notice of availability and is obliged to take the delivery of the subject matter of the contract within said period.

5.2. In the event that the subject matter of the contract is – on customer's request – delivered to a place other than seller's registered seat, the risk shall pass at the moment of delivery to the carrier and of leaving seller's warehouse. Conclusion of transport insurance or other insurances is left to customer.

5.3. If customer has been – with intent or due to gross negligence – in default to take the delivery for more than 14 days as from receipt of the notice of availability, seller is entitled to fix in writing an additional period of time of 14 days to take the delivery. After unsuccessful expiry of the additional time, seller shall have the right to cancel the contract in writing or to demand indemnification due to non-fulfilment. Granting an additional period of time is not necessary if the customer refuses seriously and finally to take the delivery or is obviously not in a position to pay the price of the contract even within said period.

5.4. In the event that seller demands indemnification, this amounts to 25% of the contractual price. The amount of damage has to be increased or reduced if seller proves a higher or customer proves a lower damage. If seller does not utilize the rights defined by Nj 5.3 or 5.4, he can freely dispose of the contractual subject and deliver in its place a similar contractual subject to the conditions stipulated by the contract.

6. Notice of defects and warranty

6.1. If the provisions of sec 377 of the Commercial Code (CommC) or of sec 381, 377 CommC apply to the contract, the following is hereby agreed with respect to the period for claiming defects: Customer undertakes to notify seller in writing of apparent defects immediately, but at the latest four days after delivery. Concealed defects need to be notified in writing to seller immediately after discovery, but at the latest four days after discovery. As for the rest, the presuppositions and consequences of a delayed notice of defects are governed by the statutory provisions of sec 377 CommC or 377, 381 CommC. The above provision of Nj 6.1 does not apply if seller – with respect to the defects to be objected to – has contractually guaranteed faultlessness, or if a damage claim is asserted against seller due to impairment of a person's life, body, health or liberty. In such cases the presuppositions and consequences of a delayed notice of defects are exclusively governed by the statutory provisions (sec 377 or 377, 381 CommC).

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6.2. In the event that customer within the scope of a mutual commercial transaction fails to give in due time a notice of defects as defined by sec 377 or 377/381 CommC, this will also lead to the exclusion of customer's tortious claims resulting or having resulted from the defect. This does not apply if the claims root in a behaviour on the part of seller or his vicarious agent which is at least grossly negligent. The exclusion does also not apply to claims which are based on the product liability act or which are the result of impairment of a person's life, body, health or liberty.

6.3. The warranty for defects of quality is – in accordance with the statutory provisions – limited to amendment (additional supply and subsequent improvement), cancellation or diminution of price. As far as a purchase of consumer goods as defined by sec 474 of the German Civil Code (CivC) is concerned, amendments shall exclusively take place in accordance with technical requirements by replacement of defective parts. Replaced parts shall become seller's property.

6.4. In the cases of intent or of gross negligence on the part of seller or his representative or person employed for performance, seller shall be liable in accordance with the provisions of the law. As for the rest, seller shall only be liable according to the product liability act, due to impairment of life, body or health, due to culpable breach of essential contractual obligations, or as far as seller has maliciously withheld the defect or has taken over a guarantee for the quality of the subject of the delivery. The claim for damages is nevertheless limited to the foreseeable damage typical of the contract. However, liability for damages of purchaser's objects of legal protection, eg damages of other objects, caused by the subject of the delivery is completely excluded. The provisions of sentences 3 and 4 of this paragraph 1 are not applicable as far as intent or gross negligence or liability due to impairment of life, body or health is concerned, or if seller has maliciously withheld the defect or has taken over a guarantee for the quality of the subject of delivery. The provision of the above paragraph 1 applies to indemnification in addition to the performance and to indemnification instead of the performance for whatsoever legal basis, in particular because of defects, violation of obligations resulting from the relationship under the law of obligations or because of illicit act. It applies also to the claim for compensation of useless expenses. The liability for default is, however, subject to Nj 4.2, whereas liability for impossibility is subject to Nj 4.7.

6.5. The direct customer is exclusively entitled to warranty claims against seller; these cannot be assigned to third parties.

7. Reservation of title

7.1. Subject matters of the contract remain seller's property until payment of the claim to which seller is entitled on the basis of the contract. The reservation of title keeps on existing also for all claims of seller against customer acquired at a later stage with regard to the subject matter of the contract.

7.2. If customer is a juristic person or special fund under public law or a merchant using this contract to operate his commercial enterprise, the reservation of title shall also apply to all other claims of seller resulting from the current commercial relationships with the customer.

7.3. Customer is entitled to resell or process the reserved goods in regular business for immediate payment or under reservation of title.

7.4. As long as the reservation of title exists, pledging, transfer of ownership by way of security, hiring or other surrender of the contractual subject affecting seller's security are subject to seller's anticipated written consent. Customer holds the object in custody for seller free of charge.

7.5. Customer assigns his claim against the third-party debtor resulting from the resale or processing of the reserved goods precautionarily to seller even at this stage, including all collateral rights up to the total of the invoice and authorization to collect the claim. Seller accepts the assignment even at this stage. If the value of said security exceeds seller's claim by more than 20%, seller shall in so far release the security on customer's request. Customer is – subject to withdrawal – entitled to collect fiduciarily and at seller's expense the claims assigned to seller. Seller is entitled to the collected profits which are to be handed over to him. Customer undertakes, on seller's request, to inform the third party about the assignment and to disclose the information which is necessary to assert seller's rights against the third party.

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7.6. Customer undertakes to inform seller immediately about taking possession of the reserved goods and about any impairment of his rights by third parties, as well as to support seller in any way in the intervention. The costs of the measures to maintain or to secure seller's property shall be born by customer.

7.7. Taking back and pledging of the reserved goods on the part of seller does not mean cancellation of the contract, unless the partner to the contract is a consumer.

8. Liability

8.1. The statutory period of limitation for the claims listed in sec 437 CivC, which are based on defects of quality, is one year, subject to the provisions stated below. If the object supplied or manufactured by seller is used, according to its usual purpose, for a building, and if the faultiness thereof is caused by this object, the period of limitation for this warranty claim is five years. As far as warranty claims against seller aim at indemnification for impairment of a person's life, health, body or liberty, the statutory periods of limitation shall be applicable. The statutory periods of limitation shall also be applicable if seller or his representative or person employed for performance have maliciously withheld a defect, or if the defect is the result of intent or gross negligence. In case that with respect to a concrete defect a guarantee for faultlessness was taken over, the statutory periods of limitations shall as well be applicable.

8.2. The statutory period of limitation for the claims listed in sec 437 CivC, which are based on a legal imperfection in title, is one year, unless the defect consists in a real right on the basis of which delivery of the purchase object can be demanded, or in another right entered in the Land Register. The statutory periods of limitation as defined by sec 438 CivC shall still be valid in the event that the imperfection has maliciously been withheld or is the result of intent or gross negligence. The statutory periods of limitation shall furthermore be applicable if seller has assumed a contractual warranty for faultlessness with respect to a specific defect.

8.3. The regular period of limitation for other claims against seller, which are not based on a liability for defects of quality or imperfection in title, is 24 months. This does not apply

- if claims against seller result from impairment of a person's life, health, body or liberty,
- if seller's liability is based on a breach of duty resulting from intent or gross negligence,
- or if claims resulting from the product liability act are asserted against seller.

The statutory periods of limitation shall rather apply in the above cases. Sections 196 and 197 CivC are not affected by this.

9. Cancellation

Seller can cancel the contract until shipment of the goods in case of customer acting considerably in breach of contract or of serious deterioration of his financial situation.

10. Legal venue, applicable law

10.1. Legal venue is seller's registered seat if customer is a fully qualified merchant, juristic person or special fund under public law or does not have a general domestic legal venue or has moved his domicile or usual place of abode outside the territory covered by the CPC, or if his usual place of abode is unknown at the place of filing the action. The statutory legal venue for initiating the default action shall not be affected by this.

10.2. The contract shall on principle be governed by the law of the Federal Republic of Germany. Application of the UN right of purchase (Convention dated 11 APR 1980) is explicitly excluded.

11. Final provisions

11.1. Seller shall have the right to process, in accordance with the Federal Data Protection Act, customer's data which he has obtained with respect to or in connection with this business relation.

11.2. In the event that particular items of these conditions are ineffective, the effectivity of the rest of the conditions shall by this not be affected. The ineffective provision shall rather be replaced by a valid provision which suits best the ineffective provision regarding its economical consequences.

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