

Standard Terms and Conditions for Sale and Delivery

§1 Standard provisions / scope of application

- Our deliveries and services shall be carried out exclusively on the basis of the following conditions; we will not recognize contrary or deviating conditions of the Purchaser, unless we expressly agreed to their application.
- Our Terms and Conditions for Sale and Delivery shall also apply to all future business transactions with the Purchaser.

§2 Offers / prices / payment conditions

- Our offers are non-binding. We may accept orders by the Purchaser within 2 weeks. Orders shall only become binding on us if they are accepted or confirmed in writing by us or if a written contract document is signed.
- Unless provided otherwise in the order confirmation, our prices shall apply "ex-works", excluding packaging. Statutory value added tax is not included in our prices; it will be shown separately in the invoice in the statutory amount on the date of issuing an invoice.
- Unless provided otherwise in the order confirmation, the payment of the net purchase price (without deduction) shall be due within 10 days of the invoice date. The statutory rules regarding the consequences of default in payment shall apply.
- If our claim for payment is put at risk as a consequence of circumstances subsequently arising, resulting in a significant deterioration of assets, we shall be entitled to call this due – irrespective of the time to maturity of a bill of exchange accepted pending full discharge of the debt. If the Purchaser gets into payment arrears, we shall be entitled to refrain from the further processing of the delivered goods or demand the return of the goods delivered by us by way of security. This security measure may not be considered as a rescission of the contract. The Purchaser may avert the stated legal consequences by providing security in the amount of our claim for payment put at risk.
- The Purchaser may only set off against counterclaims not expressly recognized by us or exercise a right of retention if these counterclaims have been recognized by a declaratory judgement in favour of the Purchaser.

§3 Scope of the delivery

- Deviations from measure or quality are permitted within the scope of the German Industrial Norms (DIN) or in accordance with a separate agreement; deviations from weight are permitted within the ranges customary in the market (deviation +/- 10%).
- The weights shall be determined on our calibrated scales and apply to the invoicing. Documentary proof of the weight shall be furnished by the presentation of the weighing log.
- The technical data, illustrations, drawings, data on weights and measures contained in the internet, in prospectuses, offers and other printed matter serve merely to describe the product and shall be considered as non-binding standard values. They shall not constitute a quality description and establish no guarantee of quality or durability, unless they have been expressly identified as such.
- We are entitled to make partial deliveries in reasonable amounts.

§4 Dates for delivery, delivery deadline, consequences of default

- Dates for delivery and delivery deadlines shall commence on the date of our order confirmation, however not before all details of the order have been clarified completely.
- If the Purchaser fails to fulfil contractual obligations in good time – including obligations to cooperate and accessory obligations – such as opening a letter of credit, producing German or foreign certificates, making an advance payment or suchlike – without prejudice to our rights arising from the default by the Purchaser – we shall be entitled to postpone our dates for delivery and delivery deadlines appropriately in accordance with the requirements of our procurement operations.
- The dates for delivery and delivery deadlines shall be deemed to have been complied with if during such period or at such deadline the goods can be forwarded from our warehouse. If the goods cannot be forwarded in good time due to no fault of our own, the dates for delivery and delivery deadlines shall be deemed to have been complied with when the goods are notified as being ready for forwarding.
- In cases of force majeure, the contractual obligations of both parties shall be suspended and the set dates and deadlines for the performance of contractual obligations shall be postponed accordingly; cases of force majeure shall also be deemed to be labour disputes in our own business premises and those of our suppliers, transport delays, machine breakdown, acts of sovereignty and other circumstances for which neither Party is responsible. The occurrence of force majeure must be notified to the other party immediately. At the earliest six weeks after the receipt of this notification, both contracting Parties shall be entitled to rescind the contract.
- In the event of non-compliance with the dates for delivery, the Purchaser shall only be entitled to the rights as provided in sections 281, 323 of the German Civil Code [Bürgerliches Gesetzbuch (BGB)] if it has set us an appropriate time limit for carrying out the delivery, which – in this respect in derogation of sections 281 and 323 BGB – is connected with the declaration that it will refuse to accept the performance after the expiry of the time limit. After an unsuccessful expiry of the time limit, the claim to performance shall be excluded. The Purchaser's right to rescind the contract shall in principle only apply to that part of the contract which is not yet performed. If partial deliveries made are however unsalable for the Purchaser without the delivery of the remainder of the goods, it shall be entitled to rescind the entire contract.
- If the Purchaser defaults in acceptance or breaches other obligations to cooperate, we shall be entitled to claim reparation of the damage sustained by us, including additional expenses. In the case of default in acceptance, the statutory regulations shall apply.

§5 Forwarding, packaging, passing of risk

- In the absence of a separate instruction, we shall specify the means of transport and transport routes as well as the carrier or freight forwarder.
- If the loading or transport of the goods is delayed for a reason for which the Purchaser is responsible, we shall be entitled to put the goods in storage at the expense and risk of the Purchaser in our fair judgement, take all measures we consider suitable for keeping the goods and invoice for the goods as delivered. The same shall apply if goods notified as ready for forwarding are not called within four days. If the goods or parts of the goods are ready for forwarding and the acceptance of performance and accordingly the forwarding is delayed for reasons for which we are not responsible, the risk shall pass upon the receipt of the notification and the readiness for forwarding at the business premises of the party ordering the goods. The statutory regulations regarding default in acceptance shall remain unaffected.
- The goods shall be forwarded in packaging customary in the trade and appropriate for the product, unless particularly specified by the Purchaser.
- In the event of transport damage or losses, the Purchaser must arrange for the relevant facts and circumstances to be recorded immediately upon receipt of the goods and notify the damage or loss within 3 days to the Seller.
- If requested by the Purchaser, deliveries shall be covered by transport insurance. The costs incurred through this shall be borne by the Purchaser.
- In the event of goods not destined for the territory of the Federal Republic of Germany being collected by the Purchaser or its authorized representative, the Purchaser must present to us any required export documents.
- The risk shall pass to the Purchaser when the goods are handed over to the carrier or freight forwarder, however no later than when they leave the works or warehouse.

§6 Annual orders, call-off orders

- Annual orders and call orders shall oblige the Purchaser to accept the total quantity indicated in the annual order / call order.
- Unless specific call-off times are indicated in an annual / call-off order, the total quantity must be called off in 6 partial quantities, in each case at an interval of 2 months.
- If the Purchaser fails to comply with the call-off times, we shall be entitled to deliver and charge for the total quantity four weeks after a sending a written notification pointing out the consequences of the omitted call-off notice. Our rights arising from the default by the Purchaser shall remain unaffected.

§7 Warranty, claims based on defects

- The goods shall be in conformity with the contract if they do not or only insignificantly deviate from the agreed specification at the time of the passing of risk; conformity with the contract and the freedom from defects of our goods shall be determined exclusively in accordance with the express agreements regarding the quality and quantity of the goods received. Liability for a particular intended use or a particular suitability shall only be assumed insofar as this is expressly agreed; in other respects, the risk of suitability and use shall be exclusively incumbent on the Purchaser. We shall not be liable for deterioration, perishing or incorrect handling of the goods after the passing of risk.
- Contents of the agreed specification and any expressly agreed intended use shall not establish a guarantee; the assumption of a guarantee shall require a written agreement.
- The Purchaser must inspect received goods immediately after receipt. Claims based on defects shall only exist if defects are given notice of immediately, however no later than on the 6th day after their discovery. After carrying out an agreed acceptance of performance, the notification of defects that may be determined during this acceptance of performance shall be excluded.
- In the event of notices of defect, the Purchaser must give us the opportunity without undue delay to inspect the goods complained about; upon request, the goods complained about or a sample of the same must be made available to us at our expense. In the event of unjustified notices of defect, we reserve the right to charge the Purchaser for freight and transport costs as well as the inspection expenses.

- In the case of goods sold as declassified material, the Purchaser shall not be entitled to any claims based on defects with regard to the stated defects or defects that it can usually expect to find.
- In the event of a defect as to quality, at our option, – taking into account the concerns of the Purchaser – we shall effect supplementary performance either by having defective goods replaced or by remedying the defect. If we fail to effect supplementary performance successfully within an appropriate period, the Purchaser may set us an appropriate time limit for effecting supplementary performance after whose unsuccessful expiry it may either reduce the purchase price or rescind the contract; no further claims shall exist. This shall not affect § 8.
- In the event of a defect in title, we shall be entitled to the right to supplementary performance by having the defect in title remedied within two weeks of the receipt of the goods. In other respects, para. 6 sentence 2 shall apply correspondingly.
- The limitation period in the event of a delivery of defective goods shall end – apart from in the event of intent – after the expiry of one year after the delivery. Without prejudice to this, for goods that have been used for a construction in keeping with their customary use and have caused its defectiveness, the statutory limitation periods shall apply. Having defective goods replaced or remedying defects shall not entail a recommencement of the limitation period.
- Rights of recourse by the Purchaser against us in accordance with section 478 BGB shall be restricted to the legal scope of the claims based on defects asserted against the Purchaser by third parties and shall presuppose that the Purchaser has complied with the obligation to make a complaint in respect of a defect immediately on receipt of the goods incumbent on it in its relationship with us as provided in section 377 of the German Commercial Code [Handelsgesetzbuch (HGB)].

§8 Liability for defects and total liability

a) Liability for defects

- We are liable under the statutory provisions if the Purchaser asserts claims for damages based on intent or gross negligence, including intent or gross negligence by our representatives or vicarious agents. Unless we have intentionally acted in breach of contract, liability for damages shall be limited to foreseeable, typically occurring damage or loss.
- We shall also be liable under the statutory provisions if we have culpably breached a material contractual obligation; in this case, however, the liability for damages shall be limited to the foreseeable, typically occurring damage or loss.
- Unless provided otherwise above, liability shall be excluded.
- The limitation period for defects shall be 12 months, calculated from the time of the passing of risk. The legal limitation period in the case of delivery recourse claims according to sections 478 and 479 BGB shall remain unaffected.

b) Total liability

- Further liability for damages than as provided for under para. a) above shall be excluded – irrespective of the legal nature of the claim asserted. This shall apply in particular to claims for damages due to culpa in contrahendo, other breaches of duty or tortious claims for the reparation of material damage in accordance with section 823 BGB.
- The limitation in accordance with para. b (1) shall also apply if the Purchaser claims the reimbursement of abortive expenses instead of a claim for the reparation of damage in lieu of performance.
- If liability for damages in respect of us is excluded or restricted, this shall also apply with regard to the personal liability for damages of our salaried employees, employees, staff members, representatives and vicarious agents.

§9 Retention of title

- We shall retain title to the goods until all sums due from the business relationship, including incidental claims, claims for damages and the cashing of cheques and bills of exchange have been paid in full.
- The retention of title shall continue to exist if individual sums due to us are included in a current account and the balance is struck and recognized.
- If goods subject to retention of title are processed to form a new movable item by the Purchaser, the processing shall be carried out for us, without our being subject to an obligation based on this. The new item shall become our property. In the event of processing, mixing or commingling with goods not belonging to us, we shall acquire co-ownership of the new item in the proportion of the invoiced values of its goods subject to retention of title to the total value.
- The Purchaser is only entitled to further process or install the goods subject to retention of title after taking into account the following provisions and only provided that the sums due as provided in item 6 are also actually passed on to us.
- The powers of the Purchaser to sell, process or install goods subject to retention of title in the regular course of business shall end upon our revocation as the result of a permanent deterioration of the financial situation of the Purchaser, however no later than upon a suspension of payment or upon the petition or rather commencement of insolvency proceedings regarding its assets.
- The Purchaser hereby assigns to us the sums due with all ancillary rights arising from the resale of the goods subject to retention of title – including any balance sheet claims. If the goods have been processed, mixed or commingled and we have obtained co-ownership of these in the amount of our invoiced values, we shall be entitled to the claim for the purchase price prorated to the value of our interest in the goods. If the ownership subject to retention of title is installed in a piece of real estate / building by the Purchaser, the Purchaser hereby assigns in advance the claim for remuneration resulting from this or from the resale of the piece of real estate / building in the amount of the invoiced value of the goods subject to retention of title with all ancillary rights including a claim-securing mortgage with priority before the rest. If the Purchaser sells the debt claim in connection with a genuine factoring, our claim shall fall due immediately and the Purchaser shall assign to us the claim against the factor replacing this and pass on its sales proceeds immediately to us. We accept this assignment.
- The Purchaser is authorized to collect the sums due assigned as long as it complies with its payment obligations. The authorization to collect the sums due shall expire when revoked, however no later than in the event of default in payment by the Purchaser or in the event of a significant deterioration of the financial situation of the Purchaser. In this case, we are hereby granted a power of attorney by the Purchaser to notify the customer of the assignment and collect the sums due ourselves. The Purchaser is obliged to hand over to us on demand a precise list of the sums due to which the Purchaser is entitled with the name and address of the customers, amount of the individual claims, invoice date etc. and furnish to us all information necessary for the assertion of the sums due assigned and permit a check of this information.
- If the value of the securities existing for us exceeds all sums due to us by more than 10 %, at the request of the Purchaser or a third party adversely affected by our over-securing, in this regard, we shall be obliged to release securities at our option.
- Pledges or transfers of the goods subject to retention of title and accordingly the assigned claim for the provision of security are not permitted. We must be notified immediately of seizures of property of a judgment debtor by court authorities stating the name of the person to whom goods are delivered in pledge.
- If we take back the delivered item based on the retention of title, a rescission of the contract shall only occur if we expressly declare this. We may realize the goods subject to retention of title taken back through a sale in the open market.
- The Purchaser shall keep the goods subject to retention of title free of charge for us. It must insure them to the usual extent against the usual risks such as e.g. fire, theft and water. The Purchaser hereby assigns to us the claims for damages to which it is entitled arising from the damage or losses of the above-mentioned type against the insurance companies or other parties obliged to pay damages in the amount of the invoice value of the goods. We accept the assignment.
- All claims as well as interests arising from the retention of title in all special forms stipulated in these Terms and Conditions shall continue to exist until the complete discharge from contingent liabilities that we have entered into in the interest of the Purchaser.

§10 Place of service / place of jurisdiction / applicable law / contract language

- The place of performance and place of jurisdiction for both parties shall be the registered office of the Seller. We are also entitled, however, at our option, to select the place of jurisdiction at the registered office of the Purchaser. The above regulations shall also apply in the case of cross-border transactions.
- For all legal relations between us and the Purchaser, the law of the Federal Republic of Germany shall apply; the application of UN Sales Law shall be excluded.
- The contract language is agreed as German.

§11 Severability clause

The legal effectiveness of individual provisions of these Terms and Conditions and the other contractual conditions shall not affect the effectiveness of the other provisions.

Status: 7/2006

Faulenbach Schmiedetechnik GmbH