

Terms and Conditions of Sale, Delivery and Payment

Verkaufs-, Liefer- und Zahlungsbedingungen

1. Offer and Acceptance

Our offers shall be subject to change. The Purchaser shall declare its acceptance either orally or in writing, only based on the general terms and conditions as specified below. Deviations from these terms and conditions, in particular conflicting terms and conditions of the Purchaser, shall become binding only upon our express written approval. Terms and conditions accepted by sales representatives shall not be considered accepted by us until they are executed or confirmed by us in writing.

2. Delivery

Deliveries shall be made ex station Pfaffenhofen/Ilm, Germany. For all deliveries (including carriage-paid deliveries), the risk shall pass to the Purchaser at the time the goods are handed over to the railway company, the forwarding agent, the freight carrier or to the other person entrusted with the task of carrying out shipment. Cartons shall generally be used to package goods; packaging shall not be invoiced. Return of such packaging shall not be subject to remuneration. In the case of orders whose quantities deviate from the packing units specified in our price lists, we shall be entitled to invoice the corresponding additional packaging costs.

3. Prices

The delivery shall be carried out at the prices applicable on the respective delivery date. The prices shall be understood to be in EUR ex works, including the respective applicable value added tax.

4. Standard Articles

Sample shipments shall always be considered to be outturn samples. Deviations that turn out to be necessary, as well as minor deviations, must remain reserved to us. Specified dimensions shall always be approximate; we reserve the right to make changes to product offerings and colours. In the case of print orders and/or special designs which deviate from our standard articles according to the respective applicable price list and/or catalogue, delivery quantity deviations up to 15% shall be deemed accepted. In the case of article changes, we shall be entitled to deliver the new goods only after the stock with the old design has been sold off.

5. Acceptance

In the event that any acceptance agreed upon does not take place at all or not in due time, we shall be entitled to send the goods at our option or to store them at the expense and at the risk of the Purchaser to the exclusion of our liability and to consider them delivered in accordance with the contract.

6. Payment

Our invoices shall be paid net within the time limit specified on the order confirmation. In the case that the payment deadline is exceeded, we shall be entitled to invoice statutory default interest, without this requiring any special reminder. Bills of exchange or cheques shall be accepted on account of payment only based on an express agreement. Discount and collection costs for bills of exchange, cheques or other collection papers shall be borne by the Purchaser. In the event that the Purchaser does not pay a debt under a bill in due time or if a cheque is not cashed, or in the event that the Purchaser does not comply with the payment terms in any other manner, any and all claims from our mutual business relationship shall become due immediately. Retention of payments shall not be permitted. Offsetting shall be permitted only against undisputed or legally enforceable counterclaims. Sales representatives shall have no power to collect.

7. Disturbance in Delivery, Default in Delivery

Instructions regarding the delivery time shall be complied with, where possible. However, they shall not imply any warranty or delivery commitment. Partial shipments shall be permitted. Delivery obligations and delivery terms shall be suspended as long as the Purchaser is in arrears with any outstanding liability. Claims for compensation for damages on the part of the Purchaser shall not be affected by this. If doubts arise with regard to the Purchaser's financial solvency, we reserve the right to make further deliveries subject to advance payment or to collateral securities. Claims for compensation for damages on the part of the Purchaser based on delayed delivery cannot be asserted. In the case of any delay in delivery, the Purchaser shall set a reasonable grace period of at least four (4) weeks. Following expiry of the period of grace without result, the Purchaser shall be entitled to withdraw from the contract.

8. Right of Withdrawal

In the event of instances of force majeure, mobilisation, war, orders from higher authorities, riots, strikes and lock-out, shortages in energy, raw materials and consumables as well as means of transport, tool damage and the like, we shall have the right to withdraw from the contract either in whole or in part, or our delivery obligations shall be postponed accordingly.

The latter shall apply, in particular, in the event of operational disruptions, delayed receipt of material and accessories, as well as in the case of manpower shortage. We shall also be entitled to a right of withdrawal if other circumstances occur which result in any change of the conditions known at the time the contract was concluded, provided that such change prevents, substantially impedes or increases the costs of fulfilment of the contract. Any delay of up to six (6) months shall not entitle the Purchaser to any right to withdraw the order. Compensation for damages and claims to subsequent delivery shall be excluded.

9. Defects

Notifications of defects may be made only within a period of eight (8) days after receipt of the goods in writing vis-à-vis us (not vis-à-vis a sales representative) by providing detailed information on the order data and invoice numbers and by enclosing samples. We shall be notified of hidden defects immediately after discovery, at the latest, however, eight (8) weeks after receipt of the goods. The burden of proof that the defect is a hidden defect shall be borne by the Purchaser. In the event that complaints raised due to shortfalls in quantities or quality were acknowledged on our part as being justified, we shall follow up such complaint at our option, either by replacement or by reimbursement of the undervalue. Goods subject to complaints may be returned only with our express consent. The risk related to the return of the goods shall be borne by the Purchaser. Other claims, such as costs for subsequent work and costs of labour, which took place without our approval, as well as freight costs, penalties for delay, compensation for direct damage and the like, shall be excluded. The Purchaser shall not be entitled in any case to refuse acceptance or payment based on any notice of defects claimed by the Purchaser.

As long as the goods are in the possession of the Purchaser, the Purchaser shall bear the risk. Other claims for compensation for damages shall be excluded, unless they are based on intent or gross negligence on our part or loss of life, personal injury or damage to health. In the case of any obligation to pay compensation for damages vis-à-vis non-merchants, our obligation to pay compensation shall be limited to the direct damage, including in the case of inability for which we are responsible. We will not pay more than 10% of the contract value as compensation for damages.

In the event of notifications of defects and warranty, non-merchants shall be subject to the statutory time limits.

10. Exclusion of Liability

Further claims that go beyond those specified in these terms and conditions, including those of a direct nature, in particular those that result from damage to objects which are not identical to the subject matter of delivery, shall be excluded. This shall include, in particular, claims arising from default at the time the contract is concluded, from positive violation of the contract, to the extent that they are based on slight negligence, and from unlawful acts, such as producer's liability.

11. Retention of Title

The delivered goods shall remain our property until any and all receivables from the business relationship between the Purchaser and us have been paid in full. The itemisation of individual claims in a current invoice, as well as the calculation of a balance and its acknowledgement shall not affect the reservation of title. The date of payment shall be deemed the date on which we receive the equivalent value.

If, in connection with the payment of the purchase price by the Purchaser, a liability of the Seller related to payment by bill of exchange is substantiated, the reservation of title shall not expire before the bill of exchange has been honoured on the part of the Purchaser.

The Purchaser shall be entitled to resell the goods subject to retention of title in the normal course of business. However, the Purchaser shall not be entitled to any seizure or transfer of collateral securities. The Purchaser shall be obliged to secure our rights within the framework of the resell of the goods subject to retention of title on loan. Apart from that, the Purchaser shall assign to us at this time its claim from the reselling of the goods subject to retention of title. We shall accept such assignment. In the event that the value of the collateral securities exceeds our claims to be secured by more than 20%, we shall be obliged to release such claims at the request of the Purchaser. At our request, the Purchaser shall provide us with any and all information on the claims assigned that is necessary for the collection and shall notify the debtors of such assignment. The Purchaser shall be obliged to take out adequate insurance against fire, theft and water damage for the goods subject to retention of title at its expense and to our benefit. In the event of damage, the Purchaser shall be obliged to assert its insurance claims to our benefit. The Purchaser shall ward off encroachments of third parties, e.g. seizure or confiscation, on our property and shall provide us with a corresponding notification without undue delay.

12. Place of Performance and Place of Jurisdiction

The place of performance and the place of jurisdiction for delivery and payment shall be Pfaffenhofen/Ilm, Germany. The contract shall be subject to German law. The application of the Uniform Laws of 17 July 1973 on the International Sale of Goods, as well as the Uniform Laws on the Formation of Contracts for the International Sale of Goods shall be excluded. The competent court for all legal disputes arising from the contractual relationship, including for actions based on bills of exchange and cheques, shall be the Local Court of Pfaffenhofen/Ilm and/or the District Court of Ingolstadt. For contracts on deliveries abroad, the competent court shall, at our option, also be the court of the capital of the country in which the Purchaser has its place of business. Apart from that, non-merchants and not fully qualified merchants shall be subject to the statutory regulations.

13. Miscellaneous

In the case that one or several provision(s) of the present provisions is / are or become(s) ineffective, this shall not affect the validity of the provisions in their entirety. The parties shall be obliged to replace the ineffective provision(s) by such new regulation that comes as close as possible to the meaning and purpose of the ineffective provision(s).

MAWA GmbH