

# STANDARD TERMS AND CONDITIONS

## 1. Preamble

Standard Terms and Conditions for the sale of our products apply without reservation, unless amended by express agreement accepted in writing by both parties. Offer, order acknowledgment, order acceptance or sale of any products are subject to the terms contained in this instrument. Any conditional or different terms proposed by the buyer are hereby objected to and will not be binding upon the seller unless consented in writing by the seller.

These terms govern any further individual contract as to the conditions of purchase between the seller and the buyer and exclude any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the buyer.

Any typographical, clerical or other error or omission in any sales prospectus, quotation, price list, acceptance of offer, invoice or other document of information issued by the seller are subjected to correction without any liability on the part of the seller.

The provisions of the Standard Terms and Conditions extend to standard contract conditions which are used in a contract with a merchant in the course of business only.

## 2. Orders and Specifications

No order submitted by the buyer shall be deemed to be accepted by the seller unless and until confirmed in writing by the seller or the seller's representative within 21 days after submittal.

Quantity, quality and description as well as any specifications of the goods answer the seller's quotation (if accepted by the buyer) or the buyer's order (if accepted by the seller). All specifications, such as sales prospectus, quotation etc. are strictly confidential and must not be made available to third parties.

The buyer is responsible for the accuracy of the terms of any order submitted must give the seller any necessary information relating to the goods within sufficient time to enable the seller to perform the contract in accordance with the terms.

If the goods are to be manufactured or processed by the seller in accordance with the specifications submitted by the buyer, the buyer must indemnify the seller against any loss, damages, costs and expenses awarded against or incurred by the seller in connection with or paid or agreed to be paid by the seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the seller's use of the buyer's specification.

The seller reserves the right to make any changes in the specification of the goods as statutory requirements have to be taken into consideration without any material deterioration in quality and performance.

## 3. Price of the Goods

The price of the goods is the seller's quoted price or, where no price has been quoted, the price given in the seller's current topical price list is valid. When goods are supplied for export from Germany, the seller's current price list is amended from time to time.

The seller reserves the right, by giving notice to the buyer at any time before delivery, to increase the price of the goods, if there is a general price development which is beyond control of the commercial parties (such as exchange rate fluctuations, currency regulations, duty liabilities, significant increases in the costs of material and production). Furthermore in regard to any change in the circumstances of the delivery or in the event of falling short with the minimum order volumes as quoted in the respective price lists.

Except otherwise stated under the terms of any quotation or in any current published price list and unless otherwise agreed in writing between the buyer and the seller, all prices are given by the seller on an ex works basis (incoterms 2000), and where the seller agrees to deliver the goods otherwise than at the seller's premises, the buyer is liable to pay the seller's charges for transport, packaging and insurance.

The price is exclusive of any applicable VAT, which the buyer is liable to pay to the seller in addition. If the sale is not subject to the application of VAT (e. g. EU domestic trade) the buyer is exempt from VAT, unless the buyer fails to submit his VAT-Ident number in his order or fails to provide the required documentation in order to prove the exemption from VAT, in that case the seller is entitled to invoice VAT all the same. If the tax authorities levy VAT on an invoice subsequently, the buyer must indemnify the seller or pay the respective VAT to the seller.

## 4. Terms of Payment

The buyer must pay the amount invoiced within 20 days after the date of the seller's invoice. Payment are to be effected by interbank payment transaction only; no cheque or bill of exchange are in line with payment obligations.

If the buyer fails to make any payment on the due date then, the seller at his discretion is without prejudice to any rights or claims entitled to:

- cancel the contract or suspend any further deliveries to the purchaser; or
- charge the buyer interest on the amount unpaid, at a rate of 7 per cent per annum above the European Central Bank's reference rate, until full and final payment has been made. The buyer is entitled to prove that delay of payment caused no or little damage only.

## 5. Delivery

The buyer is to collect the goods at the loading premises at any time after the seller has notified the buyer that the goods are ready for collection or, if some other place for delivery has been agreed upon the goods are to be delivered to that place.

If delivery of goods is made in bulk, the seller reserves the right to deliver up to 10 % more or 10 % less than the quantity ordered without any adjustment in the price, and the quantity so delivered is deemed to be in accordance with the quantity ordered.

If a fixed time for delivery has been agreed upon contractually, the seller is entitled to postpone the delivery date up to four weeks by written notice which has to be submitted to the buyer three weeks prior to the original delivery date.

If a fixed time for delivery is provided for in the contract, and the seller fails to deliver within that time or any extension thereof granted, the buyer is entitled after giving notice to the seller within a reasonable time in writing, to claim a compensation in the maximum amount of 0,5% per week of the net price payable for the respective single order, unless it can be reasonably concluded from the circumstances of the particular case that the buyer has suffered no loss.

Such a restriction does not apply if to seller's knowledge the business had to be settled on a fixed date or if the delay was caused by gross negligence or intention by the seller, his agents or representatives or if there was any other breach of any essential contractual obligation.

If for any reason whatever the seller fails within such time of effect delivery, the buyer is entitled by notice in writing to the seller to fix a deadline after the expiry of which the buyer is entitled to terminate the contract. The buyer may also recover damages from the seller if the latter is to be made responsible for. Damages may only be claimed by the buyer if the seller (or his representatives) intentionally or negligently failed to fulfil the contract. The seller, nevertheless, is held responsible for not fulfilling any further essential contractual obligation.

If the buyer fails to accept delivery on the due date, he nevertheless must make any payment conditional on delivery as if the goods had been delivered. The seller will arrange for the storage

of the goods at the risk and costs of the buyer. If required, the seller will insure the goods at the cost of the buyer.

In the event of forwarding the delivered goods to a third party, the buyer is solely responsible to comply with any possible export restrictions, customs regulations or any other statutory or administrative regulations and must indemnify the seller for any liability arising from the possible infringement of such restrictions, regulations and orders.

## 6. Transfer of Risks

Risk of damage to or loss of the goods is to be passed on to the buyer as follows:

- in the case of goods to be delivered otherwise than at the loading premises, at the time of delivery or, if the buyer wrongfully fails to take delivery of the goods, the time when the seller has tendered delivery of the goods;
- in the case of goods to be delivered at the seller's premises („ex works“, Incoterms 2000) at the time when the seller notifies the buyer that the goods are available for collection.

## 7. Retention of Title

Notwithstanding delivery and the passing on of risks in the goods, or any other provisions of these conditions, the property in the goods shall not pass on to the buyer until the seller has received full payment.

The seller has absolute authority to reclaim, sell or deal otherwise with or dispose of the goods in which title remains vested in the seller.

Until the property in the goods passes on to the buyer, the buyer must keep the goods as the seller's fiduciary agent, and he must keep the goods properly stored, protected and insured.

Until full payment the buyer is entitled to resell or use the goods in the ordinary course of business transaction, but he must give account to the seller for the proceeds from the sale including insurance proceeds, and must keep all such proceeds separate from any moneys or properties belonging to himself and third parties.

If the goods are processed or reshaped by the buyer and if processing is done with parts that the seller has no claim on the seller nevertheless becomes co-owner of the goods. The same applies if the seller's goods are completely reshaped and mixed with other goods.

If third parties take up steps to pledge to otherwise dispose of the goods, the buyer must immediately notify the seller in order to enable him to go into court in accordance with § 771 of the German Code of Civil Procedure. If the buyer fails to do so in due time he will be held liable for any damages caused.

The seller shall on demand of the buyer release any part of the collateral if the value of the collateral held in favour of the seller exceeds the value of the claims being secured. It is the seller's decision to release those parts of the collateral suitable for him.

## 8. Warranties and Exclusion Clauses

The buyer must examine the goods as required by German Law according to § 377 of the German Commercial Code and in doing so bring forward any objections. The buyer is not entitled to return the goods unless at the request of the seller.

The seller guarantees that all items delivered under this agreement will be free from defects in material and workmanship, conform to applicable specifications, and, to the extent that detailed designs have not been furnished by the buyer, will be free from design defects and suitable for the purposes intended by the buyer.

The seller is not liable for the goods being fit for a particular purpose unless otherwise agreed upon. The above warranty given by the seller is subjected to the following conditions:

- the seller shall not be liable in respect of any defect in the goods arising from any design or specification supplied by the buyer;
- the seller shall not be liable under the above warranty if the total price for the goods has not been paid by the due date for payment;
- the above warranty does not extend to parts, materials or equipment manufactured by or on behalf of the buyer unless such warranty is given by the manufacturer to the seller.

This warranty does not cover defects in or damage to the products which are due to improper installation or maintenance, misuse, neglect or any cause other than ordinary commercial application.

Any discharge from liability will be void if a defect results from a grossly negligent or intentional breach of contract on the part of the seller. The same applies if the seller may be held responsible for the breach of any other essential contractual obligation.

The buyer is entitled to demand the delivery of any substitute goods, or the repair or a reduction of the purchase price if so provided for in the terms of the individual contract of sale.

Where any valid claim in respect of any goods which is based on any defect in the quality or condition of the goods or their failure to meet specification is notified to the seller in accordance with these conditions, the seller shall be entitled at the seller's sole discretion to either replace the goods free of charge or repair the goods. If the seller is neither ready nor able to either repair or replace the goods the buyer shall be entitled at the buyer's sole discretion to claim a reduction of price or the cancellation of the contract.

If the buyer is requested by the seller to return the goods, the buyer shall prior to returning the goods submit the completed return form (see under "download" on [www.wikus.com](http://www.wikus.com)) and attach the completed return form to the transport documents. Should the buyer fails to submit the return form to the seller or to attach the return form to the transport documents or to fix the return form visibly on the returned goods and pursuant to such year the identification of the returned goods is hindered or impossible, all and every warranty claims of the buyer shall be excluded.

## 9. Miscellaneous Clauses

The seller reserves the right to improve or modify any of the products without prior notice, provided that such improvement or modification shall not sustainably affect the form and function of the product.

These terms supersede and invalidate all other commitment and warranties relating to the subject matter hereof which may have been made by the parties either orally or in writing prior to the date hereof, and which shall become null and void upon availability of these terms.

These terms shall be treated confidentially by either party unless otherwise agreed upon in writing.

## 10. Choice of Law; Place of Jurisdiction

This agreement shall be governed by and construed in accordance with non-harmonized German law under the exclusion of the United Nations Convention on the sale of goods and each party agrees to submit to the jurisdiction of the courts having exclusive jurisdiction for the seller.

The seller has the right to bring a claim before a court at the buyer's principal place of business or at his discretion before any other court being competent according to any national or international law.