

General Delivery, Payment and Warranty Conditions

1. Offer and conclusion of contract

- a) All businesses are subject to the conditions specified below. They also apply to current business relationships as well as to all future business relationships with the ordering party, even if they are not specifically confirmed in individual cases.
- b) Any deviating conditions on the part of the ordering party are hereby expressly repudiated. Said conditions shall not obligate us, even if we do not object on completion of the contract and execute delivery without reservation to the ordering party while being aware of deviating conditions on the part of the ordering party. The ordering party's conditions shall only apply if we have expressly confirmed them in writing.
- c) In the event that the ordering party objects to the validity of our sales and delivery conditions, we shall have the right to withdraw from the contract.
- d) Contracts shall only come into effect once we have transmitted our confirmation of order in writing or by electronic means. Until that happens, our offer remains unbinding.
We may provide confirmation of order up to 30 calendar days following receipt of the customer's order. This confirmation of order shall be solely decisive for the scope of the delivery or service.
- e) Any typing and calculation errors, as well as other readily obvious irregularities in offers, written orders or confirmation letters shall not be binding upon us. Said errors shall be checked by the ordering party without delay and can be corrected by us at any time without liability.
- f) Any assurances of properties, of special uses and applications of our products, oral agreements – insofar as they alter our general sales, delivery and payment conditions, subsidiary or subsequent contractual agreements, shall only be binding for us on our written confirmation.

2. Prices

- a) Unless otherwise expressly agreed, the prices quoted are for deliveries ex our warehouse or ex factory.
- b) Packaging, transport and freight costs shall be separately invoiced. There shall be no entitlement to remuneration for self-collection. Pallets on loan remain our property and shall be returned in good order and condition on the next delivery. If they are not returned within one month following delivery, we shall invoice for the costs incurred for returning.
- c) Unless otherwise provided for in the confirmation of order, the pricing shall ensue based on our valid price list applicable on the date of delivery. Should the despatch be delayed for any reasons caused by the purchaser, then the date, at which the goods were ready for despatch, shall apply as the calculation date.
- d) If fixed prices are agreed in the contract, then we shall be bound to these prices for a period of 4 months following conclusion of contract. If longer delivery periods are agreed upon, then in the event of increased material or labour costs, we shall be entitled to apply a pro rata surcharge based on our original price calculation as compensation for these cost increases.
- e) Value-added-tax is not included in our prices, and will be calculated according to the statutory amount applicable on the date of invoicing.
- f) For small orders a small-quantity surcharge will be calculated, dependent upon the size and quality of the order.

3. Delivery

- a) The sizes, weights and quantities determined by our despatch department shall be decisive. Part deliveries are permissible. Increased and decreased deliveries by up to 20 % are admissible.
- b) We reserve the right to make minor changes to samples.
- c) Delivery periods and dates are approximate and subject to confirmation. They shall only become binding when confirmed by us as such in writing. Delivery times are met if we announce the goods as ready for despatch within the agreed period.
- d) The delivery period shall be extended by the amount of time, in which we are not (or not timely) supplied ourselves.

An agreed delivery period shall only begin in the moment, in which the ordering party has submitted to us the documents he is to provide us with, any necessary approvals, clearances and plans.

Delivery periods shall be extended by a suitable amount if the ordering party does not meet the agreed conditions of payment or other contractual conditions.

The above shall not apply if we are responsible for the delay.

- e) The delivery period shall be extended in the event of unavoidable events beyond our control occurring, in particular, in the event of operational disruptions, intervention on the part of official bodies, shortage of raw materials, labour disputes, etc. by the duration of the hindrance. Should these same reasons render the delivery impossible, we shall be relieved of any obligation to deliver. In this case we will notify the contractual partner of this impossibility without delay and accordingly remunerate any funds already received.
- f) We shall – also in the event of a delivery date determined by a calendar date – only then enter into default, if we are set a delivery date of two weeks, unless we have previously seriously and definitively refused performance. We shall only be liable for delay and non-performance damages up to a maximum of double the order value of the delayed delivery, unless we or our vicarious agents have acted in a wilful or grossly negligent manner.
- g) The ordering party can only withdraw from the contract in the event of delays in delivery, if we are responsible for the delay and an appropriate grace period granted to us has elapsed without remedy.
- h) For call orders, we can – on completion of a 6-month period following confirmation of order – grant a grace period of 14 days for collection and then invoice the uncollected goods, as well as calculate appropriate storage charges to the amount of 0.5% of the price of the delayed delivery for each further commenced week until collection, up to a total amount not exceeding 5% of the delayed delivery. The contractual parties reserve the right with regard to evidence of higher or lower storage costs. The same shall apply, if the despatch or delivery of goods is delayed by more than one month following notification of readiness for despatch at the request of the ordering party.
- i) With regard to delivery dates for deliveries abroad, we shall only be bound by the dates, if all the factual and technical details as well as all export and import arrangements can be clarified in time.

- j) All deliveries shall take place on the basis of EXW Incoterms 2010.
- k) Insofar as we select the transporting company/carrier for the customer in exceptional cases, we shall only be liable for due diligence in the selection.

4. Packaging and transport risks

- a) The risk of accidental loss, destruction and deterioration of the goods shall devolve upon the ordering party on the occasion of the loading process. Should the despatch be delayed for reasons, for which we are not responsible, then the transfer of risk shall ensue with the notification of readiness of despatch.
- b) The ordering party shall dispose of the transport packaging. Should the transport packaging be returned to us, the ordering party shall bear the costs of said return to us. In this case, the transport packaging must be clean, free from extraneous matter and sorted in accordance with different types of packaging. Otherwise, we shall be entitled to demand from the ordering party a refund of the additional costs incurred in disposing of said packaging.

5. Retention of title

- a) The goods delivered shall remain our property until all claims – also those occurring in the future – against the ordering party resulting from the business relationship are met. For claims included in the current invoice, the retention of title shall apply to the relevant accounting balance.

The contract shall not be rescinded on the return of the goods. In the event of a default in payment on the part of the customer, we shall be entitled to take back the goods without prior withdrawal from the contract. The goods will be credited with the actual proceeds following deduction of the disposal and redemption costs.

- b) The customer shall undertake to insure our property against fire, water and theft. The claims against the insurance shall be assigned to us.

In the event that the ordering party should not at our request furnish proof of an adequate insurance, we shall then be entitled to insure the delivery item against theft, breakage, fire, water and other damage at the expense of the ordering party..

- c) In the event of seizures, confiscations or other disposals or encroachments by third-parties, the ordering party shall notify us without delay.
- d) The ordering party is permitted to process the goods in the proper course of business or to resell them on agreement of a prolonged or extended retention of title. He shall not be entitled to any other dispositions. The right of the ordering party to process and sell the goods shall lapse, should he not meet his payment obligations to us, grossly infringe the contracts concluded with him in any other way or suffer a deterioration of assets. Deterioration of assets includes suspension of payments, excessive indebtedness, filing of an application for the opening of insolvency proceedings or any other substantial change in the customer's financial situation, which may endanger our securities.
- e) We shall be entitled to undertake any processing of the reserved goods. In the case of joint processing for several suppliers, we shall be entitled to exercise the right of co-ownership in accordance with §§ 947 f. German Civil Code (BGB).

In the event that the customer should combine or merge our goods with goods of his own in such a manner that the goods of the customer are regarded as the principal goods, the customer shall already cede to us a share of the ownership at the ratio of the value of our goods to the ratio of the principal goods. Our share of the co-owned goods shall remain in possession of the customer, entrusted by us for their safekeeping.

- f) The ordering party shall already now assign to us our first preference partial payment equivalent to our ownership proportion arising from claims and subsidiary rights existing from the resale. He shall not be entitled to agree to a prohibition of assignment.

In the event of partial payment on the part of a customer's debtor to the customer, the claims assigned to us shall be deemed to be the last claim paid.

The customer shall be entitled to collect the claims assigned to us in the ordinary course of business. This authorisation shall elapse in the cases described in Clause d). The customer shall then be obligated to assist in the collection of these claims.

- g) We shall undertake – at the customers request – to release the securities due to us under the above conditions at our discretion, insofar as their realisable value exceeds the total claim to be secured by more than 20%.
- h) For deliveries abroad, then unless the title of retention is not permitted by the laws of another country, but said laws do permit us as vendor to reserve other rights to the goods supplied, we shall be entitled to exercise all rights of this kind. The ordering party shall undertake to cooperate in such measures on our part.

6. **Payment**

- a) No discount shall be granted for payments for invoices for mould costs, parts of mould costs as well as mouthpiece costs and parts of mouthpiece costs and other tools. Payments for the normal deliveries – trade deliveries – shall be made without deduction within 30 days after invoicing. Any bank charges arising from payment in the country of the purchaser shall be rendered by the purchaser. For payment made within 10 days following the invoice data, we will grant a 2% discount, provided that all older invoices have been paid in full.
- c) First orders shall be paid on delivery.
- d) Advance payments or payments on account shall not generate interest.
- e) Payments by bill of exchange shall require a special agreement.. Any acceptance of discountable bills of exchange or cheques will only be made for the purpose of payment, and shall not be deemed as cash payment, so that there shall be no discount entitlement. Discount charges shall be borne by the purchaser and will be immediately due.
- f) In the event of a payment default, the ordering party shall pay default interest to the amount of 8% above the respective base rate of the European Central Bank, with no requirement for notice of default. This shall not apply, provided that the ordering party show evidence that he is not responsible for the delay in payment. We reserve the right to assertion regarding further damages.

Should the ordering party fall into default of payment more than once within a period of 12 calendar months, or we become aware after conclusion of the contract of circumstances, in which a cautious businessman would only carry out deliveries against advance payment or on a delivery versus payment basis, we may deem all our invoices immediately due without regard to the agreements made. In such cases we shall also be entitled to carry out outstanding deliveries only against advance payment or on deposit of securities, and withdraw from the contract following a suitable period of grace and claim damages on the grounds of non-fulfilment. Cases of suspension of payment, composition proceedings or insolvency on the part of the ordering party shall also result in all our

claims becoming immediately due without regard to the agreements made. At the same time, any discounts, bonuses, etc. promised in the above cases shall be deemed to have forfeited, and the ordering party shall be obligated to pay the gross prices invoiced.

- h) Payments shall only be valid if they are made directly to us. Payments to employees or representatives shall only be effective if a power to collect has been provided.
- i) Offsetting against asserted counterclaims shall be excluded, unless the counterclaim is undisputed, acknowledged by us or legally established. The ordering party shall be entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship and is undisputed, acknowledged or legally established.

7. Warranty

- a) The ordering party undertakes to immediately inspect the products delivered by us, even if they are packaged. Obvious defects must be reported in writing within one week by the latest, calculated from the date of delivery. Hidden defects must be reported in writing one week by the latest following discovery.
If the report is not made or delayed, the ordering party shall lose his entitlement regarding any existing defects in the goods supplied.
- b) We guarantee that the products delivered by us are free from material defects.
The criterion for conformity of the products delivered shall be the respective contractual product description and their purpose of use in the contract concluded with the ordering party. Minor product changes with regard to construction, form and design as well as the data specified in the description and minor changes to our services shall be accepted by the ordering party, insofar as they are reasonable or deal with tolerances of commercial quantities, quality and manufacture.
Assembly instructions shall only be supplied if expressly agreed in writing.
- c) Information published in our catalogues, descriptions, illustrations, drawings etc. as well as specifications on dimensions and weights and performance figures only serve to identify the properties of our products and shall constitute neither warranted properties nor guaranties. Our employees, sales representatives or marketing intermediaries shall not be entitled to give any warranties or other promises.
The submission of samples or specimens does not in itself constitute the basis for a guarantee or assurance.
- d) It shall be incumbent upon the ordering party to assess whether the product supplied by us is suitable for the specified purpose of use.

It shall be the responsibility of the ordering party to perform any inspections and tests to evaluate the suitability of the product in practice etc.

- e) Warranty claims shall be excluded if the defect occurs through incorrect handling as a result of non-compliant use, incorrect installation or adverse effects caused by particular external influences after the transfer of risk and not contractually provided for.
Warranty claims shall also be excluded if the ordering party himself or a third-party has performed repair work, without said work being agreed with us and without being absolutely necessary.
- f) In the event of a defect, we shall be liable to repair the defect or supply a replacement product free of defects (subsequent fulfilment) at our discretion. In the case of subsequent fulfilment, we shall undertake to bear all the necessary expenses for the purpose of the subsequent fulfilment, particularly transport, travel, labour and material costs, unless said costs are increased due to the product being transferred to another place than the place of performance. Any parts rejected by the ordering party shall only be returned to us following

our request, and, where required, in proper packaging together with the packing slip containing the order number. If the rejection proves to be justified, we shall bear the costs of the return transport.

Should we not provide the subsequent fulfilment within a reasonable period of time set by the customer of at least 2 weeks following our acknowledgement of the defect, then the ordering party shall be entitled to assert his legal rights. No grace period shall be required if we have refused the subsequent fulfilment or if the subsequent fulfilment should be impossible.

- g) The ordering party may only demand compensation instead of performance, if delivery of the defect product would represent a substantial infringement of obligation. Claims for compensation due to possible collateral damage occurring independently of the subsequent fulfilment (e.g. loss of production, loss of profit, claims due to delayed delivery to the ordering party's customers, etc.) may only be asserted, once a reasonable written period of time for the subsequent fulfilment has lapsed fruitlessly.
- h) The warranty period shall be 12 months following the transfer of risk. This shortened warranty period shall not apply in cases of intent or fraud. A warranty for subsequent performance work carried out or for spare parts delivered as part of the subsequent performance shall only apply until expiry of the warranty period for the original delivery.
- i) If a subsequent fulfilment period has elapsed without result, we shall be entitled to request the customer that he declare his further warranty rights to us within a deadline period of one month. Should he not submit said declaration within this period, warranty rights shall be excluded. This, however, shall only apply, provided that we have expressly drawn his attention to this legal consequence in our request containing the deadline.
- j) The ordering party may only raise claims against us in respect of product defects, on account of which he himself has been taken into recourse, insofar as he has not agreed on any provisions extending beyond the domestic statutory provisions, particularly those concerning warranty liability.

8. Custom-made products, property rights

- a) Insofar as products are manufactured based on drawings, details or quality samples specified by the ordering party, then the ordering party shall exclusively bear liability for any third-party property rights violated by the product. In the event of any violation of property rights, the ordering party shall exempt us from all claims on the part of third-parties.
- b) Insofar as we deliver any products based on our own drawings and designs, we shall be liable for these products infringing any third-party property rights within the Federal Republic of Germany. We shall assume no liability in respect of any property rights registered or existing outside the Federal Republic of Germany.
- c) Our drawings, samples and models remain our property and may not be disclosed to third-parties. You shall be obligated to return them to us on our request, without the ordering party being entitled to a right of retention.
- d) The warranty period for our liability shall apply in compliance with Clause 7f) accordingly.
- e) Should justified third-party claims be asserted during the warranty period, we may at our discretion procure the right of use for the delivered products concerned at our own expense, or

modify the delivered products – taking account of the contractual purpose – in such a manner that property rights are not infringed, or supply comparable products, which do not infringe property rights.

- f) A warranty claim against us shall be excluded, in the case that the ordering party himself should conduct negotiations with third-parties, or conclude agreements without our agreement.

9. Tools and fixtures

- a) As a matter of principle, tools and fixtures shall remain our property, irrespective of whether the ordering party has paid for them in whole or in part.
- b) If it is agreed that the ordering party shall assume the costs for the tools, then half of the agreed costs of the tools shall be paid on the order being placed, and the other half on presentation of the 1st reference samples.
If amortisation has been agreed with the delivery, then the amortisation is taken by crediting 5% of the net value of the product in the current deliveries until full settlement of the costs of the tools.

10. Compensation for damages

- a) We shall only be liable for damages, irrespective of any legal basis:
- if we, our legal representatives or our vicarious agents have acted in a wilful or grossly negligent manner;
 - if we have provided warranties, for the performance of such warranties in the agreed scope;
any warranties require the written form and must be expressly identified as such;
 - in the event of injury to life, body and health;
 - in cases of other mandatory legal liability (e.g. German Product Liability Act, Environmental Liability Act and similar).
- b) In cases of petty negligence, we shall only be liable – excluding the cases stated in Clause 1 – for damages, irrespective of any legal basis, in the event of our infringing essential contractual obligations. In the event of petty infringements of essential contractual obligations, the amount of our liability for damages shall be limited to the replacement of the typical, foreseeable damage. The customer shall undertake to draw our attention to particular risks, atypical possibilities of damage and unusual amounts of damage before the conclusion of contract in the written form. We shall assume no liability for any consequential damages exceeding this amount, lack of economic success, indirect damages and for damages resulting from third-party claims.
- c) If only a specific product with regard to the type is covered by the delivery contract, then our liability in this case shall also be exclusively determined according to the above provisions. Any liability for damages independent of fault shall be excluded.
- d) The liability provisions specified above shall also apply to legal claims on the part of the customer for reimbursement for futile expenditures as well as the personal liability of our employees, workers, personnel, representatives and vicarious agents.

11. Other rights and obligations

In the event of a culpable infringement of our obligation to provide protection or consideration in accordance with § 241 Para. 2 BGB not directly connected with the delivery of the products, the ordering party shall only be entitled to assert compensation claims and exercise his right to withdraw from the contract, provided we have previously been notified in writing and an appropriate period of grace has been set. Notification of said shall not be required, insofar as we or our representatives or vicarious agents act in a wilful or grossly negligent manner, or as a result of injury to life, body and health.

12. Other

- a) Place of performance and legal venue is Detmold.
- b) German law shall exclusively apply to all orders placed with us, to the exclusion of the UN Sales Convention (CISG).
- c) Should individual clauses of these conditions be ineffective, this shall not affect the effectiveness of the remaining clauses. The parties shall then undertake to replace any ineffective clause with an effective agreement, which comes closest to the intention manifested herein.
- d) These conditions shall only apply to deliveries to companies as provided for by § 14 BGB and a legal entity of public law or separate funds under public law.

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