

Conditions of Sale Vesuvius GmbH

1. General

- 1.1. Solely these Terms & Conditions shall apply to any and all deliveries, including those made under future contracts, any arrangement in derogation hereof requiring our written confirmation. At the latest, taking delivery of our goods shall be deemed the acceptance of the subject Terms & Conditions.
- 1.2. Our Terms & Conditions of Sale apply only to entrepreneurs, business persons, legal entities under public law and special funds.

2. Quotations

Quotations shall always be understood to be without commitment, the contract only taking effect when the order has been accepted in writing or the goods have been physically delivered.

3. Scope of supply

- 3.1. The scope of supply shall be governed by the mutual written agreement between the parties and, failing such agreement, our written acceptance of order shall apply.
- 3.2. The documentation accompanying the quotation (such as illustrations, drawings, weight data) is approximate unless expressly stated to be binding. Our formulations (including any ingredient percentages or mixing ratios of our goods) shall be considered approximate averages only. We reserve title, ownership, and copyright with respect to price quotations, drawings and other documents, which shall not be disclosed to any third party. Quotation-related drawings and other documents shall be promptly returned to us on request if the order is not placed with us.
- 3.3. The calculation for any sale by weight shall be based on the weight as determined by us or the railway official in charge, unless otherwise stipulated.

4. Prices

Unless otherwise agreed, prices shall be deemed ex works prices plus value-added tax (VAT) at the current rate. The prices we state in our quotations or acceptance of order are based on the raw material prices, labour, fiscal and social security taxes, freight rates, etc. applicable to the cost of goods sold when contracting. If these or other cost elements change by the time of delivery, we are entitled to commensurately raise our prices.

5. Passage of risk

Risk passes to the buyer when the goods have been handed over to the carrier or have left the works or warehouse, whether or not we bear the cost of transportation. We will select the means of transportation we deem suitable, with the same care we exercise in our own affairs. While we can arrange for transport insurance at the buyer's cost and expense, we are not obligated to insure the goods.

6. Delivery

- 6.1. The goods will be delivered within the agreed delivery period ex works or warehouse. Partial shipments are permitted and shall be deemed self-contained deliveries.
- 6.2. Any circumstance beyond our control which renders the manufacture or supply and delivery of goods ordered either impossible or difficult - including any action taken by a government agency or other public authority, plant or equipment breakdown or failure, unforeseeable shortage of labour, raw-material scarcity (whether in our works or at the facilities of any of our suppliers, subcontractors, utilities or providers), non-availability of transportation or energy, war, strike, lockout will release us from the obligation to supply and deliver, as long as such circumstance or its aftermath continues. If, in any such event, the agreed delivery deadline is exceeded by more than double the original period or by 6 weeks (whichever is longer), either party may rescind and cancel that part of the contract which is affected thereby. The rights to rescind for other reasons remain unchanged by this. If we default delivery, the buyer, after the lapse of a reasonable respite granted in accordance with statutory regulations, may withdraw from the contract to the extent that the underlying goods have not been notified ready for shipment by the expiration of said respite.

7. Liability for defects

7.1. For defects in the goods at the date of the passage of risk, we perform, initially according to our selection, subsequent fulfilment through improvement repair or replacement delivery. Claims arising because of defects in the goods, incorrect deliveries and variances of quantity - also excess deliveries - are to be notified immediately in writing, as far as these are detectable through reasonable investigations, however 14 days at the latest after receipt of the goods.

7.2. If the subsequent fulfilment fails, the buyer can pursue on-going legal rights.

7.3. If the buyer decides to rescind the contract because of a legal or redhibitory defect after failed subsequent fulfilment, he is not entitled to any claim for compensation because of the deficiency.

If the buyer claims for damage compensation subsequently to failed fulfilment, the goods remain with the buyer, if this is reasonable for the buyer. The claim for damages is limited to the difference between purchase price and value of the defective object. This does not apply if we have caused the contract violation deliberately or through gross negligence.

7.4. The claims for defects are subject to the statute of limitations one year after delivery of the goods. In a deviation from this, claims for defects are subject to the statute of limitations in the case of an object which has been employed for a building, in accordance with its usual manner of utilisation, and whose defective state it has caused in two years. This does not apply however, provided that the object has been employed for a building only after expiration of the limitation period mentioned in 7.4. first sentence. In these cases, any defect claims are subject to the statute of limitations one year after delivery .

7.5. If a used object is sold, we are not liable for possible defects unless we have wilfully concealed the deficiencies.

7.6. As composition of the goods, only the manufacturer's product description fundamentally applies. Public representations, extolling or advertising by the manufacturer do not represent any contract-appropriate composition information of the goods.

7.7. The buyer does not receive warranties in the legal sense from us.

8. Payment

- 8.1. Unless otherwise agreed, payment shall be made net, without any deduction, to our company's registered office. If the buyer fails to pay by due date, the buyer is obligated to pay interest at the rate of 8% above the base interest rate.
- 8.2. Upon lapse of the buyer's credit standing, we are entitled at our discretion to demand advance payment or collateral security, or to rescind the contract and revoke any credit we may have granted. The same shall apply mutatis mutandis if the buyer has defaulted payment or if insolvency proceedings are instituted, or a petition for insolvency proceedings is filed against the buyer. However, a reasonable respite or extension will be granted upon default in payment before we rescind the contract.
- 8.3. Upon the buyer's default in payment, we are entitled, even without exercising our right of rescission and granting any respite or extension, to demand at the buyers cost and expense, the temporary redelivery of the goods we own and hold title to.
- 8.4. The buyer will not be entitled to offset any counterclaims unless these are uncontested or have become res judicata. Moreover, the buyer is only entitled to balance any counterclaim arising from the same contract.

9. Seller's lien and reservation of title

- 9.1. Any and all goods delivered shall remain our property until payment in full of all accounts receivable, arising for us with the buyer, on whatsoever legal grounds, has been received by us. In a current account relationship, the sellers lien shall be deemed collateral or any balance in our favour.
- 9.2. The buyer has the right to use or resell the Conditional Goods in the scope of ordinary day-to-day business. The buyer hereby assigns to us all of the claims arising from the resale of Conditional Goods. We herewith accept the assignment. This shall also apply to any Conditional Goods that were processed, mixed or combined or incorporated in or with other goods. To the extent that current accounts are maintained between the buyer and buyer's customers for the resale of the Conditional Goods we supplied, the balance from time to time thereunder due to the buyer shall be deemed assigned in advance to us. We will not disclose such assignment as long as the buyer complies with its payment obligations. The buyer has the obligation to disclose the names of his customers and inform them of this assignment on demand. The buyer is authorised to directly collect assigned receivables from any such sale, where we reserve the right at any time to revoke such authority.

- 9.3. No lien may be granted on, nor any security interest created in, the Conditional Goods without our prior approval. If the Conditional Goods are processed by the buyer, such processing is done on our behalf (cf. Art. 950 Par. 1 German Civil Code "BGB"). If the Conditional Goods are transformed or processed by the buyer together with, or united to, other assets not owned by us, we will pro rata acquire constructive joint title to and ownership in the newly formed product in the proportion which the value of the Conditional Goods (gross invoice amount including VAT) bears to the invoice value of such other assets at the time of their processing, transformation or mixing. Such new sole or joint property shall be kept by the buyer in custody on our behalf. If the mixing or uniting is implemented in such a manner that the object of the customer is to be regarded as a main object, then it is binding that the customer assigns to us co-ownership proportionally and also keeps the object safe for us.
- 9.4. In the event that the total realisable value of security interest assigned to us exceeds the accounts receivable by us by more than 10%, we agree, at the buyer's request, but at our sole discretion, to release any collateral security furnished in excess as aforesaid.

10. Liability

- 10.1 Any liability whatsoever for any loss or damage other than directly occasioned to the goods delivered, as well as for any other indirect or consequential damages is expressly excluded. This liability exclusion does not apply if it is attributable to intent, gross negligence on the part of executive or managerial staff, or the negligent violation of essential contractual duties. As essential contract duties are to be understood whose fulfilment generally only allows the proper realisation of the contract and may trust in their observance of the contracting partners regularly. In the case of violation of essential contractual duties, our liability is confined to the reasonably foreseeable loss or damage typical of the contract. Moreover, our liability is not excluded in cases where overriding, binding provisions of German product liability legislation apply, in case of injury to life, limb or health and in case of delivery of warranty assurances which, according to their content, aim to protect the buyer against such damages.

11. Final clauses

- 11.1. Place of performance for both parties hereto shall be our registered office. If the buyer is an entrepreneur, business person, legal entity under public law, or a special fund, sole place of jurisdiction shall be Borken, Germany (even for actions relating to cheques, drafts or bills of exchange). However, we are also entitled to sue the buyer before the courts of buyer's general residence.

- 11.2. We are entitled, under the terms of German data security and protection legislation, to process the buyer-related data which we obtained under, or in connection with, the business relationship with the buyer, whether such data originates from the buyer directly or a third party.
- 11.3. The privity of contract between us and the buyer (especially any non-German buyer) shall be governed by, and be subject to, the laws of the Federal Republic of Germany. Application of the UN Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.