

GENERAL TERMS AND CONDITIONS OF SALE

VERSION MAY 2020

I. SCOPE

1. Our General Terms and Conditions of Sale apply to all legal relationships between the contracting Parties, including those not yet entered into. Any agreements that deviate from these General Terms and Conditions of Sale shall only be valid if confirmed by us in writing.
2. Any general terms and conditions issued by the respective other Party - hereinafter referred to as the "Buyer" - shall not constitute part of the Contract unless expressly confirmed in writing.
3. Our General Terms and Conditions of Sale only apply to entrepreneurs as per Section 14 of the German Civil Code (BGB) and Section 2 Paragraph 1 (1) and (3) of the German VAT Act (UStG), legal entities under public law and special funds under public law, except in conjunction with tendering procedures.
4. Should one of the provisions of our General Terms and Conditions of Sale be or become unenforceable, this shall not affect the enforceability of any of the remaining provisions.

If a clause proves ineffective, the Parties hereby agree to promptly conclude a legally enforceable agreement corresponding to the objective/purpose of the Contract.

II. QUOTE/QUOTE DOCUMENTS

1. Our quote is subject to change unless specified otherwise in the quote itself.
2. We can accept purchase orders within a period of six (6) weeks. This period shall begin upon receipt of the purchase order via fax or email. For purchase orders submitted by post, the six-week (6-week) period shall begin on the date of our confirmation of receipt. This six-week (6-week) period is necessary due to organisational steps that need to be taken on our part, and in order to ensure that the quote is processed properly.
3. The scope of delivery or service specified in our written order confirmation is definitive. Any assurances with regard to features, addenda or supplementary agreements must be made in writing in order to be enforceable.
4. Any supplementary agreements or assurances made verbally, e.g. by our Sales staff, that deviate from the content of the order confirmation issued by us shall be unenforceable.
5. We hereby reserve all property rights and copyrights to all diagrams, photographs, drawings, calculations and other documents. The Buyer is not authorised to disclose such documents to third parties without our prior written consent.
6. We are entitled to provide partial deliveries of both stand-alone and non-stand-alone portions of the order, if and insofar as these can be used by the Buyer without having to wait for further deliveries.

III. PRICES/PAYMENT TERMS

1. Unless otherwise specified in the order confirmation, our prices apply "ex stock" or "ex works", excluding shipping costs, customs fees and packaging.
2. In case of collective agreements, changes to material costs or fluctuations in currency that affect our production costs and of which we can provide the Buyer with documentation on request, we reserve the right to alter our prices accordingly if we experience an increase in costs. If we experience a reduction in costs, we hereby agree to lower our prices accordingly. As soon as we notice these changes in costs, we shall promptly notify the Buyer while at the same time granting them the right to terminate the Contract.
3. The deduction of discounts is subject to separate written agreement. Unless otherwise stated in the order confirmation, the purchase price shall be due for payment as a net sum (without deductions) within eight (8) days as of the invoice date. Partial invoices shall be issued for partial deliveries. Each partial invoice shall be subject to its own separate payment deadline. The legal regulations regarding default of payment shall apply.
4. We only accept exchanges and cheques as conditional payment and following a separate agreement; neither exchanges nor cheques may be used in lieu of actual payment. Our claims shall not be deemed paid until the day on which we are able to access the proceeds without the expectation of charge-back claims. Collection costs, discount and exchange fees and interest shall always be borne by the Buyer, and are due for payment with immediate effect.
5. Where a settlement relationship exists under a service contract, the Buyer may also offset claims using counter-claims, such as the costs of production or repairing defects. The Buyer may only exercise a right of retention if and insofar as its counter-claim relates to the same contractual relationship.

IV. PRODUCT SPECIFICATIONS/DESIGN MODIFICATIONS

1. When submitting a request for a quote, the Buyer shall undertake to provide us with a description of the conditions under which it intends to use the goods to be delivered; said description must be comprehensive in every respect.
2. We reserve the right to make design modifications in line with technological progress, providing said modifications do not entail any major alterations to the functionality, safety or appearance of the product.

V. DELIVERY TIME

1. For delivery deadlines specified in the format of "approx. ... calendar weeks", a leeway of plus or minus 14 days shall apply. As soon as we are able to determine that the date of delivery will differ from the date specified, we shall promptly notify the Buyer and come to a mutual agreement with them regarding a specific delivery date. Fixed delivery deadlines shall be observed.
2. The time to the delivery deadline shall be counted from the date of the order confirmation, but not before we have received all the documents, approvals and releases to be provided by the Buyer, nor before receipt of any agreed payment, the opening of any letter of credit that is to be issued, or receipt of proof that any agreed collateral has been provided.
3. The delivery deadline shall be deemed to have been met if the goods leave the warehouse in Melle prior to the expiry of the delivery deadline.

4. In case of unforeseen drawbacks beyond our control that we are unable to overcome in spite of the due care promised in accordance with the circumstances of the case - irrespective of whether said drawbacks are suffered by us or one of our subcontractors - such as force majeure (e.g. war or natural disaster), delays in the delivery of essential raw materials or other circumstances not attributable to us, we reserve the right to withdraw from the delivery contract, in whole or in part, or to extend the delivery deadline by the duration of the delay caused by the drawback in question. We also reserve the same rights in case of strike or lockout at our own premises or those of our upstream suppliers. We shall promptly notify our customers in the event of such circumstances.
5. In case of delayed delivery, the Buyer shall be entitled to withdraw from the Contract upon expiry of a reasonable grace period without result. Where it proves impossible for us to deliver, the Buyer shall be entitled to exercise this right without a grace period. A reasonable grace period is four (4) weeks, or eight (8) weeks for custom orders due to special materials, cuts, designs, structural requirements, etc. Delayed delivery shall equate to impossibility if delivery does not follow after four (4) months, or eight (8) months for custom orders.
6. The Buyer shall not be entitled to claim for damages on grounds of simple negligence. If and insofar as we culpably violate a contractual obligation or a cardinal obligation, liability shall not be excluded but shall be limited to typical foreseeable contractual damage.
7. Where a commercial drop-dead date has been agreed, the limitations of liability specified in Paragraphs 5 and 6 of this Section shall not apply; the same shall also apply where the Buyer is able to assert that its interest in the performance of the Contract has ceased due to the delay attributable to us.
8. In case of make-and-hold orders, we must be notified of the retrieval dates in enough time to enable us to properly manufacture and deliver the product, not less than six (6) weeks before the required delivery date. In the absence of any agreements with regard to a fixed deadline, make-and-hold orders must be retrieved within 12 months of submitting the purchase order. If the order is not retrieved or not retrieved in full within 12 months of submission of the purchase order or by the agreed retrieval dates, the Buyer shall be deemed to be in default of acceptance.
9. If the Buyer is in default of acceptance or defaults on their obligations to cooperate, we shall be entitled to demand compensation for the damages we have incurred as a result, including any additional expenses, either at a fixed rate of ten per cent (10%) of the value of the order for expenses such as commission costs, processing work, personnel costs, printing costs, structural calculations, and material holding/storage or, where we have concrete evidence that the damage incurred exceeds this amount, this same fixed rate plus the amount by which the actual damage incurred exceeds it. In such cases, the risk of accidental loss or accidental deterioration of the purchased goods shall transfer to the Buyer as soon as they enter into default of acceptance.

VI. TRANSFER OF RISK/PACKAGING COSTS/INSURANCE

1. Unless the Buyer is a consumer, the risk of accidental loss and accidental deterioration shall be transferred to the Buyer when the goods are handed over to the forwarding agent or carrier, or at the latest when the goods leave our premises. The Incoterms 2010 "ex works/ab Werk" clause (German version) applies.

2. If hand-over is delayed due to circumstances attributable to the Buyer or on the Buyer's instructions, the risk shall be transferred to the Buyer on the date on which the notification that the goods are ready for shipment is issued. The Buyer is hereby informed that we do not maintain a separate warehouse for such delayed shipments, and that the goods can therefore only be stored in the outgoing goods area or, depending on our operational requirements, in other places, and that they may therefore need to be moved to different locations on our premises on multiple occasions. This risk associated with such actions shall be borne by the Buyer. However, we hereby agree upon express written request and advance payment from the Buyer to take out insurance to cover these costs associated with the goods we are storing. This shall also apply in cases where no delivery date has been explicitly agreed upon. In such cases, risk shall be transferred to the Buyer seven (7) calendar days as of the date on which the notification that the goods are ready for shipment is issued.
3. If requested by the Buyer, we shall take out transport insurance to cover delivery of the goods. The costs of any such insurance shall be borne by the Buyer.
4. In accordance with the German Regulation on Packaging (VerpackV), no returns of transport packaging or other packaging shall be accepted. This shall not apply to pallets or racks, unless otherwise agreed by the Parties. The Buyer shall undertake to ensure that the packaging is disposed of at its own expense.
5. Even if they contain minor defects, deliveries must be accepted by the Buyer. This shall not affect the Buyer's rights in accordance with Sections 433 et seq. of the German Civil Code (BGB).

VII. RETENTION OF TITLE

1. The Goods shall remain our property until such time as we have received full payment of the purchase price, including all related costs and charges. Until this time, the Buyer shall not be entitled to pledge the goods to third parties or use them as security. The Buyer shall hold the reserved goods for us free of charge.
2. If the Buyer processes, combines or mixes the reserved goods with other goods, we shall receive proportional co-ownership of the new item equivalent to the percentage of the complete new item that is made up of the reserved goods, up to the value of the outstanding portion of the invoice. The resulting co-ownership rights shall be considered reserved goods as per Paragraph 1 of this Section.
3. The Buyer is entitled to sell on the reserved goods in the course of an ordinary sales transaction, provided the Buyer is not in default of payment with regard to our purchase price claims.
4. If the Buyer has not yet paid us the full purchase price, the Buyer shall nevertheless be entitled to sell on the reserved goods in the course of an ordinary sales transaction. However, in such cases, the Buyer hereby assigns to us all claims arising from the sale of the reserved goods to third parties with immediate effect up to the outstanding invoice amount. If the reserved goods are sold after being processed, combined or mixed, the assignment of the claim from said sale shall only apply up to the remaining amount of the invoice for the value of the reserved goods which the Buyer has yet to pay to us. This shall also apply if the reserved goods are sold on together with other goods not supplied by us.
5. The Buyer shall still be entitled to collect the claim after they have been assigned to us. We shall be entitled to restrict the direct debit authorisation if it is in our legitimate interest to do so, and also to cancel it for good cause, particularly in cases of default on payment. We are entitled to demand that the Buyer disclose to us all claims assigned to it and the respective debtors thereof, provide us with all details required for collection, submit the associated documentation, and disclose the assignment to its debtor.

6. Upon request by the Buyer, we hereby agree to release the securities to which we are entitled under the provisions above at our discretion to the extent that the marketable value of said securities exceeds the claim to be secured by 20% or more.
7. The Buyer hereby consents to allow the persons appointed by us to deal with the assignment of the reserved goods to be present in or to access, by foot or by vehicle, the premises on or building in which the items are located in order to carry out said appointed purpose and to take the reserved goods away.
8. The Buyer must immediately notify us of any seizure, foreclosure or other action on the part of a third party that impinges upon our property rights. The Buyer must bear the cost of the measures required in order to remedy such third-party actions, especially those relating to intervention processes.

VIII. WARRANTY AND LIABILITY

1. If and insofar as defects occur and are attributable to us, we shall be entitled to resolve the issue by means of either repair or replacement, at our discretion. As a prerequisite for such action, the defects in question must not be insignificant in nature. In case of repairs, we shall undertake to bear the associated transport, work and material costs, providing said costs are not increased by the removal of the item in question to a location other than the Buyer's place of business or, in cases where the item was delivered directly by us, to the building site of the Buyer's end customer.

Where one or both of these types of remedy is impossible or disproportionate, we shall be entitled to refuse to provide it.

We may refuse to remedy the situation if the Buyer does not fulfil its payment obligations to us to an extent in accordance with the non-defective portion of our performance.

2. If the prerequisites specified in Paragraph 1 of this Section are met, we shall inform the Buyer of a suitable timeframe within which we will be able to provide repair or replacement. If the repair or replacement is not completed within this timeframe, or if we fail in our attempts at repair and/or replacement, the Buyer may, upon expiry of this timeframe, demand a reduction (decrease) in the remuneration to be paid to us or withdraw from the Contract.
3. The legal warranty rights notwithstanding, the Buyer's rights with regard to defects shall only apply if the Buyer has properly fulfilled its duty to inspect and give notice of defects in accordance with Section 377 of the German Commercial Code (HGB):
 - Where the goods are picked up from Solarlux by the Buyer, the inspection shall take place at our premises before the goods are loaded onto the transport vehicle, if and insofar as the goods have not yet been placed in their final packaging for transport. By accepting hand-over of the goods, the Buyer confirms their acceptance of the goods and that the goods are free of defects.
 - Where the goods are picked up from Solarlux by the Buyer and have already been placed in their final packaging, or if transport is to be carried out by us, the Buyer shall undertake to inspect the goods immediately upon arrival of the goods at the Buyer's place of business or the end customer's building site and to report any defects in writing, without undue delay and within two (2) business days prior to any processing, combination or installation of the goods.
4. No other claims made on the part of the Buyer shall be accepted, regardless of legal grounds, with the exception of the claims listed in Paragraph 6 of this Section, below. This shall apply in particular to damages that are not incurred by the delivered item itself and claims for damages due to loss of profit; it also covers claims that are not the result of defects in the purchased item.

5. The above provisions shall also apply in case of delivery of another agreed item or an agreed, stand-alone portion of an order.
6. The exclusion of liability stipulated in Paragraph 4 of this Section shall not apply if we are culpably liable for damages resulting from injury to life, limb or health; likewise, it shall not apply in cases of simple negligence.

If we culpably violate a material contractual obligation or a cardinal obligation, liability shall not be excluded but shall be limited to typical foreseeable contractual damages.

Furthermore, the exclusion of liability shall not apply in cases where liability exists in accordance with the German Product Liability Act (ProdHG) due to personal injury or property damage resulting from defects in the delivered item.

It likewise shall not apply in the case of assumption of a guarantee or assurance of a characteristic feature if a defect covered thereby activates our liability.

The same shall apply mutatis mutandis in case of a reimbursement of expenses.

7. We shall accept no liability for damages resulting from inappropriate or improper use, incorrect installation by either the Buyer or a third party, natural wear, incorrect or negligent handling, or modifications or repairs that are improper or made by the Buyer or a third party without our prior approval.
8. Claims for supplementary performance, damages and replacement shall lapse upon the expiry of the statutory warranty periods.

This shall not apply to items that have been used for a building structure in accordance with their usual use and caused defects in said building structure; in such cases, said claims shall lapse after five (5) years. Claims concerning electronic components shall lapse after two (2) years.

The Buyer shall not be entitled to claim for price reduction or exercise a right of withdrawal if its claim for supplementary performance has lapsed.

However, in cases covered by Sentence 3 of this Paragraph, the Buyer may refuse to pay the purchase price to the extent to which it would otherwise be entitled due to withdrawal or price reduction; where withdrawal is excluded and the Buyer refuses to render subsequent payment, we shall be entitled to withdraw from the Contract.

9. This Section shall not affect any claims arising from recourse on the part of the manufacturer.

IX. LIABILITY FOR SECONDARY OBLIGATIONS

If, due to any fault on our part, damages are incurred or the delivered item cannot be used by the Buyer as contractually agreed as a result of the prohibited or incorrect implementation of proposals or advice received before or after conclusion of the Contract or of other secondary contractual obligations, the provisions stipulated in Sections VIII and X shall apply, to the exclusion of further claims on the part of the Buyer.

X. WITHDRAWAL ON THE PART OF THE BUYER AND OTHER LIABILITY ON OUR PART

1. The following provisions shall apply in case of breaches of duty that are not covered by liability for defects, and are not intended to exclude or limit the legal right of withdrawal. Likewise, they are not intended to exclude or limit any legal or contractual claims which we are entitled to exercise.

2. The Buyer may withdraw from the Contract if the entire performance ultimately proves impossible; the same shall apply in case of incapacity.

The Buyer may also withdraw from the entire Contract if an order for similar items has been placed, the execution of any part of the delivery becomes impossible in terms of numbers due to a fault on our part, and the Buyer is not interested in partial performance. Where this is not the case, the Buyer may reduce its consideration accordingly. The right of withdrawal shall not apply in case of a non-material breach of duty.

3. In cases of full or partial delay in performance whereby the Buyer has granted us an appropriate extension to the performance deadline based on the reasons we have provided for the delay, the Buyer shall be entitled to withdraw from the Contract if we do not deliver by the extended deadline. In case of a partial delay in performance, the Buyer shall be entitled to withdraw in full if the partial delivery that has thus far been provided cannot, based on the Buyer's objective criteria, be used on its own.

If, prior to shipment, the Buyer requests a version of the item earmarked for delivery that is different in some way, the delivery deadline shall be put on hold until such time as an agreement is reached with regard to the version to be delivered, and extended if necessary in order to allow time for the respective design modifications to be made.

4. The Buyer's right to withdrawal shall be excluded if the Buyer is solely or very predominantly responsible for the circumstance that would otherwise entitle them to withdraw, or if a circumstance attributable to us occurs at a time at which the Buyer is in default of acceptance.

In the event of impossibility in the cases listed above, we reserve our right to the consideration in accordance with Section 326 Paragraph 2 of the German Civil Code (BGB).

5. All further claims on the part of the Buyer in the event of ordinary negligence attributable to us are excluded. However, the exclusion of liability shall not apply if we are culpably liable for damages to life, limb or health.

If we culpably violate a material contractual obligation or a cardinal obligation, liability shall not be excluded but shall simply be limited to typical foreseeable contractual damage.

Liability in case of assumption of a guarantee shall not be excluded if our liability is triggered by a breach of duty which is covered by this same liability.

XI. PLACE OF PERFORMANCE AND JURISDICTION

1. The place of performance for the obligations of both Parties arising from all legal relationships shall be Melle, Germany.
2. The legal relationship between us and the Buyer is subject to the law of the Federal Republic of Germany.
3. The jurisdiction for any and all disputes arising from this contractual relationship shall be Melle, Germany. We are also entitled to file suit at the location of the Buyer's headquarters.