

- 1. Validity of the conditions**
Our deliveries and service are made and carried out exclusively on the basis of these terms and conditions. Deviating terms and conditions of the Partner which are not expressly recognised by us are not valid.
- 2. Offer and conclusion of agreement**
2.1 Our offers are subject to confirmation and non-binding. Orders/lists are only binding on being confirmed in writing by us. The same applies to supplements, amendments and subsidiary agreements.
2.2 The information, drawings, illustrations and service descriptions (technical modifications are reserved) contained in catalogues, price lists or in documents which form part of the offer are approximate values, customary in the sector, unless they are expressly denoted in the confirmation of offer as binding.
2.3 The partner is liable for the correctness of the documents, e.g. drawings, samples and similar, to be supplied by him.
2.4 Each conclusion of agreement shall take place with the reservation of correct and timely self-delivery by our suppliers. This shall apply only for the case that non-delivery is not our responsibility in particular on conclusion of a congruent hedging transaction with our supplier. We expressly accept no risk of procurement.
- 3. Pricing**
3.1 If nothing else is stated, we shall keep to the prices contained in our offers for 30 days from their date. The euro prices stated in the confirmation of order are decisive plus the currently valid statutory VAT. Further-reaching deliveries and services shall be separately invoiced. If no prices are stated, the prices valid at the point of time of delivery shall apply.
3.2 The prices are valid unless otherwise agreed "ex works" not including freight, postage, insurance and packaging customary in the sector. We keep clearing accounts for pallets and pallet cages which are used in an exchange process. Any open balance shall be notified to the party ordering or the haulage company on requirement. If there is no payment for the balance within a reasonable set period, we reserve the right to invoice the corresponding nominal value. We also undertake to make payment towards our Partner.
3.3 If a significant alteration to the wage, material or energy occurs, each contractual partner is entitled to demand a reasonable adjustment to the price taking into consideration these factors.
- 4. Delivery**
4.1 The delivery period is regarded, from the receipt of the order until the point of time at which the works is left, as agreed only approximately. Even if a delivery period has been agreed according to the calendar, there is no fixed trade business in the terms of section 327 sub-section 1 HGB¹. For this, a declaration of the Partner on conclusion of the agreement is required in addition stating, for example, that for seasonal goods or advertising campaigns, the Partner reserves the right to withdrawal from the agreement without a further period of grace if the delivery period is not adhered to. Otherwise, delivery dates or periods, which can be agreed either as binding or non-binding, require written form.
4.2 If a delivery period which has been agreed as binding is not adhered to, the Partner can, after occurrence of delay, assert reminders and the setting of a period of grace of three weeks assert further-reaching rights. A period of grace is not necessary if the Partner, on concluding the agreement, has reserved the right to withdrawal for the case of non-adherence to the binding delivery date. In this case, the claim to damages of the Partner is ruled out unless, with respect to the delay, we are accused of intent or gross negligence on our part or that of a statutory representative or a vicarious agent. This also applies to the violation of duties in the case of contractual negotiations.
4.3 Our delivery is subject to the reservation of delivery to ourselves. We shall notify the Purchaser without delay if we do not receive delivery. If we do not receive delivery, the purchase agreement shall be regarded as not having been concluded. There is no procurement risk assumed by us.
4.4 For delivery and service delays due to force majeure and due to events which make delivery appreciably more difficult or impossible – these include, in particular, labour disputes, unrest, official measures, failure of delivery by our suppliers etc. - we shall not be responsible even for bindingly agreed periods and dates. They entitle us to postpone the delivery or the service by the duration of the hindrance plus a reasonable start-up time or, due to the non-performed part, fully or partly to withdraw from the agreement without the Partner being able to derive claims for damages from this unless we are guilty of gross negligence or intent. We shall make every effort to notify the Partner of the beginning and end of hindrances of the type described above. If the aforementioned hindrances occur with the Partner, the same legal consequences shall apply also for his obligation to acceptance.
4.5 Part deliveries and part services are, in as much as customary in trade, permitted and shall be invoiced separately. They shall exceptionally then be not permitted if the part performance of the agreement is not of interest to the Partner or such an agreement has been made with us.
- 5. Additional or reduced delivery**
For goods which have been produced related to order, 10% more or less delivery is regarded as having been approved. The delivery of stored goods shall take place at the packaging units determined in the contractual documents. Quantities deviating from this can be rounded up or down.
- 6. Shipping/transfer of risk**
6.1 If we ship goods at the request of the Partner, the choice of the manner of shipping is reserved. In particular, we can, if necessary, engage an external haulage company if the Partner does not legally decree a binding provision concerning this before the end of the delivery period.
6.2 If we ship the objects of the agreement at the request of the Partner, this shall take place at the risk of the Partner. For all deliveries, the risk shall be transferred to the Partner on provision of the goods for the haulage company, carriers or other persons determined to carry out shipping. This shall also apply for part deliveries and agreed freight-free delivery.
6.3 If shipping is delayed at the wish of the Partner, the delay in acceptance on the part of the Partner shall commence on receipt of written notice of readiness for shipping by him. Further, we are entitled in this case, commencing one week after notice of readiness for shipping, to invoice the costs arising for us through storage at our premises at least 1% of the invoice amount per begun week. In this case, the risk of damage or decay of the purchased item shall be transferred to the Partner at the point of time of notice of readiness for shipping. The same shall apply in the case of his delay of acceptance. At the request and cost of the customer, we shall insure the objects against destruction, loss or damage for the term of storage with us or third parties.
6.4 If we bear the risk for transport, the Partner is obliged to examine the despatch for transport damage on arrival and without delay and to send us any notice of damage of the haulage company and written notice of any damage or loss immediately, which shall also be signed. The damaged objects of delivery shall be kept in the condition in which they are found at the point of time of establishment of the damage for inspection by our employees or by the manufacturer concerned.
- 7. Conditions of Payment**
7.1 If it is not otherwise agreed, all invoices shall be due after delivery of the goods within 30 days of the date of the invoice without deduction. On payment within 14 days of the date of invoice, 2% discount shall be granted if the Partner is not in delay with the payment of demands.
7.2 Irrespective of any provisions of the Partner, we shall have sole responsibility for determining with which of several demands received payments are set off.
7.3 If we have undisputedly partly delivered faulty goods, our Partner is nevertheless obliged to make payment for the faultless share unless the part delivery is of no interest to him.
7.4 In the case of the date being exceeded, we shall be entitled to invoice default interest amounting to the rate which the bank calculates for us for the current account credit, at least, however, amounting to 10.5 % percentage point more than the base interest rate.
7.5 All our demands shall be due immediately if the payment conditions are not adhered to or reasons become known to us after the conclusion of the agreement which reduce the credit worthiness of the Partner. Further, we shall be entitled in such a case to refuse our still outstanding services for the period for which the counter performance is effected or security is provided for it. Apart from this, we can prohibit further sale of the goods delivered under the reservation of title and demand their return. The demand for return of the reserved goods does not mean any withdrawal from the agreement.
7.6 Bills of exchange shall only be accepted in accordance with expressed agreement and only for performance and under the prerequisite of their discountability. Discount charges shall be calculated with effect from the due date of the invoice sum. Any guarantee for correct presentation of the bill of exchange and for lodging bill is ruled out.
7.7 If the Partner engages a central regulation company, debt-releasing payment of invoice shall only be effected on credit of payment to our account.
7.8 If, subsequent to conclusion of the agreement, it becomes evident that our claim for payment is jeopardised by a lack of ability to pay on the part of the Partner, we may refuse the service and set the Partner a reasonable period in which he shall make incremental payment or provide a security. In the event of refusal on the part of the Partner or fruitless expiry of the period set, we shall be entitled to withdraw from the agreement and claim damages in lieu of payment.
- 8. Reservation of title**
8.1 We shall reserve the title to the delivered goods resulting from the business relationship with the Partner in a simple, prolonged and extended form until the fulfilment of all demands (including all balance demands from current account) which are due to us for any legal reason against the Partner, now or in the future, or until complete fulfilment of all claims from the agreement concerned. Therefore, the following securities shall be provided to us and shall be released on demand according to our choice if and inasmuch as their value, less the costs required for the security, exceed the demands lastingly by more than 20 %. The Partner may sell the reserved goods in the ordinary course of business. He is not entitled to transfer of the reserved goods by way of security or pledge. Further sale of the goods is only permitted if the reservation of title is passed on. For the case that the Partner does not pass on the reservation of title in case of further sale, he shall hereby assign his demand against the purchaser to us. This shall also apply to all current account balances due to us if the Partner has agreed such with his Partner. We hereby accept the assignment. We can demand of the Partner that he announce the assigned demands and their debtors. We are then entitled to disclose the assignment according to our choice.
8.2 In case of delay in payment, we can demand surrender of the object, for which the reservation of title exists, within a reasonable period and otherwise dispose over the object and, after payment by the Partner, deliver another item to him again after a reasonable period.
8.3 The Partner is obliged to store the goods belonging to us correctly and to insure them correctly.
8.4 If the Partner comes into delay in payment or if third parties access the reserved goods or if the customer suffers loss of assets, we are entitled, for assertion of our reservation of title, to enter the business premises of the Partner and to take possession of the reserved goods. The Partner shall hereby permit our staff member to enter his business premises at any time to secure the goods. The bailiff is empowered to hand out the goods to us after lifting of the attachment.
8.5 In further processing the object of the agreement, we shall be regarded as manufacturer in the terms of section 950 sub-section 1 BGB. In case of any connection of the object of purchase with other items of the Partner, we shall acquire proportional co-ownership of the new item. If, in processing, another item is to be regarded as the main object, it shall be regarded as having been agreed that the Partner grants us the co-ownership in the ratio of the value of the reserved goods to the value of the new item inasmuch as the new item belongs to him.
8.6 As long as we do not expressly declare anything else, re-acceptance of the goods does not represent the withdrawal from the agreement. Re-acceptance shall take place, rather, only to secure our claim. The Partner shall still remain obliged to performance of the agreement. The costs of re-acceptance and the utilisation of the object of purchase shall be borne by the Partner. The Partner has the duty to maintain the object of purchase in correct condition for the duration of the reservation of title.
In case of attachment, confiscation or other measures on the part of third parties, we shall be notified without delay. The costs for such measures shall be borne by the Partner. In case of violation of the duty for notification, we are entitled to assert all demands against the Partner. Inasmuch as the delivery has not taken place, we can, according to our choice, deliver against concurrent payment. The Partner shall immediately take all measures himself which are necessary to lift or avert such access and claims. Otherwise, he shall support us in the preservation of our rights in every manner. The costs for such measures shall be borne by the Partner.
- 9. Acceptance**
If an acceptance has been agreed, this shall take place in the works by the Partner or an authorised person or a third person for whom an order has been placed. If the Partner waives acceptance in the works, the goods shall be regarded as having been delivered in accordance with the conditions as soon as they have left the works. Material acceptance costs shall be borne by us while the Partner shall bear the personal costs of the person engaged to carry out acceptance. If the Partner us required to call or accept within a certain period, we shall be free to issue invoices after the expiry of this period without further ado or to withdraw from the agreement.
- 10. Withdrawal from the agreement (impossibility, delay)**
10.1 If we come into delay with the transfer of an item and if the accusation of gross negligence or intent applies to us in respect of the delay, we shall compensate the customer for all damage arising for him from this. In the case of simple negligence, claims on the part of the customer are ruled out.
10.2 In the case of non-delivery by the supplier, both parties shall have the right to withdraw from the agreement.
10.3 We are entitled to withdraw from the agreement for the following reasons.
10.3.1 If it ensues, contrary to the assumption existing before the conclusion of the agreement, that the customer is not creditworthy. Creditworthiness can be assumed without further ado in cases of protest of a bill of exchange or a cheque, cessation of payment by the customer or an unsuccessful compulsory enforcement attempt at the customer's. It is not necessary that it concerns the relationships between us and the customer.
10.3.2 If it evolves that the customer has given untrue information with regard to his creditworthiness and this information is of appreciable significance for the conclusion of the agreement.

¹ German Commercial Code

- 10.3.3 If the goods, which are under the reservation of title, are sold in another manner as within the regular business transactions of the customer. In particular through transfer of security or attachment. There shall only be exceptions to this if we have declared ourselves to be in agreement with sale.
- 10.3.4 If, after the conclusion of the agreement, circumstances which are significant for winding up the agreement have developed without being able to exert influence, in such a manner that the service becomes impossible or made unreasonably difficult for us (e.g. non-delivery by the preliminary suppliers for which we are not responsible or the possibility of delivery only under significantly hampered conditions).
- 10.3.5 If the customer significantly violates his contractual duties, in particular if he can be accused of a violation of his duty to take care with respect to dealing with the goods delivered under reservation of title.
- 10.3.6 Otherwise, our right to withdrawal and the right to withdrawal of the customer shall be determined by the statutory provisions.
- 11. Warranty/material defects**
- 11.1 We vouch for the correct manufacture of the goods delivered by us. If no special arrangements have been made, all articles, for which there are norms, shall be delivered according to these norms and the stated, marketable quality tolerance. For the use of count scales or determination of the piece number, there is a tolerance of $\pm 1\%$.
- 11.2 The Purchaser is obliged to check the delivered goods immediately after delivery and to notify us without delay in writing of any existing defects (at the latest by the day after the next day after delivery. Defects, which are complained of too late, i.e. contrary to the duty stated above, shall be excluded from any warranty. Any defects, which are not obvious and which only appear in the course of time, shall be notified by the customer without delay after discovery in writing. Notices of defects shall only be recognised by us as such if they are notified in writing even if they are subsequently asserted against field service staff, haulage companies or third parties.
- 11.3 The return of the goods necessary in the case of defects can only take place with our previously granted approval. The return of items which takes place without our previously issued approval shall not be accepted by us. In this case, the Purchaser shall bear the costs for the return shipping resulting from our refusal of acceptance.
- 11.4 For the case that, on the basis of justified notice of defects, improvement or a replacement delivery takes place, the provisions concerning the delivery period shall apply correspondingly.
- 11.5 The warranty period for newly manufactured items is 12 months and commences on transfer of risk to the customer. There is no warranty for used items. Within the warranty period, we shall eliminate defects at no cost which the customer has reported in writing and in a comprehensible form. The elimination of the defect shall take place according to our choice through elimination of the error, bypassing the error or delivery of another item (subsequent performance). The customer is obliged to compensate us for those advantages of use which he has gained from the defective item up to delivery of the replacement item as compensation for use in accordance with the statutory regulations. If we offer the customer in exchange, a used item which is free of defects, the customer has the option of whether he takes the new item and compensates the advantages of use or whether he takes the used item. In this case he shall pay no compensation for the advantages of use. If subsequent performance is unsuccessful, the Partner can set us a final period of at least 4 weeks within which we shall meet our obligations. After unsuccessful expiry of this period, the Partner can demand a reduction in the price, withdraw from the agreement or have the necessary subsequent improvement undertaken by himself or a third party at our expense and risk. If the subsequent improvement has been carried out successfully by the Partner or a third party, all claims of the Partner shall be covered on refund of the reasonable costs which have verifiably arisen for him. Refund of costs is ruled out inasmuch as the expense increases because the item has been brought, after our delivery, to another place unless this corresponds to the intended use of the item.
- 11.6 Further-reaching claims of the customer against us are ruled out, in particular claims for the compensation of damage, which has not arisen on the object of agreement itself. This shall not apply if, in cases of intent or gross negligence, liability is assumed.
- 11.7 For material defects which arise through unsuitable or incorrect use or faulty assembly through the Partner of a third person, customary wear, faulty or negligent handling, we shall be just as little responsible as for the consequences of incorrect modifications or such carried out by the Partner or a third party without our agreement. The same applies to defects which reduce the value of the fitness of the goods only inappreciably. If, after examination, the defect reported by the customer cannot be established, the customer shall bear the costs of the examination inasmuch as he is a businessman.
- 11.8 In the case of defects, we shall repair the complained of object of the agreement according to our own choice at our premises or at the premises of the customer. If there is a defect which can only be repaired at the premises of the customer, we shall bear the costs which have arisen for this only up to the place at which the item was to be used on conclusion of the agreement. If nothing has been agreed and if nothing arises from the circumstances, we shall also be obliged to carry out the repair at the premises of the customer. Additional costs, which result from this, that the customer has taken the item to a different place from the originally intended place of set-up to his premises own, shall be borne by the customer unless the transport to this place corresponds to the intended use of the item.
- 11.9 We are liable for damage which results from defectiveness in the item, if these can be put down to an, at least gross negligent, breach of duty on our part, that of our statutory representatives or our vicarious agents. The customer shall verify the damage which has arisen with respect to the reason and the amount. The same shall apply for the expenditure which taken place in vain. The aforementioned restriction shall expressly not apply inasmuch as, through culpable breach of duty on our part, the part of our statutory representative or vicarious agents, there is reason for liability for damages from fatal or bodily injury, or endangerment to the health of the customer. If we have assumed a guarantee for a certain type of composition of the sold item for a determined period, the above-mentioned provision concerning the examination and complaint obligations and the number of subsequent performance attempts shall not apply.
- 11.10 The onus of proof for the existence of a defect is borne by the Purchaser.
- 11.11 If claims are asserted arising from the violation of German protective rights through items delivered or licensed in accordance with these conditions against the customer, we shall compensate the customer for all legally imposed costs and damages sums if we are notified without delay and in writing of such claims, receive all necessary information from the customer, the customer meets his general duties of co-operation, we can take the final decision as to whether the claim is defended or we reach a compromise and we are to blame with respect to the violation of the protective rights. If it is established with legal effectiveness that further use of the objects of the agreement would violate the German protective rights of third persons or, in our view, the danger of protective rights action exists, we can, inasmuch as the liability is still assumed, at our own expense and according to our own choice, create the right either for the customer to continue to use the object of the agreement or to exchange it or to modify it such a manner that there is no longer any violation or, accepting the return of the object of the agreement, to refund the customer the value of the object of the agreement deducting a compensation for use for the use made of it up to then. The compensation for use shall be calculated on the basis of an assumed depreciation period of 3 years so that for each month of use a 1/36 of the price shall be paid.
- 11.12 Winding up external guarantees
Guarantees are the promise of service given by the manufacturer concerned to the customer. They do not form the basis for any obligation on our part whatsoever. The customer is obliged himself to bring about the prerequisites for utilisation of claims from such guarantees at his own cost. We are expressly prepared to carry out the necessary measures on behalf and for account of the customer.
- 12. Liability**
Irrespective of the provisions concerning the warranty and other special regulations agreed in these provisions, the following shall apply in cases of a breach of duty on our part:
- 12.1 The purchaser shall grant us a reasonable period for subsequent performance for the elimination of the breach of duty which may not be less than three weeks. Only after unsuccessful expiry of the period for subsequent performance can the purchaser withdraw from the agreement and/or demand damages.
- 12.2 The purchaser can only assert damages in the cases of gross negligence or intentional breach of duty or intentional breach of duty by us. Damages instead of performance (on non-performance, section 280 sub-section 3 in connection with section 281 BGB) and the delay damage (section 280 sub-section 2 in connection with section 286 BGB) are limited to negative interest. Damages due to not provided or not provided as owed performance (section 281 BGB) are limited to the amount of the purchase price. Damages instead of performance on exclusion of the duty for performance (impossibility) are ruled out.
- 12.3 If the purchaser is solely or predominantly responsible for the circumstances which would entitle him to withdrawal or has the circumstance entitling him to withdrawal occurred during the delay in acceptance of the purchaser, withdrawal is ruled out.
- 13. Exclusion from procurement and guarantees**
We do not assume any procurement risk or any type of guarantee unless an expressed written agreement in this respect has been concluded with the Purchaser.
- 14. Sales aids**
Sales and presentation aids which are made available at no cost and as a loan to the Partner remain our property and can be requested back at any time. During the use of sales and presentation aids by the Partner, all risks associated with these shall be transferred to him. He undertakes to adorn the sales and presentation aid only with our goods and to replace them in the case of any loss or damage for which he is responsible. If he changes his programme or the business relationship, the customer undertakes to return the sales aids freight-free to our address if the business relationship is terminated.
- 15. Secrecy**
If nothing else is expressly agreed, the information forming the basis of this contractual relationship is not regarded as being confidential.
- 16. Sub-contractors**
We are also entitled to have contractual performance undertaken by sub-contractors. In such cases, the warranty shall always remain with us.
- 17. Set-off/retention**
Any set-off on the part of the Partner is ruled out unless it concerns an undisputed or legally established demand. In the case of a justified notice of defects, right of retention is only permitted in a reasonable and appropriate relationship between defect and purchase price. If the transaction is one between business persons, the Partner can only retain payments if the notice of defects has been recognised by us or legally established.
- 18. Prohibition of assignment**
The rights of the Partner from the agreements made with us are not transferable without our previous written approval.
- 19. Data protection**
The partner is in agreement with the fact that we store and automatically process personal data becoming known with the framework of the business relationship in our computer system.
- 20. General**
- 20.1 If one or several of the aforementioned conditions are or become ineffective or contain an omission, the remaining conditions are not affected by this. The contractual parties are obliged in such a case to replace an ineffective condition with an effective one which most closely corresponds to the economic purpose of the ineffective one. This also applies to the removal of unintended omissions which are required to be filled.
- 20.2 Any agreements deviating from the aforementioned conditions or additional agreements shall only be effective in the form of an additional written agreement concerning the agreement concluded by the parties in which reference is made to the amended conditions. The cancellation of this requirement for written form also requires written form.
- 20.3 The place of performance for all obligations from this agreement is our head office.
- 20.4 The sole place of jurisdiction for all disputes resulting from the contractual relationship and concerning its effectiveness, also within the framework of a bill of exchange and/or cheque process is, if the customer is a full businessman, legal entity under public law, or it concerns special assets (of the German Federal Government) under public law, or if he has his head office abroad, our head office or that of the customer according to our choice.
Only the law of the Federal Republic of Germany shall apply to this legal relationship. Validity of the UN Convention on Contracts for the International Sale of Goods (CISG) is expressly ruled out.