

Delivery and payment conditions valid as of 1 July 2022

A. General terms and conditions

I. Scope

1. These delivery and payment terms only apply vis-a-vis companies, legal entities under public law or special funds under public law within the meaning of Civil Code section 310.
2. Our deliveries and services are exclusively provided on the basis of the following provisions. Different or contrary terms of the buyer only apply insofar as we have explicitly agreed to them in writing.

II. Offers, declarations

1. Our offers are non-binding and can be freely withdrawn at any time until their acceptance.
2. Verbal declarations are not binding unless confirmed in writing.

III. Provided documents

We reserve the ownership and copyright for all documents, e.g. calculations, drawings, etc. provided to the buyer in connection with the order placement. These documents must not be made accessible to third parties unless we explicitly agree to this in writing. If no contract materializes, these documents need to be sent back to us immediately upon request. The latter does not apply where the buyer is subject to a statutory obligation to retain the documents.

IV. Payment terms and prices, withdrawal from contract

1. Unless otherwise agreed, payments need to be made within 30 days from the invoice date without discount deductions and in a manner ensuring that we can dispose over the amount on the due date.
2. All prices are understood ex works (Dillingen or Dünkirchen) and plus the statutory VAT.
3. Unless otherwise agreed, all prices apply to metric tons (t = 1000 kg).
4. If the goods are picked up by vehicles that the client provides, we will add a surcharge of Euro 5/t for the extra internal costs arising for us.
5. Extra costs arising from the performance of the delivery and for which no prices have been agreed are borne by the buyer unless we are answerable for their arising.
6. If taxes and other external costs (especially freight costs) that are included in the agreed price change or are newly created, we are entitled to raise and/or obliged to lower the price accordingly.
7. If an acceptance/material inspection is agreed, the buyer bears its own costs arising from its attendance at the delivering plant or from the involvement of third parties. The acceptance will be performed in the agreed delivering plant.
8. If the start of production should be delayed by more than six months for reasons we are not answerable for, we are entitled to withdraw from the contract.
9. Default interest will be claimed at the statutory rate in the event of default.
10. Insofar as our payment claim is jeopardized by post hoc circumstances leading to a significant deterioration of the assets, we are entitled to declare it due immediately.
11. If the buyer defaults on a due payment or if the institution of insolvency proceedings is applied for, we are entitled to (i) refuse to deliver the goods, (ii) prohibit the further processing of the delivered goods, (iii) take the goods back and, if required, enter the buyer's premises to this end and take possession of the goods. The taking back is no withdrawal from the contract.
12. In the cases of subsections 10 and 11, we can revoke the collection authority (section A.VII.7) and demand down payments for any deliveries still outstanding.
13. The buyer can avert the legal consequences detailed in subsections 10 to 12 by providing insolvency-secure sureties to the amount of our jeopardized payment claim.
14. The statutory provisions for default remain unaffected.

V. Sureties

1. There is a principle of not delivering goods without financial coverage. Insofar as possible and commensurate economically, we principally aim to collateralize our goods deliveries by taking out commercial credit insurance. If no or no adequate coverage by a commercial credit insurance is provided, we are entitled to sureties of the customary nature and scope for our claims, at our choice, even insofar as these are conditional or limited in time.
2. In the event that the buyer fails to provide the sureties required by subsection 1 or an existing surety falls away later for reasons we are not answerable for, we are entitled to stop the production start and goods delivery at any time.

VI. Setoff, retention

The buyer must only offset against undisputed claims that have been determined without further legal recourse and is only able to assert retention rights insofar as the counterclaims are based on the same contractual relationship.

VII. Reservation of ownership

1. All delivered goods remain our property (goods subject to retention of title) until the fulfilment of all claims, especially also the respective balance claims, due to us in the business relationship. This also applies to future and contingent claims, for example from reverse bills of exchange.
2. The transformation and processing of goods subject to retention of title are performed for us as the manufacturer within the meaning of Civil Code section 950 without obliging us. The transformed and processed goods count as goods subject to retention of title within the meaning of subsection 1.
3. If the buyer processes, combines and mixes the goods subject to retention of title with other goods, we are due co-ownership of the new thing in the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other goods used. If our ownership expires through the combining, mixing or processing, the buyer already assigns to us the ownership of and/or expectant title to the new stock or thing to the extent of the invoice value of the goods subject to retention of title now, and in the case of processing in the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other goods used, and safekeeps it for us free of charge. Our co-ownership rights count as goods subject to retention of title within the meaning of subsection 1.
4. The buyer must only resell goods subject to retention of title in the ordinary course of business at its normal terms and conditions and as long as it is not in default, provided that the buyer reserves the ownership and the claims from the resale pass to us as per subsections 5 and 6. The buyer is not entitled to other dispositions over goods subject to retention of title. Using the goods subject to retention of title to fulfil contracts for work or for work and labour also counts as reselling within the meaning of section A.VII.
5. The buyer's claims from the resale of the goods subject to retention of title are already assigned to us at this point in time. They serve as sureties to the same extent as the goods subject to retention of title within the meaning of subsection 1.
6. If the buyer resells the goods subject to retention of title together with other goods, the claim from the resale is assigned to us in the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other goods. If goods whose ownership we share as per subsection 3 are resold, a part of the claim that corresponds to our co-ownership share is assigned to us.
7. The buyer is entitled to collect claims from resales unless we revoke the collection authority as per section A.IV.12. Upon our request, the buyer is required to immediately inform its customers about the assignment to us - insofar as we fail to do so ourselves - and to provide us with the information and documents required for collection. The buyer is not authorized to assign the claims in any case; this also applies to all kinds of factoring transactions, which are also not permitted for the customer on the basis of our collection authority.
8. The buyer needs to inform us immediately of seizure or other impairments by third parties.
9. If the value of the provided sureties exceeds the collateralized claims by more than 10 % overall, we are obliged to release the securities at our choice upon the buyer's request.

VIII. Place of fulfilment and place of jurisdiction

The place of fulfilment and jurisdiction for both parts of the contract is Dillingen/Saar. We are also entitled to sue the buyer at its general place of jurisdiction.

B. Delivery performance

I. Delivery periods, delivery dates

1. If delivery periods are agreed, they start from the date of our order confirmation at the earliest, but not before all the order's details have been fully clarified; the same applies to delivery dates mutatis mutandis.
2. If the buyer fails to meet contractual requirements or cooperation and ancillary obligations, e.g. the opening of a letter of credit, procurement of certificates at home and abroad, payment of an advance, or similar, on time, we are entitled to commensurately postpone our deliver periods and dates in keeping with the needs of our production workflow, without prejudice to our rights from buyer default.
3. The shipment date from the plant is decisive for compliance with delivery periods and delivery dates. If the goods cannot be shipped in time through no fault of our own, the delivery periods and delivery dates count as observed with the notification of readiness for shipment, and the invoicing is initiated.

II. Force Majeure and economic sanctions

1. The term "Force Majeure" means all circumstances which (i) are beyond the control of the relying party, (ii) could not reasonably have been foreseen at the time of the conclusion of the contract and (iii) make it impossible or substantially difficult for the relying party to perform any obligation under this contract or (iv) the intended procurement or sale, processing or other use of the contractual products and/or services as well as the raw materials, semi-finished products, intermediate goods or workpieces. Reasons for force majeure may be, without being limited to:
 - a. natural catastrophes such as earthquakes, fires, floods, (particularly contagious) illnesses, as well as the releasing of radiation, biological or chemical substances;
 - b. war, civil war, terrorism, armed conflicts, unrest, demonstrations, strikes and lockouts;
 - c. economic, trade or financial sanctions, embargos, import or export prohibitions, authorisation requirements, punitive tariffs, quotas, other restrictions of the movement of goods or services or of payment transactions, and measures comparable in terms of their purpose or effect (hereinafter collectively referred to as "Economic Sanctions") by a jurisdiction worldwide (state, union of states, other territorial entity, supranational organisation). The existence of an Economic Sanction shall not cease because the jurisdiction affected by it reacts with an economic sanction, particularly a counter-sanction. Rather, in such case a breach is to be examined in isolation for every Economic Sanction in each instance.
2. The buyer hereby warrants that, taking into consideration the parties, their economic beneficiaries, the contract subject and all of the other circumstances (particularly end buyers), after careful examination at the time of entry into this Contract, no Economic Sanction exists, has been announced or has been raised as a prospect, which would be breached through entry into or performance of this Contract in whole or in part.

The buyer shall also continuously monitor the situation with regard to Economic Sanctions being announced or raised as a prospect after entry into this Contract, and notify us of the same without undue delay.

3. If an instance of force majeure arises, the affected party shall notify the other party thereof without undue delay, stating the reasons. The affected party shall be entitled during the period of the force majeure to refuse to render the pertinent performance and in such case the buyer shall be entitled to refuse to render the consideration incumbent upon it in the same scope. No party shall have claims due to the delay or the non-fulfilment of performance which is attributable to force majeure.
- The provisions of (3) above shall also apply until final clarification in the event that we presume in good faith the existence of force majeure but its existence is in dispute between the parties.
4. If the force majeure lasts for a period of more than 90 days after receipt of the notification pursuant to the first sentence of (3) above, then each of the parties shall be entitled to terminate the Contract. If the force majeure only continues to exist because one party refuses to fulfil its obligations in the framework of (6) and (7) below, then only the other party shall be entitled to declare the termination of the contract.
5. The parties shall work together in the framework of what is reasonable, if and insofar as this is possible, in order to eliminate force majeure, for example by filing applications for exemption from an Economic Sanction. Upon our request, the buyer shall provide all of the relevant information and documents in this respect, particularly pertaining to the destination, the end buyer and intended use of the contract products or services, as well as pertaining to its own organisation, that of the end buyer and its respective economic beneficiaries.
6. In the event that the occurrence or continued existence of force majeure as a consequence of an Economic Sanction can be prevented or eliminated by a change to the provisions of this Contract, the buyer hereby undertakes to agree to such changes, unless these result in an unreasonable disadvantage which cannot be rectified even by rendering a security or other equalisation measures. Potential contract amendments can pertain in particular to:
 - a. changing delivery dates, deleting or reducing delivery periods or deadlines;
 - b. transferring ownership and taking possession of goods; or
 - c. the provisional or final waiver of performance-refusal rights, particularly with regard to payments.

III. Dimensions, weight, quality

Deviations from the dimensions, weight or quality are permitted in keeping with EN/DIN or the applicable drill. The weights are measured on our calibrated scales and decisive for the invoicing. The weight is substantiated by presenting the weighing report. Where individual weighing is not customary, the total shipment weight applies. Differences from the mathematical individual weights are distributed across them proportionately.

IV. Shipment, packaging and transfer of risk

1. We select the shipper or freight forwarder.
2. If the loading or transport of goods is delayed for reasons the buyer is answerable for, we are entitled, at our reasonable discretion, to store them at the buyer's expense and risk, apply all measures we deem appropriate to preserve them, and invoice them as delivered. The same applies if goods reported as ready for shipment are not called off within four days. The statutory provisions for delayed acceptance remain unaffected.
3. Insofar as customary in the trade, we will deliver the goods packaged or protected from rust; the costs are borne by the buyer. The packaging and protection and transport materials will not be taken back.
4. If there is transport damage, the buyer is required to occasion a formal report from the competent bodies without delay.
5. The risk of accidental destruction and accidental impairment passes to the buyer when the goods are handed over to the shipper or freight forwarder, and upon their leaving the factory or warehouse at the latest.
6. If the buyer collects goods itself, we are entitled to reject the loading of vehicles that appear unsuitable for safe transport or lack the means required to secure the cargo.

V. Warranty

1. The quality of our goods is described in material specification sheets or references thereto; this description serves as a quality agreement within the meaning of Civil Code section 434.1, sentence 1. A guarantee for the quality as per Civil Code sections 442, 443 or 444 is not provided by this.
2. After the examination required from it (Commercial Code section 377), the buyer needs to inform us immediately if the goods we delivered exhibit a material defect. In this case the buyer is immediately required to afford us an opportunity to convince ourselves of the defect, and especially provide us with the rejected goods or samples thereof upon request.
3. If a defect is justifiably reported immediately, we will - at our choice - either eliminate the defect or deliver a flawless item. Only if we fail to meet this obligation within a reasonable period of time is the buyer entitled to withdraw from the contract, reduce the purchase price, or to compensation for damages in keeping with the provisions in part C.
4. Claims based on defects of movable items lapse after five years for items that have been used for a building in the customary manner and caused its defectiveness, after one year in all other respects.
5. If an agreed acceptance is performed, the assertion of rights based on an item's defect that can be discovered in this acceptance is excluded.

C. General limitation of liability

Unless otherwise agreed in these terms and conditions, we are only liable to pay compensation for damages attributable to a deliberate or grossly negligent breach of duty by a statutory representative, senior executive or vicarious agent or a culpable breach of a material contractual duty. In case of a grossly negligent breach of duty by a vicarious agent or culpable breach of a material contractual obligation - excluding deliberate or grossly negligent breaches of duty by a statutory representative or senior executive - we only accept liability for the foreseeable damage that is typical for the contract. Claims based on the damage of an item intended for private use or consumption under product liability law and claims based on injury to life, body or health, regardless of their legal grounds, remain unaffected by this provision.

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D. Miscellaneous

I. Export certificates, customs, dues and taxes

1. If a buyer that is based outside the Federal Republic of Germany (extraterritorial customer) or its representative collects goods and conveys or ships them to the foreign territory, the buyer needs to provide us with the export certificate required for tax purposes. If this certificate is not provided, the VAT payable for the invoice amount of deliveries within the Federal Republic of Germany needs to be paid by the buyer at the respectively applicable VAT rate.
2. Cross-border deliveries are made with duty unpaid and untaxed. Insofar as customs, taxes or other dues are levied, they need to be borne by the buyer.

II. Special provisions

1. For triangular, chain or similar transactions involving other companies but ours and the buyer and performed across borders on the customer's behalf, the buyer undertakes to meet all statutory requirements in its sphere of responsibility for the correct administrative handling in the states concerned, such as the tax identification number, tax representative, etc.
2. As a proof of shipment for inter-community shipments, the buyer confirms the arrival of the goods in the respective country to us by means of a confirmation of arrival provided to the buyer by us with the invoice or as a collective certificate.
3. The buyer will equally meet all statutory requirements for inter-community shipment within the EU and onward transport outside the EU.
4. For tax-free export deliveries as per VAT Act section 4.1a in conjunction with VAT Act section 6 and/or tax-free inter-community deliveries as per VAT Act section 4.1b in conjunction with VAT Act section 6a in cases of transformation or processing, we are required to provide evidence that we or the buyer have conveyed or shipped the delivered item into the third country and/or other Community territory. If the transforming or processing company is based in Germany, the metal sheets initially remain with the German transforming and processing company commissioned by the buyer. The buyer insofar becomes the owner of the metal sheets in Germany. We are therefore forced to invoice the buyer with the German VAT for lack of proof for the transport to another country. If the transforming and processing company is based in an EU member state instead, we also need to make out an invoice with German VAT until the provision of proof for the item's arrival abroad.

III. Applicable law

1. All legal disputes between us and the buyer are exclusively subject to the law of the Federal Republic of Germany.
2. The invoicing of deliveries from one EU member state to another is subject to the VAT regulations of the 6th Accounting Directive of the European Community as amended from time to time, unless national law determines otherwise in keeping with the 6th EC Accounting Directive. Insofar as VAT is to be collected from us, the buyer also owes the respective VAT in addition to the agreed (net) purchase price.

IV. Additional provisions for subcontracts

Subcontracts are supplementarily and/or constrainingly also subject to the following conditions:

1. The ordering party is required to deliver the material to be processed and all the technical documents required for the processing in time and at its own expense.
2. The material to be processed needs to be flawless and conform with the stated values. It must be free from flaws that complicate the processing and needs to have the normal additions for the intended processing.
3. All extra costs and damages arising from the material not conforming with subsection 2 (e.g. if porosity, sand inclusions, brittleness, hardness or other circumstances make the processing more expensive) will be invoiced additionally. This also applies to extra costs and damages owed to inadequate technical documents (subsection 1). If the material becomes unusable for one of these reasons or otherwise without our fault, we are additionally entitled to compensation for our services provided up to the discovery of the flaw.
4. We will perform the assumed tasks diligently. We accept no liability for damages or delays attributable to flaws of the material, mistakes in the technical documents or other information provided, or warping of the piece during or after the processing. In the event of justified complaints being received in due time and form, we will only meet our obligation by touching up. If the material becomes unusable through our fault, we will cover the costs outlaid by us up to the discovery of the flaw. We are also willing to process replacement material that has been delivered to us free of charge in keeping with the provisions of this contract.
5. Unless otherwise agreed, scrap, shavings and other wastes become our property.