

GENERAL TERMS AND CONDITIONS OF BUSINESS

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February 12, 2019Ersteller
AFBereich / Abteilung
Armaturenfabrik

Conditions of sale

1. General, scope

- 1.1. Deliveries, services and offers shall be carried out exclusively subject to the applicability of these terms and conditions. The following conditions shall apply to all future business transactions, even if they are not explicitly agreed again. Opposing conditions of sale, or conditions, which deviate from our conditions of sale shall not be recognized by us, unless we have explicitly agreed to their applicability in writing.
- 1.2. Our conditions of sale also apply, if we carry out the delivery to the client without prejudice, whilst being aware of the client's opposing conditions of sale, or conditions, which deviate from our conditions of sale.
- 1.3. The law of the Federal Republic of Germany shall apply. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

2. Conclusion of contract and its content

- 2.1. Catalogues, brochures and price lists do not represent an offer.
- 2.2. Our offers shall be without obligation until they have been accepted by the client. Our prices are based on the actual stainless steel prices. Provided that there is no fixed-price agreement, all prices shall be subject to appropriate market adjustments. This refers to all raw material price changes on or after the day of placing orders with a delivery time of 60 days or more.
- 2.3. Our written order confirmation shall be decisive in regards to the content and extent of the agreement made. Any additional verbal agreements or verbal confirmations, which exceed the content of the written contract, shall not be valid.
- 2.4. Any business transactions carried out by our representatives shall require a confirmation from our head office.

3. Prices, payment conditions

- 3.1. The prices are "ex works" excluding the packaging, transport and additional costs, plus the respectively applicable legal value added tax.
- 3.2. The client shall be obligated to make the contractually agreed payment within fourteen days of receiving the invoice and without making any deductions by means of a transfer to one of the bank accounts listed by us.
- 3.3. In case of exceeding the payment date, this shall be regarded as a case of default without it requiring a warning. In this case, we shall be entitled – irrespective of other legal entitlements – to charge default interest in the amount of 9% points above the respective basic interest rate of the European Central Bank p.a. without this requiring a warning. If we are able to demonstrate higher default damages, we shall be entitled to claim these.
- 3.4. The ordering party may only offset against our claims or carry out rights of retention, if their claims are being recognized by us, or if they have been legally established. They may also offset counterclaims, which are ready to be decided upon, or which are based on the same contractual relationship.
- 3.5. In the case of a default of payment, our claims in regards to the entire business relationship shall be due, unless the ordering party is able to raise other objections. In this case, we are also entitled to demand prepayments.

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4. Delivery time, delivery delays

- 4.1. The start of the delivery time quoted by us shall be subject to the clarification of all technical questions, the timely receipt of all of the documents to be provided by the client, such as official permits and authorizations, as well as the timely provision of all possibly agreed prepayments or the arrangement of an agreed bank credit. Delayed fulfillments of the client's payment obligations shall lead to an according extension of the delivery date.
- 4.2. If an export authorization is required for the delivery, and if this has not been presented despite a correct and timely application before the intended delivery date, the delivery date shall be extended to when this has been issued. This shall not warrant any compensation claims.
- 4.3. The delivery time shall be considered as having been adhered to, if the delivery object has left the works before the expiration date, or if readiness to deliver has been notified. Partial deliveries are valid, unless they have been excluded explicitly.
- 4.4. The delivery deadlines as per the contract shall be extended accordingly in case of non-adherence to deadlines due to strikes, business interruptions (including a lack of raw materials and power cuts), lock-outs, war, acts of terrorism, embargos, viral and other attacks from third parties to our IT systems, if these occurred despite an adherence to protective measures whilst applying standard due diligence, as well as in other cases of force majeure. In such cases, we shall be entitled to withdraw from the contract without the client being able to submit compensation claims against us.
- 4.5 If we have not delivered during an agreed or extended delivery timeframe, the client shall be entitled to withdraw from the contract after the expiry of an appropriate grace period of 30 days by means of a written declaration.
- 4.6. Upon our request, the client shall be obligated to clarify within an appropriate timeframe, whether they will withdraw from the contract due to the delay of a delivery, or whether they will insist upon the delivery.
- 4.7. Any compensation claims of the ordering party due to delayed deliveries shall be excluded, unless there is a mandatory liability in case of intent or gross negligence by our representatives or assistants, or if significant contractual obligations have been breached; this shall not be linked to a change of the burden of proof to the disadvantage of the ordering party.
- 4.8. If the shipping or delivery is being delayed upon the request or due to the fault of the client, they shall be charged for storage costs starting one month after having been notified of readiness to deliver, and in case of a storage at the supplier works, at least 0.5% of the invoice amount for each month. The contractual parties shall be at liberty to prove higher or lower storage costs.
- 4.9. If the client delays an acceptance, or if they breach other contributory obligations, we shall be entitled to claim for any damages occurred, including possible additional expenses. In this case, the risk of accidental loss or accidental damage to the purchase object shall be transferred to the client at the time, when they enter into an acceptance default.
- 4.10. If a mandatory payment of the client is delayed by more than three months, we shall be entitled to withdraw from the contract. Any payments made shall then be offset against the costs incurred by us.
- 4.11. If, after concluding the contract, it comes to light that the client's financial capabilities have been reduced significantly, we may cease to fulfill the contract until the client has paid for the services in full, or if a bank guarantee or similar security of our choice has been provided. The same applies, if the client has repeatedly and/or significantly defaulted on payments. If the client fails to answer such demands, we may withdraw from the contract.

5. Shipping, transfer of risks and insurance

- 5.1. Unless agreed otherwise in accordance with INCOTERMS, the risks shall be transferred to the client at the time and to the extent of the product or parts thereof leaving our works, or as soon as the client has been notified in regards to our readiness to send. This shall also apply to deliveries, which are being carried out by our employees, in case of free and packaging-free deliveries, and in cases, where we carry out assembly, set-up or other services.
- 5.2. If parts of a product may not be delivered after completion and upon notifying our readiness to send, due to a delay in the client's acceptance, we shall fulfill our service obligations by storing the product. In this case, the client shall be obligated to meet all costs incurred to us after sending the invoices. We will notify the client as soon as possible and in writing in regards to the storing of the product. Legal compensation entitlements shall not be affected by this. In this case, the risk of accidental loss or damage of the product shall be transferred to the client at the time of the occurrence of the acceptance default.

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5.3. At the request and expense of the ordering party, the delivery shall be insured against the risks stipulated by them. We shall be entitled to take out transport insurance at their expense.

5.4. The ordering party shall transfer their claims against the insurance provider in case of damage to us at this point in time. They shall be obligated to do everything possible in order to maintain the insurance entitlement, especially in regards to providing the insurance provider with the required information and documents in a timely manner.

6. Copyright and ownership of documents

6.1. We reserve our copyrights, even after fulfilling the contract. Any software and documents, which have been handed over (drawings, declarations, cost estimates etc.) may not be made accessible to third parties. They shall have to be returned upon our request. They shall remain our property. The utilization rights shall be restricted to the client or to contractually authorized users. The copyright shall not be affected by this.

7. Reservation of proprietary rights

7.1. All major and minor items delivered by us shall remain our property until all our demands in regards to the business relationship have been paid in full.

7.2. If the client acts in breach of the contract, and especially in case of a payment default, we shall be entitled to withdraw from the contract and to demand back any items delivered so far.

7.3. The ordering party shall be obligated to treat the delivery object with due care and to insure it as new at their own expense. Any necessary maintenance and inspection works shall be carried out in a timely manner at the ordering party's expense.

7.4. The ordering party may process the delivered items in a revocable manner at any time as part of their ordinary business transactions, or link it with other equipment. Business transactions would not be considered as "ordinary", if the ordering party's operations have been encumbered with security transfers, payment delays, seizures, check or exchange protests.

7.5. The ordering party shall be entitled to sell on items delivered by us as part of ordinary business. In this case, however, they shall agree to transfer their claims in regards to the on-sale to the following extent at this point in time:

7.5.1. If we have sole ownership of the goods, the full claim shall be transferred to us.

7.5.2. If we only own part of it, a respective share of the part of the claim shall be transferred to us, which would correspond to our co-ownership share. The ordering party shall be entitled to confiscate transferred claims, as long as they fulfill their payment obligations.

7.5.3. After this transfer, the client shall be authorized to confiscate claims from their end customers. We reserve the right to obtain the claims ourselves, as soon as the client fails to fulfill their payment obligations correctly, or if they default on payments. In this case, the client shall be obligated to notify their end customers in regards to this transfer.

7.6. If any of the items delivered by us are being seized, the ordering party shall be obligated to notify us of this in writing immediately. We obligate ourselves to release the securities, to which we are entitled, upon the ordering party's request to the extent that their realizable value exceeds the claims to be secured by more than 10%; we shall be entitled to choose the securities to be released.

8. Liability for defects

8.1. Any rights in regards to the ordering party's liability for defects assumes that they have adequately met their inspection and complaint obligations in accordance with §377 of the commercial code (HGB). If the ordering party fails to complain about an obvious defect within 3 working days, the delivery shall be considered as having been authorized.

8.2. In case of a timely and justified defect complaint by the ordering party, we shall either repair or replace all damaged parts at our own discretion. Any parts, which have been replaced, are to be returned to us. In the case of a removal of the defects, we shall be obligated to meet all costs in regards to the removal of the defect, and especially transport, access, work and material costs, unless these are higher due to the fact that the delivery item has been brought to another place than the place of execution. If it is not possible to carry out repairs or replacement deliveries, or if these are being refused, or if they go on beyond the appropriate timeframe, or if they fail for reasons, for which we are responsible, the ordering party may choose to either withdraw from the contract or to reduce the purchase price.

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8.3. In order to carry out all repairs, which we deem necessary, the ordering party is to provide adequate time and opportunity; otherwise, we shall be released from our liability for defects.

8.4. We shall not be liable for damages, which occur due to normal wear and tear, an unsuitable or incorrect utilization or treatment, excessive use, or a faulty assembly or start-up by the ordering party or third parties.

8.5. Any further claims of the ordering party, especially in regards to compensation instead of service, the reimbursement of expenses and compensation for indirect and direct damages, including defaults upon concluding the contract, shall be excluded, unless this is due to the intent or gross negligence of our legal representatives or assistants, or if there is a guarantee in regards to the condition of our products, or due to a culpable breach of obligations, which have led to the loss of life or damage to body and health, or in case of a mandatory liability due to a culpable breach of significant contractual obligations. Compensation for the breach of significant contractual obligations, however, shall be limited to foreseeable damage, which are typical for this type of contract, unless there is a case of intent or gross negligence. The above stipulations shall not be linked to a change in the burden of proof to the disadvantage of the ordering party.

8.6. The stipulations in accordance with figure 8.5 shall apply accordingly in regards to direct claims of the ordering party against our legal representatives or assistants.

8.7. All fault claims on behalf of the ordering party, including the regulated compensation and expense reimbursement claims as part paragraphs 8.5. and 8.6. shall expiry within one year of delivering the goods to the ordering party.

9. Safety-related conditions

9.1. Dangerous work materials: the ordering party shall be obligated to complete the questionnaire sent to them in regards to the composition of the materials to be processed in a complete and truthful manner.

9.2. Any machinery and equipment shall comply with the relevant and generally recognized rules of technology in accordance with the law on product safety (ProdSG dated 8th November 2011 (BGBl. I p. 2179, rep. 2012 I p. 131).

9.3. If the offered safety features, such as access-protected inlet and outlet elements, electrical equipment etc. are not part of the delivery (special design), the ordering party shall be responsible for ensuring safety in another way.

9.4. The ordering party shall be obligated to take into account safety notes and specifications in our operating instructions and any other regulations when assembling replacement and wearing parts.

9.5. When purchasing spare-parts, the ordering party is obligated to observe the safety instructions and information contained in our company regulations and other regulations during the assembly of spare parts and parts subject to wear.

10. Liability

10.1. If it is not possible for the client to utilize the delivery item and if this is our fault due to an omitted or faulty execution of suggestions or consultations before and after concluding the contract, or due to a breach of other additional contractual obligations – especially in regards to misleading instructions concerning the installation, operation and maintenance of the delivery item – the regulations as per paragraph 8 shall apply, as well as the following figure 10.2, whilst excluding all further possible claims of the client. Any damages, which may occur if and as far as the client is not following our instructions and warnings, shall not be our responsibility. The client herewith consents to release us from all possible demands, cases of liability and compensation claims, which could result thereof.

10.2. In regards to damages, which did not occur in regards to the delivery item, and which are not included in our liability for defects in accordance with paragraph 8, we shall only be liable – for whatever legal reasons – in case of intent, gross negligence of the owner/ organs or managing employees, and in case of damage to the delivery object, as far as we are liable in accordance with the law on product safety, for bodily and material damages in regards to privately used objects. In the case of a culpable breach of significant contractual obligations, we shall also be liable in case of gross negligence by non-managing employees, and in case of simple negligence, the latter case shall be restricted to reasonable and foreseeable damage, which is typical for this type of contract.

10.3. Any other claims shall be excluded.

10.4. As far as our liability has been excluded or limited, this shall also apply to the personal liability of our employees, staff, colleagues, representatives and assistants.

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11. Final clauses, place of jurisdiction

- 11.1. If one of the stipulations of these conditions of sale should be or become invalid, the validity of the remaining stipulations shall not be affected by this.
- 11.2. The contract, all changes or additions to the contract and any other agreements shall require the written form in order to take effect. The ordering party may not transfer demands and other contractual rights to third parties without our written consent.
- 11.3. Unless stipulated otherwise in our order confirmation, the place of execution in regards to the delivery and payment shall be Biberach/Riss, Germany. The place of jurisdiction shall be the registered office of our company in Biberach/ Riss, Germany. We are, however, entitled to also sue the ordering party at their registered company office.
- 11.4. German law shall apply to all claims from or in connection with the business relationship, whilst excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

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