

1 Scope of validity

These terms and conditions of sale apply exclusively to companies, legal entities under public law or public funds in accordance with § 310 section 1 BGB [German Civil Code]. We do not recognise the customer's conditions which conflict with or deviate from our terms of sale unless we have expressly agreed to their applicability in writing.

These terms and conditions of sale shall also apply to all future business with the customer insofar as legal transactions of a similar nature are concerned.

These terms and conditions of sale apply to domestic - i.e. German - companies and to foreign - i.e. non-German - companies in equal measure.

2 Quotation and concluding the contract

We sell storage and conveyance technology/systems for bulk materials technology as well as spare parts, and we either furnish the customer with a concrete quotation or the customer makes us an offer, which we accept.

We also sell engineering services for the redesign/optimisation of new and existing systems.

Our quotations are non-binding and subject to change, unless they are specifically marked as binding or contain a specific acceptance deadline.

Insofar as an order is to be regarded as an offer in accordance with § 145 BGB, we are able to accept this within two weeks by email, fax and in writing.

3 Documents provided

We reserve the proprietary rights and copyrights to all documents, such as calculations, drawings, etc., that are provided to the customer prior to and upon placing the order. These documents shall not be made accessible to third parties unless we have provided the customer with express permission to do so in writing. This does not apply to companies associated with the customer per § 15 AktG [Stock Corporation Act], or to disclosure obligations as a result of official instruction.

If the customer should disclose these documents to a third party without written permission, the customer shall be obligated to pay us a contract penalty amounting to 5% of the total net order value. We reserve the right to make compensation claims for damages, although the contract penalty payment shall be offset against these.

4 Price and payment

Unless otherwise agreed in writing, our prices apply ex works per the Incoterms valid at the time of contractual conclusion excluding packaging and subject to VAT at the applicable statutory rate. The customer shall be billed for the packaging separately.

Payment of the purchase price shall take place exclusively to one of the accounts cited on the invoice. The deduction of a discount may only be granted by special agreement in writing.

Unless otherwise agreed, the invoice shall fall payable within 14 days of the invoice date. Interest on arrears amounting to 8 % p.a. above the respective basic interest rate will be charged. We reserve the right to claim for higher damages caused by delay.

Unless a fixed price agreement has been concluded, we reserve the right to make proportionate price changes due to a change in wage, material and sales costs for deliveries that take place three months or more after contractual conclusion. The customer shall be informed of this immediately.

5 Offsetting and rights of retention

The customer is only entitled to offsetting and to asserting a right of retention insofar as (a) the counter-claim they draw upon here is either undisputed or legally recognised, or (b) in the case of procedural assertion the last oral proceedings are ready for judgement at the time, or (c) mutuality of obligation with the main claim exists.

6 Delivery time

The start of the delivery time stated by us assumes the punctual and correct fulfilment of the customer's obligations. We reserve the defence of non-performance of the contract. The delivery period shall then be extended accordingly.

If the customer delays acceptance or culpably infringes other duties to cooperate, we are entitled to demand compensation for damages which arise in this respect, including any additional costs, upon provision of proof. We reserve the right to enforce additional claims. Insofar as the previous preconditions are fulfilled, the risk of accidental loss or an accidental deterioration of the purchase item transfers to the customer at the time at which they delay acceptance or default on a payment.

The delivery time is deemed to have been met with if the delivery item has been dispatched from our factory on or by this date, or

notification is issued that the item is ready for shipping. If acceptance is required, the acceptance date is decisive – except if acceptance rejection is reasonable – or alternatively the notification of readiness for acceptance.

If delivery or acceptance of the delivery goods is delayed for reasons attributable to the customer then the costs incurred as a result of the delay shall be charged to him commencing 2 weeks after notification of readiness for delivery or acceptance.

If failure to adhere to the delivery time is attributable to force majeure, industrial action or any other circumstances that lie outside the sphere of influence of the supplier then the delivery time shall be appropriately extended. The supplier shall inform the customer of the onset and end of such circumstances as soon as possible.

Part deliveries are permissible where these are reasonable for the customer.

7 Retention of title

We reserve title to the item supplied by us until all amounts owing due to the contract have been settled in full. This also applies to all future deliveries, also if we do not expressly state this each time.

The customer is obliged to handle the purchase item with care as long as the title has not been transferred to him. They are obligated in particular to insure the item at their own cost against theft, fire and water damage, sufficiently so as to cover its new value. Where maintenance and inspection works are necessary, the customer must carry these out promptly and at their own cost. As long as the title has not been transferred, the customer must inform us in writing with immediate effect if the delivered item is seized or exposed to any other third party interventions. Insofar as the third party is not in a position to refund to us the legal or out-of-court costs resulting from a claim in accordance with § 771 ZPO [Code of Civil Procedure], the customer shall be liable for the loss incurred by us.

The customer has the right to resell items subject to the reservation of title in the course of ordinary business. The customer hereby transfers to us their claims against the buyer from the resale of the item subject to the reservation of title, per the value of the gross invoice amount agreed with us (including VAT). This act of transfer applies regardless of whether the purchase item is sold without or after being processed. The customer is entitled to collect the receivables also after the act of transfer. Our authority to collect receivables ourselves remains unaffected. However, we shall not collect the receivables as long as the customer fulfils their obligations to make payment from the proceeds collected, does not fall into payment arrears, and in particular does not file for insolvency and does not discontinue payment.

The processing, reprocessing or redesigning of the purchase item by the customer always takes place in our name and on our behalf. In this case, the customer's expectant right to the purchase item continues with the reworked item. Insofar as the purchase item is processed with items that do not belong to us, we acquire co-ownership of the new item, proportionate to the objective value of our purchase item to the other processed items at the time of their processing. The same applies in the event of combining. Insofar as combining is effected in such a way that the customer's item can be regarded as the main item, it is deemed to be agreed that the customer transfers a relative proportion of the resultant sole ownership or co-ownership to us. To safeguard our claim against the customer, the customer also hereby transfers such receivables to us, which arise from the third parties by combining the item subject to the reservation of title with a plot of land; we hereby accept this transfer.

We undertake to release the securities we are entitled to at the customer's request, insofar as their value exceeds the claims to be secured by more than 20 %.

8 Warranty for defects

The statutory regulations shall apply to the rights of the customer in the event of defects of material and title (including incorrect deliveries and shortfalls in delivery, as well as defective assembly or instructions), insofar as these conditions of sales do not contain alternative or supplementary provisions.

We are not subject to any warranty obligations for material defects with any agreed delivery of used products, with the exception of cases per clause 10, section 2, section 3, 3 lit. a and lit. b and section 4 of these conditions of sales. Furthermore, we are not subject to any warranty obligations if the customer modifies the goods without our approval, or allows others to do so, and the rework is complicated or rendered impossible as a result of this. In any case, the customer is required to bear the additional costs incurred during the rework as a result of the modification.

Claims for defects are not admissible in case of minor deviations from the agreed characteristics, in case of minor impairments to the usability, in case of natural wear and tear, or damage that occurs after the transfer of risk due to faulty or negligent handling, excessive stresses and loads, unsuitable operating equipment, deficient structural works, unsuitable foundation soil, or in case of certain outside influences that are unforeseen according to the contract. If the customer or a third party performs unprofessional maintenance work or modifications, no claims for defects shall exist for such works and for any resultant consequences.

Unless otherwise expressly agreed, (a) our products and services are required to satisfy the legal requirements applicable in Germany exclusively and (b) the customer is solely responsible for the integration of the products into their technical, structural and organisational systems and circumstances.

Insofar as acceptance is not expressly agreed, the customer is obligated to check the goods supplied immediately upon delivery, or to commission a third party with performing this check, and to report any defects immediately. This is subject to §§ 377, 381 HGB and the provisions in this clause. Immediate notification of defects requires that these are reported no later than seven (7) working days after delivery or - in the case of a defect that was not immediately apparent at the time of inspection (§ 377 section 2 and 3 HGB) - no later than three (3) working days after the defect is discovered. If the customer fails to carry out the proper inspection and/or report defects, our warranty obligations and other liabilities for the respective defect are excluded.

In deviation from § 640 section 2 BGB, an unconditional acceptance despite the customer being aware of defects leads not only to a loss of such rights on the part of the customer, as defined in § 634 no. 1 - no. 3 BGB, but also to a loss of entitlement to claim for damages as described in § 634 no. 4 BGB. This does not apply if we have provided a quality guarantee, or if we have maliciously concealed a defect.

On our request, goods reported as being defective must be sent back to us immediately at the cost of the customer. In case of a justified notification of defects, we shall reimburse the customer's costs for the most economical shipping method; this applies insofar as the costs are not increased because the goods are located at a site other than the intended place of use.

In all cases, the customer must provide us with the necessary time and opportunity to assess defects and other complaints, and to provide due supplementary performance, and must in particular furnish us with the affected goods for the aforementioned purposes, or - in case of permanent installation or similar on-site fixing - with access accordingly.

We shall bear the essential costs incurred with the inspection and supplementary performance, in particular transport, travel, work and material costs, if a defect is found to be present. The supplementary performance does not include disassembling the defective goods or the subsequent installation of the faultless goods, if we were not responsible for carrying out the original installation. If it becomes apparent that the customer's request for defect rectification is unjustified, we are entitled to demand that the customer reimburse the costs incurred by us.

If the delivered object proves to be faulty, we are initially entitled and obligated to choose - within an appropriate period of time - whether to remedy the defect through a repair (rework) or by delivering a faultless object (substitute delivery). In the event of substitute delivery the customer must return to us the object that is to be replaced, in accordance with statutory regulations. The same applies to spare parts replaced within the framework of rework.

We are entitled to make our outstanding rework dependent on the customer paying the due purchase price or the current instalment due where applicable, whereby the customer is also entitled to withhold part of the due payment proportionate to the defect.

If supplementary performance is not possible or is unsuccessful, or a reasonable period of grace to be set by the customer for the supplementary performance expires unsuccessfully, or it is unnecessary according to the statutory regulations, the customer

can withdraw from the purchase contract or reduce the purchase price at their own discretion. However, no right to cancellation exists with a minor defect.

The customer can only cancel or terminate the contract owing to a contractual infringement that does not comprise a material defect, if we are responsible for the contractual infringement; the statutory regulations additionally apply here. A free right of termination on the part of the customer, in particular per §§ 651, 649 BGB, is excluded.

Any claims for compensation due to damage only exist according to clause 10 of these conditions of sales.

9 Guarantee of freedom from the industrial property rights of third parties

According to the provisions of this clause 9, we state that the goods are free from industrial property rights or copyrights of third parties in the countries of the European Union, or in other countries in which we manufacture the goods or have them manufactured. Each party shall inform the other in writing with immediate effect, if claims are asserted against them as a result of an infringement of such rights.

Claims due to the infringement of industrial property rights or copyrights of third parties are excluded, if these infringements pertain to an instruction of the customer, an unauthorised modification, or a use of the goods by the customer that violates the contract.

In the event that the goods infringe the industrial property rights or copyrights of a third party, we shall amend or exchange the goods at our own discretion and at our own cost, such that no further rights of third parties are infringed, although the goods continue to fulfil their contractually agreed function, or we shall obtain rights of use for the customer through the conclusion of a licence agreement. If we are unable to do so within an appropriate period of time, the customer is entitled to withdraw from the contract or appropriately reduce the purchase price.

In the event of other manufacturers or suppliers infringing rights to products supplied by us, we shall be entitled to choose whether to assert our guarantee entitlements against these manufacturers or suppliers on behalf of the customer, or transfer our rights to the customer; clause 8, section 13 of these conditions of sales applies accordingly.

Any claims for compensation due to damage only exist according to clause 10 of these conditions of sales.

10 Liability for compensation

Unless otherwise stated in these conditions of sales, we shall be liable in accordance with the statutory regulations in the event of a breach of contractual and non-contractual duties.

We shall be liable - on whatever legal grounds - without limitation, for compensation for damages arising due to contractual infringements based on malice or gross negligence, for which we, our legal representatives or vicarious agents are responsible.

In the event of a contractual infringement arising due to simple negligence, for which we, our legal representatives or vicarious agents are responsible, we shall only be liable

- a) although without limitation, for damages arising due to an injury to life, body or health;
- b) for damages due to an infringement of significant contractual obligations. Significant contractual obligations are such obligations as must be fulfilled in order to diligently fulfil the contract, and such obligations, the fulfilment of which the customer does and should be able to regularly depend upon. However, in this case our liability is restricted to damages that are contractually typical and that were foreseeable at the time of contractual conclusion.

The liability limitations that can be derived from section 3 of this clause 10 shall not apply insofar as we have maliciously concealed a defect, or if we have provided a guarantee for the condition of the goods subject to damages, or we have assumed a procurement risk. Further to this, any mandatory and statutory liability, in particular according to the product liability law, remains unaffected.

Insofar as our liability is excluded or limited by the provisions above, this also applies in regard to the personal liability of our bodies, legal representatives, staff, employees and vicarious agents.

11 Limitation period

In deviation from § 438 section 1 no. 3 BGB, the period of limitation for claims - also non-contractual - due to material and title defects is one (1) year from the delivery date; however, this does not apply to the cases stipulated in clause 10, section 2, section 3 lit. a and lit. b and section 4 of these conditions of sales. In such cases, the respective valid statutory period of limitation shall apply.

The term delivery in the previous section refers to the arrival of our notification of readiness for shipping/collection with the customer, or - if agreed - the transfer to transport personnel. Insofar as acceptance is agreed, the period of limitation only begins with acceptance.

If the goods are a building structure or an object that is conventionally used in a building structure and that has caused its defectiveness (building materials and components) then the period of limitation is five (5) years from delivery (§ 438 section 1 no. 2 lit. a or b BGB) according to the statutory regulations. Notwithstanding this, the statutory regulations for surrender claims of third parties in rem (§ 438 section 1 no. 1 BGB)[, / and]for our malicious concealment of a defect (§ 438 section 3 BGB) remain unaffected.

12 Miscellaneous

This contract and the legal relations of the parties in their entirety are subject to the law of the Federal Republic of Germany to the exclusion of UN Convention on Contracts for the International Sale of Goods (CISG). The regulations on contract awards for public works do not apply.

The place of fulfilment and sole jurisdiction for all disputes arising from this contract is our place of business.

All agreements made between the parties for the purpose of fulfilling this contract must be stipulated in writing.

If one of the provisions of these T&Cs should be or become invalid, the remaining provisions of the contract shall remain in force.