

Terms and Conditions of Business

(valid as from 1. February 2002; the Terms and Conditions hitherto are hereby invalidated)

These Terms and Conditions govern all contracts for the delivery and performance of our products and the execution of repair work. Conflicting terms and conditions of business of the Purchaser are inapplicable, even if we do not expressly object thereto.

I. Tender and Scope of Delivery

Our tenders are subject to change without notice. An order shall be deemed accepted only after we have acknowledged the order in writing following the complete clarification of all technical and commercial details. Our written acknowledgement of the order shall be decisive for the scope of delivery. Collateral agreements shall be effective only if we have acknowledged these in writing. Details and information contained in our printed matter, such as for example illustrations, drawings, indications of dimensions and weights as well as descriptions, shall be applicable only if they are expressly referred to as binding. We reserve the right to alter technical data and designs.

II. Prices

Except where otherwise agreed upon, prices shall be deemed to be ex works and exclusive of packaging, freight charges, postage, a value guarantee, installation and statutory value-added tax. Confirmed prices shall be based on prices of materials and wages valid at the time the purchase order is accepted. We reserve the right to invoice, upon delivery, prices applicable on account of the prices of materials and wages then valid.

III. Packaging

Our packaging expenses actually incurred and not reimbursed shall be invoiced.

IV. Delivery Period

Delivery periods specified by us shall not be binding. They shall apply as from the day when the purchase order is accepted, but not before the clarification all details of execution and all prerequisites that the Purchaser is required to meet. The delivery period shall be reasonably extended in the event of unforeseen occurrences during manufacturing or other impediments, such as cases of force majeure, transport delays, plant interruptions at our own works or at works of subcontractors. Damage claims, in particular on account of default due to delayed delivery, shall be rejected. We shall be entitled to deliver before the end of the confirmed delivery period and to make part deliveries.

V. Orders for Delivery on Demand

Except where specifically agreed upon, delivery of goods ordered on demand shall be taken within a reasonable period, but no later than within 12 months after the date of the acknowledgement of the order. If delivery of goods is not taken in due time, we may at our option store the goods ready for dispatch at the expense and risk of the Purchaser and invoice these as delivered, charging all costs incurred, or dispatch the goods after having given prior notification.

VI. Passage of Risk

Risk shall pass to the Purchaser no later than at the time the delivery parts are dispatched, that is, even if delivery at no cost to the Purchaser is agreed upon by way of exception. If dispatch is delayed due to circumstances for which we are not responsible, the risk shall pass to the Purchaser as from the day when the goods are ready for dispatch.

VII. Dispatch

Dispatch shall occur for the account of and at the risk of the Purchaser. We shall determine the type of dispatch and the route to the best of our judgement, except where otherwise agreed upon in writing. All freight charges, postage expenses, insurance and other expenses shall be chargeable to the consignee, just as any stamp duty.

VIII. Right of Cancellation

The Purchaser shall have the right to cancel the contract if it becomes totally impossible for us to deliver, if we are in default and have in this connection culpably ignored an adequate additional period that we have been set under threat of cancellation, if we have culpably ignored an adequate additional period that we have been set for remedying a defect attributable to us within the meaning of the Terms and Conditions of Sale, or if it proves to be impossible to remedy the defect. Unforeseen events within the meaning of section (IV) that cause the agreed delivery period to be exceeded shall give us, excluding any and all claims of the Purchaser, the right to cancel the contract in whole or in part if, since the time the order was placed, the commercial conditions have changed to such a considerable extent that we can no longer be reasonably expected to perform. This shall equally apply if an extension of the delivery period was initially agreed upon. Apart from the above right of cancellation and the claims defined in section (XV), the Purchaser may not assert against us any compensation claims whatsoever or any other rights on account of any disadvantages related to the supply contract or the delivery item, regardless of the legal basis of such claims.

IX. Deferment of Order, Cancellation

If delivery of goods ordered is, without justification, not taken within a period still to be fixed by us, and if the Purchaser cancels the order, which shall in any event be subject to our consent, the Purchaser shall be obliged to pay the cost of processing the order, preliminary work performed, including materials procured for dealing with the order, plus reasonable compensation for lost profit.

X. Drawings and Documents

The recipient of drawings and documents may not make these known to any third parties. If this is breached, full compensation for damages shall be payable, and we shall be entitled to withdraw from all obligations entered into.

XI. Models and Tools

In so far as it is necessary to make models and tools for special designs, these shall remain our property, even if the Purchaser has wholly or partly paid for these. We may only enter into an obligation to reserve for a customer individual types of design in respect of our delivery items, in so far as these are protected by a patent or a legally valid German utility patent.

XII. Proprietary Rights

The Purchaser shall be solely responsible for ensuring that special makes ordered do not infringe third-party proprietary rights. The Purchaser shall indemnify us against all claims raised in connection with such proprietary rights.

XIII. Reservation of Title

1. The goods shall remain the property of the Supplier until all claims to which it is entitled against the Purchaser out of the business relationship with the Purchaser have been satisfied. In so far as payment of liabilities by cheque or bill of exchange has been agreed upon with the Purchaser, the reservation of title shall also extend to the Purchaser's honouring of the bill of exchange accepted by the Supplier, including all contingent liabilities, and shall not lapse as a result of a received cheque having been credited to the Supplier. All orders in this connection shall be deemed to be one unitary transaction.
2. The Purchaser may sell goods under reservation of title only in the ordinary course of business, pursuant to its customary terms and conditions of business and as long as it is not in default, provided that the Purchaser has agreed upon a reservation of title with its customer and the account receivable (final invoiced amounts including VAT) arising from the resale passes to the Supplier. The Purchaser shall not be entitled to make other dispositions.
3. The Purchaser shall be obliged to handle and treat goods under reservation of title with care. In particular, the Purchaser shall be obliged to adequately insure these at the replacement value at its expense against fire damage, water damage and damage due to theft.
4. The Purchaser's account receivable arising from the resale of goods under reservation of title is already now assigned to the Supplier with immediate effect. It shall serve to secure the

Supplier's claims to the same extent as the goods under reservation of title.

5. If the Purchaser sells goods under reservation of title together with other goods not purchased from the Supplier, the assignment of the account receivable arising from the resale shall apply only to the extent of the invoiced value of the goods under reservation of title sold in each particular case. In the event that goods in which the Supplier has a co-ownership share are sold, the assignment of the account receivable shall apply to the extent of this co-ownership share.
6. At the Purchaser's request, the Supplier shall be obliged to release security items to which the Supplier is entitled to the extent that the value of the security items exceeds by more than 20 % the account receivable to be secured. The Supplier shall be responsible for selecting the security items to be released in this connection.
7. In the event that the Purchaser acts in breach of the contract, particularly if it defaults on payment, the Supplier shall be entitled to take back the goods. This shall not constitute a cancellation of the contract. The Supplier shall have the power to sell the goods after having taken them back. The proceeds from such a sale shall be credited against the Purchaser's liabilities, less reasonable costs in connection with the sale.
8. The Purchaser shall not be entitled to pledge the Supplier's goods or to transfer ownership thereof to third parties by way of security. In the event of a levy of execution or any other third-party intervention, the Purchaser shall without delay give the Supplier written notification and inform the third party of the Supplier's rights. In so far as the third party is unable to reimburse the Supplier for court costs and out-of-court costs in connection with a third-party action against execution, the Purchaser shall be liable for the loss incurred by the Supplier.
9. Processing of goods delivered by the Supplier shall occur on behalf of the Supplier as the manufacturer within the meaning of section 950 of the German Civil Code [BGB] without placing the Supplier under any obligation. The processed goods shall be deemed goods under reservation of title within the meaning of subsection 1. If the Purchaser or its representatives process, combine or mix goods under reservation of title with other goods not belonging to the Supplier, the Supplier shall be entitled to co-ownership rights in the new item in the ratio of the invoiced value of the goods under reservation of title to the invoiced value of the other goods used. In case the Supplier's ownership rights lapse as a result of combining or mixing, the Purchaser already now transfers to the Supplier the ownership rights to which the Purchaser is entitled in the new unit or the new item to the extent of the invoiced value of the goods under reservation of title and shall act as the custodian thereof free of charge. The co-ownership rights arising hereunder shall be deemed to be goods under reservation of title.
10. If the reservation of title or the assignment of accounts receivable is ineffective under the law in whose area of jurisdiction the goods are located, security equivalent to the reservation of title or the assignment of accounts receivable in this area shall be deemed agreed upon. If the Purchaser's co-operation is necessary in this connection, the Purchaser shall take all measures necessary for establishing and preserving such rights.

XIV. Payment

Payments shall be made within 30 days after the invoice date in cash, without any deduction, free of charge to the Supplier's payments office. Provided that no due invoices are outstanding, we shall allow a 2 % cash discount on payments that we receive within 10 days after the invoice date. Excluded from this are consignments of repair parts and spare parts, which shall be due immediately net cash. Deliveries abroad shall be accounted for according to specific agreements. Deliveries to a Purchaser with whom we are not in ongoing business relations shall be made against payment of the invoiced amount on delivery with a 2 % cash discount. Cheques and bills of exchange shall be considered as payment only once they have been cashed or honoured, whereby bills of exchange shall be subject to the Supplier's acceptance. The cost of bills of exchange shall be chargeable to the Purchaser. No cash discount shall be allowed on payments by bill of exchange. If the agreed period for payment is exceeded, compensation for default shall be charged at the rate of the respective bank interest rate and bank charges for unsecured business loans. There shall be no obligation to specifically give notice of default in this connection, and the right to assert further rights is reserved. If the Purchaser's financial circumstances deteriorate following the delivery, or if we first acquire knowledge of such deterioration after the delivery, our accounts receivable shall be immediately due. Additionally, we shall be entitled to carry out outstanding deliveries only against advance payment and to cancel the contract following a reasonable additional period. The same shall apply in the event that payment terms are breached. The Purchaser agrees that claims against us shall be offset against liabilities. The Purchaser may not withhold or offset payment with counter-claims that have not been recognised. Commercial agents of the Supplier may only take payments if the Supplier has specifically empowered them to do so.

XV. Warranty

We shall be liable, excluding further claims, as follows for defective delivery, which also includes any lack of expressly warranted features: We shall, at our option, repair or replace free of charge all parts that prove to be unusable, or whose usability is significantly impaired, within 12 months – in the case of 8-hour operation – as from the day of delivery ex works Ruhrgetriebe, provably as a result of a circumstance existing prior to the day of delivery, particularly on account of materials of poor quality procured from us or unsatisfactory execution. The prerequisite for this is that the Purchaser has performed its contractual obligations, in particular that it has met the agreed payment terms. Any discovery of such defects shall be reported to us in writing without delay. The Purchaser shall give us, free of charge, the time and opportunity necessary for carrying out all alterations or a substitute delivery that we consider necessary. Repairs shall be carried out only at our works. Parts complained about shall be returned to us free of charge only at our request. Exchanged parts shall become our property. We accept no liability for delivery parts that are damaged or are subject to premature wear and tear due to the nature of their materials, the type of use thereof, normal wear and tear, incorrect or negligent handling or treatment, excessive use, unsuitable operating materials, chemical, electro-technical or electrical influences or effects of the weather and nature. The results obtained on our testing stand shall be decisive for the operation characteristics of gearing. We accept no liability for faults occurring due to installation conditions or improper maintenance. We shall be liable for repair work carried out and for spare parts delivered only up to the end of the warranty period for the original delivery. Liability shall lapse if subsequent work, alterations or repair work are carried out without our prior consent. We shall be liable for third-party products delivered only to the extent that our subcontractors give us a warranty for their products. More extensive claims of the Purchaser on any legal basis whatsoever, particularly for compensation for indirect damages, are excluded. We give advice to the best of our knowledge. However, the Purchaser shall be responsible for carefully examining the feasibility of our proposals. Warranty claims in this respect are excluded.

XVI. Place of Performance and Jurisdiction

Mülheim an der Ruhr is the place of performance for delivery or performance, acceptance and payment and is the place of jurisdiction, also for proceedings based on documentary evidence or a bill of exchange. All contractual relations are exclusively governed by German law.

XVII. Invalidity of Terms and Conditions

If individual terms and conditions herein are ineffective or are declared ineffective by a final and absolute court judgement, this shall not affect the validity of the other terms and conditions.