

Terms of Sale

General Terms of Sale

Conclusion of Contract, General Subject Matter of Contract and Scope

The following conditions are only applicable to merchants, legal entities under public law or special assets governed under public law.

1. Orders only become binding with regard to type and scope of delivery once they have been confirmed by the Supplier. Modifications and amendments must be in writing.
2. These conditions shall also apply to ongoing business relations without direct reference to future transactions in which they are not expressly referred to if they have been agreed by the parties in a previous contract. Should alternative provisions arise on the part of the Customer or the Supplier in place of these General Terms of Conditions, they must be explicitly agreed by the partners. Should individual provisions thereof be or become ineffective, the validity of the remaining provisions shall not be affected.
3. The terms and conditions of purchase on the part of the Customer are only binding for the Supplier if explicitly acknowledged by the latter.

Prices

4. Our pricing is based on the prices valid on the day of delivery for the appropriate quantities and qualities, plus the statutory value added tax applicable on the day of delivery. If in doubt, the prices shall apply ex works excluding freight, customs, import duties and packaging.
5. In the event that there are substantial changes to the costs arising after contract closure, the parties hereto undertake to agree on price adjustments in writing.

Quantity and Delivery

6. Reasonable partial deliveries and deviations of up to 10% from orders are permissible.
7. Delivery terms shall be agreed between the Seller and the Buyer for each order. The Incoterms as amended shall apply for the interpretation of the delivery clauses, provided that such interpretation does not conflict with these General Terms of Sale or with the separate agreements made between Seller and Buyer.
8. Call orders and specifications for individual deliveries must be made in good time so that proper production and delivery within the period specified in the contract are allowed.
9. Goods manufactured according to the Buyer's special specifications or according to samples provided by the Buyer shall be ready for delivery as soon as they are completed or, if provided for in the contract, at the latest on the date the test results are forwarded to the Buyer or notice of the delivery is given.
10. The delivery deadlines are authoritative for the time of delivery ex works; the dates given for deliveries are approximate only. An appropriate extension of the delivery periods shall be granted if the Buyer fails in his duties or if the delivery is delayed by non-culpable, unforeseen extraordinary events in the Seller's production facility, in a facility supplying the Seller or in a shipping firm.

The same shall apply in the event of strikes and lock-outs. If the hindrances exceed one month, or if the sub-supplier's or sub-contractor's production facility is shut down, or in the event of war, dispositions by higher authorities, traffic disturbances and other cases of force

majeure, the Seller and the Buyer shall be entitled to withdraw from the contract after written notice, if the delivery is delayed by such events by more than 30 days.

The Seller shall inform the Buyer of such impediments as soon as possible. Claims for damages arising from delayed delivery or non-performance shall be ruled out in all cases of delays with the exception of gross negligence or intent. In the event of delay caused by the Seller, the Buyer shall be entitled to withdraw from the contract after a reasonable period to be set by the Buyer in writing, unless the goods have already been manufactured at the date the written withdrawal declaration is received by the Seller.

11. If the goods ordered are not called or specified within the specified period, the Seller shall be entitled after having fixed a deadline to no avail to demand payment in advance or to withdraw from the contract and/or to claim damages.

12. During acceptance and storage of the goods, the Buyer undertakes to observe all statutory provisions and regulations, in particular with regard to occupational health and safety, and to obtain and keep the necessary permits and licences.

13. The Buyer agrees to return pallets and containers capable of being returned in a clean and undamaged condition. The same applies to the exchange of europallets.

Industrial Property rights

For deliveries according to specifications or details supplied by the Buyer, the Buyer agrees to indemnify the Seller from and against all third party claims under industrial property rights. In the event the Buyer violates the contract, the Buyer's industrial property rights shall not prevent the utilisation of the goods by the Seller.

Liability, Warranty

14. The Seller warrants that the goods comply with the Buyer's specifications as amended.

15. The duty to examine whether the goods ordered or proposed by the Seller are suitable for the Buyer's intended purpose lies with the Buyer. The Buyer must ensure that the goods ordered by him are suitable for further processing and use intended by him.

16. The Seller does not warrant the suitability of the product for a specific purpose, also if this purpose is known to the Seller. Advice and recommendations given by the Seller on technical applications are given to the best of the Seller's knowledge. Details on the suitability and use of the goods do not release the Buyer from the duty to carry out his own tests and trials involving the suitability of the goods for the intended processes and uses.

17. The Buyer's warranty rights require that the Buyer inspects the goods for compliance with the agreed specifications after receipt and that he notifies the Seller in writing immediately of any defects, however, at the latest within 5 working days after delivery. In case of hidden defects, this term shall be extended to 1 week from their detection, but no longer than 3 months after receipt of the goods.

18. In case of justified complaints (including wrong deliveries), the Buyer's claims shall be limited to substitute delivery, freight paid by the Seller. If substitute delivery fails, the Buyer may demand reverse transaction of the contract or reduction of the purchase price. Any other claims, in particular claims for damages or reimbursement of expenses because of defects or claims for consequential damage because of defects shall only be applicable in accordance with the provision in No. VI. Replaced parts are to be returned to the Seller at his request and

cost.

The warranty period shall be one year after transfer of risk.

General Limitations of Liability

In all cases in which the Seller, in derogation of the above provisions, is obliged to compensate for losses or expenses by virtue of claims arising from the contract or by law, the Seller shall only be liable to the extent his executive officers, agents or persons employed in performing his obligations are culpable of intent, gross negligence or physical injury involving life, body or health. Liability without fault under the product liability laws shall remain unaffected. Culpable liability for the infringement of essential contractual duties shall also remain unaffected; however, with the exception of the cases under sentence 1 above, liability shall be limited to the predictable damage typical for the contract.

Payment

20. All payments must be made in EURO to the Supplier only.

21. Unless otherwise agreed, the purchase price

a) for moulds is payable net, 50% upon confirmation of order with the remaining 50% due 30 days after presentation of the turnout sample as per contract. Upon confirmation of order changes made by the Customer prior to completion of the moulds, all costs incurred up to that point in time must be reimbursed insofar as they exceed advance payments on account.

b) For partial deliveries or other services payable with a 3% discount for advance payment or cash on delivery, with a 2% discount for payment within 14 days and without discount if paid within 30 days of the invoice date. Discount will only be granted if all previous invoices that are due have been settled.

22. If the agreed date of payment has been exceeded, interest will be charged at 2% above the respective Bundesbank discount rate unless the Supplier can demonstrate that a higher rate of debt interest is due.

23. Bills of exchange and cheques shall only be accepted subject to previous agreement and on account of performance as well as subject to the discounting possibility. If payments are made by bills of exchange or by cheque, the Buyer shall bear the costs of discounting and collection.

24. Non-compliance with the terms of payment, or circumstances that cast serious doubt on the Customer's credit rating, result in the immediate maturity of all outstanding debts in favour of the Supplier. The Supplier shall further be entitled to require advance payments for deliveries not yet completed and, following a reasonable period of grace, to withdraw from the contract or claim damages for non-fulfilment; he shall further be entitled to prohibit the Customer from reselling goods and to take back any unpaid goods at the cost of the Customer.

Moulds

25. The price for the moulds also includes the costs of providing samples, however, not the costs for testing and processing devices or for changes prompted by the Customer.

26. Unless otherwise agreed, the Supplier is and remains owner of the moulds produced for the Customer by the Supplier himself or by a third party assigned by him. These shall be used only for the Customer's orders, provided that the Customer meets his duties of payment and acceptance. The Supplier is obliged to replace these moulds free of charge only if these are required for providing an output quantity warranted to the Customer. The obligation of the Supplier to store tools and moulds expires two years after the delivery of the last parts and upon prior notification of the Customer.

27. If it is agreed that the Customer shall become the owner of the moulds, the ownership is transferred after the purchase price for the moulds has been paid. The transfer to the Customer is replaced by the Supplier's obligation to store such moulds. Independently of the Customer's legal right to recover possession and of the service life of the moulds, the Supplier shall be entitled to their exclusive possession until acceptance of a minimum quantity to be agreed upon and/or until the expiry of a determined period of time. The Supplier must mark moulding as third party property and insure said property at the Customer's request and expense. In case of moulds owned by the Customer and/or moulds lend by the Customer, the Supplier's liability concerning storage and maintenance is limited to the care applied to his own property. Costs for repair and insurance shall be borne by the Customer. The obligations of the Supplier shall expire after order completion if the Customer does not collect the moulds, despite having being invited to do so. As long as the Customer has not completely met his contractual obligations, the Supplier has a right of retention of the moulds in any case.

Retention of Title

28. The title to the goods is first transferred to the Buyer upon full payment of the claims to the Seller from ongoing business relationships with the Buyer.

29. The Buyer is obliged to store and keep the goods under retention of title with care, at his own expense and in suitable and clean rooms. He must insure the goods subject to reservation of title against loss and damage. He hereby assigns his claims under the insurance contracts to the Seller in advance. The Seller accepts this assignment.

30. The Buyer shall perform processing or mixing for the Seller without creating a liability for the Seller. If the goods subject to reservation of title are mixed or processed with materials that are not supplied by the Seller, the Buyer herewith, for the purpose of securing his claims, already assigns to the Seller the co-ownership in the new goods in the ratio of the value of the goods subject to reservation with respect to other processed items on condition that the Buyer stores the new goods on behalf of the Seller free of charge.

31. Claims arising from the sale of goods that have been sold by the Seller to the Buyer and the property of which has not yet passed to the Buyer are already assigned by the Buyer in the amount of the purchase price agreed between the Seller and the Buyer.

32. At the Seller's request, the Buyer has to obtain all necessary information about the existence of the condition of the goods to be supplied by the Buyer and the property of which has not yet passed to Seller and about the claims assigned to the Seller as well as to notify his customers of the assignment.

33. If the value of the guarantee for the Seller exceeds his total claims by more than 10%, the Seller is obliged on request of the Buyer to release securities to such extent at the Seller's choice.

34. The Buyer shall be entitled to dispose of the goods delivered subject to the retention of title in the course of normal business and to collect the claims assigned to the Seller. These rights shall expire as soon as the Buyer does not meet his obligations from the business relationship with the Seller in due time, if he discontinues payment and/or falls into financial collapse. Should any of these conditions occur, the Seller shall be entitled, subject to the exclusion of the right of retention, without setting an extension period or exercising the withdrawal, to demand the immediate temporary repossession of all goods subject to the retention of title.

Place of Performance and Jurisdiction

35. These Terms of Sale and the contracts based thereon shall only be governed by the laws of the Federal Republic of Germany. The application of the UN Treaty on the International Sale

of Goods dated April, 11 1980 (BGB 1989, p. 586) for the Federal Republic of Germany shall be ruled out.

36. If any provision of the contract or these General Terms of Sale is ineffective or invalid in whole or in part, the remaining provisions shall remain in full force and effect.

37. The place of performance for all obligations deriving from this contract shall be the company's headquarters. At the Seller's choice, the jurisdictional venue shall be at the Seller's or Buyer's headquarters; this shall also apply to document, cheque and bill of exchange processes.

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Headquarters: Eisenach, VAT ID no. DE 150 292 467

District court Mühlhausen, HRA 256
District court Mühlhausen, HRB 2101

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