

Conditions of delivery and payment.

Deliveries and services of all kinds are carried out subject exclusively to our terms of trade. Any terms deviating from this are herewith renounced; in no case do such deviations achieve validity upon their receipt in our offices, even though we do not issue an additional specific renunciation of the same.

1. The content and scope of the contract are determined exclusively by our written confirmation. If delivery is undertaken without such, our invoice will be forwarded in advance and deemed as order confirmation. Supplementary agreements are only valid after our written confirmation.
2. Our prices are always quoted net, subject to change without notice, excluding packaging and value added tax. Domestic consignments exceeding a net value of Euro 750,00 will be delivered freight paid within Germany. Export deliveries exceeding a net value of Euro 750,00 will be delivered DAF, FAS or FCA depending on the transport module (INCOTERMS 2001). Transportation is at the purchaser's risk, also in the case of freight paid shipments. Risk devolves to the purchaser when the goods are transferred to the railway, post office, forwarder or carrier but at the latest when they leave the factory or warehouse; this provision is also applicable in all cases where we effect delivery to the destination with our own vehicles. In the absence of specific instructions to the contrary, shipment will be effected in accordance with our best judgment. We assume no liability for compliance with foreign customs regulations or other rules.
3. Packaging will be invoiced. Return of packaging is accepted if delivered without cost to our disposal. No issue of credit note.
4. Payment is to be made within 14 days of the invoice date with 2% discount or 30 days net. The remitter shall bear all banking charges. If the payment date as specified in the invoice is exceeded, we are entitled to charge interest at the prevailing standard bank rate without further notification.

The purchaser is entitled to retain payments due or to offset them against counterclaims including claims arising from guarantee conditions, only when such counterclaims are uncontested or when right to payment has been determined by court order.

We accept discountable and tax-paid bills of exchange on account of payment only after prior express agreement. As agreed upon in paragraph 5, the more comprehensive conditions set forth there notwithstanding; we retain title to the goods until such time as final payment of the bill of exchange is affected. Bills of exchange and cheques are credited to account, less charges and fees, subject to payment, at the value or rate of exchange prevailing on the day on which we have the funds at our disposal. In case of default or delayed payments, interest will be charged at the rates currently charged by the banks for credit, but at least 3% above the current discount rate as set by the German Federal Bank. If the terms of payment are not met or if facts are revealed which justify doubt as to the creditworthiness of the purchaser, all our claims including those for which we have accepted bills of exchange become due payable immediately. The same stipulation is applicable to any costs incurred by us, to services, and to goods still in the manufacturing process, as well as to goods, which have been finished but not yet shipped. In such cases we are obliged to undertake services and deliveries only against payment in advance or when payment can be pledged; following a reasonable term, we may either withdraw from the contract or recover damages due to breach of contract.

In addition and based on the retention of title stipulated in paragraph 5, we may prohibit resale and further machining or processing of delivered goods, and may demand their return or transfer of constructive possession of the delivered goods, at the purchaser's expense, and may revoke the authorisation for collection of claims provided for in paragraph 5. The purchaser authorises herewith his acceptance that delivered goods may be physically recovered from his premises in respect of the above. The recovery of the goods is not to be construed as withdrawal from the contract unless this is specifically stated. If the value of the existing securities exceeds the value of the claims for which security is pledged by more than 10%, we are obliged to release securities corresponding to that excess value; the selection of the specific securities to be released being at our discretion. The purchaser must inform us immediately upon the placement of a lien or any other encumbrances initiated by third parties.

5. All goods delivered remain our property (retention of title) until such time as all claims have been settled, and in particular the account balances due in our favour, for whatever reason these balances may have accrued to us. This applies as well if payments have been made which are specified as being in settlement of particular claims or invoices.

The purchaser may resell goods to which title has been retained only within the scope of normal business transactions and at his usual terms of trade and as long as he is not in default of payment, provided that the claims arising from the resale are assigned to us in accordance with the agreements below. The purchaser is not authorised to dispose in any other manner of the goods to which title is retained. The purchaser's claims, arising from the resale of goods to which title is retained, are assigned to us in advance. These claims serve as security to the same extent as the goods to which title is retained.

If the goods to which title is retained are resold by the purchaser together with other goods supplied by third parties, the assignment of claims arising from the resale is only valid to the amount of the invoice for the goods resold in each case. The purchaser is authorised to collect his claims arising from resale, in accordance with the agreements contained in this clause, until we revoke such authorisation. We are entitled to revoke this authorisation only under the circumstances specified in the third paragraph of section 4. The purchaser is in no case entitled to assign his claims to third parties. Upon our request, he is obliged to inform his customers immediately of the assignment of collection rights to us and to provide us with the information and documentation necessary for our collection of such claims.

6. All information concerning delivery periods is only approximate and thus not binding. Shipments executed prior to expiration of the delivery period and partial shipments are allowable.

Events beyond our control authorise us to extend the delivery period by a length of time corresponding to the duration of the event and a reasonable initiation period, or in respect of the portion of the contract not yet fulfilled to withdraw from the contract either in whole or in part. Events beyond our control include strikes, lockouts or other unforeseen circumstances such as interruptions in operations, including rejects and re-working, which make punctual delivery impossible in spite of our reasonable efforts. We are obliged to provide proof of such interruptions. This also applies when the above-mentioned hindrances occur during a period of default or in the operations of one of our contractors or suppliers.

The purchaser may require that we state within a period of two weeks whether we wish to withdraw from the contract or to deliver within a reasonable extended delivery period. If we fail to issue such a statement of intent, the purchaser is authorised to withdraw from the portion of the contract not yet executed.

7. We guarantee correct manufacture of the parts supplied by us in accordance with the application purpose as per our catalogue. Decisive for the determination of compliance with the contract is the state of the goods at the point in time at which risk is transferred.

Written notification of defects is to be made by the purchaser within 8 days of receipt of the goods at the destination; notification of concealed defects is to be made immediately upon discovery, and at the latest within 6 months of the transfer of risk.

We are to be given the opportunity to confirm the presence of the alleged defect. In urgent cases where operational safety is endangered or in order to avoid the purchaser incurring disproportionate damages, we are obliged to examine the defect and provide our findings immediately. Goods in which defects have been discovered are to be returned immediately upon our request. If the purchaser fails to meet this obligation or if he modifies in any way goods concerning where notification of defect has been made, his rights arising from the guarantee are annulled.

In the case of justified punctual notification of defects, we will at our option either repair the defective goods or supply replacements in good order. We will not reimburse costs incurred by the purchaser for dismounting and installation for his machining or reworking of defective goods.

Should we fail to meet our obligations arising from the guarantee terms or not carry out our obligations in accordance with the contract, and after the expiry of a reasonable extension of the delivery period in respect of the defective goods, the purchaser is entitled to rehibition or abatement.

These conditions of delivery and payment shall exclude any claims, including indirect claims other than those set out in these conditions of delivery and payment and in particular claims arising out of or in connection with damage to objects not identical with the products delivered. Such inadmissible claims shall include without limitation claims arising from culpa in contrahenda, constructive breach of contract or unauthorised acts (e.g. product liability). This liability exclusion shall not apply in the event that damage was due to either wilful or gross negligence on the part of ourselves, our legal representative, servant, agent or employee. Furthermore, this liability exclusion shall not apply in those cases where quality warranties already cover the risk of consequential damages. In the event that the servant, agent or employee is not senior management personnel, damages shall be limited to twice the value of that portion of delivery which is defective. For the purpose of these conditions of delivery and payment culpable negligence shall not include ordinary negligence.

The purchaser shall indemnify us and save us harmless from any third-party claims regarding product liability.

Rights arising from the guarantee terms expire three months after our written rejection of the notification of defect, and at earliest with the expiration of the period for notification of concealed defects.

The stipulations set forth above are also applicable if characteristics expressly assured for the goods are not present or if goods other than those specified in the contract are supplied.

We levy a handling fee amounting to 15% net value of the goods, a minimum of Euro 13,- for return shipments not due to fault on our part.

8. All illustrations are only explanatory in nature. Thus, we reserve the express right to deviate from such illustrations.
9. The place of performance for payments and all other obligations is Velbert, Germany. The court of venue for all legal proceedings is at our option either the County Court at Velbert or the District Court at Wuppertal, Germany; this also applies to suit concerning bills of exchange and cheques. We are also authorised to file suit against the purchaser at the court having jurisdiction over his place of business.
10. The laws of the Federal Republic of Germany are authoritative exclusively for all legal relationships between the purchaser and us; the Hague Convention concerning commercial law is specifically excluded.
11. Should individual provisions in these terms of delivery and payment be or become either wholly or partially inoperative or invalid, the parties to the contract are obliged to agree to a new provision which to the greatest possible extent fulfils the sense of the inoperative or invalid provision.