

STANDARD TERMS OF SALE AND DELIVERY

I. Scope of Application

1. All of our sales, deliveries and services shall be subject to the following terms. These terms apply vis-à-vis entrepreneurs and legal entities (hereinafter referred to as: "Buyer"). By accepting these terms without raising any objection, the Buyer agrees to their exclusive application for the respective delivery and all subsequent business transactions, without additional explicit reference.
2. We do not recognise any terms of the Buyer which oppose or deviate from our terms unless we expressly agree to the application of such terms in writing. Our terms apply even if, despite having knowledge of terms of the Buyer which oppose or deviate from our terms, we effect delivery to the Buyer without reservation.
3. We reserve the right to modify our standard terms of sale from time to time. The Buyer agrees to the exclusive application of the modified conditions if it does not object to their application within a week of receiving them, and if we specifically informed the Buyer of the modified conditions.

II. Conclusion of Contract

1. Our offers are non-binding and subject to confirmation in writing. This shall also apply in case we provide data sheets, brochures and other advertising information material.
2. Orders placed by the Buyer are considered binding offers of a contract. We may accept such offer within two (2) weeks of the date of receipt.
3. We may declare acceptance expressly in writing (e.g. order confirmation) or implicitly by delivery of the goods.

III. Prices, Conditions of Payment, Delay

1. The prices are "Ex Works", i.e. without VAT, external packaging and dispatch costs.
2. All prices relate to the cost factors at the time of conclusion of the contract. If subsequently, there is a substantial increase in the cost of raw materials, energy, freight or packaging material for us or our supplier, and if these lead to a considerable increase in our purchase prices or total production costs, we are entitled to demand that the Buyer immediately enters into negotiations regarding a price adjustment, unless the price was expressly confirmed as a fixed price. If no agreement is reached within a reasonable period, both parties are entitled to rescind the contract.
3. Our invoices are payable within 30 days from the invoice date following delivery. Decisive is the receipt of the payment into our accounts. We reserve the right to make delivery subject to advance payment, also in the course of a continuous business relationship. We will declare such reservation together with the acceptance of the order at the latest.
4. In the event of a delay in payment, interest shall become due at a rate of 9 percent points p.a. above the basic interest rate (sec. 247 BGB). The right to provide evidence of a more extensive default damage is reserved.
5. We are not obliged to fulfil the agreement for as long as the Buyer fails to comply with its duties arising from other agreements with us, in particular has not paid due invoices.
6. The Buyer can only set off against, or retain payment on account of, such claims as have been acknowledged in writing or assessed with unappealable effect.
7. If, following conclusion of the contract, it becomes foreseeable that the payment of the purchase price is at risk (e.g. due to Buyer's filing for insolvency), we reserve the right to suspend or – subject to a notification – rescind the contract.

IV. Delivery and Delivery Times, Packaging, Default in Acceptance, Transfer of Risk

1. Our written order confirmation is decisive for the type and scope of the delivery. Unless otherwise agreed, delivery shall be "Ex Works" (Incoterm 2010). In case of sale of dispatch at the request of the Buyer and at the Buyer's expense, we are entitled to determine the means of transport (carrier, transportation route, packaging). At the request of the Buyer we will insure the respective delivery against theft, breakage, transport, fire and water damage at the Buyer's expense.
2. We are entitled to make partial deliveries.
2. Delivery times are only approximate unless they are expressly agreed as binding in writing.
3. If we exceed the agreed delivery times for reasons not attributable to us (non-availability), we shall inform the Buyer without undue delay and indicate the estimated new time of delivery. If the goods are not deliverable within the new time of delivery or not deliverable at all, we are entitled to fully or in part rescind the contract; we shall reimburse the Buyer without undue delay for payments already made. Non-availability shall be events of force majeure or other disturbing events at Arakawa, our suppliers or carriers, if neither attributable to us nor our suppliers or carriers.
4. If it has been agreed that the delivery of a total amount is to be effected in accordance with several call-forward requests, the Buyer is to distribute the individual deliveries evenly over the calendar year. If more than 10% of the annual delivery is to be called forward in one calendar month, this requires our prior written consent.
5. Risk passes to the Buyer in accordance with the agreed Incoterm.
6. If delivery is delayed as a result of circumstances which are the Buyer's responsibility (Default of Acceptance), the price risk passes to the Buyer on the day on which it is notified of our readiness to deliver.
7. The Buyer is to assert complaints about transport delays, deficiency notifications or transport damage against our forwarder and freight driver, and to notify us of this fact without delay.
8. We are not obliged to supply third parties at the request of the Buyer.

V. Warranties, Claims for defective goods, Duties of the Buyer in the event of a Defect Notification by its Customers, Compensation of Damages, Liability

1. The goods are considered defective if not compliant with our written order confirmation or our written product descriptions, subject to the following:
 - a) The information and data contained in data sheets, brochures and other advertising and information material only serve as a guideline and only become binding if we have expressly agreed to them in writing.
 - b) The qualities of patterns and samples are only binding if this was expressly agreed.
 - c) Stipulations concerning the composition and imperishable nature of the goods are only considered warranties if they are expressly referred to as such.
 - d) The quality of the goods is measured exclusively according to agreements made in writing between the parties concerning properties, features and characteristics ("agreement of quality").
 - e) Advertising statements of the Buyer vis-à-vis its customers or in its advertising materials are only binding if they have been authorised by us in advance.
2. For the Buyer's warranty claims (including incorrect or short delivery) the legal provisions of the German Civil Code (hereinafter referred to as: "BGB") shall be applicable, unless otherwise specified below. In any case, the legal provisions regarding the delivery of the goods in case the end customer is a consumer (supplier recourse, §§ 478, 479 BGB) shall remain unaffected.
3. The Buyer's warranty claims depend on it properly complying with its statutory duties of examination and notification. In the event of an obvious defect or incompleteness of the goods, we are to be notified thereof in writing within two weeks of delivery, including a precise description of the defect and the order or invoice number; hidden defects must also be notified to us in writing within two weeks of discovery. At our request the documents, samples and/or the defective goods are to be returned to us.
4. Should the goods be defective, we can elect to remove the defects or to replace the defective goods. If this fails or is unreasonable, the Buyer is entitled to rescission or reduction of the purchase price. The right to rescind the contract is excluded if the defect is not significant. The Buyer shall not be entitled to any further rights for damages.
5. The Buyer is to inform us without delay of any defect notification of its customers in respect of our objects of delivery. If the Buyer does not comply with this obligation, it shall have no claims against us due to defective deliveries. Furthermore, the Buyer is to secure evidence

in a suitable form and, at our request, give us the opportunity to examine this evidence.

6. Further, the Buyer's warranty claims shall be excluded in the following instances:

- a) If deviations from the agreed composition/specifications are only insubstantial and/or if the impairment to use is merely insubstantial.
 - b) If the goods are not suitable for Buyer's intended use, except the intended use is agreed in writing.
 - c) If the defect results from improper treatment, modifications, assembly and/or operation of the delivery object, or from incorrect advice or instructions of the Buyer. In addition, the Buyer bears the full responsibility for the use of any design, trademark or trading name appearing on the goods at its request.
7. Our liability – no matter for what legal cause – shall be limited to any damages caused by us or our vicarious agents or legal representatives with intent, gross negligence or in case of breach of duties essential to fulfillment of the contractual purpose by slight negligence. In such cases of slight negligence, our liability shall be limited in the amount to typical damage or loss which was foreseeable at the time of conclusion of the contract. The aforementioned shall not apply to claims for damages by the Buyer against us under the German Product Liability Act and/or resulting from loss of life, personal injury or damage to health.
 8. The warranty period shall be twelve months from delivery. In respect of any replacement deliveries, the warranty period shall be three months from delivery, however, not shorter than twelve months from original delivery.

VI. Reservation of title

1. We reserve title to all goods delivered until the Buyer has completely fulfilled all present and future obligations arising from its business relations with us. This applies even if payments have been made against specifically designated claims. In the event of a current account, the reserved goods shall be deemed security for the claim to the account balance.
2. Any conversion or processing of the reserved goods shall be effected for us as manufacturer within the meaning of sec. 950 BGB, without subjecting us to any obligation. The converted/processed goods shall be deemed reserved goods within the meaning of these terms. If the reserved goods are processed or inseparably mixed/combined with objects which do not belong to us, we shall acquire joint title to the new object in the proportion of the invoice value of the reserved goods to the invoice value of the other objects used at the time of processing or mixing/combining. If the reserved goods are combined or inseparably mixed with other goods which do not belong to us to form a uniform object, and if this object is to be regarded as the principal object, the Buyer herewith transfers co-ownership of this principal object to us on a pro rata basis, insofar as it owns this principal object. The Buyer keeps safe custody of the owner's title for us together with its own title without charge.
3. Until our revocation, which is admissible at any time and without any particular reason, the Buyer is entitled to sell, process or recast the reserved goods within the ordinary course of business. A sale within this meaning shall also include an installation in the ground or earth or in machines connected with buildings, or a use in fulfilment of other contractual agreements. In the event of such sale the Buyer herewith assigns to us its resulting claims against the customer to payment of the purchase price. If the reserved goods are sold by the Buyer together with other objects not supplied by us, this assignment shall only apply up to the value of the reserved goods sold as specified in our invoice. In respect of the sale of objects to which we have a co-ownership share in accordance with clause VI.2, the assignment shall apply in the amount of this co-ownership share. The assigned claims serve as security to the same extent as the reserved goods. If the assigned claim is included in a current account, the Buyer already now assigns to us a balance from the current account corresponding to the amount of this claim. Until our revocation, which is admissible at any time and without any particular reason, the Buyer is entitled to collect the claims assigned to us. At our request it is obliged to notify its customers of the advance assignment and to provide us with the information and documents necessary to assert the claim.
4. If the value of the securities provided for us exceeds the total value of our claims by more than 10%, at the request of the Buyer we shall release corresponding securities of our choice.
5. The Buyer is not entitled to make any other disposals of the reserved goods (pledges, transfers for security purposes) or any other assignments of the claims mentioned in clause VI.3. In the event of a levy of execution or seizure attachment concerning the reserved goods, the Buyer is obliged to make our ownership known and inform us without delay.
6. The Buyer is obliged to insure the reserved goods appropriately against all usual risks, in particular fire, burglary and water damage, at its own expense, to treat them carefully and store them properly.
7. If the Buyer is fully or partially in default with payment of at least two purchase rates, we are entitled to take back the reserved goods after having set a period of grace expiring without result. This also applies in case we have not withdrawn from the agreement.

VII. Observance of Safety and other Provisions

1. Unless anything to the contrary is agreed in the individual case, the Buyer is responsible for observing statutory and official provisions, as well as accepted practices concerning import, transport, storage, treatment, use and disposal of the goods.
2. Furthermore, the Buyer is obliged
 - a) to familiarise itself with all product information provided by us, including MSDS.
 - b) to provide its employees, contractors, agents and customers with sufficient instructions to work with the product,
 - c) to take suitable measures for preventing damaging environmental effects and other risks for persons or assets by our goods.
3. If the Buyer violates the duties set forth in clause VII. 1 and 2 in a way which is not insubstantial, we are entitled to withdraw from the agreement after giving prior warning.
4. The Buyer shall be liable to us for all damage incurred as a result of its failure to observe the safety provisions and shall indemnify us against claims of third parties.

VIII. Transfer of Rights, Trademark Use, Infringement

1. A transfer of the Buyer's rights arising from this contractual relationship is only admissible with our prior written consent.
2. Within the scope of its advertising measures, the Buyer is only entitled to use the trademarks protected in our name with our prior consent, in accordance with our specifications, in the original form and for unaltered, original goods. Our consent can be revoked at any time. The Buyer shall bear the sole responsibility for the form of its advertisements.
3. In any case of trademark infringement by others, the Buyer is obliged to inform us immediately in writing about the scope and extent of the violation with regard to the delivery items. The Buyer is obliged to support us in defending our property rights, in particular by providing all information attained to his knowledge.

IX. Confidentiality, Contractual Penalty

1. The Buyer shall keep strictly confidential the business and trade secrets, and in particular the prices agreed, disclosed to him within the scope of the contractual relationship. It shall only communicate them to third parties after having obtained our prior written consent. The Buyer shall inform its employees about this obligation to maintain confidentiality. The Buyer shall pay a contractual penalty in the amount of €10,000 if this clause IX. is violated.

X. Choice of Law, Legal Venue

1. The law of the Federal Republic of Germany shall apply exclusively, excluding the conflict of law provisions and the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).
2. Frankfurt am Main shall be the place of jurisdiction for all disputes resulting from the business relationship between the parties. However, we are entitled to sue the Buyer at its general place of jurisdiction.