

General terms and conditions of sale and payment

(Version: 01/2019)

§1. Validity of conditions

Our conditions of sale shall apply exclusively. Conflicting or differing terms or conditions of the customer shall only apply with Seller's express written consent. These conditions of sale apply to all deliveries, services and offers provided by Seller. Confirmation to the contrary by the customer and references to customer's own terms and conditions are hereby excluded. The unconditional execution of deliveries to the customer shall not imply acceptance of is or her general terms and conditions. These conditions of sale shall also apply to all future business dealings with the customer.

§2. Offer and conclusion of contract

§2.1.

Seller may accept an order that fulfils the requirements for offers contained in Section 145 BGB within 2 weeks. Our offers are always subject to change.

§2.2.

We reserve all proprietary rights and copyrights on images, diagrams, calculations and other documents. These shall not be made available to third parties. This applies, in particular, to all confidential information, especially written documentation; Buyer requires Seller's express written consent prior to conveying such information to a third party.

§2.3.

Diagrams, images, measurements, weights or other technical data shall only be deemed binding if they have been expressly confirmed in writing. Such data shall not be deemed to guarantee quality.

§3. Prices/terms of payment

§3.1.

Unless otherwise stated in the order confirmation, our prices are "Seevetal ex works" and include packaging, unless otherwise agreed. Seller reserves the right to reasonable price adjustments after conclusion of the contract to accommodate price fluctuations of materials. The customer shall be informed of such adjustments on request.

§3.2.

The prices shown in the Seller's current price list shall apply, plus applicable VAT. Additional deliveries and services will be invoiced separately.

§3.3.

Payment is due in full within 30 days, unless expressly agreed otherwise. The statutory regulations for the consequences of late payment shall apply.

§3.4.

Set-off rights shall only apply if Buyer's counterclaims are legally binding, undisputed or acknowledged by Seller. Furthermore, the right of retention can only be asserted if the counterclaim by the customer arises from the same contractual relationship.

§3.5.

Should Seller become aware of circumstances detrimental to Buyer's creditworthiness, in particular with regards to bankruptcy, Seller is entitled so demand all outstanding debts in full. In such event, Seller is also entitled to demand advance payment or the provision of security.

§4. Period of delivery and service, delays

§4.1.

Seller's specified delivery period begins when all technical matters have been dealt with.

§4.2.

Dates and times specified by Seller are non-binding, unless otherwise expressly agreed in writing. Seller shall accept no procurement risk.

§4.3.

Delivery and service delays due to force majeure and other occurrences that significantly restrict Seller's ability to perform (e.g. strikes, road closures, war, riots, official restrictions, etc.), entitle Seller to reschedule the delivery or service to a more convenient date. This shall also apply if the aforementioned restrictions affect supplier's contractors or subcontractors.

§4.4.

The right to correct and timely delivery remains unaffected.

§4.5.

If Seller fails to render a service required under the contract, Buyer is not entitled to terminate the contract and/or claim compensation instead of fulfilment, nor to claim damages for lost expenditure, if the breach of contract is insignificant.

§4.6.

Unless otherwise specified in this contract or by law, Seller shall only be in default following receipt of a request for payment. Reminders and Buyer's deadlines require the written form to be effective.

§4.7.

The punctual and orderly fulfilment of Seller's duty to deliver requires proper performance of Buyer's obligations. The right to object to non-fulfilment of contract is reserved. Seller is entitled to make partial deliveries and render partial services at any time.

§4.8.

Seller is liable in accordance with the legal regulations, if the underlying contract of sale constitutes a fixed transaction pursuant to Section 286 Para. 2 No. 4 BGB or Section 376 HGB. Seller is also liable in accordance with the legal regulations, if Buyer is entitled to assert that he or she has no further interest in the contractual fulfilment due to delayed delivery by Seller.

§4.9.

Seller is also liable in accordance with the legal regulations, if the delayed delivery is due to intentional or grossly negligent breach of contract; Seller is accountable for negligence by a representative or other agent. If the delivery delay is not due to intentional breach of contract, the liability of the Seller's liability for compensation shall be limited to foreseeable and typically occurring damage.

§4.10.

Prerequisite for Seller's delivery delay is that a reasonable deadline specified by Buyer for performance of services or subsequent fulfilment has passed without success. Buyer is obliged to combine the extended deadline with a clear declaration, on unsatisfied expiry of the extended deadline, Buyer will reject the delivery and assert against Seller all rights arising from the delayed delivery.

§4.11.

Further claims for compensation by Buyer are excluded for all cases of delayed delivery, including after expiry of any extended deadline set by the Seller. This shall not apply to wilful or gross negligence and physical injury; a change of the burden of proof to the disadvantage of the Buyer is hereby excluded.

§4.12.

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Seller is entitled to assert his or her statutory if Buyer defaults on accepting delivery or neglects the requirement to cooperate. The risk of accidental loss and/or deterioration of the goods is transferred to the Buyer at the time of accepting default, at the latest.

§4.13.

Should Seller default and Buyer can show probable cause of damage, he or she is entitled to claim compensation for simple negligence, irrespective of the liability limitation described in sections 4.9. to 4.11. Such compensation is limited to a maximum of 0.5% for each complete week of delay, and no more than 10% of the price of the requested delivery item that could not be used appropriately due to the delay.

§5. Transfer of risk, packaging

§5.1.

If no other agreements are in place, deliveries are by Seevetal ex works. Risk transfers to Buyer when the goods have been passed on to the carrier or left the warehouse for the purpose of delivery; this also applies if Seller delivers the goods him- or herself.

§5.2.

If delivery is not possible through no fault of Seller, the risk transfers to Buyer on notification of readiness for dispatch.

§5.3.

At the request of Buyer, Seller will provide transport insurance, the cost of which is borne by Buyer.

§5.4.

Transport packaging and other packaging under the German Packaging Ordinance is non-returnable; this does not include reusable transport equipment, such as pallets, box pallets, pressure cylinders, etc. Buyer is responsible for disposing of one-use packaging at own cost. Reusable transport equipment is provided on a loan basis only; Buyer is obliged to return the items in a suitable condition, i.e. empty and damage-free; Buyer is liable for all costs in connection with the contamination or damage of transport equipment, or liable for the costs of replacing equipment that cannot be repaired.

§6. Guarantee

§6.1.

Buyer's rights pertaining to defects only apply if Buyer has properly complied with his inspection obligations in accordance with Section 377 HGB.

§6.2.

Buyer's statutory right of recourse against Seller shall only apply to the extent that Buyer has not reached any agreement with the customer that exceeds statutory claims for defects.

§6.3.1

If the purchased item is defective, Buyer is entitled to demand compensation in the form of rectification of the defect. If subsequent fulfilment fails, Buyer – notwithstanding possible claims for damages – is entitled to withdraw from the contract or request a reduction in purchase price. Claims by Buyer for the purpose of subsequently fulfilling necessary expenses, particularly transport, labour and material costs are excluded, insofar as expenses have increased as a result of the item being subsequently transported to a location other than the premises of the party placing the order.

§6.3.2

If the item provided by Seller is defective, Seller is obliged to provide compensation within the agreed period of time. Seller is entitled to repair or replace the item at his or her own discretion.

§6.4.1

Minor variance from the agreed quality, minor impairment of usability, natural wear and tear or damages after transfer of risk due to improper use, excessive operational demands, unsuitable equipment and/or other influences and/or requirements not stipulated in the contract shall not give rise to claims for defects.

§6.4.2

Seller shall not be liable for item defects if Seller's operating and maintenance instructions are not observed, improper changes are made to the products, parts are exchanged or replacement parts do not fulfil original specifications; other provisions shall only apply if the defect is not attributable to one of the aforementioned causes.

§6.5.

Claims for defects are valid for 12 months; the term begins with transfer of risk. The above provisions shall not apply insofar as the law defines longer periods according to Sections 438 Para. 1 No. 2 (Construction Work and Objects for Construction work), Section 479 Para. 1 (Right of Recourse) and Section 634 a BGB (Construction Defects).

§6.6.

Unless specified otherwise below, further claims by Buyer – irrespective of their nature – are not permitted. Seller is therefore not liable for damages that are not directly associated with the delivery item; Seller is, in particular, not liable for any loss of profit or other financial losses incurred by Buyer.

§7. Right of retention

§7.1.

The goods supplied shall remain the property of Seller until such time as payment has been made in full for all services arising from the business contract between Seller and Buyer. The transfer of individual debts to a current accounts, as well as the acknowledgement of the balance, shall not affect the retention of title. Payment shall only be deemed effected upon receipt of the due amount.

§7.2.

In the event of a breach of contract by Buyer, particularly with regards to late payment, Seller is entitled to take back the purchased item. Returning a purchased item to Seller does not constitute a withdrawal from the contract, unless Seller has expressly stated this in writing.

§7.3.

Seller must immediately be informed of all attachments or intervention by third parties in writing to allow Seller to take legal action in accordance with Section 771 of the German Code of Civil Procedure (ZPO).

§7.4.

Buyer is entitled to sell the goods subject to retention of title in the ordinary course of business; Buyer hereby assigns to Seller in advance all claims in the amount of the final invoice (including VAT arising from the resale of goods to customers or third parties, irrespective of whether the purchase item has been resold with or without repairs. The Seller shall accept such transfer. If the debt assigned against the purchaser of the goods under retention of title is included in a current account, in the event of Buyer's insolvency, the assigned claim shall also apply to the accepted balance, as well as to the

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'casual balance'. Buyer shall be entitled to collect such accounts receivable, including after assignment. Seller's right to demand payment shall remain unaffected. However, Seller undertakes not to collect payment as long as the purchaser complies with his or her payment obligations, does not default with payment and an application for insolvency proceedings has not been submitted or payments have not been suspended. In such case, Seller is entitled to require Buyer to inform Seller of such assigned claims and the liable parties, provide the information required to collect such claims, surrender the relevant documents, as well as inform creditors (third parties) of such assignment.

§7.5.

Buyer processes or transforms goods subject to retention of title in Seller's name. If the goods under retention of title are processed with other items not owned by Seller, Seller shall acquire co-ownership of the new item in the ratio of the value of the purchased goods (final invoice amount including VAT) at the time of processing. The items resulting from processing are also subject to the same conditions as the item under retention of title.

§7.6.

If goods under retention of title are inseparably processed with other items not owned by Seller, Seller acquires co-ownership of the new item in the ratio of the value of the purchased goods (final invoice amount including VAT) at the time of processing. If mixing is in such a way that the item of the Buyer can be regarded as the main item, it is then deemed as agreed that Buyer shall transfer a proportionate share of the title to Seller.

§7.7.

Seller is obliged to release to Buyer on demand, securities to which Buyer is entitled insofar as the liquid value of the collateral exceeds the security to which the Seller is entitled by more than 10%; Seller is entitled to choose the securities for release.

§8. Right of beneficial use; user fees; Sellers right to possession and claims for damages

§8.1.

Insofar as Seller has supplied Buyer with refrigerant/industrial gas cylinders with or without contents (empty cylinders), such cylinders remain the property of Seller. Buyer is obliged to return the cylinders to Seller after using their contents and at own cost. Buyer is not permitted to fill the refrigerant/industrial gas cylinders supplied to him with other purchased or produced refrigerants/gases and may not supply these to a third party without Seller's consent; cylinders owned by Seller may not be made available with contents other than those supplied by Seller.

§8.2.

Seller is entitled to demand the immediate return of the refrigerant/industrial gas cylinders if Buyer is in breach of the requirements mentioned in Section 8.1 above, or if Buyer handles cylinders owned by Seller in an improper manner. In such event, Seller is entitled to claim additional damages.

§8.3.

If Buyer has not returned the cylinders supplied to the Seller within a period of 12 months from the date of delivery, Seller is entitled to demand the return of the relevant cylinders. Buyer is required to dispose of any contents that have not been used by this time (refrigerants/industrial gases).

§8.4.

If the empty rental and deposit-free refrigerants/industrial gas cylinders

are not returned immediately on enforcement of the claim for the return of the goods, Seller is entitled to charge a fee for each cylinder that is not returned; the fee shall be graded according to the period of use (period of use: more than 12 to 24 months, more than 24 to 36 months, more than 36 months). Seller is hereby entitled to specify a charge based on the current price list (sale price) for each refrigerant/industrial gas cylinder size. When calculating the fee, Seller is entitled to charge the current sale value of the cylinder in accordance with the currently applicable price list if the refrigerants/industrial gas cylinders have not been surrendered within the period specified by Seller.

§8.5.

If Seller charges a cylinder deposit, he or she is entitled to reduce reimbursement of the corresponding deposit (from the calculated period of time) to 75% for a usage period of 12 to 24 months, to 50% for a usage period of 24 to 36 months and to 25% for a usage period of 36 to 48 months. Seller is no longer obliged to return Buyer's deposit if the usage period exceeds 48 months.

§8.6.

If Buyer has rented a refrigerant/industrial gas cylinder for a maximum period of 12 months and not returned these within the period agreed (more than 12 months after the delivery date for each cylinder), Seller is entitled to demand a long-term rental fee of 50% of the usage fee for each day that the cylinders were not returned as compensation for the delay. Irrespective of this, Seller is entitled to demand that cylinders be returned.

§9. Applicable law, place of jurisdiction, other

§9.1.

The law of the Federal Republic of Germany shall apply. The terms of the UN sales convention do not apply.

§9.2.

If Buyer is a trader, legal person under public law or separate estate of public law, the place of jurisdiction for all legal disputes is Lüneburg. This also applies if the customer does not have a general place of jurisdiction in Germany or no known place of domicile or usual place of residence at the time legal proceedings are instituted. Seller is, however, entitled to bring action against Buyer at their place of business.

§9.3.

Should individual provisions of this sales agreement including the general conditions of sales become ineffective in part or in full, this shall not affect the validity of the remaining provisions. The partly or wholly invalid provision shall be replaced by a provision that comes as close as possible to the economic purpose of the invalid provision.

§9.4.

Amendments to the contract and general conditions of purchase are to be made in writing. This also applies to the written form clause itself.

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