



Hebie GmbH & Co. KG
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Germany

General Terms of Sale

1. General information

- 1.1 The following General Terms and Conditions shall apply to all deliveries and services to be provided by us. This shall also apply to all future business of this kind, even if these terms and condition are not referred to in an individual case. Changes and collateral agreements require our explicit written confirmation in order to be valid.
- 1.2 Deviating terms and conditions of the orderer are hereby explicitly objected to. They shall not obligate us either if we do not explicitly object hereto once again upon conclusion of the contract.

2. Offer/placement of order

- 2.1 All offers submitted by us are without obligation.
- 2.2 The documents belonging to our offer, such as diagrams, drawings, weight and measurement details, are only approximately decisive, insofar as they have not explicitly been described as binding. The orderer will be liable for the accuracy of the documents to be delivered by it such as in particular clichés, samples and drawings.

3. Delivery

- 3.1 The delivery deadline shall only be deemed as approximately agreed. It will begin on the date of the order confirmation, however not before the orderer has carried out the acts of assistance for which he is responsible, in particular has made a possibly agreed down payment. The delivery deadline is adhered to if the goods have left the plant/warehouse at the agreed time.
- 3.2 The right is reserved to the timely and correct self-delivery. Should delays occur we will inform the orderer immediately about their start and end.
- 3.3 In case of later amendments to the contract by the orderer, which influence the delivery deadline, the delivery deadline can be extended by a reasonable extent.
- 3.4 Delivered orderer on call are to be accepted within six weeks after the order confirmation.
- 3.5 In case of delays in delivery due to force majeure, civil commotion, strike, lock-out, exhaustion of raw materials or interferences to operations for which we are not responsible, also at our component suppliers, the service time will be extended by the period of time until the remedy of the interference, insofar as the interference has an influence on the production or delivery of the object of delivery. We will inform the orderer of the start and end of such impediments as soon as possible.

In case of permanent interferences to operation for which we are not responsible, which shall also include the case that we are not supplied by our sub-suppliers without our fault, we and the orderer will be entitled, to cancel the contract in full or in part under the exclusion of all claims for compensation. Interferences to operation are deemed permanent if they continue for at least two months.
- 3.6 In case of delay in delivery the orderer has to set us a reasonable final deadline of at least four weeks.
- 3.7 Claims for damages can only be asserted against us under the pre-requisites of Subclause 9.2 below.
- 3.8 Reasonable partial deliveries are permitted.



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4. Shipment and passing of risk

- 4.1 The shipment will be carried out ex works, if not otherwise agreed. The transport risk will be borne by the orderer in any case. This shall also apply to the event that we deliver carriage paid as an exception.

5. Tolerances

If special productions are ordered the delivery in terms of numbers of units may not be fallen short of or exceeded by 15%.

6. Prices

- 6.1 The prices are without obligation and are deemed plus value added tax.
- 6.2 The prices are deemed ex works and shall **not** include packaging, freight charges, postage and insurance.
- 6.3 With the agreement of a delivery deadline of more than four months we are entitled to pass on cost increases that occurred in the meantime by an increase in prices for material, production, assembly, personnel, delivery or similar items to the orderer to a corresponding extent.

7. Payment/ban on offsetting/right of retention

- 7.1 In case of default of payment the orderer has to compensate for interest on default in the amount of 12%, at least however 9 percentage points above the base lending rate according to Section 288 BGB [German Civil Code]. Insofar as the interest according to Sentence 1 exceeds the statutory interest rate according to Section 288 BGB, the orderer is at liberty to prove that damages due to default were not suffered or not suffered in this amount. The assertion of high damages due to default is not excluded either.
- 7.2 If the orderer is in default with a payment then all claims, even if we have accepted bills of exchange as conditional payment for their settlement, will be due and payable immediately.
- 7.3 If there is a substantial deterioration in the asset circumstances of the orderer, which endangers our claim we are entitled to request advance payment or reasonable security. This shall also apply if we only subsequently become aware of such existing circumstances before conclusion of the contract. If the advance payment or provision of collateral is not provided within the final deadline despite the setting of a reasonable final deadline then we are entitled to cancel the contract or to claim damages owing to non-fulfilment. In the aforementioned cases the payment or provision of security cannot be rendered dependent on the return of ongoing bills of exchange.
- 7.4 Bills of exchange or cheques will only be accepted as conditional payment and after a special agreement. Discount, bill of exchange charges and costs will in any case be borne by the orderer.
- 7.5 An offsetting by the orderer against counter-claims is excluded unless the counter-claims are based on the same contractual relationship or the counter-claims are undisputed or have been declared final and binding. The assertion of a right of retention by the orderer is excluded, unless it is based on the same contractual relationship or the counter-claims are undisputed or have been declared final and binding.

8. Reservation of title

- 8.1 We reserve the property to all goods delivered by us (reserved goods) until the full purchase price payment and until all of our claims from the business relationship have been paid.
- 8.2 The orderer is entitled to further process and resell the goods in the proper course of business as long as he is not in default towards us with the fulfilment of his obligations or suspends his payments. The following shall specifically apply:
- a. The processing or conversion of the reserved goods are carried out on our behalf as a manufacturer within the meaning of Section 950 BGB, without obligating us. By the processing or conversion of the reserved goods the orderer shall not acquire the property according to Section 950 BGB to the new object.

If the reserved goods are processed, mixed, combined or connection with other objects we shall acquire co-ownership to the new object at a share, which corresponds with the ratio of the invoice value of our reserved goods to the total value.

The provisions applicable to the reserved goods shall apply accordingly to the co-ownership shares produced according to the aforementioned provisions.

- b. The orderer hereby assigns the claims from the resale or the other sales transactions such as e.g. contracts for work and services with all secondary rights to us pro rata also insofar as the goods are processed, mixed or combined or connected or have been firmly installed and we have obtained co-ownership hereto in the amount of our invoice value or the goods have been firmly installed. Insofar as the reserved goods are processed, mixed, combined, connection or firmly installed, we shall be entitled to a fraction of the respective claims from the resale from this assignment which in the ratio of the invoice value of our reserved goods to the invoice value of the objects.

If the reserved goods are sold by the orderer together with other goods not delivered by us, the orderer hereby now already assigns a share of the claim from the resale to us in the amount of the invoice value of our reserved goods.

If the orderer has sold this claim within the framework of the real factoring he hereby now already assigns the claim replacing this against the factor to us. If the claim from the resale by the orderer is place in a current account relationship with his buyer, the orderer hereby now already assigns his claims from the current account relationship to us in the amount of the invoice value of the reserved goods.

- c. We hereby accept the above assignments.
- d. Until our revocation the orderer is entitled to collection of the claims assigned to us. The collection authorisation shall lapse with revocation, which will be carried out with a default in payment of the orderer or discontinuation of payment by the orderer. In this case we are authorised by the orderer to inform the buyer of the assignment and to collect the claim ourselves.

The orderer is obliged to provide us a precise list of the claims to which the orderer is entitled with the names and address of the buyers, amount of the individual claims, invoice date, etc. upon request and to **provide us all information and documents which are necessary for the assertion of the assigned claims** and permit us to examine this information.

- e. Pledges or assignments as collateral of the reserved goods or the assigned claims are not permitted. We are to be informed of attachments by stating the attachment creditor immediately.

- 8.3 If the realisable value of the securities to which we are entitled exceeds our total claim against the orderer by more than 10%, we are insofar obliged to release at the request of the orderer.



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- 8.4 The orderer shall hold the reserved goods free of charge on our behalf. It has to insure these against customary risks such as fire, theft and water to the customary extent. The orderer hereby assigns his claims for compensation, to which he is entitled from damages of the stated kind against insurance companies or other parties obliged to compensation, to us in the amount of our claims. We accept the assignment.
- 8.5 In countries, in which the validity of the reservation of title is linked to special pre-requisites or form regulations, the orderer has to ensure their fulfilment. If the orderer does not satisfy this obligation or if in the country in question the agreement of a reservation of title not possible we are entitled to render the delivery dependent on the hand-over of an absolute guarantee of a German bank of Sparkasse authorised as customs or tax guarantor in the amount of all liabilities existing at the time when the contract was concluded. The guarantee must be subject to German law.

9. Claims for defects / damages and cancellation owing to other breaches of obligations

- 9.1 With justified complaints the subsequent fulfilment will be carried out at our choice by subsequent improvement or substitute delivery insofar as the statutory pre-requisites have been fulfilled for this purpose. In addition, the orderer shall be entitled to the further statutory claims for cancellation of the contract and reduction, insofar as the statutory pre-requisites have been fulfilled for this purpose. Section 377 HGB shall remain unaffected. We explicitly reserve the right to change our products and thus also the technical documents, in particular drawings. If the orderer orders according to a drawing he is responsible for ensuring previously by a query to us whether changes have been made in the meantime.
- 9.2 Claims for damages of the orderer shall exist to an unlimited amount according to the statutory provisions, if these
- a) are due to the injury to life, the body or the health and they were caused by a wilful or negligent breach of obligation by us, one of our legal representatives or vicarious agents or
 - b) are due to the German Product Liability Act or
 - c) due to a wilful or grossly negligent breach of obligation by us, our legal representatives or vicarious agents or
 - d) due to malicious intent or
 - e) we have assume a procurement risk or a guarantee and are therefore liable.

If a damage is only due to a negligent breach of an obligation that is essential for the contract (cardinal obligation) by us, our legal representatives or vicarious agents, we shall also be liable for damages, however limited in terms of amount to the typically occurring and foreseeable damages, unless, we are liable to an unlimited extent according to Sentence 1 a) to e).

Essential obligations for the contract (cardinal obligations) within the meaning of the aforementioned regulations are obligations, the fulfilment of which makes the proper execution of the contract possible at all and on the compliance with which the orderer may rely as a rule. Further essential obligations for the contract (cardinal obligations) are those, of which the breach jeopardises the achievement of the purpose of the contract.

The statutory distribution of the burden of proof shall continue to apply.

Further claims for damages against us, our legal representatives and vicarious agents as well as assistants are excluded, no matter on which legal grounds they are based.

- 9.3 If not especially agreed the orderer can cancel the contract if the object of purchase is faulty and the statutory pre-requisites for cancellation have been fulfilled.

The statutory distribution of the burden of proof shall continue to apply. Subclause 3.5 of these terms and conditions shall remain unaffected.

10. Statute-of-limitations of claims for material defects

Claims of the orderer owing to material defects shall become statute-barred in one year, unless,

1. the goods delivered by us are concern an object, which in line with it customary intended use was used for a building and it caused its faulty condition **or**
2. it concerns claims of the type regulated in Section 479 BGB **or**
3. the defect was maliciously not disclosed or is due to a wilful breach of obligation by us or our legal representatives or our vicarious agents.

In the cases 1. to 3.) and for claims for damages, which are not excluded according to Subclause 9, the legal statute-of-limitations shall apply.

The statutory provisions concerning the inhibition, inhibition to expiry and concerning the new start of the statute-of-limitations shall continue to apply.

11. Drawings

- 11.1 Insofar as we hand documents over to the orderer, in particular of technical presentations, drawings or sketches, no matter on which data carrier, the orderer may only use these for the purpose, for which they were handed over. He may in particular not forward these to third parties, if we have not explicitly permitted this. All rights hereto shall remain with us insofar as we have not explicitly agreed otherwise with the orderer.
- 11.2 If we receive technical documents, in particular drawings from the orderer, according to which we have to produce the goods, the orderer will assume the construction responsibility. We do not in particular have to examine whether the construction is suitable for the purpose requested by the orderer, unless we have explicitly agreed otherwise with the orderer.
- 11.3 The orderer guarantees that no rights of third parties exist to those documents, which we have received from him. The orderer will indemnify us immediately from possible claims of third parties hereto.

12. Contractual language, correspondence

The contractual language is German or English. All correspondence and all other documents are at our choice to be written in the German or English language. This shall in particular apply to the other documentation, e.g. to possibly owed operating and installation instructions.

13. Place of performance and place of jurisdiction

The place of performance as well as exclusive place of jurisdiction is Bielefeld. However, we are at liberty to also assert a claim against the orderer at his general place of jurisdiction.

14. Choice of law

The substantive law of the Federal Republic of Germany shall apply exclusively under the exclusion of those legal standards, which refer to other legal systems. The validity of the Uniform UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.