

Allgemeine Verkaufs- und Lieferbedingungen Diese Allgemeinen Verkaufs- und Lieferbedingungen gelten gegenüber Unternehmen, juristischen Personen des öffentlichen Rechts und öffentlich-rechtlichen Sondervermögen. Unsere Lieferungen und Leistungen erfolgen ausschließlich aufgrund der nachstehenden Bedingungen. Geschäftsbedingungen des Bestellers, die von uns nicht ausdrücklich anerkannt werden, haben keine Gültigkeit.

01 Conclusion of contracts and scope of delivery

A Our quotations are subject to change without notice. Contracts and other agreements shall not become binding until they have been confirmed by us in writing.
B The scope of delivery shall be based on our written confirmation. References to DIN regulations are performance specifications and are not assurances of qualities or guarantees of properties.
C Unless otherwise specified in these General Terms of Sale and Delivery, all trade clauses shall be interpreted under the latest valid Incoterms.

02 Pricing and terms of delivery

A Prices are exclusive of the relevant rate of value added tax, payable in addition.
B Our prices are free on rail or road »ex works« or »ex warehouse«, excluding packaging and loading equipment, for a net goods value of up to €1,500. If the net goods value exceeds €1,500 by at least €1,000, delivery within Germany is free domicile. In the event of export, sea-rate agreements shall apply from case to case.
C If, after the conclusion of a purchase order, there are substantial changes to the costs relating to that order, the parties shall negotiate an adjustment.

03 Periods and dates of delivery

A A period of delivery shall commence on the date of our confirmation of a given purchase order, though not until all the details of the purchase order have been resolved completely. The same applies to delivery dates.
B If the ordering party fails to meet certain contractual commitments, including duties to cooperate or secondary duties (such as issuing a letter of credit, furnishing German or foreign certificates, making advance payments, etc.), then we shall be entitled to specify an adequate extension of our periods and dates of delivery to suit the needs of our production routines; this right may be exercised by us irrespective of our rights arising from delays caused by the ordering party.
C To decide whether periods and dates of delivery have been observed, the relevant time shall be the time of despatch from the plant. Periods and dates of delivery shall be suitably extended if a delay has been caused by circumstances not within our responsibility. This includes, in particular, force majeure, industrial disputes, delays caused by the ordering party and any other impediments not within our sphere of responsibility.
D If a delay in delivery or performance has occurred as specified in this clause, and if the delay has caused loss or damage to the ordering party, then the ordering party is entitled to request all-inclusive damage compensation on the grounds of delayed delivery/performance. Such damages shall be 0.5% for each full week of the delay, though in their totality not exceeding 5% of the value of the relevant part of the overall consignment, i.e. the part which could not be used in time or could not be used for its contractually specified purpose as a result of the delay. If the ordering party sets us – in due consideration of legally specified exceptions – a suitable deadline for performance and if this deadline is not kept by us, then the ordering party shall be entitled to cancel the agreement within the limits of the available legal provisions.
E In the event of delayed delivery or after the expiry of a delivery period set by ourselves, we do not reimburse damage claims of the ordering party if they have been caused by delays in delivery or if they constitute damage claims in replacement of performance in cases where such claims exceed the limits specified in clause 03 D. This does not apply in cases of mandatory liability for intent, gross negligence or injury to life, limb or health; neither does it entail a change in the burden of proof to the detriment of the ordering party.

04 Partial delivery, delivery agreements and call orders

A We are entitled to conduct partial deliveries after giving the ordering party opportunity to comment and provided that partial delivery is reasonable for the ordering party. Each partial delivery shall be regarded as a separate business transaction.
B If, in a delivery agreement with a call order, the ordering party does not call off or assign goods on time and if an extension of the call-off period has expired without any results, then we shall be entitled to assign or deliver the goods ourselves or to cancel the unfulfilled part of the delivery agreement and to demand reimbursement for the financial loss incurred by us.

05 Force majeure and other impediments

Force majeure, industrial disputes, civil unrest, administrative measures, absence of supplies from our contractors and other unforeseeable, inevitable and serious occurrences exempt the parties from their undertakings for the duration of the disturbance and to the extent of the effect. This also applies if such occurrences happen at a time when the affected party is defaulting, unless its default has been caused either deliberately or through gross negligence. The parties undertake to provide the required information immediately and to the extent that this is reasonable and shall adjust their obligations to changed circumstances in good faith.

06 Checking procedures and acceptance

A If the ordering party requires us to conduct necessary checks, then it shall notify us accordingly. The manner and extent of these checks shall be agreed in writing before the conclusion of the agreement.
B If the ordering party wishes to conduct acceptance, then the manner and extent shall be specified in writing before the conclusion of the agreement. Acceptance shall be conducted at the ordering party's expense and as soon as readiness for acceptance has been reported at the plant effecting delivery. If no acceptance takes place or if acceptance takes place incompletely or late, then we are entitled to despatch the goods or to store them at the ordering party's expense and risk. The goods shall then be considered accepted.
07 Dimensions, weights and quality

A Deviations in dimensions, weight, numbers of items and quality are permitted within the commercially acceptable tolerances or under the pertinent standards; they do not justify complaints.
B Calculation shall be based on the delivery weights and numbers of items as identified by us.
08 Packaging and loading equipment
Unless otherwise agreed or unless other methods are commercially acceptable, the goods shall – as is commercially acceptable – be delivered unpackaged and without anti-corrosion treatment. Where appropriate, we shall ensure the usual or customized packaging and loading equipment (such as planks of wood underneath the products, frames, blankets, etc.) at the ordering party's expense or against a usage fee. If requested, such materials shall be returned to us at the ordering party's expense and risk. Steel pallets for sections remain within the property of Inoutic / Deceuninck GmbH.

09 Shipping and passage of risks

A The ordering party shall immediately take delivery of any goods reported as ready for shipment. Otherwise we shall be entitled to ship goods at our own discretion or to store goods at the ordering party's expense and risk, if necessary in the open air. We are also entitled to store goods at the ordering party's expense and risk if shipment accepted by us cannot be undertaken through no fault of our own. Goods shall be considered as delivered after one week upon the commencement of storage as notified by us to the ordering party, whereupon the said goods can be charged for. We are not liable for damage or corrosion on such goods.
B Unless otherwise instructed, the selection of the means of transport and of the transport route shall be at our own discretion. C If shipment to the destination port is not possible, then we are entitled – where possible upon notification of the ordering party – to ship goods to a different port, located near the destination port. The resulting additional costs shall be borne by the ordering party. Any additional costs incurred for a special shipping method or route (e.g. special carriages, express freight, accelerated freight) and other special expenses (e.g. delivery free domicile, special transport, low water surcharges) shall be charged to the ordering party's account. D We

shall only insure goods upon the ordering party's express request. We shall not be liable for the consequences of the late delivery of a ship-ping note. E. Even in cases where we have accepted responsibility for shipment, risks shall pass to the ordering party as soon as goods have been passed on to the railway, the carrier or the freight operator or one week after the commencement of storage as notified to the ordering party, though no later than the despatch of goods from the factory or warehouse.

10 Terms of payment

A The invoice is payable less 2% discount within 14 days or net within 30 days. If the ordering party wishes to offset its own receivables, it may only do so for receivables that are undisputed or which have been established as legally effective. The ordering party shall only be entitled to a right of retention where such a right is based on the same contractual relationship.
B Payment arrears shall incur 8 per cent interest above the base lending rate of the European Central Bank as applicable at the relevant time.
C If our payment claims are jeopardized through subsequent circumstances which have led to a substantial deterioration of the ordering party's asset situation, then we shall be entitled to demand immediate payment irrespective of the term of bills of exchange accepted for the purpose of payment. The same applies to cases where circumstances jeopardizing our payment claims occurred before the conclusion of the agreement but do not become known to us until after the conclusion of the same.
D If the ordering party is in arrears with payments, then we shall be entitled to prohibit the further processing of the delivered goods, to have the goods returned to us or, if necessary, access the ordering party's premises and reclaim the goods delivered by us. Reclaiming of goods does not constitute a cancellation of the agreement.
E In the cases specified in clauses 10 / C and 10 / D we shall be entitled to revoke the direct debit arrangements detailed in clause 11 / G and demand advance payments for all outstanding deliveries.
F These provisions shall not affect the applicability of statutory regulations on payment arrears.
G We are entitled to offset any of the ordering party's claims towards us against any claims to which we are entitled towards the ordering party. H / The ordering party may avert the legal consequences detailed in clauses 10 / C, 10 / D, 10 / E through the payment of a security amounting to our jeopardized payment claim.

11 Reservation of ownership

A All goods delivered by us shall remain our property (reserved goods) until all our payment claims have been met, particularly also balance claims to which we are entitled under this business relationship. The same shall apply to future and conditional claims, e.g. from return bills.
B The processing and machining of reserved goods take place for us as manufacturers under the definition of section 950 of the German Civil Code (Bürgerliches Gesetzbuch), without any commitments on our part. Processed and machined goods shall be considered reserved goods within the meaning given in clause 11 / A.
C If reserved goods are processed, combined or mixed by the ordering party with other goods then we shall be entitled to joint ownership of the new items at the ratio of the invoice value of the reserved goods in relation to the invoice value of the other goods that have been used. Catering for the event that our ownership ceases through combination, mixing or processing, the ordering party shall at this stage assign to us any ownership rights to which it would then be entitled in respect of the new items; it shall do so to the extent of the invoice value of the reserved goods in relation to the invoice value of the other goods that have been used and shall hold the goods in safe custody for us, free of charge. Our joint ownership rights shall be considered reserved goods within the meaning of clause 11 / A.
D The ordering party may only resell reserved goods within the scope of ordinary business activities, on its normal terms and conditions and for as long as it is not in payment arrears. This is on the proviso that the ordering party reserves ownership and that the payment claims arising from resale under clauses 11 / E and 11 / F pass to us as security. The ordering party is not entitled to dispose of reserved goods in any other way. The terms "reselling" and "resale" shall also cover the use of reserved goods for the fulfilment of contracts of manufacture and work performance contracts.
E / The ordering party shall assign to us, by way of precaution, any of its payment claims arising from the reselling of reserved goods. They shall serve to provide security to the same extent as reserved goods within the meaning of clause 11 / A.
F If reserved goods are resold by the ordering party together with other goods, then it shall assign to us the payment claims arising from the resale at the ratio of the invoice value of the reserved goods in relation to the invoice value of the other goods. If goods are resold which are jointly owned by us under clause 11 / C, the ordering party shall assign to us whatever part of the payment claim corresponds to our joint ownership share.
G The ordering party shall be entitled to collect payment claims arising from the resale unless we revoke the collection authorization in the cases specified in clause 10 / E. Should this be requested by us, then the ordering party shall immediately notify its customers of the assignment to us – unless we do so ourselves – and submit to us the information and documents required for collection. Under no circumstances shall the ordering party be entitled to assign payment claims to third parties. This also applies to all types of factoring business, which the ordering party is not permitted to conduct, even on the basis of our collection authorization.
H The ordering party must notify us immediately of any seizure of goods or of any impairment brought about by third parties.
I If the value of existing securities exceeds the secured payment claims by a total of over 10%, then we shall, at the ordering party's request, be obliged to release securities to this extent at our discretion.

12 Quality defects and delivery of contractually non-compliant goods Subject to the proviso of clause 15, we accept the following liabilities at the exclusion of further-reaching claims:

A The condition of the goods shall depend exclusively on the agreed technical delivery specifications. If we are expected to deliver goods on the basis of the ordering party's drawings, specifications, speci-mens, etc., then the risk concerning the suitability of goods for their intended purpose shall be borne by the ordering party. Whether or not goods are in a contractually compliant state shall depend on the condition of goods at the time of their hand-over to the carrier or freight operator and no later than the time when the goods leave our premises.
B Notification of defect shall be received by us from the ordering party by letter, by telephone or by fax immediately upon the arrival of goods at their destination; however, such notification does not permit the ordering party to withhold payment of invoiced amounts. In the event of defects, all processing and machining shall be discontinued immediately.
C Notification of defects is not accepted at a later stage if it refers to defects that were already noted under an agreed acceptance procedure.
D If parts turn out to be defective as a result of a circumstance which occurred before the passage of risks, then it shall be at our discretion whether such parts should be repaired free of charge or whether they should be replaced by non-defective parts. Any re-placed parts shall become our property.
E The ordering party shall immediately give us opportunity to study a given defect and, in particular, provide us with the relevant goods or samples at our request. To enable us to conduct all the repairs and replacements that may seem necessary to us, the ordering party shall give us the required time and opportunity upon coordination with us. Otherwise we shall not be under any liability for the resulting consequences. The only condition on which the ordering party shall be entitled to remove a defect itself or to have it removed by third parties and then to demand reimbursement from us for the expenses incurred is that of an urgent danger to operating safety or in order to avert disproportionately greater damage, in which case we must be notified immediately.
F Operating within the limits of legal regulations, the ordering party shall

have a right to cancel the agreement if – with the exception of certain cases specified under the law – we have failed to meet a re-on-able deadline for the repair or replacement of a defective item. In the event of a negligible defect, the ordering party shall merely be entitled to a reduction of the contractually agreed price. Otherwise the ordering party shall have no entitlement to a reduction of the contractually agreed price. Further claims are specified in clause 15D of these Terms of Sale and Delivery.
G Claims arising from defects shall lapse after 12 months following the receipt of goods at their destination and no later than 14 months after notification of readiness for shipment. This does not apply in cases where longer periods are mandatorily specified by law, particularly for defects in a building or for items which, to satisfy their usual purpose, were used for a building and which have thus caused a defect in that building.
H In particular, no guarantee is accepted in cases of inappropriate or improper use, faulty installation or assembly by the ordering party or a third party, faulty start-up, natural wear and tear, faulty or negligent treatment and the application of unsuitable or late protective coating. Neither do we accept liability for consequences resulting from unsuitable production equipment or facilities, external influences (e.g. chemical or electrochemical influences) or the non-observance of operating instructions. The same applies to defects that relate to areas outside Europe, to warranty guidelines from protective film manufacturers, to delivered parts that are subject to increased wear and tear due to the material contained therein or their type of use (e.g. seals, plastic bearings), and to any defects that reduce the value or suitability of goods by no more than a negligible extent.
I The warranty shall lapse as soon as any touch-up, changes or re-pairs have been conducted without obtaining our prior consent.
J The ordering party shall not be in a position to claim legal recourse towards us if it has made arrangements with its customers that go beyond statutory warranty claims.

13 Order-specific manufacturing equipment

A Order-specific manufacturing equipment – such as tools, devices, models and templates – provided by the ordering party shall be sent to us free of charge. If the ordering party supplies such manufacturing equipment, we shall not check its compliance with contractual specifications or with drawings or specimens provided by us unless such checking has been expressly stipulated in agreements.
B The cost of modifying, maintaining and replacing manufacturing equipment shall be borne by the ordering party.
C Subject to the proviso in clause 15D, we shall only be held liable for intentional or grossly negligent damage to manufacturing equipment provided by the ordering party. We are under no obligation to conclude insurance for such equipment. Any manufacturing equipment of the ordering party that is no longer required by us may be returned to the ordering party at its own expense and risk or, if the ordering party does not meet our request to collect the equipment within a reasonable period of time, we may dispose of the equipment at our own discretion.
D Any order-related manufacturing equipment produced or procured by us at the ordering party's request shall continue to be our property even if pro-rata costs are calculated. If the ordering party has paid for manufacturing equipment in full and in compliance with contractual specifications, then we are obliged to confer ownership of such equipment upon the ordering party within a reasonable period of time.
E Claims arising from copyright or industrial property rights may only be made by the ordering party if it has drawn our attention to the existence of such rights and if it has expressly reserved these rights.

14 Supplier's copyright protection

Documents and drawings given by us to the ordering party and any constructive services and suggestions provided by us for the design and production of a delivered item shall only be used by the ordering party for their intended purpose and shall not be made available to third parties without obtaining our prior consent; neither shall they be used in publications.

15 Liability

A The ordering party shall bear the responsibility for proper design and for the observance of any security regulations, particularly with regard to the intended use, the selection of the material and of the required test methods, the correctness and completeness of technical delivery specifications and of the technical documents and drawings submitted by us as well as for the use of the supplied manufacturing equipment, even in cases where changes have been suggested by us and approved by the ordering party. Moreover, the ordering party shall be liable to ensure that its specifications will not lead to the violation of industrial property rights or other third-party rights.
B The ordering party shall indemnify us against cases where a third party may claim from us compensation for damages caused within the ordering party's sphere of responsibility.
C If a delivered item cannot be put to its contractual use through our own fault, due to our non-observance or faulty observance of proposals or consultations that took place before or after the conclusion of the agreement, or due to the violation of other additional contractual undertakings – particularly instructions concerning the operation and maintenance of the delivered item – then the provisions of clauses 12 and 15 / D shall be applied by analogy, although the ordering party shall not be entitled to any further-reaching claims. D Any damage occurring outside the delivered item itself shall not be our liability, irrespective of legal reasons, unless such damage is due to a / intent, b / gross negligence of a member of our Management or a senior executive, c / culpable violation of life, limb or health, or d / maliciously concealed defects or defects whose absence we have warranted.
E Defects on the delivered item (where liability is mandatory under the German Product Liability Act (Produkthaftungsgesetz) for persons or for damage to privately used items; in the event of the culpable violation of essential contractual undertakings, we shall also be liable for gross negligence of non-executive staff and for slight negligence; in the latter case our liability shall be limited to whatever damage is typical in agreements and reasonably foreseeable. We are not liable for any further-reaching claims.

16 Place of jurisdiction and performance

A The place of performance for payments shall be Munich, and for all other commitments it shall be the place of the delivering plant or warehouse.
B The place of jurisdiction is the local or regional court with responsibility for the company's registered office, including any proceedings relating to bills of exchange and cheques. We are also entitled to bring legal action against the ordering party at its own general place of jurisdiction.

17 Applicable law

These Terms of Sale and Delivery shall be subject to the law of the Federal Republic of Germany; they shall not be subject to standard law on the international purchase of movable property items or to standard law on the conclusion of international purchase agreements on movable property items.

18 Partial ineffectiveness

Should individual provisions in these General Terms of Sale and Delivery be wholly or partially ineffective, then this shall not affect the full effectiveness of the remaining provisions.

18 Teilunwirksamkeit

Sollten einzelne Bestimmungen dieser Allgemeinen Verkaufs- und Lieferbedingungen ganz oder teilweise unwirksam sein, so bleiben diese Bedingungen im Übrigen voll wirksam.