

TERMS AND CONDITIONS OF SALE AND DELIVERY FOR COMMERCIAL BUSINESS TRANSACTIONS

1 Offer and Scope of Delivery

Offers are deemed nonbinding. An order will only be deemed accepted if we confirmed it, in writing, after having clarified, in full, all technical and commercial details.

Verbal agreements and assurances, even those made by our sales employees or representatives require our written confirmation to be effective.

Our written order confirmation shall be decisive for the scope of the delivery. Amendments, supplements or oral agreements must also be acknowledged by us, in writing.

The calculation will be made at prices confirmed by us. Information such as descriptions, figures, and drawings, measurements and weights contained in printed matters and catalogues as well as dimension sheets shall not be decisive, unless such were explicitly identified as being binding. Surplus or short weights and deliveries within standard commercial limits will not entitle the recipient to make complaints (price reductions). Changes of technical data and constructions serving the technical progress remain reserved.

We reserve property rights and copyrights to cost estimates, drawings, and other documents; such must not be made accessible to third parties.

2 Scope of Application

These Terms and Conditions of Sale and Delivery shall also apply to all future legal transactions, regardless of whether such will be agreed upon again or not, for as long as our Terms and Conditions of Sale and Delivery in the present form are still in effect. Our Terms and Conditions of Delivery apply toward non-merchants, unless otherwise specified in legal provisions. Insofar, the general legal provisions set forth in the HGB [German Commercial Code] and BGB [German Civil Code] shall apply then.

3 Prices and Payment Terms

Prices shall apply ex works and are specified exclusive of packaging, freight, postage, value guarantee as well as any potential alloy surcharges, copper surcharges, etc. and value added tax at the legal rate.

Packaging will be charged at cost and will not be taken back.

Invoices are due in accordance with the agreed terms.

Deliveries to foreign countries will be charged according to special agreements.

Cheques and bills of exchange will only be deemed as payment upon cashing, where we reserve the right to accept bills of exchange. Exchange charges shall be borne by the buyer. No discount will be granted for payments by bills of exchange. Default interest of 9% above the base rate of the European Central Bank will be charged if the agreed payment period is exceeded, without a special notice of default being required, the assertion of further rights remains reserved.

Our receivables will fall due immediately, if the buyer's financial circumstances deteriorate after the delivery and endanger our claim for consideration. Furthermore, we shall be authorised to only make outstanding deliveries against payment in advance and to withdraw from the contract after an adequate grace period. The same shall apply in case of a non-compliance with the payment terms.

Any retention of payments or set-off with the buyer's counter-claims that have not been acknowledged by us or found effective by a court shall be excluded.

4 Delivery Period

The delivery period commences when the order confirmation is sent, however not before the provision of the documents, approvals, releases to be obtained by the buyer and not before the receipt of an agreed advance payment. The delivery will be made within the confirmed calendar week. The delivery date shall be deemed to be complied with, if the goods are reported as ready for shipment prior to its expiry. The delivery period shall be prolonged adequately, if unforeseeable impediments occur which are outside of our control, regardless of whether such occur with our suppliers, e.g. events of force majeure, measures by authorities, and other involuntary delays in the completion of delivery parts, such as operating breakdowns, scrap due to the delays in the delivery of essential parts and raw materials, insofar as such impediments demonstrably have a great influence on the completion or delivery of the deliverable. We shall not be held responsible for such impediments, even if such occur during a delay which already exists.

Any changes that are subsequently requested by the buyer result in an interruption of the delivery period which will recommence after an agreement about the desired change. No consideration for delay will be granted.

If the shipment of the goods is delayed for reasons attributable to the buyer, we shall be entitled to charge to the buyer any costs arising from the storage at a flat-rate of 0.5% of the invoice amount relating to the stored parts for each month of storage which started, after we notified them of their readiness for shipment.

The presentation of evidence that a higher damage occurred shall be permitted.

Partial deliveries are permitted.

After having granted an adequate period which expired without success, we shall be entitled to otherwise dispose of the deliverable and to make deliveries to the buyer within an adequately extended period. Precondition for a compliance with the delivery period is the fulfilment of the buyer's contractual duties.

5 Retention of Title

Our deliveries will be made exclusively under retention of title. Delivered goods shall remain our property until the full payment of any and all of our receivables arising against the buyer, regardless of their legal grounds. That shall apply also if the purchase price is paid for certain goods deliveries specified by the customer. We reserve the title in the delivered goods until any and all receivables arising from the delivery contract have been paid, in full. The buyer shall be obliged to properly store the deliverable and to insure it against fire and water damage as well as theft. The retained title serves as security for our payment balance request in case of ongoing invoicing. If the buyer is in default of payment, the goods delivered by us and stored by the customer shall be recorded in a stock-taking, at our request. If the goods delivered by us are processed with other objects, the customer assigns to us their property right and co-ownership right to the object which arises from the processing, up to the amount of our receivables. The buyer shall be entitled to resell the delivered goods in their normal business operation. They are prohibited from pledging or transferring them as security. The buyer shall be obliged to notify us, immediately, in case our property is endangered by pledging, retention or other interventions by third parties, and shall notify the enforcement officers of our retention of title. They shall be liable for damage we incur due to the failure to notify us in due time or to clarify the ownership relations. The costs incurred to prevent any pledging shall be borne by the buyer. If the buyer sells the goods delivered by us, they hereby assign to us that part of the goods' value and the newly arising claims to their purchaser which arise from the sale, until all of our receivables were paid in full. The buyer is authorised to collect these receivables. Other assignments are not permitted. The buyer shall be obliged to notify sub-buyers of the assignment, at our request. We shall be authorised to collect the receivables, if necessary.

If the value of the security provided to us exceeds our receivables by a total of more than 20%, we shall be obliged to make a return transfer at the buyer's request.

If the goods are taken back based on our retention of title, we shall generally only be obliged to grant credits by deducting the reductions in value which have occurred in the meantime, insofar as we are able to otherwise use the delivered goods. Take-back and disassembly costs generally amount to at least 30%, in case of standardised components. The buyer may evidence, at any time, that a lower damage occurred.

6 Transfer of Risk

The risk shall be transferred to the buyer not later than upon sending of the deliverables, ex works, even if freight-less delivery.

If the shipment is delayed due to circumstances not attributable to us, the risk shall be transferred to the buyer from the day on which the goods are ready for shipment.

7 Liability for Defects in the Delivery

We shall be liable for defects in the delivery, to the exclusion of further claims, as follows:

All those parts shall, at our choice, be repaired or newly delivered by us, free of charge, which demonstrably prove to be unusable or whose usability is significantly impaired within 24 months from the date of transfer of risk, due to any circumstances which arose prior to the transfer of risk, in particular due to defective material obtained by us or defective workmanship. The determination of such defects shall be notified to us, immediately and in writing. If the repair or replacement delivery fail, a reduction of the consideration or, if so desired, a rescission of the contract might be agreed upon.

The buyer shall grant us, free of charge, the necessary time and opportunity to perform any changes which seem necessary to us or to make the replacement delivery. Repairs will only be made in our factories. Parts complained about shall only be sent back at our instruction. Exchanged parts will become our property. If the buyer fails to provide us with sufficient opportunity or time to eliminate any existing defects, we shall be released from the complaints for defects.

No liability will be assumed for delivered parts which are damaged or subject to a premature deterioration due to their substantial condition, the type of their use as a consequence of natural wear, defective or negligent handling, excessive stress, inappropriate consumables, chemical, electro-technical effects or effects of weather and natural influences.

The results obtained on our test stand shall be decisive for the operating characteristics of engines. We assume no liability for faults arising from the installation conditions or improper care.

Any liability for performed subsequent work or delivered spare parts shall apply only until the expiry of the guarantee period for the original delivery.

The liability shall be void, if repairs, changes or servicing work are performed without our prior consent.

Any other claims of the buyer, in particular, a claim for the compensation for damage which did not occur in the deliverable itself shall be excluded. This exclusion of liability shall not apply in case of intentional or grossly negligent acts.

8 Technical Advice and Suggestions

We advise to the best of our knowledge. It is, however, the buyer's responsibility to carefully verify our suggestions for their usability. We assume, insofar, no claims for warranty.

9 Right of Withdrawal and Other Rights

The buyer has a right of withdrawal if the delivery becomes impossible for us, if we are in default and if we culpably failed to use any sufficient grace period granted to us under threat of withdrawal, if we culpably failed to successfully use any sufficient grace period granted to us for eliminating a defect attributable to us in terms of the Terms and Conditions of Delivery or if the repair proves impossible.

Unforeseeable events in terms of Art. 4 resulting in the excess of the agreed delivery period will entitle us to withdraw, in full or in part, to the exclusion of any claims of the buyer, if the economic conditions have changed so drastically since the order was placed that we cannot reasonably be expected to fulfill the obligation. That shall apply even, if initially a prolongation of the delivery period was agreed upon.

If the entrepreneur is in default with the fulfilment of ancillary obligations or if the fulfilment of such duties becomes impossible to them, they shall only be liable for such in case of gross negligence and intent.

If the cancellation of the contract is agreed upon, we reserve the right to charge cancellation costs to the buyer in the amount of the actually incurred costs. We shall evidence the costs to the buyer.

10 Place of Fulfilment, Place of Jurisdiction and Applicable Law

The contractual relationship shall exclusively be governed by the laws of the Federal Republic of Germany. The application of the UN Convention on Contracts for the International Sale of Goods shall be excluded. Insofar as the contractor is a merchant or has no general place of jurisdiction in the Federal Republic of Germany, the national courts competent for our registered office in Bad Salzschlirf, Germany, shall be agreed exclusively as place of jurisdiction. We shall, however, also be entitled to sue at any other legal venue.

11 Deviations from these Provisions

Any deviations from these provisions require our explicit consent. Terms and conditions of the buyer which contradict these Terms and Conditions of Delivery shall not be binding upon us, even if such are made the basis of the purchase order or if we failed to explicitly contradict to their contents.

12 Severability

If any provisions hereof are ineffective, the other provisions shall remain in full force and effect. The same shall apply if individual items of our Terms and Conditions will not become part of the contract.