

General Terms and Conditions

I. General Provisions

1. Orders shall be binding with regard to type and scope of delivery as well as price only upon order confirmation by the supplier ("Supplier"). Amendments and additions must be made in writing even though they are agreed upon with agents and sales representatives.

2. In the case of on-going business relationships these terms and conditions shall also apply to all future transactions.
If any provision is or will be invalid, the remaining provisions shall not be affected.

3. The customer's ("Customer") conditions of purchase shall be binding for the Supplier only if he expressly acknowledges them in writing.

4. Our prices are ex works exclusive of packaging, freight and transport insurance plus VAT (*Mehrwertsteuer*) at the then applicable rate. The charging of packaging, freight and transport insurance for the various product categories of the Supplier may vary. The respective determination in quotations and/or order confirmations shall apply.
Unless prices are explicitly designated as fixed prices in our quotations and order confirmations, we reserve the right to reasonably adjust the price in the event that our costs for raw materials, wages, energies and general charges and tariffs (e. g. freight) increase significantly after conclusion of the contract and before delivery.

5. The seller ("Seller") points out that export provisions may apply in the event of a resale of the supplied goods. The buyer ("Buyer") undertakes toward the Seller to ensure the compliance with the relevant export regulations applicable for the re-export. The Seller shall have the right to verify the compliance with the relevant export regulations at the Customer's premises. In the event of a breach of these provisions and a potential claim by third parties the Seller shall be entitled to claim damages.

6. Reasonable part deliveries as well as deviations from the ordered quantities up to ± 15 % shall be permissible. The minimum purchase volume shall be one entire packaging unit.

7. All items are kept in a sorting and/or stored in a silo. Therefore, also distorted or uneven or blemished parts must be accepted. Dimensional discrepancies shall also be permissible. The respective product specifications of the Supplier as well as the deviations and tolerances described therein shall apply. Deviations of the items regarding shape due to incorrect handling or storage may not be complained to the Supplier. The Supplier's respective handling directions shall apply.

8. German law shall apply exclusively. The application of the uniform laws concerning the international purchase of movable items (German Civil Code (*BGB*) 1Y3/S 856) as well as the conclusion of international purchase contracts for movable items (German Civil Code 1.73/S 868) dated 17 July 1973 shall be excluded.

II. Payment Terms

1. The invoice for the goods delivered shall be issued at the date of dispatch and be payable net cash without deductions at the latest within 30 days after invoicing. Date of settlement shall be the day on which we can dispose of the money. All payments shall be effected in Euros exclusively to the Supplier.

2. Unless otherwise agreed, cash expenditures and services shall be due net without deductions at the time of performance.

3. Should the payment deadlines be exceeded, interest at a rate of 2% above the applicable discount rate of the German Federal Bank (*Bundesbank*) shall be charged, unless the Supplier proves a higher debit interest. Payment by bill of exchange shall not be accepted. Withholding payments or offsetting of any claims of the Customer shall be excluded, unless these claims are undisputed or have been legally established. A failure to comply with the payment terms or circumstances, which are suitable to reduce the creditworthiness of the Customer, shall result in all claims of the Supplier becoming due immediately. In addition, the Supplier shall be entitled to demand advance payments for all outstanding deliveries as well as to rescind the contract after a reasonable period of time or to claim damages for non-performance. Furthermore, the Supplier shall be entitled to prohibit the Customer from reselling the goods and to reclaim unpaid goods at the Customer's expense as well as to withdraw any outstanding acceptances by offsetting all costs.

III. Retention of Title

1. The delivered goods shall remain the property of the Supplier until any and all claims of the Supplier against the Customer are fulfilled, even if the purchase price for specifically designated claims has been paid. In the case of a current account the reserved title to the delivered goods (retained goods) shall be deemed as security for the outstanding balance due to the Supplier.

2. According to Sec. 950 of the German Civil Code any handling and processing by the Customer shall be deemed to have been carried out without transfer of title on behalf of the Supplier; the Supplier shall remain the owner of the resulting object which shall serve as retained good of the Supplier to secure the claims according to sub-paragraph 1.

3. If the Customer processes (combines/intermixes) goods with other goods not belonging to the Supplier, the provisions of Sec. 947, 948 shall apply with the consequence that the joint ownership to the new object shall be deemed to be a retained good within the meaning of these Terms and Conditions.

4. The Customer shall only be permitted to resell retained goods in the ordinary course of business on condition that he also agrees on retention of title with his customers according to sub-paragraph 1 – 3. The Customer shall not be entitled to any other disposal of the retained goods, in particular to pledges and assignments as security.

5. In the event of a re-sale the Customer herewith assigns to the Supplier all receivables and other claims against his customers together with any ancillary rights arising out of the re-sale until all and any claims of the Supplier are fulfilled. Upon the Supplier's request the Customer shall be obliged to provide the Supplier with any information and documents necessary in order to exercise the rights of the Supplier against the Customer's customer.

6. Should the retained goods be resold by the Customer after processing according to sub-paragraph 2 and/or 3 or together with any other goods not belonging to the Supplier, the assignment of the claim for payment of the purchase price under sub-paragraph 5 shall be limited to the amount of the invoice value of the retained goods of the Supplier.

7. If the value of the securities existing for the Supplier exceeds his total claims by more than 20%, the Supplier shall be obliged, upon the request of the Customer, to release the securities to this extent at the discretion of the Supplier.

8. The Supplier shall be notified immediately about pledges or seizures of retained goods by third parties. Resulting costs of intervention shall in any case be borne by the Customer.

9. If the Supplier makes use of his retention of title and takes back retained goods according to the aforementioned provisions, he shall be entitled to sell the goods by private contract or by auction. The retained goods shall be taken back in the amount of the obtained proceeds but no more than the agreed delivery prices. Further claims for damages, in particular loss of profit, shall be reserved.

IV. Obligations to Deliver and Accept

1. Periods of delivery shall commence upon receipt of all documents necessary to perform the order, the agreed advance payments and any agreed timely procurements of material by the Supplier. Periods of delivery shall be suspended in the case of redesigns and article changes requested by the Customer. They commence again once the modified drawings have been approved by the Customer. The period of delivery shall be considered as met upon notification of the readiness for dispatch, thus by invoice or advice note of the Supplier, even if dispatch is impossible without the fault of the Supplier.

2. In the case of call-off-orders without agreements regarding duration, manufacture lot sizes and acceptance dates the Supplier may request a binding determination of such items no later than 3 months after order confirmation. If the ordered – manufactured goods are not delivered to or taken over by the Customer after 6 weeks following the Supplier's readiness to dispatch, storage costs shall be charged. The basis for HEL-X products shall be EUR 3 (net) / m³ per calendar month and in the case of other product categories of the Supplier 1% of the value of goods per calendar month, unless otherwise agreed in writing.

3. Events of force majeure on the side of the Supplier or his sub-suppliers shall reasonably extend the period of delivery. This shall also apply to authority interventions, difficulties with energy and raw material supplies, strikes, lockouts and unforeseeable delivery difficulties, provided that they are not attributable to the Supplier.

4. The Seller shall not be liable for delays in delivery resulting from export restrictions or for the fact that a delivery cannot be accomplished at all due to export restrictions. If it appears after conclusion of the contract that a delivery cannot be accomplished as provided for in the contract, the Seller may rescind the contract at any time. In such case the mutual performances shall be reversed. In this case the Seller shall not be liable for compensation or damages.

V. Drawings, Designs and Documents

1. The Customer shall be liable to the Supplier that the ordered deliveries and services are free from property rights of third parties, shall indemnify the Supplier against all respective claims and shall compensate him for any resulting damage. If the Customer is required to attach certification and quality marks, the Customer shall guarantee that he is entitled to these marks for the respective article.

2. Designs and construction proposals of the Supplier may only be passed on with his written approval.

VI. Packaging, Shipping and Transfer of Risk

1. Unless otherwise agreed, the Supplier shall choose packaging and dispatch at his best discretion. Our packaging such as cardboard boxes, boxes, sacks, Big Bags etc. are disposable containers which we partly charge separately and do not take back. Likewise, the postage for mailings, if they are explicitly requested or appropriate for small-scale orders, shall be charged separately.

2. Goods shall travel at the risk of the Customer, namely already upon leaving the factory of the Supplier. In the case of delays attributable to the Customer the risk shall be transferred to him already upon notification of the readiness for dispatch.

3. On the written request of the Customer the goods shall be insured at his expense against any damage due to storage, breakage, transport and fire as well as against risks to be explicitly marked.

4. In the case of any transport damage the Customer has to assert his claims towards the freight carrier before taking over the goods.

VII. Liability for Defects

1. Even if the Supplier has advised the Customer, he shall only be liable for the operability and suitability of the product in the case of a written warranty.

2. Notices of defects shall be asserted in writing immediately, at the latest 1 week upon receipt of delivery.

3. Defects shall be assessed according to the Supplier's documents "FK Garantie" (FK Guarantee) and "Messen und Wiegen" (Measure and weigh) as well as other provisions of the Supplier updated from time to time. Only these documents of the Supplier shall be controlling.

4. Unauthorised rework and improper handling shall result in the loss of all claims for defects.

5. Warranty claims against the Seller shall only be due to the immediate Customer and are not assignable.

6. The aforementioned paragraphs shall contain the conclusive warranty for the products of the Supplier and exclude any other warranties whatsoever.

VIII. Liability for Damages

1. Claims for damages irrespective of the legal reason (liability for defects, positive breach of contract, tortious act etc.) shall be excluded, unless we or our agents are accused of having caused the damage deliberately or by gross negligence.
This shall apply with regard to claims for damages from a liability of defects notwithstanding paragraph VII of our Conditions of Sale and Delivery.

IX. Place of performance and Jurisdiction

1. Place of performance shall be Marktrodach.

2. In the event of any dispute indirectly or directly arising out of the contractual relationship the place of jurisdiction shall be our principal office. CISG shall be excluded.

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