

GENERAL TERMS AND CONDITIONS OF SALE AND SUPPLY APPLICABLE TO INDUSTRIAL DISTRIBUTION IN SWITZERLAND
Updated 10/2013

I. Validity, Offer and Order Acceptance

1. The present general terms and conditions apply for all - including future - agreements concerning delivery and other services. Terms and conditions of sale are not applicable to us even if we fail to explicitly decline them again after receipt thereof by us.
2. Our offers are non-binding unless otherwise indicated. We endeavour to comply with the prices, quantities, quality, and delivery deadlines offered by us.
3. All orders must be confirmed by us in writing or by invoice in order to be valid.
4. Agreements, in particular oral or side agreements, assurances, guarantees or other warranties made by members of our sales force are only binding once confirmed by us in writing. Transmission by fax or email shall also be deemed to meet the written requirement.

II. Data Protection

We record and use information on purchasers in order to process their own transactions. When processing customer information we comply with applicable data protection rules.

III. Prices

1. Prices refer to confirmed or invoiced performance. Unless otherwise agreed, it is understood ex works, exclusive freight, postage and packaging, plus the statutory value added tax. Prices are not applicable for follow-up orders.
2. The minimum invoice amount is CHF 50.00 net value of the goods.
3. Any additional costs which arise due to requested materials and security checks or special logistics and transport costs are not included in prices and shall be invoiced separately.
4. If the goods are delivered in packaging, we invoice such packaging at cost; we will not accept returns of packaging delivered by us.

IV. Payment and set-off

1. Unless otherwise agreed, our invoices are payable within 30 days. The invoice amount is due within due 30 days of the invoice or value date. Payment - without early payment discount - shall be made in such a way that we can dispose of the funds per the due date. The purchaser shall automatically be in default following expiry of the thirty-day payment deadline, without there being any need to serve notice.
2. Nevertheless, we reserve the right to demand payment in advance in any event.
3. An agreed early payment discount always refers only to the value of the invoice exclusive freight and is conditional upon settlement of all outstanding obligations on the part of the purchaser at the time of claiming the discount in question.
4. Invoices for assembly work, repairs, forms and contributions to the costs of tools are always due immediately and payable net.
5. Counterclaims that are contested by us or which have not been determined in a legally binding manner, do not entitle the buyer to withhold payments or afford him a right of set-off. The right to refuse performance within the meaning of Art. 82 SCO is excluded.
6. After expiry of the thirty-day deadline for payment, since the invoice/value date, we are entitled to demand compensation for the costs of sending payment reminders as well as default interest since the invoice or value date for the year, even where the contract stipulates a lower interest rate. If according to the contract a higher interest rate applies, we may also demand said higher interest rate during default period. We reserve the right to assert other damage claims resulting from default.

V. Delivery Periods

1. Any indications provided re expected delivery dates and time periods are non-binding. Such indications are given to the best of our knowledge as can be met under normal conditions of supply and proper conditions. Delivery deadlines are deemed to have been complied with where the item to be delivered has left our site before the expiry thereof.
2. Our delivery obligations are entered into subject to the reservation that we are supplied in a correct and timely manner, unless the fact that we have been supplied incorrectly or late is due to an oversight on our part.
3. In the occurrence of a force majeure event, deliveries shall be delayed for the duration of the hindrance and a reasonable adjustment period. This shall also be the case when such events occur during a pre-existing delay. Considered equivalent to force majeure are currency, trade-policy and other government measures, strikes or lockouts, interruptions to operations that have not been caused by us, obstruction of traffic routes, delays in import/customs clearance, as well as any other circumstances, which, without being caused by us, significantly complicate or render impossible the delivery and performance. In this context, it shall be of no consequence whether the circumstances in question transpired with us, the factory another supplier. Where, as result of the aforementioned occurrences, execution becomes unreasonable for one of the contracting parties, it may withdraw from the contract by way of immediately declaring its intent to do so in writing.

VI. Benefits and Risk, Performance of Deliveries

1. Upon handing over the goods to a shipper or freight forwarder - in the case of drop shipping upon leaving the factory - benefits and risks shall pass to the purchaser for all transactions. All obligations and costs related to unloading shall be borne by the purchaser. We only obtain insurance at the instructions and expense of the purchaser.
2. We are authorized to make partial deliveries in such quantities as is reasonable for customers. For customized items, bulk items or rolls of material, surplus or short deliveries of up to 10 percent of the agreed quantities are permitted.
3. In case of purchase on demand, we are entitled to manufacture or have the entire order-quantity manufactured in a single batch. Provided that no fixed agreements have been concluded, on-call deadlines and quantities can only be observed, to the extent they are within the limits of our delivery and production capabilities. Where the goods are not called up as agreed, we are authorised to invoice them as delivered following a reasonable grace period.

VII. Retention of Title

All goods delivered remain our property until payment in full of the purchase price owed. We reserve the right to have our retention of title entered in the registry of retention rights at the purchaser's place of residence. In the event of delays in payment by the purchaser, we reserve the right to withdraw from the contract and to demand return of the delivered goods (reservation within the meaning of Art. 214 [3] SCO).

VIII. Liability for Defects.

1. We undertake, in the event of demonstrated defects (production defects or faulty materials) to the delivered goods within the statutory or contractually agreed period, to either make replacement deliveries or repairs, at our own discretion. To the extent allowed under the law, any further liability and all other claims by the purchaser for any damages (direct or indirect, causal or consequential), in particular for statutory material defect claims, are hereby excluded. The purchaser bears all risks as to the suitability and usage of the goods. We decline to honour any and all warranties in the event of improper storage or handling, excessive or inappropriate use. This notwithstanding the provisions of the Federal Product Liability Act (PRHG).
2. Unless otherwise agreed, contract claims which the purchaser wishes to assert against us for reasons of or in connection with the delivery shall be time-barred one year after the delivery in question. In the event of a warranty claim, if an exchange takes place in that a defective product is replaced by an identical new product, the warranty period shall not begin anew.
3. References to SN or EN or other standards and similar regulatory frameworks, as well as indications re quality, types, dimensions, weights and uses for the goods, indications provided in signs and pictures, as well as statements in advertising materials do not constitute assurances or warranties, unless explicitly designated as such in writing.
3. For the inspection of goods and notifications re defects, the statutory provisions apply: Material defects to the goods are to be immediately notified in writing, or at the latest within 8 days of delivery. In the event of disguised defects, the notice of defects is to be provided immediately upon discovery of the defects, albeit at the latest within 3 months of receipt of the goods. In the event of untimely notification, all warranty claims shall be forfeit.
4. For as long as the purchaser fails to afford us the chance to verify the defects for ourselves, particularly by failing to make the allegedly defective goods or samples available to us on request, the purchaser shall be unable to assert any defects to the goods in question.

IX. Return of Goods

We undertake to take back any goods that have been erroneously delivered or that are defective. Returned goods will only be accepted by us subject to advance notice, with our consent and at such place as indicated by us. The goods are to be returned in their original packaging, liquids in closed and sealed containers, with a copy of the delivery invoice, at the risk and expense of the purchaser.

X. Intellectual Property Rights

1. We reserve our intellectual property rights on all documents such as offers, blueprints, drawings or calculations, which we have prepared for the purchaser; they may only be made available to third parties subject to our consent. Any drawings and other documents provided together with offers are to be returned to us on request.
2. Where we have delivered items based on drawings, models, templates and other documents provided by the purchaser, it is the purchaser who is liable that the intellectual property rights of third parties have not been infringed. Where third parties prohibit us, in invocation of their intellectual property rights, from manufacturing and delivering such items in particular, we shall be entitled - without being obliged to verify the legal situation - to cease and desist with any further activities and, in the event the purchaser is to blame, to demand compensation for damages. In addition, the purchaser undertakes to immediately indemnify us for all and any third-party claims in connection herewith.

XI. Test parts, moulds, tools and parts provided

1. Moulds and tools, which we manufacture or have manufactured for a purchaser, shall remain our property even where the purchaser has contributed to the costs in part or in full. The purchaser has no claim to have such items handed over.
2. The preparation of test parts including any costs for moulds and tools, are to be borne by the purchaser.
3. For tools, moulds and other production equipment provided by the purchaser, our liability shall be limited to the level of care we use for our own affairs. Costs for maintenance and care shall be borne by the purchaser. Our duty of safekeeping expires - irrespective of the purchaser's property rights - at the latest five years following the last production using the mould or tool.
4. Where the purchaser is required to contribute parts for the execution of the order, they are to be delivered ex works in the agreed excess quantity or, if the amount is not agreed upon, in an appropriate excess quantity for any discarded production, in a timely manner, free of charge and without defects. Failure to comply herewith shall result in any costs and other consequences that arise as a result thereof, being borne by the purchaser.

XII. Place of Performance, Place of Jurisdiction, Applicable Law

1. The place of jurisdiction and place of performance for our deliveries (unless otherwise agreed) is our place of registered office. We reserve the right to take legal action against the purchaser at its place of registered office or residence.
2. For all legal relations between us and the purchaser, Swiss law shall apply. The United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention/CISG) is hereby excluded.

XIII. Obligatory Version

In case of doubt, the German version of these General Conditions of Sale and Supply shall prevail.

Kommentiert [A1]: Wir haben „Zurückbehaltung“ mit „to withhold payments“ übersetzt. Allenfalls ist damit aber „to retain goods“ gemeint.

Dürfen wir Sie bitten unsere Interpretation des Ausgangstexts zu überprüfen und dies allenfalls zu ändern.