

## General Terms and Conditions of Delivery and Payment

Last updated: January 2017

### 1. General information

- (1) Our offers, deliveries and services are provided exclusively based on these General Terms and Conditions. The present Terms and Conditions shall apply to any future business, even if there is no explicit mention of the terms. By sending the order confirmation, whether in paper or electronic form, but no later than with the acceptance of our goods or services, the present Terms are considered accepted. Confirmations of the Purchaser referring to their own Terms of Business and Purchase will not be accepted.
- (2) In case any of the provisions contained in these General Terms and Conditions shall be invalid, the validity of all remaining provisions contained herein shall not be affected in any way thereby. The parties will jointly replace, within the bounds of what is reasonable, any invalid provisions in good faith with such provisions, which best approximate the economic intent of the contract without the content of the contract being thereby subject to a material amendment. The foregoing shall apply if circumstances in need of regulation are not explicitly regulated.
- (3) All agreements (including a change of this clause) made between us and the Purchaser for the purpose of performance of this contract shall be made in writing. In the context of electronic or telephonic orders, text-form (e-mail, fax) is sufficient.

### 2. Conclusion of the contract; scope of services

- (1) Our offers are without subject to change and non-binding. Declarations of acceptance and all orders are subject to our confirmation in writing, by fax or electronic mail in order to become valid. The contract is deemed to be concluded if we send an acceptance of order in text-form, which determines the scope of our contractual obligations. If this written declaration does not exist, our scope of services shall be determined by the offer, which the Purchaser has accepted at the due date. The delivery replaces the written acceptance of order.
- (2) The Purchaser must check our acceptance of order without undue delay to ensure that it is correct and complete and must inform us of any discrepancies between the order and the acceptance without undue delay.
- (3) The performance characteristics specified in the catalogues and orders such as figures, plans etc. are only to be considered an approximation. Plans, figures, measures, weights or other performance data are only binding if explicitly confirmed in writing. We reserve legal property and copyright usage rights to cost proposals, plans and other documentation (hereinafter: documentation). Such documentation may only be made accessible to third parties following our prior approval and are, if the order is not placed with us, to be returned to us immediately upon request.
- (4) Our sales employees are not authorized to make further verbal agreements or provide verbal warranties/promises, which exceed the content of the written contract.
- (5) The Purchaser is liable for the correctness, accuracy and completeness of his order data and all of his order documents, especially those relating to plans as well as for technical data and samples. Verbal details including those relating to amendments and modifications of the documentation and data provided shall require confirmation in writing. If we do not confirm in writing or execute an order within a month after receipt, within 3 months in special cases (e.g. custom products), during the term of which the Purchaser is bound to his order, the Purchaser is entitled to take back the order without him being entitled to lodge claims for damages against us.

### 3. Prices; payment terms

- (1) Our prices are EURO prices. The prices including shipping costs specified in our acceptance order shall prevail. They are ex works, in Germany plus applicable value-added tax and do not include installation, commissioning and assembly costs as well as packaging, freight, postage and insurance costs. They are calculated on the basis of the salary, material costs and other costs applicable on the day of our tender. For orders through our online shop we will - if possible - display the final prices including shipping costs; insofar as this is not yet possible due to the nature of the delivery item or due to the still to be determined parameters for the delivery (e.g. package size, weight, distance) at this time, we will give the final price and the shipping costs in our acceptance order. If there is an increase in material and commodity prices, energy costs, salaries and wages, production or transport costs, we are entitled to invoice the prices arising on the day of delivery due to cost increases that have effectively occurred.
- (2) Supplemental deliveries and services are - after consultation with the Purchaser - invoiced separately.
- (3) Payments are to be conducted without the use of cash and free of charge without any deductions, namely: delivery takes place at our discretion after prepayment or on account. In case of prepayment, the delivery period begins to start only after receipt of the full invoice amount. Invoices are to be paid within 30 days from the date of the invoice. Possibly different payment options are displayed in the catalog / order process. Despite dissenting provisions by the Purchaser, we are entitled to offset payments first against his older debts; we will inform the client of the offset method employed. If any cost and interest were generated, we are entitled to offset the payment first against the cost, then the interest and the main service as last. A payment is considered settled when we can dispose of the sum. In the case of cheques, the payment is only considered settled when the cheque is cashed. We reserve the right to take in external or own acceptances as conditional payment; the payment of our claim is considered to be completed as soon as the Purchaser cashes the bill of exchange. The Purchaser shall bear discounts, fees and other expenses.
- (4) In case of culpable exceedance of the payment deadline, default interest in the amount of 9 percentage points shall be requested above the applicable ECB base rate. If the Purchaser defaults on a considerable part of his payment or cheques or bills of exchange are protested or the criteria for lending are not applicable, all of our claims against him for immediate payment shall fall due. The foregoing also applies to invoices originally deferred as well as any later bills of exchange or cheques.
- (5) If the financial position of the Purchaser deteriorates considerably after conclusion of the contract or if the deterioration in the financial position only becomes apparent after the conclusion of the contract, we are entitled in the event of breach of the consideration to refuse deliveries not yet executed and demand appropriate advance payments or collateral security, respectively.
- (6) The exercise of the set-off by the Purchaser is only permissible if the claim of the User has been found to be indisputable or legally binding. The Purchaser may only use a right of retention insofar as it is based on claims arising from the same contractual relationship and a right of retention in accordance with § 320 or § 641 para. 3 German Civil Code (BGB).

### 4. Series deliveries, long-term and order contracts

- (1) Indefinite contracts are subject to termination at a term of 3 months to the end of a calendar month.
- (2) If in the case of long-term contracts (contracts with a term of more than 12 months) a material change in the salary, material or energy costs arises after the first six weeks of the term of the contract, each Party is entitled to request that the price be adjusted having regard to such factors.
- (3) Our prices are calculated on the basis of the agreed order quantities. If no binding order quantities are agreed, our calculation is then based on the agreed target quantities. If the order quantity or target quantity is not achieved, we are entitled to increase the price per unit in an appropriate manner. If the Purchaser exceeds the quantity with our consent, he can request an appropriate price reduction if he notifies us of this in writing at least 3 months prior to the agreed delivery date. The amount of the reduction or increase must be calculated using our calculation bases.
- (4) In the case of delivery contracts on call, unless otherwise agreed, the binding quantities are to be notified at least six weeks prior to the delivery date by call. Additional costs arising as a result of the delayed call or subsequent amendments to the call in terms of time or quantity by the Purchaser, shall be borne by the latter; our calculation shall prevail here.

## 5. Time of delivery

- (1) Delivery dates or deadlines which may be arranged with or without engagement shall be made in text-form. Our delivery times are calculated from the date of our order acceptance. All changes made to the scope of services after the order has been accepted will result in a corresponding extension of the delivery period.
- (2) The observance of delivery deadlines requires the timely receipt of all the documentation to be submitted by the Purchaser as well as compliance with the agreed payment terms and other obligations by the Purchaser. Should the buyer delay or neglect required or agreed upon concurrence activities on his part, the delivery deadline shall be extended appropriately.
- (3) Even in the case of agreed binding delays and dates, we cannot be held responsible for unintentional delays of delivery or service due to Force Majeure and due to events over which we have no influence, which cause difficulties for the delivery which are not only temporary or which render impossible any delivery – such events are, among others, strike, lock-out, governmental decisions, malfunctions or the shutdown of key production facilities / machinery, delays in the delivery of material raw and building materials, lack of materials and / or energy, for example as a result of major price increases, delays in transportation as well as all cases of force majeure even if such postponement occurs at the sites of our suppliers or sub-suppliers of our suppliers. The above shall also apply if the aforementioned circumstances occur during a delay in delivery which already exists. Such events entitle us to postpone the delivery or service by the duration of the disturbance plus an adequate lead-time. If the hindrance lasts longer than three months, we are entitled to rescind, in whole or in part, the contract due to the part which has not yet been fulfilled. This shall be without prejudice to other rescission rights.
- (4) If the disturbance continues for more than three months, the Purchase is entitled after an appropriate grace period to rescind the contract in whole or in part, in consideration of the part which has not yet been fulfilled. If the delivery time is extended or if we are exempt from our obligation, the Purchaser shall have not have the right to claims damages in this regard. We can only refer to the stated circumstances if we inform the Purchaser of such disturbances without delay.
- (5) If acceptance of the delivered goods is requested, the latter's conditions must be stipulated upon conclusion of the contract at the latest. The acceptance has to be performed at our factory immediately after we have informed the Purchaser that the goods are ready for acceptance. The Purchaser shall bear the costs of the acceptance.
- (6) If dispatch or service of documents is delayed at the request of the Purchaser by more than a month after notice of readiness for dispatch, we shall have the right to invoice the Purchaser for every month of warehouse rent begun amounting to 0.5% of the price of the delivered goods but not exceeding 5%. The Parties are at liberty to provide documentary evidence of higher or lower storage costs.
- (7) This does not affect partial deliveries insofar as such partial deliveries are reasonable for the Purchaser.

## 6. Delivery and transfer of risk

- (1) Deliveries are made EXW (ex works, Incoterms® 2010) from Porta Westfalica. The risk of accidental loss and/or of deterioration of the delivery item shall pass to the Purchaser once we have passed the item on to the forwarding agent, carrier or other third parties commissioned with the delivery (i.e. at the moment when the loading procedure commences) or when the item has left our warehouse for delivery. This shall apply regardless of the question of payment of delivery costs or transportation. The delivery is deemed to have been completed once the item has been unloaded.
- (2) If the dispatch, the service or reception of documents is delayed for reasons for which the Purchaser is responsible or the Purchaser defaults in acceptance for other reasons, the risk is thus transferred to the Purchaser.
- (3) Unless agreed otherwise, the type of packaging, shipment method, transport route etc. will be left to our due discretion. The transport boxes that we use as standard for packaging are not designed to be stacked. If the Purchaser requires special packaging (for instance with strengthened supports to allow the transport boxes to be stacked, but no more than two high), then he/ she must request and agree this in advance (with the submission of the order, at the latest) and must bear the associated additional costs.
- (4) Upon our request packaging material and transport containers shall be returned immediately freight-free; a credit memo shall be issued in accordance with the salvage value. Mesh pallets or Euro flat pallets which are not returned shall be invoiced after a grace period set by us.
- (5) Insurance against theft, breakages and damage caused by fire, water or transport or against other insurable risks is provided only at the express request of the Purchaser and at his/her own expense.

## 7. Retention of Title

- (1) Until the full payment of all claims arising from the business relationship, including future and contingent claims, (including all claims from current account advances) to which we are entitled on whatever legal grounds at present and in the future, we will be granted the following securities which we will release at our choice upon request, if their value exceeds the claim by more than 10 %. The foregoing also applies to payments made to settle specifically designated claims.
  - a) The goods remain our property. Any processing or conversion is carried out for us as manufacturer, however without any obligation on our part. With expiry of our (co-)property due to joining with other products, it shall be agreed here, that the (co-)property of the Purchaser in the compound item shall be transferred proportionately (invoice value) to us. The Purchaser will store our (co-)property free of charge. Goods in which we are entitled to (co-)property shall be referred to as reserved goods.
  - b) As long as the Purchaser is not in delay, the Purchaser is entitled to process and sell the reserved goods in the course of ordinary business. Pledges or transfer of ownership are not admissible. For reasons of security, the Purchaser will transfer at present any claims (including all account balances from current accounts) arising from a resale or any other cause (insurance, inadmissible action) with regard to the reserved goods. We irrevocably entitle the Purchaser to collect all claims transferred to us for our account in his name. This entitlement is revocable only if the Purchaser does not fulfil his payment obligations.
- (2) In the event of access of third parties to the reserved goods, in particular in the case of levies of execution, the Purchaser will make clear that the reserved goods are our property and inform us without delay in order to enable us to claim our property rights. The Purchaser will be held liable if the third party is not able to refund the incurred judicial and extrajudicial costs. .
- (3) In case of actions of the Purchaser contrary to the contract – in particular delayed payment – we are entitled to rescind the contract and reclaim the reserved goods. The Purchaser is obliged until the reserved goods have been paid for in full to notify us at all times of the location of the reserved goods.

## 8. Rights of the Purchaser in case of Defects (Warranty)

- (1) Within these terms and conditions, we assume the warranty for the delivered products for the period of 12 months or a maximum of 8,000 operating hours after commissioning, whichever date comes first, but not later than 18 months after the date of delivery, provided that the customer made a proper selection of products, as well as assembly and treatment is properly done. The warranty includes material, design and function of the goods delivered. Product-contacting parts which are subject to wear and tear and thus a removal of material, are excluded from the warranty as long as the warranty claim is not based on a fault which is independent from wear and tear / removal of material. The shortening of the statutory period of limitation according to clause 1 shall not apply to intent and gross negligence as well as injury to life, limb or health, in the event of fraud or in the event of the assumption of a guarantee by us. The statutory period of limitation applies in these cases.

(2) If our operating and maintenance instructions are not followed, modifications are carried out in the products, parts are exchanged or consumables used that do not conform to the original specifications, claims due to product defects shall not apply, unless the Purchaser refutes a corresponding substantiated assertion that one of these circumstances first caused the defect. The foregoing applies if defects are attributable to poor assembly, incorrect installation, poor maintenance, incorrect or negligent handling or storage, repairs not properly carried out by us, alterations without our written consent, excessive strain, unsuitable operating conditions and resources as well as chemical, electro-chemical or electrical influences for which we are not responsible as well as weather-induced or other natural causes. Finally, claims for defects are ruled out in the case of insubstantial deviation from the agreed condition, in the event of minor impairment of usability, or in the case of natural wear and tear.

(3) The claims by the Purchaser based on defects require that he has duly observed his obligations to examine the goods and to give notice of defects in accordance with § 377 of the German Commercial Code (HGB), as follows: The Purchaser is required without undue delay to notify our Customer Service Department of defects, but at latest within a week after receipt of the delivered goods. Defects that may not be discovered within this period even upon careful examination shall be notified to us in writing immediately upon their discovery.

(4) If the Purchaser notifies us of a product defect, we shall be entitled, at our discretion, to demand that:

a) the defective component or device be sent to us, freight prepaid, for repair and subsequent return to the purchaser;

b) the Purchaser stores the defective part or device and our service technician is dispatched to the Purchaser in order to carry out the repair.

If a notice of defects is justified, we shall bear the costs, including those of the most economic means of shipment. Claims by the Purchaser due to expenses required for the purpose of supplementary performance, in particular transport, travel, labor and material costs are excluded, shall not be borne by us to the extent that the expenses are increased due to the fact that the purchased commodity has been taken to a place other than the location of the professional activity or commercial branch establishment of the recipient after receipt, unless such move corresponds to the intended use of the object.

The Purchaser shall have the right to rescind the contract without prejudice to any claims for damages or diminish compensation if the supplementary performance fails to take place within a reasonable period. Our maximum liability for damages is based on Clause 10.

(5) Claims against us due to defects may only be asserted by the direct Purchaser and may not be assigned.

(6) In the event of deficiency reports, payments by the Purchaser may only be withheld to an extent which is in proportion to the defects in quality which have occurred. A payment may only be withheld if the Purchaser asserts a deficiency report whose justification is not open to any reasonable doubt. If the deficiency report was made without good reason, we are entitled to request a reimbursement from the Purchaser of the expenses incurred by us.

(7) In the case of parts used for production, reprocessing or reworking which the Purchaser sends to us, we shall not be liable for their behavior during processing; if the material becomes defective in the process, we shall be reimbursed for the expenses which we have already incurred for the processing. Unless the damage is attributable to an intentional or grossly negligent breach of duty on our part, our agents or a breach of duty material to the purpose of the contract. This limitation of liability shall not apply to intent and gross negligence as well as injury to life, limb or health, in the event of fraud or in the event of the assumption of a guarantee by us.

## 9. Right of recourse of the entrepreneur

If the Purchaser sells the newly manufactured goods within the framework of his commercial business on to a consumer and has had to take back the goods due to them being defective or has reduced the purchase price for the consumer, we do not require the setting of a deadline in order for the claims for defects of the Purchaser to be asserted. In this case the Purchaser shall have the right to request to be reimbursed for expenses which he had to bear in his relationship with the consumer, provided the defect asserted by the consumer already existed at the time of transfer of risk to the Purchaser. Within the scope of such right to recourse of the entrepreneur, the Purchaser shall not have a claim to compensation except as provided by the provisions in paragraph 10.

## 10. Liability

(1) In cases of gross negligence or intent, we are liable under the statutory provisions, the following limitations will not apply in these cases. In case of simple negligence, liability is excluded to the extent neither an essential contractual obligation (cardinal obligation) has been violated, nor life or limb were injured, or in the case of impossibility or the delay.

(2) The foregoing shall not apply for liability arising out

- explicitly warranted quality features,
- the German Product Liability Act,
- cases of wilful intent or gross negligence,
- injury to life, the body or even impairment of health,
- the breach of essential contractual duties.

Nevertheless, the claim for compensation for the breach of essential contractual duties is limited to the foreseeable damages specific for the contractual scope; claims for foregone profit, compensation claims of third parties and for other indirect and consequential damage shall not be admitted. The foregoing shall not apply if a quality feature guaranteed by us has been used to hedge the Purchaser against such damage and / or if intent or gross negligence apply or if liability exists due to injury to life, limb or health. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser.

(3) To the extent our liability is excluded or limited, this shall also apply to our employees, legal representatives and agents.

## 11. Design Modifications

We reserve the right to make design modifications at any time; this applies to current orders only insofar as by the delivery item is not changed in a way that it no longer meets the specifications, agreed with the customer. However, we are not required to carry out modifications in products already delivered.

## 12. Copyright

(1) The documents and plans which we passed on to the Purchaser as well as design services rendered by us and design and manufacture proposals may only be used by the Purchaser for the intended purpose and may be made available to neither to third parties nor for publication purposes without our consent. Unless otherwise agreed, we are required to perform the delivery free of industrial property and copyright of third parties (hereinafter referred to as industrial property rights) only in the country where the place of original delivery is located.

(2) If a third party raises legitimate claims against the Purchaser due to the breach of industrial property rights as a result of deliveries used in accordance with the contract and provided by us, we shall be liable vis-à-vis the Purchaser within the 12 month period as defined in paragraph 8 as follows:

We shall, at our option and cost, either secure a right of use of the deliveries concerned, or modify them so as to ensure that they shall not infringe upon such property rights or exchange such deliveries. If this would be unreasonable to demand from us, the Purchaser may cancel the contract or reduce the remuneration pursuant to the statutory provisions. Our obligation to pay damages shall be determined by paragraph 10.



NO. 1 IN PIPEWORK SYSTEMS

The above obligations apply to us only if the Purchaser notifies us immediately in writing of the claims asserted by third parties, does not admit the infringement and leaves in our hands any defense of the claims and settlement negotiations. If the Purchaser stops using the deliveries in order to reduce the damage or for other good reason, he shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued. Claims by the Purchaser are excluded insofar as he himself is responsible for the infringement of the industrial property right. Similarly, claims by the Purchaser are excluded if the infringement of the industrial property right is caused by the Purchaser's special requirements or is caused by a use which we could not foresee or because the delivery is changed by the Purchaser or is used together with products that we did not deliver. In all other respects, the provisions set forth in paragraph 10 shall apply to claims by the Purchaser in the event of infringements to industrial property rights.

### 13. Non-Disclosure

- (1) Our technical documentation, plans, service and operating manuals as well as all the information on the function and installation of the goods received by us during the contractual negotiations are subject to non-disclosure. The Purchaser undertakes to prevent unauthorized persons from accessing the applicable information.
- (2) Unless otherwise explicitly agreed in writing, the information to which we were privy in the context of orders shall not be construed as confidential.

### 14. Final provisions

- (1) A transfer of the contractual rights and obligations to third parties by the Purchaser is only admissible with our written approval. This does not apply if the transfer is to an affiliated company within the meaning of § 15 German Stock Corporation Act.
- (2) Place of performance for payments is Porta Westfalica, for all other obligations the relevant supplier's plant.
- (3) Legal relations existing in connection with this contract shall be governed by German substantive law, with the exclusion of the conflict of law rules of any jurisdiction and the United Nations Convention on Contracts for the International Sale of Goods.
- (4) The place of jurisdiction for all disputes arising from the contractual relationship including legal proceedings relating to cheques, bills of exchange and deeds is the venue, Porta Westfalica, which is competent for our head office.

Wir liefern unter Geltung unserer „Allgemeinen Lieferungs- und Zahlungsbedingungen“.

(Siehe auch unter [www.jacob-rohre.de](http://www.jacob-rohre.de) oder auch auf Anforderung.)

We deliver in accordance with our 'General Conditions of Delivery and Payment'.

(Please visit also [www.jacob-uk.com](http://www.jacob-uk.com) or also request a copy from us.)

Nous effectuons nos livraisons en tenant compte de « nos conditions générales de vente et de paiement ». (Voir aussi sur le site [www.jacob-dosatec.fr](http://www.jacob-dosatec.fr) ou aussi sur demande.)

