

General Terms of Business

1. General

1.1 The following General Terms of Business (GTB) shall be exclusively valid for all our offers and orders, and also for repeat orders placed to supplement previous orders. We do not recognise any terms of the buyer to the contrary unless we have expressly agreed in writing that they shall apply. Our GTB are also valid if we carry out deliveries to the buyer without reservation, being unaware of any terms of the buyer that conflict with or differ from our GTB. Our GTB are also valid for all future transactions with the buyer.

1.2 With regard to the content of the contract our written confirmations of order are authoritative. Side agreements must be agreed in writing. Any change in the clause requiring the written form as such must also be agreed in writing.

2. Offers

2.1 Our offers are without commitment on our part until we have confirmed the customer's purchase order in writing.

2.2 We reserve the rights of ownership of all offer and contract documentation without restriction, together with rights of utilisation in accordance with the law of copyright. Offer documentation must be returned to us without delay if we are not awarded the order.

2.3 Our offers shall be subject to the ability of our suppliers to deliver the required raw materials in sufficient quantities and in good time. Technical drafts, sketches and specifications given in catalogues, such as dimensions and prices, together with other descriptions, are subject to alteration without notice and are for reference purposes only.

3. Prices

Our prices are fixed ex works, excluding freight, customs duties, packaging, insurance and other subsidiary costs, and they are subject to value-added tax at the legally prescribed rate. Prices are based on material and labour costs and overheads effective at the point in time when the order is confirmed by us. Should there be an increase in these costs – the amount and nature of which we shall substantiate on demand – before the date of delivery, we shall be entitled to raise our prices accordingly. In the event of price increases that exceed contractually agreed prices by more than 20%, the buyer shall have the right of withdrawal – provided that the increase in costs did not take place during a period of delay to the delivery of our products or services that was attributable to the customer, and that it was not caused by requests from the customer for changes post-dating the conclusion of the contract.

4. Delivery, transfer of risk

4.1 All goods shall be delivered ex works from D-76703 Kraichtal/Germany. We reserve the choice of both the method and the route of transportation. If the buyer stipulates special instructions, it shall bear any resulting extra cost. Our compliance with our obligation to deliver presupposes that the buyer has fulfilled its obligations in good time and in due order.

4.2 The risk of accidental destruction or accidental deterioration passes to the buyer as soon as the goods have been handed over to the person or body designated for collection or the execution of delivery, and in any case no later than when they leave our premises. This also applies to deliveries by our own vehicles, and to deliveries excluding freight and packaging.

4.3 In the event of a delay in the acceptance of the goods or in their delivery for reasons for which the buyer is responsible, the risk of accidental destruction or accidental deterioration passes to the buyer at the moment when the delay in acceptance occurs, or when the goods could have been collected by or delivered to the buyer if it had conducted itself in accordance with its obligations.

5. Delivery

5.1 The delivery date is determined by the date of readiness for shipment. It requires all commercial and technical matters to have been settled. The delivery schedule set by us shall be such that it is highly likely to be met. Agreed schedules only become fixed schedules when they have been expressly designated as such in writing. Partial shipments are permissible.

5.2 We are not responsible for delays in delivery due to *force majeure*, strikes, lock-outs and other events that we could not have foreseen and for which we are not to blame, that take place after the conclusion of the contract or of which we were through no fault of our own unaware at the time of the conclusion of the contract. The same applies in the event of delay due to such causes affecting our direct or indirect suppliers. Delays in delivery of this nature justify us in postponing delivery by the duration of the impediment, plus a reasonable start-up period – or in withdrawing from the contract should it become prohibitively difficult to comply with its terms. Any further claims, e.g. for damages or alternative procurement, are excluded.

5.3 If we are late in delivering, our obligation to pay compensation in the event of standard negligence shall be limited to the foreseeable damages typical of this type of contract.

6. Delayed acceptance

If the customer is late in accepting the goods at the place of fulfilment or calling off goods for delivery, or if delivery is otherwise delayed for reasons that are the customer's responsibility, then notwithstanding our legal rights we shall be entitled to call for immediate payment for the goods affected by the delay, to store these at the customer's expense and risk and, having drawn the attention of the customer to our rights and set a reasonable extension period for compliance, on the expiry of that period to take whatever action with regard to the goods affected by the delay as we see fit, to deliver them to the customer after a reasonable extended period, to withdraw from the contract or to claim damages for non-fulfilment. In the latter event we can claim compensation equal to 25% of the gross order value without providing proof, unless the customer can show that the actual damage suffered was substantially less. We reserve the right to lodge a claim for higher actual damages. Storage costs arising from the delay in acceptance shall be charged to the buyer.

7. Warranty

7.1 Obvious defects must be reported to us in writing within one week of their becoming apparent. Defects that are not obvious must be reported to us in writing within one year of their becoming apparent under careful examination. Claims under warranty in respect of defects that have not been properly reported are excluded.

7.2 Claims of any nature under warranty cannot be lodged if, without our consent, the buyer or a third party attempts to assemble or commission the goods or to rectify any defects, the items delivered have been worked on by third parties, altered by external influences, handled other than in accordance with our technical guidelines or otherwise improperly handled or used and the buyer fails to show that the defects were present when the transfer of risk took place.

7.3 In the event of legitimate complaints we shall have the option of repairing or replacing the goods. If the repair or the replacement fails, the buyer shall be entitled to demand cancellation of the contract or a reduction in price. We are entitled to have repairs carried out by third parties if we wish. Parts that we replace become our property. The customer enjoys no more extensive rights in respect of replacement supplies and rectification work than in respect of the original contracted products. Damages can only be claimed by the buyer if and to the extent that any of our legal representatives or agents of vicarious liability has acted wilfully or with gross negligence. In the event of standard negligence the limit on liability shall not apply if a cardinal obligation or a significant contractual obligation has been breached; our replacement obligation is then limited to the foreseeable damages typical of this type of contract. This also applies to claims for damages arising from any culpable violation of our duty to provide repair or replacement, or from a positive breach of contract.

7.4 The warranty period is one year from acceptance unless the goods sold are new consumer goods, in which case the warranty period is two years from acceptance. This period is a limitation period.

7.5 Any assurance given with regard to particular attributes must be expressly stated by us in writing.

8. Liability

8.1 No further claims by the buyer based on any legal reasons whatsoever shall be entertained. We are therefore not liable in respect of damage other than to the item delivered itself; in particular, we shall not be liable for loss of profit or any other financial loss to the buyer unless the damage was caused by wilful or grossly negligent conduct. Accordingly all our employees, staff, representatives and agents of vicarious liability shall also be exempt from any personal liability to the same extent as the company.

8.2 Exemptions from liability do not apply to claims under § 1.4 of the German Federal Product Liability Act. The same is true in the event of initial incapacity or apparent impossibility.

9. Payment

9.1 Payment is due net within 30 days.

9.2 The buyer is not entitled to offset payments against counterclaims unless these are undisputed, acknowledged by us or upheld by a final court decision. The right to withhold payment can only be asserted if it is based on the same contractual relationship.

9.3 If we do not receive prompt payment after issuing a reminder, we are entitled, without issuing a further reminder, to charge interest on the arrears at the rate of 8% over the basic interest rate as per § 1 of the German Federal Discount Rate Transfer Act. We reserve the right to lodge a claim for further damages.

9.4 We are entitled to call for an advance payment or a deposit if the buyer fails to comply with these terms of payment or circumstances become known that call its financial standing into question. After a reasonable period we are entitled to withdraw from the contract or to claim damages for non-fulfilment.

10. Reservation of title

10.1 We retain the ownership of items delivered until all payments due under the order have been received.

Where we operate current accounts for clients, debiting them with our invoice amounts, the reservation of title extends to the balance due to us (current-account reservation).

10.2 In the event of a breach of contract by the buyer, especially if it falls into arrears with its payments, we are entitled to recover the delivered goods. Transfer of ownership by way of security and assignment as collateral are not covered by the customer's authorisation to dispose of the goods. In the event of breach of contract by the customer, especially if it falls into arrears with its payments, we are entitled – subject to the provisions of insolvency law – to revoke the authorisation to sell the goods on and either recover them or call on the customer to relinquish its rights to recovery of possession vis-à-vis third parties. Recovery by us does not entail withdrawal from the contract unless we have expressly declared in writing that it does so. Seizure by us, however, always entails withdrawal from the contract. Having recovered the goods, we are authorised to dispose of them, and the liabilities of the buyer shall be reduced by the proceeds of disposal, less reasonable disposal costs.

10.3 The buyer is obliged to handle the goods delivered with care; in particular, to insure them at its own expense on a replacement-value basis against damage caused by fire, flood or theft. The customer hereby assigns to us all resulting insurance claims relating to the goods concerned, and we hereby accept such assignment. We furthermore reserve the right to lodge claims for non-fulfilment or damages.

10.4 The buyer shall carry out maintenance and inspection work at its own expense. The buyer must notify us in writing without delay of seizure or other intervention by third parties.

10.5 The buyer is entitled to resell the goods delivered in the course of normal business. However, the buyer hereby assigns to us by way of collateral all its claims with regard to resale up to the original invoice amount (including value-added tax), regardless of whether the goods concerned have been processed. The buyer remains authorised to enforce these claims even after having assigned them. Our authorisation to enforce the claim ourselves is unaffected hereby. We undertake, however, not to enforce the claim provided that the buyer meets its payment obligations to us from the proceeds, is not in arrears with its payments and in particular has not ceased to make payments or made any application for the initiation of insolvency or composition proceedings. Otherwise we shall be entitled to call on the buyer to notify us of the assigned claims and the corresponding debtors, to provide us with all the information and related documents required to enforce these claims, and to notify its debtors of the assignment. Any processing or modification by the buyer of the goods delivered shall be carried out on our behalf.

10.6 If the goods delivered are combined with other items which are not our property, we shall acquire a share in the joint title to the resulting products proportionate to the value of the goods originally supplied by us at the time of the combination. The resulting product is subject to the same provisions as the goods supplied by us subject to reservation. The buyer also assigns to us, as collateral for our claims against it, any claims against third parties resulting from the combination of the delivered goods with real property. We undertake, on being called on by the buyer to do so, to release collateral if the value of the collateral held by us exceeds the corresponding liabilities by more than 20%. The selection of the collateral to be released is a matter for us.

11. Returned goods

11.1 Goods properly delivered may only be returned with our express prior written consent. Credit can be given – for undamaged goods only – less a reasonable charge to cover administration, inspection and repackaging costs. No credit can be given for damaged goods.

11.2 When the electrical appliances reach the end of their useful life the purchaser shall ensure that they are disposed of in accordance with statutory regulations. It hereby releases ARGO-HYTOS from its obligations under § 10 para. 2 of the Federal Electrical and Electronic Equipment Act (ElektroG).

12. Information technology

We are entitled to process all data relating to business dealings with the buyer, or to have them processed by others, subject to compliance with the German Federal Data Protection Act.

13. Penalty clause

We hold exclusive rights to all contract documentation (drafts, prospectuses, catalogues etc.) passed to the buyer in the course of our business dealings, as well as to samples and models. The buyer may make no use of the aforesaid documents, samples and models except in accordance with the contracts concluded with us and with our agreement. The buyer undertakes to pay us a penalty of €2,500 for every breach of these obligations. We reserve the right to lodge claims for damages exceeding this amount.

14. Venue and place of fulfilment

14.1 The place of fulfilment is our place of business.

14.2 If the customer is an entrepreneur within the meaning of § 310 of the German Civil Code (BGB) or a corporate body or special authority under public law, the venue for all obligations arising from the contractual relationship, including matters relating to cheques and bills of exchange, is our place of business or, at our option, that of the customer. The foregoing agreement regarding venue also applies to customers whose place of business is abroad.

14.3 This contract shall be governed and construed in all respects solely in accordance with German law. The language of this contract is German. The United Nations Convention on international trade contracts (UN Convention on Commercial Law) shall not be applicable in any respect.