

Dolezych

Sales-, delivery and payment terms and conditions

I General provisions

1. Conclusion of a contract

Our deliveries are made exclusively on the basis of the following terms and conditions. Purchasing terms and conditions on the part of the purchaser are herewith expressly opposed. They are not binding upon us even if we do not oppose them again on conclusion of a contract. Our general sales-, delivery and payment terms and conditions are deemed to have been accepted at the latest on receipt of the goods. With regard to non-merchants, these present business terms and conditions may be altered only by contractual agreement or extended to future business transactions. As far as merchants are concerned these business terms and conditions also apply to future follow-up business on the understanding that we expressly reserve the right to make alterations with respect to future business transactions. All our quotations are non-binding and without obligation. Contracts, price agreements and other agreements – particularly if they also alter these sales terms and conditions – become binding upon us only when confirmed in writing by us.

2. Prices, payment terms and conditions

The prices stated in our confirmation of order or those in our price list, valid at the time of the conclusion of the contract, apply. If the costs of materials, wages, processing materials or legal levies increase significantly during the period between conclusion of the contract and delivery, for reasons for which we are not responsible, we are entitled to increase the agreed price in line with the extent of the increase in costs by way of compensation, on disclosure of the original calculation as well as providing a specific explanation of the increase in cost factors. In dealings with non-merchants we are entitled to act in this way only if there are more than four months between the conclusion of the contract and the delivery date. In such a case non-merchants are entitled to withdraw from the contract. Unless otherwise agreed, all payments must be made net cash within 30 days of the date of the invoice. Discount is permitted only if expressly agreed. We accept promissory notes and discountable bills of exchange as forms of payment only if expressly agreed. Credit entries by way of cheques and bills of exchange are accepted subject to their receipt, with the deduction of the applicable basic interest rate and possible bank and collection charges, being credited on the day on which we can access the proceeds. When dealing with merchants we are entitled, should the payment date be exceeded, to demand interest on the overdue payment amounting to 5%. In the case of delay on the part of the purchaser, we are entitled to demand default interest amounting to 2% above the base interest rate of the Deutsche Bundesbank (German Federal Bank) – amounting, however, to a minimum of 6% - while reserving the right to make further claims for damages caused by default. The purchaser retains the right to prove a lesser loss. In the case of a culpable breach of these sales-, delivery- and payment terms and conditions or of insolvency on the part of the purchaser, the claim affected by this breach becomes due immediately. If, following the conclusion of the contract, substantiated doubts arise concerning the purchaser's ability to pay, which endanger our claim, we are entitled to execute outstanding deliveries only against pre-payment or security. After setting an appropriate additional period of time, with the threat of repudiation, we are entitled, should the time expire fruitlessly, to withdraw from the contract or claim for damages on the grounds of non-fulfilment. The purchaser may offset only undisputed or legally established claims. Merchants are entitled to claim a right of lien only in respect of those counter-claims, which are based upon the same contractual relationship. We are entitled to offset our claims against the purchaser – irrespective of the cause.

3. Reservation of title

All goods supplied remain our property until the fulfilment of all our claims against the purchaser – irrespective of the cause – arising from the business relationship. This also applies to those goods, for the delivery of which the purchaser has specifically drawn his payment. With a current account the retention of title acts as security for our claim for the balance. The purchaser may resell the reserved goods only in the course of normal business transactions on his normal business terms and conditions and only as long as he is not in default. He is only entitled to resell the reserved goods with the proviso that the claim arising from the resale is transferred to us. He is not entitled to other disposal of the reserved goods, particularly to pledge or transfer them as security.

The purchaser has already assigned to us the claims due to the purchaser, arising from the resale of the (possibly worked or finished) reserved goods or from another cause affecting the reserved goods, to the

amount of the value of the reserved goods. They act in the same way as the reserved goods as security. Insofar as the value of the securities we hold exceeds our claim in total by more than 20% we are obliged, at the purchaser's request, to release securities of our choice to that amount. In no circumstances is the purchaser authorised to assign the claims to a third party. At our request he is obliged to inform his buyer of the assignment to us and provide us with the necessary information and documents for collection. The processing of the goods supplied takes place on our behalf, without any obligations attaching to us therefrom. In the case of processing, combining or mixing by the purchaser of the reserved goods with other objects not belonging to us, our joint ownership proportion in the new item as reserved property is in the proportion of the invoiced value of the processed reserved goods to the invoiced value of the other processed goods. The purchaser's right of future enjoyment in the delivered object continues in the object. If the retention of title lapses for any reason the claim arising from it replaces it. In the case of a delay in payment by the purchaser or of circumstances arising following the conclusion of the contract, which endanger the satisfaction of our claim, we are entitled to withdraw from the contract. In such a case, at our request, the goods are to be handed over to us by sending us an inventory without delay. Our reclaiming of the goods counts as withdrawal from the contract. In these circumstances we are entitled to resell the goods at our discretion, by way of auction or by private treaty and to offset the proceeds against the purchase price. In the case of attachment or seizure by a third party of the reserved goods or of claims assigned to us, the purchaser must draw attention to our reservation of title or the assignment and inform us immediately by handing over the documents necessary for an intervention. If the intervention was successful and its costs cannot be recovered from the third party, these will be borne by the purchaser. The rights arising out of § 46 of the Schedule of Costs apply together with the existing rights. The purchaser renounces the rights arising from § 50 of the Regulations for Settlement Proceedings.

4. Liability

We are liable to pay compensation to an unlimited amount arising from any legal cause for losses due to malice aforethought or gross negligence on the part of our legal representative or our agents, for damage arising from injury to life or limb or to health, even in the case of a simple, negligent breach of an obligation, caused by us our legal representative or our agents and losses caused by the failure of a guaranteed condition or relating to faults, about which we have fraudulently kept silent.

In transactions between firms we are liable in the case of a breach of material contractual obligations, if our liability is not already substantiated according to the above, the amount being limited to the contractually normal loss, foreseeable at the time of the conclusion of the contract.

Any further liability for compensation, particularly absolute liability, is excluded.

Liability in accordance with the Product Liability Law remains unaffected.

5. Place of fulfilment and place of jurisdiction

The place of fulfilment for all rights and obligations of both contracting parties – with the exception of the payment obligation on the part of the purchaser – and the place of jurisdiction for contracts with merchants, corporate bodies or separate estates under public law is Dortmund. We are, however, at liberty to seek legal redress in the purchaser's general place of jurisdiction.

6. German law, partial legal invalidity

The law of the German Federal Republic applies. The UN Convention on Contracts for the International Sale of Goods (CISG) is excluded. The legal invalidity of individual clauses of these terms and conditions does not affect the validity of the remaining regulations. In place of the legally invalid obligations the contracting parties undertake to decide upon a regulation, which approximates most closely to the intended effect and which the parties would have agreed upon had they known of the legal invalidity of this clause.

II Execution of the delivery

1. Delivery term

The stated delivery deadlines apply ex works. They are only an approximation and may be extended, without affecting our rights should the purchaser be in default, by the period during which the purchaser is in default of his obligations arising from this or another transaction. If a delivery deadline is agreed as being legally binding, it is considered to have been met if and insofar as we have despatched the goods on time. If we are not able to send the consignment for reasons which are not our fault or that of the

supplying factory, or if the necessary despatch instructions, the agreed official acceptance or the opening of a credit account have not been completed in time, the delivery deadline is considered to have been met if the notification of readiness for despatch is sent on time. If we ourselves are in default the purchaser must set us an appropriate additional period of time, as above. Following the expiry of this deadline the purchaser can withdraw from the contract only if the service was due and the goods were not notified as being ready for despatch in an untreated or finished state before the expiry of the deadline. Claims for damages because of non-fulfilment on the grounds of slight negligence are excluded, unless the latter refers to contractually material obligations.

2. Force majeure

Events of force majeure occurring after the conclusion of the contract entitle us to delay delivery for the duration of the hindrance – at most, however, for 4 months – plus an appropriate starting up time. Should the duration of the hindrance be more than 4 months we are entitled to withdraw from the contract. Any advance payments made are to be refunded by us. Those circumstances are to be considered as force majeure, which render the delivery significantly more difficult for us or make it impossible, such as strike or lawful lockout, fire, mechanical breakdown even including faults relating to acceptance or precautionary or preventative measures, for which we are not responsible, or operational breakdowns in our factory as well as in that of a supplier as well as unforeseen shortages of raw materials or fuels. Our right to withdraw in accordance with sentence 1 does not apply to delivery delays caused by trade disputes. On giving us an appropriate deadline the purchaser can demand a statement from us as to whether we wish to withdraw or deliver within the stated deadline. If we do not provide a statement within the stated period the purchaser can withdraw from the contract.

3. Partial shipment, regular transaction, exceeding the contract

We are entitled to part performances of a reasonable size. In the case of transactions with consecutive deliveries, we are to be provided in good time with call-ups and specifications for approximately equal monthly quantities otherwise, after fruitlessly setting a further period of time, we ourselves are entitled to divide up and specify and to deliver the goods or to withdraw from the whole of the outstanding part of the transaction and to claim damages, on account of the part which was not authorised or specified at the appropriate time. If the contractual quantity is exceeded by the purchaser's separate call-ups, we are entitled to deliver the excess, but not, however, obliged to do so. For instance, unless any special agreement is made, we will invoice goods delivered over and above the transaction quantity at the rate valid on the day of the last delivery or at the transaction price.

4. Official acceptance

If special material specifications are agreed or if the goods are being sent abroad, the purchaser is obliged, following notification of readiness for despatch, to test and officially accept the goods at the supplier's works within 5 working days. The purchaser is responsible for the staff acceptance costs, we are responsible for the practical acceptance costs. If the purchaser does not remove the goods following notification of readiness for despatch, does not do so within the appropriate time or not in full, we are entitled to store the goods and to charge the storage costs thus incurred by us or a third party or, following the setting of an appropriate further deadline, to send the goods to the purchaser at the latter's expense. With their shipment or storage the goods are then deemed to have been accepted.

5. Packaging

If the consignment must be sent on reels, the latter are invoiced and must be paid for at the same time. Round reels will be credited at two thirds of the invoiced value if they are returned free of charge within two years and reach the factory in good condition. At the end of two years they can be taken back only after special agreement. Cross reels will not be taken back. The packaging will be included in the weight. The calculation of the delivery in rings, without reels, is done gross for net, if it is being sold by weight. With sales by the metre, two hundredth of the invoiced value of the delivery will be charged for the packaging, with a minimum, however, of 5 euro.

6. Despatch and transfer of risk

Material notified as being ready for despatch must be called for despatch without delay in accordance with the delivery terms, otherwise we are entitled without more ado to store it as we think fit at the purchaser's expense as well as invoicing it as having been delivered ex works immediately following notification of

readiness for despatch. If collection by lorry is intended and the material is not collected within 5 days of our notification of readiness for collection – in accordance with the agreed delivery date – we are entitled to consign the goods ourselves as we see fit. The legal regulations concerning late acceptance are not affected. In every instance – even including f.o.b. or c.i.f. transactions – the risk, including that of seizure, passes to the purchaser with the handing over to the forwarding agent, carrier or shipper. We reserve the right to choose the routing of the goods and means of transport and protection. In this connection means of protection and covered and special trucks are invoiced separately.

7. Deficiencies, delivery and goods not in accordance with the contract

If, for both contracting parties, the purchase is a business transaction, the purchaser must draw attention in writing or by fax to externally discernible faults within 8 days of receipt of the goods. Unless otherwise agreed, claims under guarantee, made in this instance by the purchaser against us arising from or in connection with the delivery of the goods, lapse one year following delivery of the goods. For non-merchants a reporting period of 14 days from receipt of the goods applies in the case of obvious deficiencies. Within this period of time non-discernible deficiencies are to be reported in the above-mentioned manner following their discovery with the immediate cessation of any treatment or processing (the legal guarantee obligation applies).

In the case of justifiable complaints, we are obliged at our discretion either to rectify the fault or to take back the faulty goods and replace them with fault-free goods otherwise we or our agents are charged with malice aforethought or gross negligence. In the case of delayed re-delivery or failure to do so or if the rectification work is unsuccessful as well as in the case of deficiencies in the re-supplied goods, the purchaser is entitled to demand a reduction in the reimbursement (reduction in value) or cancellation of the contract (annulment on account of some material defect). Further claims for damages are excluded, except in the instances detailed in sentence 1 of the previous paragraph as well as in the case of deceit on our part or breaches by us of contractual obligations, which materially endanger the purpose of the contract.

Deficiencies in part of the delivery only entitle a complaint to be made about the whole delivery if it is not possible in an acceptable manner to separate faulty and fault-free goods. Claims under guarantee cannot be upheld if the purchaser does not give us the opportunity to convince ourselves of the justification for the complaint. Claims under the Product Liability Law are not affected. The above conditions also apply to the delivery of other goods as stipulated by the contract.

8. Return of goods

Only in exceptional circumstances and if it is possible will properly authorised products be accepted back, provided the latter are in perfect condition and are not part of a special contractual production. We charge our costs at 25% of the value of the goods, with a minimum, however, of 50 Euros.

9. Dimensions, weights, quality

Deviations in dimensions, weight and quality are permissible in accordance with DIN regulations or applicable practice. The weights will be ascertained by the weighers on our calibrated scales, which are continuously monitored and shall determine the calculation. In the case of truck loadings the total weight shall determine the calculation. Mathematical differences with regard to the single weights are to be divided between the latter proportionally.

The weight certificate follows presentation of the weighing protocol.

III: Additional terms and conditions for export transactions

1. Unless these sales terms and conditions or special agreements determine otherwise, the international trade conditions laid down in the incoterms apply to our sales obligations in the form valid on the day of the contract confirmation.

2. The prices laid down in our contract confirmation apply.

Our prices pre-suppose normal, unhindered transport conditions, in the case of sea-borne transport, for example, unhindered navigation. Additional costs arising through incomplete loading or interruptions to the transport conditions will be borne by the purchaser.

Customs duties, consular fees, freightage, insurance premiums and other additional charges, if they are contained in the agreed price and increase following the conclusion of the treaty or should they newly arise, will be borne by the purchaser as far as that is concerned. The same applies to the additional costs,

which are incurred if it was necessary to send the consignment by a different route than the one intended. Unless agreed otherwise payment is due without deduction immediately on receipt of the invoice.

3. In the case of damage during transport the purchaser must without delay make a statement of the facts to the competent office, since otherwise claims against the carrier and the insurer will be dropped. These terms and conditions apply to f.o.b. sales and correspondingly to other sales, in particular to free on board or c.i.f. normal port.

Dear Customer,

Unfortunately even between merchants, rules drafted in lawyers' German must be written down. We assure you, however, that we regard you – our customer – as the number one in our business relations.

Should there be any differences of opinion you can be certain that in us you have an accommodating and fair partner!

Incidentally: **Dolezych** produces safe products – but you can only be certain if the instructions for use and the accident prevention regulations are heeded. Safety lies in the interplay between product and handling.

Please note: advice pre-supposes information. The better you put us in the picture, for example, with regard to the operational data, normal handling or special features of your company, the better we can advise you!

Dortmund, May 2003