

ixetic

Terms of sale and delivery

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Our deliveries and other services towards businessmen, public law legal entities as well as towards public law special assets shall be on the following terms only.

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I. Conclusion of agreement / written form

1. The supply agreement as well as any amendments, subsidiary arrangements, declarations in respect of its termination and other declarations and notices have to be in writing unless otherwise agreed in these terms.
2. At the time of receipt of the confirmation and/or the acceptance of the products or services ordered, the customer accepts our terms of sale and delivery. Any differing general terms and conditions of the customer do not obligate us. They do not become part of the agreement either by acceptance of the order or by any other implied action.

II. Prices / handling fee

1. The prices and discounts valid on the day of delivery or service plus the relevant applicable value added tax shall apply. In the event that these are disadvantageous for the customer in comparison to those applicable at the time of conclusion of the agreement, the customer has the right to withdraw from the agreement only in the event that there are less than 4 months between the time of conclusion of the agreement and delivery or service, if the price increase is not verifiably due to an increase in own costs or the price increase is unreasonable for the customer.
2. We may charge a handling fee in respect of purchase order quantities which do not reach the minimum quantity set out in our offers or as otherwise agreed and/or the defined minimum purchase order value..

III. Delivery term / default / call orders / partial deliveries

1. Delivery terms commence with the order confirmation, at the earliest, however, as of the final agreement in respect of the questions to be clarified with the customer prior to the start of production. If the delivery term starts later than at the time of the order confirmation, we shall regularly point this out in the confirmation.
2. Unforeseen, inevitable events in the course of the production and other obstacles such as force majeure, industrial action or other disruptions in the own business or in the businesses of our suppliers as well as delayed deliveries from our suppliers shall entitle us to extend the delivery term by the period of time of the obstruction. This shall not apply if we are responsible for the obstruction. We shall notify the customer as soon as possible of the start and the end of such circumstances.

3. To the extent that we are in default and the customer suffers any damage as a result, the customer is entitled to demand compensation. For each full week of delay this is 0.5 %, in total, however, no more than 5 % of the value of the relevant part of the total delivery which cannot be used in time or not as agreed due to the delay. Any further claims due to the default shall be based exclusively upon VII clauses 2 and 3. The customer may only withdraw from the agreement within the scope of the statutory provisions to the extent that we are responsible for the delay of the delivery.
4. To the extent that it is agreed with the customer that a fixed agreed order quantity is to be supplied within a fixed period of time (the "Completion Period") and the customer has the right to determine the delivery date, the deliveries are to be called up at the latest twelve weeks prior to the desired delivery date. After expiry of the Completion Period, we can deliver and invoice to the customer the quantity not called up yet.
5. Partial deliveries are permissible to the extent that this is reasonable for the customer.

IV. Packaging / dispatch / passing of risk

1. Delivery, passing of risk and dispatch are ex works (Incoterms applicable in the relevant current version), "place named by us". The choice of packaging as well as the method of packing is at our discretion.
2. Pallets, containers and other reusable packaging shall remain our property and are to be returned immediately and free of charge to our delivery location by the customer. Disposable packaging is invoiced at cost price and is not taken back.
3. Additional costs for express goods and postage for small goods mailings are paid by the customer.

V. Payments

1. Payments are to be made without deduction to one of our accounts within 30 days of the invoice date. Where this payment date is exceeded, the customer is in default to the extent that the payment is not still outstanding due to a circumstance which the customer is not responsible for.
2. The withholding of payments on the basis of counterclaims and/or the set-off against counterclaims is not permissible unless the counterclaims are undisputed, legally ascertained or due for decision.

VI. Retention of title

1. We retain title to all products supplied by us until settlement of all claims arising from the business relationship with the customer (Retained Product). On open account, the retention of title is also considered to be security for the claims in respect of the balance.
2. In the event that, due to assembly, the Retained Product becomes part of a

new item which belongs to the customer it shall be agreed that the customer transfers joint ownership in the new item to us and keeps the new item safe for us at no cost. Our proportion of ownership is determined by the proportion of the value of the Retained Product compared to the value of the new item.

3. The customer shall already assign all claims to us which arise from the selling-on of the Retained Product against his customers. If the Retained Product is sold on together with other products which are not owned by us, the customer assigns such part of the claim arising from the selling-on to us which corresponds to the invoice amount of the Retained Product. If the Retained Product sold on is only owned by us in part, the assigned part of the claim arising from the selling-on shall be determined according to our part of the ownership.
4. The customer shall remain irrevocably authorised to collect the receivables from the selling-on. Upon our demand, he has to notify his customers of the assignment and provide all information and documents to us which we require for the assertion of our rights.
5. We undertake to release from security the securities we are entitled to insofar as their value exceeds the claims to be secured by more than 10%.
6. In the event that the Retained Product is pawned or our rights are in any other way infringed upon by third parties, the customer has to immediately notify us.

VII. Breach of duty

1. The statutory rights of the customer according to § 437 no. 1 of the German Civil Code (BGB) shall apply pursuant to the following provisions:
 - a) To the extent that delivery items are wholly or partly unusable due to defects, we shall, at our choice, using equitable discretion, remedy the defects free of charge or deliver delivery items free of defects at no extra cost (hereafter together, the "Supplementary Performance"). In addition, we shall bear the direct cost of the disassembly and assembly at the customer's location. Such obligation to bear the cost for direct disassembly and assembly costs does not exist if the customer takes the products to a different place of delivery from the one set out in the supply agreement unless the costs arising for us thereby are not significantly higher than inland. It further does not exist insofar as there is no reasonable proportion between the costs and the delivery price of the defective delivery item. In any other case, the customer has to bear the costs.
 - b) In order to undertake the Supplementary Performance the customer has to allow us a reasonable amount of time and opportunity. Only in urgent cases of endangering the safety of the business or for the purpose of averting disproportionately large damage or if we are in default of remedying the defects, the customer has the right to carry out the remedy himself or have it done by third parties and demand compensation for the necessary costs from us. In such case, we are to be notified immediately.
 - c) If the Supplementary Performance fails, the customer can reduce the purchase price or withdraw from the agreement.

2. The further statutory rights of the customer shall apply pursuant to the following provisions. We shall be liable only in the following cases:
 - intentional breach of duty,
 - grossly negligent breach of duty by our legal representatives and vicarious agents,
 - culpable violation of life, body and health,
 - fraudulent concealment of defects or guarantee for the consistence of a delivery item,
 - culpable breach of material contractual obligations – in the case of gross negligence, non-executive employees and in the case of slight negligence, however, limited to the contractually typical, reasonably foreseeable damage,
 - to the extent that there is a liability in accordance with the law on product liability in respect of personal or physical damage to privately used items.
3. Unless otherwise provided for in III clause 3 as well as VII clauses 1 and 2, our liability is excluded.
4. Defects are to be notified to us immediately after their identification. The delivery items rejected are to be kept available for us. We will only refund the costs for return if such return is made upon our demand.
5. The customer shall bear the burden of proof that the requirements for the claims asserted by him on the basis of breach of duty are fulfilled unless this concerns circumstances relating to ixetic which are outside the scope of the customer. This shall also apply to any default on our part.
6. Claim for defects become time-barred after 24 months after the delivery of the delivery item unless the law mandatorily prescribes a longer limitation period.
7. In respect of statutory rights of withdrawal, § 350 BGB shall apply accordingly.

VIII. Guarantee / delivery risk

1. The assumption of guarantees has to be explicit, be referred to as such and has to be in writing in order to be effective. The customer and we agree that any statements made in our catalogues, brochures, prospectuses and other general information do not constitute a guarantee at any time.
2. We reserve self-delivery unless we have expressly assumed the delivery risk for the individual case. In the event that we are not able to provide a part, basic material or preliminary product which is essential to our delivery, we shall immediately inform the customer thereof and refund to him any already paid consideration, if any, in the case of a withdrawal.

IX. Use of software

1. To the extent that the scope of delivery comprises software, the customer is granted a non-exclusive, non-transferable right which is limited according to the provisions of the scope of delivery, to use the software inclusive of its documentation in connection with the intended delivery item. A use of the software in connection with more than one delivery item is prohibited. The

granting of sublicences is inadmissible

2. The customer may duplicate, revise or translate the software or convert it from the object code into the source code only within the legally admissible scope (§ 69 a et seq. of the German statute on copyright). The customer undertakes neither to remove nor, without our prior written express consent, to change any manufacturers' particulars – in particular, copy right notices.
3. All rights to the software and the documentation including any copies are reserved to us.

X. Confidentiality

1. The customer and we shall keep the respective information received from the other party confidential. This shall also continue to apply after termination of the supply agreement. This obligation shall not apply in respect of information which the receiving party was already legitimately aware of at the time of receipt or which such party became legitimately aware of at a later stage, in each case without the obligation to keep such information confidential, or which – without either party breaching the agreement – is or becomes a matter of common knowledge.
2. Each party reserves the ownership and any applicable rights in respect of the documents and data media provided by it respectively. Duplicates and dissemination of such documents or data media are only admissible if the party providing the documents or data media consents.

XI. Miscellaneous

1. Place of delivery is the place from which we deliver. Place of payment is our principal office.
2. Place of jurisdiction is Bad Homburg v.d.H.. We are, however, able to institute legal proceedings at the place of business of the customer.
3. The contractual relationship is subject to the laws of the Federal Republic of Germany to the exclusion of the law on conflicts. The application of the uniform United Nations Convention on Contracts for the international sale of goods (CIGS) is expressly excluded.
4. Full or partial omission or belated assertion of any right arising from this supply agreement does not constitute a waiver of such right or of any other right.
5. If any provision is or becomes ineffective, the effectiveness of the remaining provisions shall remain unaffected thereby.
6. We point out that we shall store personal data subject to the statutory provisions and process such data in connection with transactions, as necessary, subject to the European Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data.