

Terms of Sale and Payment

Placing of Order

All agreements and offers are based on our conditions of sale and payment; the placing of an order or acceptance of delivery by the customer is regarded as a tacit approval of these conditions. Any deviating terms the purchaser may have which we do not expressly assent to in writing are not binding for us, even if we do not oppose these specifically.

Delivery Period

The delivery time agreed upon is always approximate.

The delivery period begins with the date on which the order confirmation is sent but not before clarification of all technical and commercial points relating to the supply; the delivery time is deemed adhered to if the goods have left the factory/warehouse by the end of the delivery period or, when consignment is possible, as soon as notice of readiness for dispatch has been given. If the goods are supplied ahead of time, this date of actual delivery is decisive and not that originally agreed upon.

These terms are subject to correct and punctual self-supply. An appropriate extension of the delivery period must be allowed, even in case of delay in delivery, in the event of unforeseeable hindrances which we could not avert in spite of reasonable care appropriate to the circumstances – irrespective of whether these hindrances happen in our factory or to our subcontractors – e. g. interruption of operations, intervention by official authorities, labour dispute measures, delays in the supply of important raw and construction materials. The same applies to strikes and lockouts also. We are obliged to inform the purchaser of such delays immediately.

If the contact is altered at a later date, e. g. due to lack of clarity in drawings provided by the purchaser or changes in design which could influence the period of delivery, the delivery time is extended appropriately if special agreements have not already been reached to provide for such an event.

Prices and Terms of Payment

Orders for goods for which there is no specific agreements on fixed process are invoiced in accordance with the prices ex works valid on the day of delivery. Unless there has been express agreement on other terms of payment, payment must be effected immediately in cash without any deduction. If payment is overdue, interest will be charged at a level of 3% above the current central bank (Bundesbank) discount rate.

Bills of Exchange will be accepted only on account of performance without recourse for protest and only on agreement and on condition of their discountability. Discount charges are calculated from the day the invoice amount is due.

The purchaser may not offset counterclaims which we do not recognize against debts nor may he enforce a right to withhold payment on the basis of the counterclaims.

Passage of Risk, Dispatch and Freight

If the goods are being consigned to the customer at his request, the risk of accidental loss, destruction or deterioration passes to the customer as soon as we hand over the goods to the forwarding agent, however at the latest as soon as the goods leave our factory or warehouse, irrespective of whether or not dispatch is from the place of fulfilment and regardless of who is paying the freight cost. If the goods are ready for dispatch and dispatch or acceptance of delivery is delayed due to causes for which we are not responsible, the risk passes to the purchaser on his receipt of the notification of readiness for dispatch.

Acceptance

If the goods are to be checked in accordance with special conditions, the acceptance test is carried out in the supplier's factory. The acceptance test costs are borne by the customer in this case unless otherwise agreed. If the customer chooses to dispense with the acceptance test in the factory, the goods are deemed to be accepted as soon as they leave the factory.

Assembly

Our vehicles and those of our suppliers must have easy accessibility to and unobstructed mobility on the construction site; there must also be sufficient space for storing the delivered goods. Electricity must be provided for the assembly equipment on the construction site, namely alternating current with 220 volt and three-phase current with 380 volt.

Brick building, groundwork and concrete work are not part of our services. Such work is charged separately. Conditions must be created which allow the erectors to carry out assembly work without impediment or disturbance. Waiting periods before and during assembly will be charged in accordance with the time lost and material costs.

Reservation of Proprietary Rights

The goods we supply remain our property until all accounts receivable arising from the business relationship between us and the purchaser have been paid in full. The charging of a particular amount in any one Invoice, the balance of accounts and its confirmation do not affect the reservation of title. Goods are any then regarded as paid when we have actually received the countervalue.

The customer is entitled to resell our reserved goods in orderly business transactions; however, he is not permitted to pledge or assign these for security.

The purchaser is obliged to safeguard the rights of the purchase of reserved goods on credit.

The purchaser assigns the account receivable arising from the resale of the reserved goods to us now. We accept the assignment.

Despite assignment and our right to collect, the purchaser is entitled to collect outstanding himself as long as he fulfils his obligations to us and does not become insolvent. At our request the customer is obliged to reveal to us the details of the assigned accounts receivable which are necessary for collecting these debts and to inform the debtor of the assignment.

Handling and processing of the reserved goods by the purchaser does not lead to any liability on our part. If the goods we deliver are combined, processed, mixed or blended with goods belonging to a third party, our share of the co-ownership of the new items is proportionate to the value of our reserved goods in relation to the other goods at the point of time of processing, combining, mixing or blending. If the purchaser acquires sole ownership of the new item, the parties to the contract are agreed that the purchaser shall grant us co-ownership of the new item in proportion to the value of the processed, combined, mixed or blended reserved goods and that he shall hold these in safe custody free of charge. If the reserved goods are sold with other goods, regardless of without or subsequent to processing, combining, mixing or blending, the value of the above agreed assignment in advance only corresponds to the value of the reserved goods which are resold with the other goods. If the reserved goods or the accounts receivable which are assigned in advance are levied by a third party, the purchaser must give us immediate notice and provide us with the documents necessary for an intervention.

As supplier we promise to release the securities due to us in accordance with the preceding terms at our discretion and on the customer's request if the value exceeds the debt to be secured by 20%.

The purchaser is obliged to take out insurance for the reserved goods at his expense and against all kinds of damage.

Warranty, Liability and Complaints

Claims based on warranty against material defects

If the delivery item is defective or lacks the guaranteed qualities, or if damage arises during the warranty period due to faulty manufacture or materials, we must either repair it or supply a replacement, at our discretion and to the exclusion of all further warranty claims from the purchaser. We must be informed in writing without delay of such defects, within 10 days at the latest after acceptance of delivery in the case of apparent faults and immediately on discovery in the case of concealed faults. The warranty period is six months. It begins when the goods are handed over to the purchaser. The warranty period ends at the latest 6 months after the goods have left our premises.

Other claims for Compensation

Claims of compensation arising from impossibility of performance, delay, positive breach of an obligation, culpa in contrahendo, and tortious acts are excluded unless they are due to wilful intent or gross negligence on our part or on the part of our senior staff.

Third-Party Proprietary Rights

If goods are supplied in accordance with drawings or other details given by the customer and if this results in the infringement of a third party's patent or other proprietary rights, the customer shall release us from all claims.

Force Majeure, Strikes and Lockouts

If we are prevented from fulfilling our obligations due to the occurrence of unforeseeable, extraordinary circumstances which we could not avert in spite of reasonable care appropriate to the circumstances – irrespective of whether these hindrances happen in our factory or to our subcontractors – e.g. interruption of operations, intervention by official authorities, delays in the supply of important raw and construction materials, the delivery period is extended by an appropriate length if the delivery or service is not impossible. If the delivery or service is impossible due to the above circumstances, we are released from our obligation to supply.

In the case of strikes and lockouts also, the delivery period is also extended by a reasonable length of time if the delivery or service is not impossible. If the delivery or service is impossible, we are released from our obligation to supply. If the delivery period is extended in the above case or if we are released from our obligation to supply, the purchaser's rights derived from these incidents to claim compensation or to withdraw from the contract shall become invalid.

Place of Fulfilment, Jurisdiction and Applicable Law

The place of fulfilment for all obligations arising from the contract is Nordwalde. Jurisdiction for all legal matters arising from the contractual relationship, its creation and validity is Steinfurt.

The contractual relationship is subject to the law of the Federal Republic of Germany.