

General Terms and Conditions of Business

1. Our deliveries, performances and offers are made exclusively on the basis of our General Terms and Conditions of Business in the version valid for the time being. Through the placing of a contract, these Terms and Conditions are accepted. General Terms and Conditions of Business of the Customer are only validly agreed in so far as they are brought to our attention in due time and in so far as they contradict neither individual contractual nor the following conditions. Our Terms and Conditions of Business also apply for future transactions, even if no express reference is made to the same, in so far as they have been sent to the Customer in the case of a contract confirmed by us.
2. Offers are always made subject to a right of withdrawal of the same and a non-binding basis. A contract of supply comes into being only through our confirmation of contract, which also determines exclusively the object of the performance to be provided by ourselves. Excesses or short-falls in deliveries resultant from manufacturing processes up to 6% of the quantity stated in the confirmation of contract are permissible without the agreed item price being changed.
3. Offers, samples, drafts, plans, quotations and similar documents remain our property. They are to be treated confidentially and we retain copyright in the same. Through the payment of the costs for tools or similar items, the Customer does not acquire any right to transfer of ownership in these objects.
4. Delivery times are only binding if their binding nature has been confirmed by us in writing. If the performance of a contract requires action on the part of the Customer, the delivery period shall only begin to run when this action has been taken. The Customer may not derive any rights from our failure to keep confirmed time limits if the failure to keep the time limit was beyond our control, in particular, for instance, in the event of *Force Majeure*, industrial dispute measures, delays in transport, break-downs in the production process or such like for which we are not at fault. Part deliveries are permissible. In so far as we are responsible for the failure to meet a time limit for which we have given a binding commitment and are in this respect guilty neither of gross negligence nor of deliberate intent, the Customer is entitled to cancel the contract after setting a reasonable extension of time; the assertion of a claim for any damage arising on account of the delay shall be restricted in its amount to 20% of the invoice value of the deliveries and performances affected by the delay; no further-reaching claims exist. Until the Customer has fulfilled his contractual obligations, he may not assert claims deriving from delayed delivery. Should the Customer be in default of a payment obligation existing towards ourselves, we may refuse to make delivery for the period of the default, also in relation to other contracts.
5. If call-off contracts are not called off within 12 months of placement of the contract, we shall be entitled, at our option, in relation to the quantities not called off to deliver such quantities or to cancel the contract, either in whole or in part. The Customer shall be obliged to reimburse the damage arising from the failure to fulfil the contract, in particular in relation to the raw materials and semi-manufactured products already purchased or finished by us.
6. Our prices are quoted in EURO ex works exclusive of packaging. The minimum invoice value amounts to EURO 200 net. When using materials the price of which is determined by market quotations, we shall be entitled to adjust the agreed price. In the case of customised items for which we cannot calculate the costs in advance, we shall be entitled to determine the price in accordance with our reasonable discretion.
7. We always dispatch goods- even in the case of deliveries which are made carriage made - at the risk of the recipient. Our obligation of delivery is deemed to have been fulfilled as soon as the goods are transferred to the carrier or as soon as they have left the works.
8. The goods delivered remain our property until payment in full of all claims arising from our business relationship. The reservation of title also extends to products arising through processing. In the case of processing, combination or co-mingling of the object of delivery with other material, we shall acquire co-ownership in the product thereby arising in the ratio of the invoice value of our goods to the value of the product arising. The Customer shall be entitled to re-sell the goods which are the subject of the reservation of title in his normal course of business provided the passing to us of the claim accruing to the Customer is not excluded. The Customer already now assigns to us - in the case of co-ownership, in the amount of the share of co-ownership in the product sold - by way of security all claims arising out of the sale of the goods delivered or from the sale of those products in which we are entitled to co-ownership. The Customer shall be entitled to collect the receivable assigned as long as he complies with his obligations of payment to us and does not run into economic difficulties. We shall, at the demand of the Customer, be obliged to release securities of our choice if the value of our securities exceeds our claims by more than 20%. We shall be entitled to demand surrender of possession of the goods which are subject to reservation of title
 - if the Customer is in default with the fulfilment of his obligation of payment or
 - if he has made application for the opening of judicial composition proceedings or if an application for insolvency proceedings has been made himself or a third party or
 - if it becomes evident from other circumstances that the Customer has run into economical difficultiesto the extent necessary in order to secure our claims, even when the same are not yet due for payment. Should our claims not be settled within one month following the surrender of possession, we shall be entitled to sell the goods subject to the reservation of title on the open market or have the same auctioned. The Customer shall be obliged to notify us without delay if levy of execution measures are announced or performed by a third party in relation to the goods subject to the reservation of title or in relation to an object in which we have obtained co-ownership or in respect of a claim assigned to us.
9. The Customer shall be obliged to inspect each delivery, including part deliveries, immediately following receipt with the care of a prudent businessman and to notify any complaints in writing without delay, but no later than within 8 days, in particular in relation to possible faults or deficiencies in quantity. In the case of latent defects, this shall apply analogously as from the point in time of discovery. In the case of breach of the obligation of inspection and notification of complaints, no warranty claims of any kind shall exist. The same shall apply if our operating, installation or maintenance instructions are not followed, or if changes are made to the products, in particular where parts are exchanged or consumables are used which do not conform to our specifications. Where a complaint of a fault is made, the Customer shall be obliged, at our option, to send us the faulty item for examination or to enable us to have the examination carried out on site. In the event that a repair or a replacement delivery is made by reason of a justified complaint, the provisions concerning the delivery time shall apply correspondingly. The presence of a fault established as being such and effectively notified to us as a complaint substantiates the following rights of the Purchaser, provided the complaints were notified in writing: The Purchaser has, in the case of a fault, firstly the right to demand subsequent performance from the Supplier. The choice as to whether the item is to be replaced or whether rectification of the fault is to be undertaken lies in this respect with the Supplier at its own discretion. Furthermore, the Supplier has the right, again at its own option, where an attempt at performance is unsuccessful, to undertake renewed subsequent performance. Only once the repeated subsequent performance has proved unsuccessful shall the Purchaser have the right to cancel the contract or to reduce the purchase price. Only in cases of grossly negligent or deliberate breach of the duty of delivery of flawless goods may the Purchaser demand damages or reimbursement of expenditure incurred in vain. He shall have the burden of proof of both showing that the damage has actually arisen and also its amount. The same shall apply to the expenditure incurred in vain. The warranty obligation shall amount to one year following delivery. The Purchaser must in any event prove that the fault was already present at the point in time of delivery. Notwithstanding the provisions concerning the warranty and also the other special provisions contained in these Terms and Conditions, in the case of a breach of duty on the part of the Supplier, the following shall apply:
 - a) the Purchaser shall grant the Supplier a reasonable period of time for performance for the purpose of rectifying a breach of duty, which period of time may not be less than three weeks. Only following the unsuccessful expiration of the period of extension may the Purchaser cancel the contract and/or demand damages.
 - b) the Purchaser may only assert claims for damages in cases of gross negligence or deliberate breach of duty on the part of the Supplier. Damages in place of performance (in the case of non-performance § 280, para. 3, in connection with § 281 BGB - German Civil Code) and also default damages (§ 280, para. 2, in connection with § 286 BGB) shall be restricted to the negative interest. Damages on account of non-performance or performance not in accordance with the contract (§ 282 BGB) shall be restricted to the amount of the purchase price. Damages in lieu of performance in the case of exemption from the duty of performance (impossibility) are excluded. Should the Customer, either alone or predominantly, be responsible for the circumstances which would entitle him to cancel the contract, or should the circumstances which would justify cancellation of the contract by the Customer have occurred during default of acceptance on the part of the Customer, the right of cancellation is excluded.Limitations on liability under these General Terms and Conditions of Business do not apply to personal injury.
10. The Customer shall be obliged to indemnify us from all claims of third parties arising out of breach of copyright or industrial property rights in so far as the object of delivery was manufactured on the basis of a specification of the Customer. The Customer shall be obliged upon first demand to provide us with reasonable security for the performance of the indemnity obligations.
11. Our invoices are payable within 30 days following the date of invoice without deduction. We may, however, make delivery dependent upon prior payment.
12. A set-off against a counter-claim is for both sides only permissible if such counter-claims are recognised or have been judicially determined and have become final and legally binding. Only under this condition is a set-off or a right of refusal of performance permissible.
13. We shall be entitled to process data received concerning customers in relation to business relationships or in connection with the same, regardless of whether such originate from the Customer or from third parties, for our own purposes in accordance with the Federal Data Protection Act. In so far as permissible by law, claims for damages by reason of the handling of such data are excluded.
14. A contractual relationship substantiated with us shall be subject to German Law. The Uniform Law concerning the International Purchase of Movable Goods (EKG) of 17th July 1973 and the Convention of the United Nations in relation to Contracts concerning the International Sale of Goods (CISG) of 11th April 1980 are not applicable.
15. In the case of deliveries within the Community, the Customer shall be obliged to co-operate in relation to the provision of the proof that the delivery by Eichenauer is tax free, and to submit to Eichenauer without delay and without specific request all necessary documents complete. In so far as Eichenauer has to remit VAT on deliveries within the Community because the proof of the exemption of the delivery from VAT could not be produced, and this is the result of the Customer, in contravention of his obligation under para. 1, not having provided the necessary documents, the Customer shall be obliged to reimburse Eichenauer, upon first demand and upon the issue of a corresponding invoice, the amount of VAT to be paid.
16. The place of performance and court venue for all claims shall be D-76870 Kandell.