

Conditions of Sale and Delivery

1. General

These Conditions of Sale and Delivery shall apply to all our sales and services. The Conditions of Purchase or the General Business Conditions of the Buyer that contradict these Conditions shall be considered non-binding by us, even if they are made the subject of the order, and even if we do not expressly oppose their content. This shall also apply in the event that the Buyer, in its conditions, precludes the effectiveness of deviating conditions. Even the causing of the service by us shall not constitute an implicit or tacit acceptance of deviating conditions. On the other hand, in the event of doubt, it shall be the acceptance of the delivered goods that will, at the latest, constitute the acceptance of our General Conditions of Sale and Delivery. Our Conditions of Purchase shall also apply to all and any consecutive business transactions, even if the reference thereto has not been repeated at the time they were entered into. Subsidiary agreements as well as amendments and supplements to the agreement and our General Conditions of Sale and Delivery shall only be valid, if they have been confirmed by us in writing.

2. Prices.

The prices offered or confirmed by the Seller shall be valid only so long as the underlying cost factors remain unchanged, they shall, however, be fixed for deliveries that take place within 4 months after the contract has been entered into. As to the rest, all and any prices shall be deemed to be subject to the addition of VAT.

3. Dispatch.

Any dispatch of goods shall be at the expense and risk of the Buyer. We charge you with the cost price for postage and transport-costs. Should the buyer give no specification concerning the dispatch we are allowed to choose the mean of transport according to our opinion.

4. Postage and Packing.

The postage shall be calculated at the tariffs in force from time to time. Packing shall only be charged, if the goods are dispatched in crates or if special packing has been requested by the Buyer. In the event that the crates are returned free of freight charges and in a usable condition, within a period of two months, the amount invoiced shall be credited to the Buyer.

5. Complaints.

Complaints must be made immediately after the goods have arrived. They may be taken into account insofar as they are justified, for non-obvious defects within the statutory limitation period, for obvious defects within a fortnight at the longest, in each case after the receipt of the goods. They shall, in any event, be in writing. The buyer is not entitled to withdraw from his obligations of payment. Complaints cannot be accepted after manufacturing, also not for hidden defects. Should the goods supplied be faulty we reserve the right to repair or overwork them or to send a free replacement after you have returned the goods claimed. Claims for damages may not exceed the value of the goods, penalty for breach of contract are impossible. It's only allowed to send back reclaim goods with our acceptance. Commercial or minor deviations from quality, color, weight, design, finish or format (the latter up to a tolerance of the edge length of +/- 5%) that are unavoidable from a technical viewpoint, may not be objected to, given our sub-suppliers make such proviso. In the event of justified complaints due to defects in the manufacture, free of charge replacement deliveries shall be made at our option (in the event of failure, the Buyer shall have the right to rescind the contract) or a credit note issued, however only in the event that our goods have not been processed yet. Claims arising out of consequential damages, if any, irrespective of what legal grounds there may be (also arising out of manufacturers' liability) – shall be precluded.

6. Right to rescind the contract on the part of the Seller.

War, operational or traffic disturbances, shortage in raw materials, Acts of God shall relieve us wholly or partly from the delivery obligations, without the Buyer being given the right to claim damages. In the event that the acceptance of the goods does not take place in good time due to the fault of the Buyer, we shall have the right either to invoice the goods and make the purchase price due and payable or to rescind the contract or request the payment of damages, after having granted an additional period of 10 days at the most.

7. Time of Delivery.

We do our best to deliver as fast as possible. We do not guarantee the date of delivery stated. The date of delivery is estimated on principle. Unforeseeable events such as strikes, official precautions, catastrophes, delays cause by our suppliers, unexpected machine defects or any other reasons could delay our time of delivery. Should the date of delivery be delayed, the buyer must grant an adequate supplementary period in which we can supply. Partial deliveries are allowed. In the event that we are in default with the delivery, the Buyer shall permit an additional delivery period of 4 weeks. In the case of ready-to-dispatch inventory goods, the additional delivery period shall be 5 days. The additional delivery period may only be claimed after the delivery deadline has expired and shall be calculated from the day on which the registered notification of the Buyer is received by us. Claims on the part of the Buyer in respect of delayed delivery made prior to the expiry of the additional delivery time shall only be possible, if the delivery default or the impossibility have been intentionally or grossly negligently caused by us.

8. Payments:

Our invoices shall be due and payable as specified on the invoices. We shall have the right to request reasonable prepayment.

9. Payment Default.

In the event of payment after the due date, interest at the rate of 3% above the discount rate shall be calculated. We shall not be obligated to carry out further deliveries arising out of any current agreement before the invoice amounts due inclusive of interest on arrear have been paid in full. In the event that the Buyer is in default with a due payment or if a considerable worsening of its financial situation occurs, we shall have the right, prior to the delivery of the goods, to request cash payment for all and any outstanding deliveries by way of abolition of the period allowed for payment. Under the same conditions we shall have the right to make all our claims due and payable with immediate effect.

10. Mode of Payment.

Payments shall be accepted by cash, cheque, bank transfers, or letter of credit. Legally effective payments shall only be effected directly to our company, not to our representatives, in particular not to our commercial agents.

11. Reservation of Title.

The delivered goods shall remain the property of the Seller (reservation of title goods) until the full payment of all and any accounts receivable by the Seller from the Buyer, also insofar as they have been made part of a current account. In the event of the treating or processing of the reservation of title goods, any and all acquisition of ownership thereof by the Buyer shall be precluded. The treating or processing of the goods shall be carried out for the Seller in such a way that it is deemed to be a manufacturer. When processing the goods together with the goods of other origin, that are also subject to the reservation of title that has been extended to the processing and treating of the goods, the Seller shall acquire the co-ownership in the new item, at the proportion of the invoice value for the reservation of title goods to the value of the other goods attributed to them at the time of the processing or treating. If, owing to any circumstances during the treating or processing of the reservation of title goods or their union with other goods, ownership or co-ownership rights arise in favor of the Buyer, such ownership or co-ownership rights shall, upon their coming into effect, immediately pass to the Seller. The Buyer shall, already now, assign all and any inchoate rights or titles that could lead to such acquisition of ownership by the Buyer. The ownership rights that arise in favor of the Seller as the result of the treating or processing or by way of union of the goods with other goods, shall also be deemed to be reservation of title goods in accordance with these aforementioned provisions. All and any claims of the Buyer arising out of the onward sale of reservation of title goods shall, upon the entering into of the purchase agreement, pass to the Seller, and this irrespective of whether the goods are sold to one or to several takers without having been processed or treated or after their treating or processing or union with other goods. In the event that the goods do not exclusively belong to the Seller or that the reservation of title goods are sold together with the goods that do not belong to the Seller, the assignment shall cover the counter claim only to the extent of the invoice amount for the reservation of title goods. The Buyer may collect the assigned claims in the normal course of business, in any event the claimed amount must not exceed the invoiced amount. The Seller may revoke such permit, if the Buyer does not meet an obligation to the Seller in good time, or if circumstances arise that appear to jeopardize the rights of the Seller. The Buyer's permission to collect shall, without any problems become nil and void, if the Buyer suspends its payments, if enforcement proceedings are brought against it, if it is requested to disclose its financial condition or situation before court, if the institution of composition or bankruptcy proceedings over its assets before court is requested, or if it endeavors to enter into an out-of-court settlement. The Buyer shall, upon the request of the Seller, notify the debtors of the assigned claims of the assignment, notify the Seller of the debtors and the amounts owed by them and to hand over to the Seller all and any documents needed for the assertion by the latter of the assigned claims. The Buyer shall sell, treat or process or unite the reservation of title goods with goods of other origin only in the normal course of business. Such realization shall only be permissible by way of sale and only with the proviso that the claim of the Buyer arising out of the realization transaction as per clause 11.3 shall pass to the Seller. The Buyer shall not have the right to make other dispositions in respect of the reservation of title goods, it may neither pledge them nor use them for the purpose of chattel mortgage. The Buyer shall inform the Seller forthwith of any and all enforcement proceeding measures or other access by third parties to the reservation of title goods or assigned claims. The costs incurred as a result of the intervention shall be borne by the Buyer. In the event that the Buyer does not meet an obligation it has towards the Seller in good time or if circumstances arise that appear to jeopardize the rights of the Seller, the Seller may without further ado take immediate possession of the reservation of title goods, without first having had to declare the rescission from the purchase agreement. The existence of the purchase agreement and the obligation on the part of the Buyer shall not be affected by such a request and by the surrender of the reservation of title goods. In the event that the Seller, as a matter of exception, takes back the goods and indemnifies the Buyer from its obligation to accept the goods, the Seller shall have the right to claim damages from the Buyer for non-performance. The reservation of title clause shall be deemed to be subject to the condition subsequent that upon the full and final settlement of all and any claims of the Seller against the Buyer, the reservation of title ownership or co-ownership of the Seller shall, without further ado, pass to the Buyer, and the assigned claims shall pass to it as well. The Seller shall be obliged, upon the request of the Buyer, to release the security to which it has a right (retention of title goods and assigned claims) at the Seller's option, insofar as its value exceeds the claims to be secured by more than 20%.

12. Place of Jurisdiction.

The exclusive jurisdiction for all and any disputes in respect of and arising out of the agreement, also for bills of exchange and cheque proceedings, shall be Hong Kong. We shall, however, have the right to bring an action against the Buyer also at another place of jurisdiction that applies to it.

13. Manufacturing documentation, such as drafts, final drawings, point patterns, jacquard cards, print installations, etc. are manufactured by us, and we shall charge the Buyer therefore on a pro-rated basis. This shall not constitute any ownership rights on the part of the Buyer. In the event that the Buyer makes available the documentation for the drafting or places orders for the making of products of our manufacture, it shall indemnify the Seller from all and any claims from third parties – irrespective of what legal grounds are cited therefore – arising out of violations of registered designs, if any, copyrights or other rights by third parties, in particular of claims for damages. Prior to the placing of orders, our draft designs shall be subject to protection in accordance with the statutory regulations. They may not be duplicated, draft-copied, passed on nor exploited commercially. Workmanship samples will only be supplied upon request and then only against invoicing of the costs incurred.

14. Our Conditions of Sale and Delivery shall be supplemented by the uniform conditions in the version applicable from time to time. In cases of doubt, however, our Conditions of Sale and Delivery shall take precedence. In the event of the statutory ineffectiveness of individual parts of this Agreement, the effectiveness of the remaining provisions of the agreement shall not be affected thereby. All and any disputes arising out of and in connection with the Agreement shall be decided by the regular court.