

General Terms and Conditions

SALMET International GmbH

Salmet GmbH & Co. KG

§ 1: Scope of Application

1. The following conditions apply to all our offers, sales and deliveries, unless otherwise expressly agreed between us and the purchaser (individual agreement).
2. Conditions to the contrary set out by the purchaser shall be void and of no effect. The purchaser's conditions of purchase shall not be recognised even if we have not expressly contradicted them upon receipt.
3. In the case of any doubt the commercial clauses and delivery terms shall be interpreted pursuant to Incoterms (in their most recent version).
4. Our general terms and conditions shall only apply to commercial undertakings as defined in § 14 BGB (German Civil Code).

§ 2: Offers and Contracts

1. All agreements reached between us and the purchaser for the purpose of the performance of the contract must be made in writing.
2. Any documents pertaining to the contract for example illustrations, drawings, project descriptions, estimates of costs and other miscellaneous supporting documents are only approximate references and are not binding unless expressly termed as such. The drawings, illustrations, technical data etc are for information purposes only and are not binding. We reserve the right to make improvements and changes without liability to the purchaser. We reserve all proprietary and copyright rights of estimates, drawings and other documents – these may not be copied or passed on to third parties.
3. The purchaser accepts sole responsibility for the documents (such as construction plans, drawings or such like) which he provides. He shall take responsibility to ensure that the specification drawings provided by him are correct in all details and he shall be liable for any damage that results from incorrect information.

§ 3: Prices, Payment and Set-Off

1. Unless otherwise agreed upon, such prices and terms as stated when the contract was concluded shall apply. In the absence of an agreement, prices are ex-works. Packaging, transport, assembly and insurance shall be separately agreed upon. If no agreement is made with regard to the assembly, the assembly shall be calculated on a time and material basis at the valid hourly rate (at the time of assembly) plus all related costs. All prices are plus the tax prescribed by law that is applicable on the day of invoice, if applicable.
2. We reserve the right to change our prices if after the conclusion of the contract costs lower or rise due in particular to collective agreements, changes in taxes or alterations to the price of materials. We shall account for these to the purchaser.
3. Unless otherwise agreed or stated in our invoice, payment shall be made in EURO without discounts – in particular also without cash discount, so that we can dispose of the sum on the due date. Any payment transfer costs shall be borne by the purchaser. The purchaser may set off any counterclaims only in so far as his claims are undisputed or accepted by us or have become legally binding (*res judicata*). Furthermore the purchaser is authorised to exercise a right of retention in so far as his counterclaim is based on the same contractual relationship.
4. If payment is not made on the named due date, we shall be entitled to charge a rate of interest at 8%-points above the base interest rate unless higher rates have been agreed upon. We reserve the right to claim additional damages.
5. If, after the conclusion of the contract, there are any doubts regarding the purchaser's ability to pay, we shall be entitled to the rights contained in § 321 BGB (German Civil Code) (defence of uncertainty). In such a case we shall be entitled to demand immediate payment of all accounts under the current business relationship with the purchaser that are not barred by the passage of time. The defence of uncertainty shall extend to all other outstanding deliveries and obligations of the purchaser.
6. Any agreed cash discount always relates to the pure value of the goods and will only be granted if and in so far as the purchaser has completely paid all amounts due at the time of the discount.

§ 4: Delivery

1. Our obligation to deliver is subject to the proviso that we have received the required goods correctly and on time from our suppliers, except in cases in which incorrect or delayed delivery on the part of our suppliers is due to reasons for which we are responsible.
2. The particulars about delivery times shall be stipulated in the contract. Delivery times shall commence with the date of our written order confirmation and are subject to the timely clarification of any details of the order as well as the timely fulfilment of all of the purchaser's obligations e.g. the provision of official certifications, letters of credit and payment guarantees or payment of instalments.
3. Delivery dates shall be considered to have been met if and in so far as the goods have been dispatched as agreed. In the event of any delay in shipment for reasons for which we are not responsible, compliance with the delivery time shall be considered to have been met upon notification that the order is ready for dispatch.
4. If the delivery / pick up is delayed for reasons for which the purchaser is responsible, he shall bear all costs of the warehousing and risk of accidental damage.
5. Events of force majeure and events beyond our control entitle us to defer delivery for the duration of the interference and an appropriate length of time afterwards. This also applies if such events occur during a pre-existing delay. Force majeure shall also be deemed to include monetary, trade, commercial and other governmental measures, strikes, lock-outs, operational disturbances for which we are not responsible (e.g. fire, shortage of raw material or energy), transportation obstructions, delays at customs as well as all other circumstances for which we are not responsible which make delivery and performance considerably difficult or impossible. If, as a consequence of the afore mentioned events, the execution of the contract becomes unreasonable for either party, they may cancel the contract.

We are obliged to inform the customer without delay should such circumstances arise; counter performance shall without delay be repaid.

§ 5: Passing of risk and unloading

1. Unless otherwise specified, we shall determine the route and mode of dispatch as well as the forwarding agent and carrier.
2. If for reasons for which we are not responsible the goods cannot be transported or it becomes considerably difficult to transport the goods on the planned route within the designated time, we reserve the right to transport them via a different route; the purchaser shall bear all additional costs. In such cases the purchaser will be given a prior opportunity to make any comments.
3. The passing of risk shall be, as arranged by Incoterms, with the purchaser. This shall be stated in the contract. Unless otherwise specified in the contract, we will take care of insurance. The cost of this shall be borne by the purchaser.
4. The obligation to unload and the costs associated therewith shall be with the purchaser. The purchaser shall unload the goods without delay and appropriately. If we assist in this, we do so without any liability and liability for slight negligence is excluded.
5. Unless otherwise agreed or legally required, the goods will be delivered partially unpacked. Any packaging or protection will be supplied by us according to our experience and at the purchaser's cost. The purchaser will deal with their disposal and will bear all costs.
6. We accept no liability for damage to the goods that occurs during the unloading, or discharge.

§ 6: Notice of Defects and Warranty

1. Each shipment shall, on acceptance be inspected by the recipient for visible, identifiable transport damage. If damage is found, this shall be recorded on the corresponding transport document (consignment note, delivery note). The forwarding agent shall countersign this. A copy of this transport document with the comment about the alleged faults shall be faxed to us not later than the following working day.
2. A further examination of the visible quality and integrity of the goods shall take place without delay on receipt and after unloading of the goods. Defects or mistaken quantities shall be reported in writing without delay after discovery. The customer shall photograph visible defects in quality.

3. Provided that the assembly is not carried out by us, hidden defects in quality, which were not discovered within the time limit even upon careful inspection, must be notified to us in writing immediately upon their discovery.
4. If we carry out assembly, the inspection shall be carried out immediately after notification that the goods are ready (acceptance trial). The buyer shall bear all inspection costs.
5. Equivalent legal consequences to the inspection occur, if the purchaser allows a time limit set by us for inspection to lapse.
6. Written notification of defects shall include the following information:
 - The date of the determination of the defect,
 - A description of the found defect,
 - An exact description of the method of transport (identification number of the container – or lorry – in which the goods were delivered in, or alternatively in cases of “ex works deliveries”, the identification number which the purchaser used to pick up the goods).
7. If a claim is justified and made within the time limit, we may at our discretion, either repair the defect or replace the defective goods (subsequent performance). All claims under this warranty shall be excluded if the purchaser does not immediately give us (or someone appointed by us) the opportunity to verify the alleged defect on site and in particular does not present the goods immediately on our request. To this effect the purchaser shall receive from us, within 5 working days, a written memorandum indicating when goods are to be inspected.
8. Claims for defects shall lapse 1 year after the transfer of risk. § 438 I Nr.1 and 3, III BGB and § 634a I Nr.2 und 3, III BGB shall remain unaffected.

§ 7: Retention of Title

1. We shall reserve ownership of all goods (goods in which title is retained) delivered until all existing claims, including conditional and subsidiary claims, resulting from the business relationship have been settled. This shall also apply to future and conditional claims for example acceptance notes and to such cases where payments are to be made on separately indicated claims. As soon as the accounts have been settled in full, title to those goods that were delivered before such payment shall be transferred.
2. With regard to processing or manufacturing of the goods to which title is retained, we shall be deemed to be manufacturer within the meaning of §950 BGB (German Civil Code), without obligation. The processed and manufactured goods shall be deemed to be goods in which title is retained within the meaning of clause 1. If the purchaser manufactures, combines or mixes the goods to which title is retained with other goods, we shall obtain co-ownership in the new goods in proportion to the invoiced price of the goods to which title is retained to the invoiced price of the other goods. If, by such combining or mixing, our ownership expires, the purchaser shall transfer to us any rights which the purchaser will have in the new products or goods in proportion to the invoiced price of the goods in which title is retained, and he will keep them in safe custody free of charge. Our co-ownership rights shall be regarded as goods in which title is retained as defined in clause 1.
3. Goods in which title is retained may only be resold by the purchaser in the normal course of his business in accordance with his normal terms and conditions and so long as he is not in default, and provided also that he shall retain title on the products sold by him and the claims from the resale shall be assigned to us as set forth in clauses 4 to 6. The purchaser shall not be entitled to dispose in any other way of the goods in which title is retained.
4. All claims resulting from the resale of the reserved goods or other legal reason are hereby assigned to us together with all securities which the purchaser has acquired for the claim. Such claims shall serve as a security to the same extent as the goods in which title is reserved. If the goods in which title is retained are resold by the purchaser together with other goods not sold by us, the claim from the resale shall be assigned to us in proportion to the amount of the invoiced value of the goods in which title is retained. In the case of the resale of goods in which we have co-ownership rights in accordance with clause 2, we shall be assigned a part of the claim in the amount of our proportion of co-ownership.
5. The purchaser shall be authorised to collect all claims resulting from the resale. This right shall expire if revoked by us, at the latest if there is default of payment, failure to honour a bill of exchange or the commencement of insolvency proceedings. Our right of revocation will only be asserted if and in so far as it becomes evident after the conclusion of the contract our claim for payment or other contracts with the purchaser is at risk by the lack of the purchaser's ability to pay. The purchaser shall, at our written request, immediately inform his customers of such assignment and give to us any information or documents necessary for collection.

6. An assignment of claims from the resale is not permitted, unless it is an assignment of a genuine factoring, which is notified to us and the proceeds of such factoring exceeds the worth of our secure claim. Our claim shall be due immediately with the factoring proceeds credit note.
7. The purchaser shall inform us immediately if the property is seized or otherwise becomes subject to third party rights. The purchaser shall bear any costs to suspend such seizure or which are required for the return transport of the goods in which title is retained, so far as these costs are not borne by a third party.
8. If the purchaser becomes in default of payment or if he fails to honour a bill of exchange, we are entitled to take back the goods in which title is retained and for this purpose, to enter the purchaser's premises. The same shall apply if after the conclusion of the contract it becomes evident that payment resulting from this contract or from other contracts is jeopardised by the purchaser's lack of ability to pay. If property is taken back, this shall not be regarded as withdrawal from the contract. In the event that insolvency proceedings are commenced, we are entitled to rescind the contract.
9. Should the realisable worth of the existing securities exceed the amount of the secured claims including additional claims for interest, costs etc by more than 50, we shall be obliged – at the purchaser's request, to release securities at our choice in the appropriate value.

§ 8: General limitation of liability

1. We shall be liable for the breach of contractual and non-contractual obligations including our managerial staff and any other person employed by us only in the event of wilful misconduct or gross negligence. Our liability is limited to foreseeable and typical losses and damage.
2. These restrictions shall not apply where there has been a breach of a fundamental contractual obligation for which we are responsible where this endangers the achievement of the purpose of the contract, in cases of statutory liability pursuant to the German Product Liability Act, where there is damage to life, to the body or to health and to the extent where we fraudulently conceal the defects in the goods or have guaranteed their absence.
3. The statutory rules of the burden of proof remain unaffected.

4. Unless otherwise agreed, contractual claims, which arise due to or in connection with the delivery of the goods, shall lapse 1 year after the inspection of the goods. This time limit shall also apply for such goods, which have been used according to their usual use for an installation and which has caused their defectiveness. Our liability for wilful or grossly negligent breach of duties and the time limitation of claims for recourse shall remain unaffected. Our liability pursuant to § 438 I, III and § 643a I Nr. 2 and 3 III BGB (German Civil Code) shall remain unaffected.

§ 9: Place of Jurisdiction and Applicable Law

1. The exclusive place of jurisdiction for disagreements arising out of the contractual relationship shall be Frankfurt am Main if the purchaser is a businessman, legal person under public law or Federal Special Fund. We reserve the right to file a lawsuit at the purchaser's headquarters.
2. All legal relations between us and the purchaser, in addition to these conditions shall be governed by German law in particular the BGB /HGB (German Civil Code / German Commercial Code). If the purchaser has his domicile abroad, German law shall apply to the exclusion of the conflicting law but including the provisions of the United Nations Contracts for the International Sale of Goods of 11th April 1980.