



EXCOR Korrosionsschutz –Technologien und Produkte GmbH, Tonlandstr. 2, 34346 Hann. Münden
Tel.: 0 55 41/70 62 00,
Fax: 0 55 41/70 62 10
District Court Göttingen, HRB 112264,
Managing Director: Gerhard Hahn

EXCOR Korrosionsforschung GmbH,
Magedeburger Str. 58,
01067 Dresden
Tel.: 0351 / 88 85 73 – 0
Fax: 0351 / 88 85 73 - 31
District court Dresden - HRB 14589;
Managing Director: Prof. Dr. Georg Reinhard, Dr. Donald A. Kubik



**EXCOR Korrosionsschutz – Technologien und Produkte GmbH
and EXCOR Korrosionsforschung GmbH
General Terms and Conditions of Sale and Delivery**

I. General

1. These General Terms and Conditions of Sale and Delivery (“Terms and Conditions”) shall apply for all our quotations, offers and legal transactions concerning the delivery of goods. Diverging General Terms and Conditions of the Purchaser are only binding on us if they are explicitly accepted by us in written form.
2. These Terms and Conditions shall also apply to all business in progress and all future business. An explicit reference to our Terms and Conditions is not necessary if they had been included in a previous contract.
3. N° 2 does not apply to nonmerchants.

II. Quotations/Orders

1. All our quotations are not binding unless they have been explicitly named as firm offer.
2. Supplements require written form.

III. Delivery

1. Delivery is effected from our distributing warehouse. If delivery is agreed to be freight paid, we dispatch the goods in our discretion inside Germany at the railway station next to the place of destination.
2. The delivery date is the date of dispatch or the agreed delivery date. We are allowed to deliver up to one week in advance of the agreed delivery date.
3. In default of differing agreement, the time for delivery shall run from the latest of the following dates:
 - a) confirmed date of the confirmation of the order
 - b) the date on which the Purchaser has fulfilled all technical, financial and business-related conditions incumbent upon him
 - c) the date on which we receive a prepayment due before delivery and/or on which a letter on credit has been opened
4. If we fail to meet agreed delivery times or delivery periods, the Purchaser has the right to withdraw from the non-fulfilled part of the contract after expiration of a reasonable grace period set by the Purchaser. Damage claims shall be excluded unless exceeding the agreed delivery period is caused by intent or gross negligence.
5. If the Purchaser does not take delivery from us after we have announced readiness for delivery according to the contract or if he does not give us the necessary delivery instructions, we are entitled to claim for damages instead of performance or to withdraw from the contract after expiration of a reasonable grace period. Furthermore we are entitled to the locally customary costs of storage.

6. We will take out a transport insurance policy only on written demand and on cost of the Purchaser.
7. According to sec. 39 KVR art. 30 CMR (Convention on the Contract for International Carriage of Goods by Road) the recipient has to notify the carrier of evident damages on acceptance of the goods on the consignment note. The recipient has to notify us of non-evidence damages within the period of one week after acceptance of the goods. The recipient has to request for determination of the damage.

IV. Short delivery / partial delivery

1. Short deliveries are allowed up to 5 % per 500 kg weight of goods.
2. We are entitled to partial deliveries. We are allowed to deviate from the agreed partial delivery up to 10 %.

V. Delivery on Demand

1. Contracts with agreed partial deliveries (delivery plans) oblige the Purchaser to take delivery of the installments.
2. In the event of contracts without fixed dates for demanding delivery of the installments the whole quantity will be delivered within the period of one year. In case of default of demand within three months – unless otherwise agreed– we are entitled to deliver the installments every fourth week; the last instalment will be delivered at the end of the one year’s period. The invoice for every instalment has to be announced by setting a fortnight’s period for taking delivery. The due date of invoices for installments is determined according to sec. IX.
3. If the Purchaser does not take delivery of the goods after expiration of a reasonable grace period, we are entitled to withdraw from the contract and to claim for damages.

VI. Passing of risk

1. The risk of accidental loss, destruction or deterioration passes to the Purchaser on transfer of the goods to the carrier. This does not apply in case of a purchase of consumer goods in the sense of sec. 474, 475 of the German Civil Code (“Bürgerliches Gesetzbuch, BGB”).
2. The weight or filling quantity ex works is decisive in case of differences in weight or quantity for which neither we nor the Purchaser are responsible.

VII. Self supply/ Impairment of the performance of an obligation

1. Sale and delivery is subject to the correct and punctual supply to us.

**EXCOR Korrosionsschutz – Technologien und Produkte GmbH
and EXCOR Korrosionsforschung GmbH
General Terms and Conditions of Sale and Delivery**

2. In case of interruption of operations not imputable to us, e.g. measures of industrial action which are not only of temporary nature, force majeure at our premises or those of our suppliers or in case of comparable circumstances like legal or governmental interventions, hindrance or delay of transportation, interruption of energy supply, intermediate or end products, we are entitled to withdraw from the contract partially or in total, without being liable for damages.
3. Should one of the cases enumerated in sec. VII n° 2 occur the Purchaser is entitled to withdraw from the non-fulfilled part of the contract after setting a reasonable grace period.
4. Sec. VII n° 1 does not apply to nonmerchants.

VIII. Prices

Our prices are not binding, unless otherwise agreed, and do not include VAT, transportation, packaging, tariffs and other charges. This does not apply in case of a purchase of consumer goods in the sense of sec. 474, 475 of the German Civil Code ("Bürgerliches Gesetzbuch, BGB").

IX. Payment

1. The invoice is payable net cash on account within 30 days commencing on the date of the invoice.
2. We grant a 2% discount on the merchandise value if the invoice is paid within a fortnight commencing on the date of the invoice.
3. After the time limit set in sec. IX n° 1 has elapsed we are entitled to interest in the amount of 5 percentage points above the base lending rate; this without prejudice to our rights. Furthermore we are entitled to dunning costs in the amount of EUR 2.50 per reminder and EUR 5.00 per reminder in international sales.
4. Drafts are not accepted.
5. We are entitled to withhold the delivery until the Purchaser has paid the price or has given a guarantee in case of a defaulting economic capacity; this without prejudice to our rights. We are entitled to withdraw from the contract if the Purchaser does neither pay contemporaneously nor give a guarantee within a reasonable grace period.
6. Sec. IX n° 3 and 5 are not applicable to nonmerchants.
7. In case of international sales we reserve the right to demand payment out of a confirmed irrevocable letter of credit in EUR and subject to further conditions which we determine in our fair judgment in lack of agreement. Principally, we agree upon the UCP Uniform Customs and Practice for Documentary Credits (Einheitliche Richtlinien und Gebräuche für Dokumentenakkreditive, ERA 500) issued by the International Chamber of Commerce (ICC) in Paris. The letter of credit is issued by one of our banks and has a validity of two months plus the agreed delivery period. All banking charges shall borne by the Purchaser.

X. Retention of title

1. We retain title to the goods to be delivered until the complete settlement of all our claims out of or in connection with the business relationship to the Purchaser, subject to the restriction according to sec. X n° 10 here below.
2. With regard to specification, the authorized manufacturer acts for us without having any claims against us because of the specification.
3. In case of specification or union with material of third parties we acquire co-ownership in the newly manufactured products at the ratio of the value of the goods subject to retention of title to the value of the newly manufactured products, however at least to the amount of the goods subject to retention of title. The moment of specification is decisive for the value of the goods subject to retention of title and for the value of specification.
4. The Purchaser is obliged to carefully preserve the goods subject to retention of title, to insure them against damage and theft and to prove the conclusion of an insurance contract to us. If we do not acquire co-ownership in case of union of several goods, the Purchaser transfers to us his co-owner's share according to sec. X n° 3 phrase 1 and 2 with immediate effect.
5. The authorized manufacturer is obliged to regularly establish an inventory of the goods subject to retention of title which are provided to him for the specification according to the contract. The authorized manufacturer is obliged to communicate the result to us quarterly. Goods subject to retention of title not utilized now or in a following order, shall be resent to us upon request.
6. In case of resale of the new product, the Purchaser assigns to us his claim for the purchase price for security purposes at the ratio of sec. X n° 3 phrase 1 and 2 instead of transferring his co-owner's share to us. The Purchaser assigns to us this claim with immediate effect; we herewith accept this assignment.
7. The Purchaser assigns to us with immediate effect all claims (including ancillary rights) resulting from the resale of unprocessed goods, however limited to the amount of our claim against the Purchaser; we herewith accept this assignment.
8. The Purchaser is entitled to process and to resell the goods subject to retention of title in the ordinary course of business. He shall be authorized to collect the claims assigned to us on his own behalf.
9. We are obliged to release the exceeding part of securities issued in our favour upon request of the Purchaser if the realizable value of the securities exceeds our claims to more than 10 %.
10. The Purchaser is obliged to notify us immediately in written form in case of execution against goods subject to retention of title, products in which we acquired co-ownership or against future claims assigned to us. The Purchaser is obliged to immediately communicate to the executive body and to the judgment creditor that

**EXCOR Korrosionsschutz – Technologien und Produkte GmbH
and EXCOR Korrosionsforschung GmbH
General Terms and Conditions of Sale and Delivery**

the goods are subject to retention of title, resp. that we are co-owners, resp. that the claim has been assigned to us.

11. If the Purchaser is a nonmerchant, the retention of title according to sec. X n° 1 here above is limited to the goods to be delivered under the contract.

XI. Set-off

The Purchaser shall only be entitled to setting off against our claim for payment with undisputed counterclaims or with counterclaims that have become *res iudicata*.

XII. Warranty

1. The Purchaser is obliged to examine the fitness of the delivered goods for the contractual purpose immediately after delivery. This is also applicable to drop shipments effected by our contractual partners.
2. We deliver according to our product description and specification which are considered to contain the contractually agreed quality.
3. Evident defects in type, quantity and quality of the goods have to be reported to us in written form within a cut-off period of two weeks after delivery of the goods. Hidden defects have to be reported to us in written form within a cut-off period of two weeks after detection of the defect, however within one year after delivery at the latest (two years in case of nonmerchants).
4. Inevitable deviations in quality, purity of material, colour and other features as well as customary and technically inevitable deviations in quality, material thickness and measurements are not considered to be a defect. With regard to material thickness and measurements the latest German customs of our line of business shall apply. With regard to imported material the respective customs of the origin country shall apply.
5. The Purchaser is only entitled to request replacement in case of a justified notice of defects with regard to processed or unprocessed goods. This does not apply in case of a purchase of consumer goods in the sense of sec. 474, 475 of the German Civil Code ("Bürgerliches Gesetzbuch, BGB"). The Purchaser is entitled to reduce the price or to withdraw from the contract if the replacement fails.
6. The Purchaser is obliged to examine the fitness of the goods for the presumed use. Samples can be provided for tests within the usual limits. With regard to newly manufactured products, the limitation period in actions for breach of warranty is one year for entrepreneurs and two years for consumers, each commencing on delivery of the products. With regard to used products, the limitation period in actions for breach of warranty is one year commencing on delivery of the products, subject to a proper notice of defects. This does not apply if international or grossly negligent behaviour is imputable to us or to our vicarious agents or if injury of life, body or health of the Purchaser is imputable to us.

XIII. Liability

1. Our liability is limited to the predictable (dependent on the type of goods), typical, direct average damage in case of slightly negligent violations of our duties. This also applies to slightly negligent violations of duties committed by our statutory representatives or vicarious agents. We are not liable towards entrepreneurs in case of slightly negligent violation of non essential contractual duties. Contractual duties are essential if the contract cannot be executed properly without their fulfillment and if the contractual partners usually rely on their fulfillment and are allowed to do so.
2. The limitations of liability under sec. XIII. n° 1 here above do not apply to claims according to the Product Liability Act ("Produkthaftungsgesetz"). Furthermore, they do not apply if injury of life, body or health of the Purchaser is imputable to us.
3. The Purchaser's claims for damages are statute-barred after one year commencing on delivery of the goods. This does not apply if international or grossly negligent behaviour is imputable to us or to our vicarious agents or if injury of life, body or health of the Purchaser is imputable to us.

XIV. Choice of law, Place of jurisdiction

1. This contract is subject to the laws of the Federal Republic of Germany. The Convention on the International Sale of Goods (CISG) is not applicable.
2. All disputes arising out of or in connection with our business activities shall be settled by the courts at our registered office. This is not applicable to a nonmerchant unless he does not have a general place of jurisdiction in Germany.

XV. Invalidity

If one of the stipulations above shall be deemed invalid in parts or as a whole, this does not affect the validity of the remaining stipulations.