

General Terms of Sale and Delivery

Date: 1. November 2006

I. Applicability of these terms

1. The following terms of delivery and payment apply to any and all deliveries and services to be made by us within the scope of business transactions with companies. The general terms and conditions of the party placing the order are not applicable irrespective of whether we expressly contradict them again.
2. Supplementary to our terms of delivery and payment, the general terms of delivery for products of the electrical industry in the respective version valid at the time a contract is concluded apply as does the supplementary clause "extended retention of title". Said terms can be obtained from us free of charge.

II. Delivery

1. Quotations submitted by ourselves are subject to confirmation.
2. The party placing the order shall always bear the risk of shipment. Should the party placing the order not communicate special specifications in regard to the method of shipment, we will choose the method of shipment most expedient in the respective case. We are not obliged to choose the cheapest method of shipment.
3. Goods up to a net value of € 500.00 are delivered ex-works, excluding packaging and shipping costs. Goods with a net value in excess of € 500.– are delivered free of charge, including packaging or free border within Germany for cross-border deliveries. The minimum order value is € 20.00.– per order. Orders amounting to less than this minimum order value will automatically be billed at € 20.00. These regulations also apply to re-ordering or to requested partial deliveries. Packaging for disposal must be returned at no cost to us in so far as we are obliged to do so because of binding regulations.
4. Complaints due to incorrect or incomplete deliveries or claims based on obvious defects must be communicated in writing immediately, at the latest on the eighth day after receipt of the goods.
5. The goods delivered are regarded as original products as defined in the EU regulations governing the preferential treatment thereof. Goods from third countries are generally identified as such separately.
6. The party placing the order undertakes to dispose of the product appropriately once the product's service life cycle has ended. Should the party placing the order resell the product, this undertaking is transferred to the respective buyer. Any incurred disposal charges are billed separately on our invoices.

III. Warranty/Guarantee

1. We do warrant for the faultlessness of our luminaires in accordance with the technical standards valid in Germany.
2. The Period of Warranty shall be 12 months starting with the delivery date. We do grant an additional guarantee for our products for the time span of the 13th – 24th month after the date of delivery according to the provisions of article 7 ("guarantee").
 - Not included in the warranty, respectively in the guaranty are: Consumable parts, e.g. lighting elements;
 - Damage following improper treatment, operation or use;
 - Damages due to purchaser's fault;
 - Damage caused by chemical, electronic or weather related influences appearing as a consequence of improper use of our products;
 - Damages caused by spare parts that are not original spare parts;
 - Damages due to unauthorized changes and/or alterations of our products by purchaser or third parties;
 - Damages following faulty installation or commissioning by purchaser or third party.
3. The purchaser has to check our products for defects immediately after receipt and report any defects in writing immediately after discovery. Claims on obvious defects can only be taken into account when they are reported to us in writing at the latest on the eighth day after receipt of the goods. Hidden defects are to be reported to us immediately after discovery. Defects due to transport have to be reported and documented immediately when receiving the goods.
4. Insofar as a defect of a delivered good is actually discovered within the warranty period and the cause of the effect existed at the time of passing of risk, the purchaser has the right to ask for "post performance". In this case, we shall decide to either deliver a new product free from defects (post delivery) or to repair the defect (post improvement).
5. Basically, the purchaser shall ship a defective product to us at our cost. Only under exceptional circumstances, if shipment of our product should not be possible or unreasonably costly, shall we repair or exchange the product at the purchaser's site. In case of shipment of a defective product, the purchaser shall enclose the original bill of delivery or the respective invoice. In case the product should prove defective, we shall take care of all costs necessary to remove the defect, especially transport, travel and labor costs, as long as these costs do not increase because the purchaser has taken the product to a different place than the original place of delivery, unless the taking to a different place was part of the proper use of our product.
6. Should our "post performance" fail within the warranty period of the initial 12 months, the purchaser is entitled to either withdraw from the contract or to ask for a price reduction.
7. In case a defect should occur within the time period of the 13th – 24th month after the date of deliver, and this defect does not fall under article 2 above, the following applies: The purchaser shall ship the product to us at his cost. Potential costs for dismantling have to be borne by the purchaser. In case our luminaire should prove defective, we offer to repair the defect, replace the luminaire or offer a price reduction solely at our discretion. In case of repair, we shall bear the costs of repair and well as the cost of shipping the repaired product back to the purchaser. Withdrawal is excluded within the guarantee period.

8. All parts replaced during product repair shall pass into our property. At our request, they have to be shipped to us at our expense.
9. We shall not accept any liability for consequences resulting from repair work (maintenance and/or repair) that was improperly carried out by the purchaser or third party without our explicit consent.
10. Additional or other contractual claims of purchaser resulting from our defective products are excluded.

IV. Payment

1. In absence of any agreements to the contrary, all prices apply ex-works excluding packaging, customs charges, fees, additional taxes and other additional costs. The costs for travel, installation and assembly are invoiced separately based on our rates valid at the time services are rendered.
2. In absence of any agreements to the contrary, packaging will be invoiced at cost price. We must decline to take back packaging unless we are under legal obligation to do so.
3. Insofar as no fixed prices are expressly stated in the confirmation of the order, we are entitled to increase prices appropriately after conclusion of the contract in such cases where there are changes to, e.g., material costs, labour costs, shipping rates, public charges and other circumstances beyond our control. Insofar as this does not apply to continuing obligations, the above provision is applicable only in such cases where delivery (or partial delivery) was agreed to occur more than four months after conclusion of the respective contract or where the delivery actually occurs more than four months after conclusion of the respective contract through the fault of the party placing the order. Should this increase exceed 5% of the agreed remuneration, the party placing the order is entitled to rescind the contract.
4. All payments are due immediately upon receipt of the invoice and payable within 10 day less a 2% discount or within 30 days with no deductions unless expressly agreed otherwise or specified otherwise on the invoice. Deliveries to parties placing orders who are based outside of Germany are always subject to advance payment unless agreed otherwise.
5. Should sustainable reasons for doubting the solvency or willingness of payment of the party placing the order become apparent, especially due to the neglect of payment obligations imposed by this or another contract with us or due to a later decline of that party's economic circumstances, in such a manner as to obviously adversely affect our claims for payment, we shall be entitled to make our claims due with immediate effect – even in such cases where respite has been granted subsequently to the conclusion of a contract –, to demand an advance or sureties or – should the party placing the order refuse these – to rescind the contract insofar as the conditions defining delayed payment apply. The right to claim damages remains unaffected.
6. The retention of payments and/or the offsetting against any possible counterclaims by the party placing the order that we have denied and that have not been proven to hold legally is not permissible under these terms unless it is proven that we are liable due to gross breach of duty or the offset claims originate from ourselves making an improper or legally defective delivery.

V. Disposal (in Germany)

In accordance with the German law governing electric and electronic devices (ElektroG), we implement the option of a contractual agreement on the disposal of the luminaires we deliver as follows:
Luminaires (without fluorescent lamps):
In compliance with the disposal obligation legally imposed on the supplier for luminaires available since 13.08.2005, we have commissioned the services of ISD INTERSEROH Dienstleistungs GmbH in Cologne at our expense (for acceptance and disposal). The party placing the order bears the costs of delivery to the collection points. For details of alternative INTERSEROH collection points available to the party placing the order, please contact the INTERSEROH head office in Cologne or log on to www.interseroh-isd.de. The party placing the order undertakes to ensure that disposal is carried out solely by the disposal company commissioned by Herbert Waldmann GmbH & Co. KG. Our WEEE Registration No. is: DE 77596560
Fluorescent lamps:
Fluorescent lamps can also be dropped off free of charge at the widely available collection points of a network of the German lamp industry.

VI. Applicable law and jurisdiction

1. German substantial law shall apply for all disputes arising from or in connection with this contract explicitly excluding the UN Convention on the International Sale of Goods (Vienna Convention of 1980 – CISG).
2. For all disputes arising from this contract, the place of Jurisdiction shall be our domicile insofar as the purchaser is a tradesman/dealer. Additionally, we are entitled to take the purchaser to court at his domicile.