

General Terms and Conditions of Sale, Delivery and Payment

The following Terms and Conditions shall apply exclusively unless other agreements have been explicitly confirmed in writing. Any terms and conditions of purchase deviating herefrom shall not become part of the contract even through acceptance and execution of the order.

I.) Offer

The documents and illustrations, drawings and indications of weights and measurements relating to the offer are only approximately authoritative unless they are explicitly described as binding. The supplier reserves the ownership right and copyright in quotations, drawings and other documents; they may not be made accessible to third parties. The supplier is obliged to only make plans designated as confidential by the customer accessible to third parties with the customer's consent.

SCREENING AND DRYING TESTS: If required, the customer is obliged to make available an adequate quantity of the material to be processed to the supplier free of charge for test purposes. This material and the values determined hereby form the basis of the delivery.

II.) Prices and Payment

In the absence of any special agreement, prices are deemed to be ex works excluding packaging and loading. VAT at the respective statutory rate is added to the prices.

If a period of longer than six months elapses between the order confirmation and the agreed commencement of production, or if the production takes longer than six months, in the event that thereafter there is an increase in commodity prices, wages, freight rates or in prices of the parts to be purchased in addition by the supplier, the supplier has the right to reasonably increase the price agreed, but by no more than five percent.

Bills of exchange, cheques and other securities as well as assignments of claims and other collateral shall only be accepted by the supplier (on account of payment) subject to the reservation of full and punctual payment. When accepting bills of exchange and cheques, the supplier is not liable for presentation and protesting in due time. In the case of an assignment of claims, the supplier is not obliged to take legal action to pursue the assigned claims. Only those payments made to the supplier directly have the effect of discharging the debt.

Default interest in an amount of eight percent above the base rate of interest pursuant to Section 247 German Civil Code (BGB) shall be charged in the event of the payment date being exceeded, with the assertion of any further rights being reserved, without the requirement to put the customer in default. If, in the case of agreed payment by instalments, a payment is not made in due time in whole or in part, the entire amount still outstanding shall become due for immediate payment.

Irrespective of the agreed payment method, the supplier is entitled, at its option, to demand immediate payment of the entire purchase price, or to withhold the delivery until the full purchase price has been paid, or to withdraw from the contract, if, after conclusion of the contract, it should transpire that the claim to the purchase price is at risk owing to the customer's circumstances, irrespective of whether such risk arose before or after conclusion of the contract. One case of such risk is, in particular, if a bill of exchange accepted by the customer is protested.

The customer is not entitled to withhold payments on account of counterclaims or to make a set-off against them, unless such counterclaims are undisputed or recognized by final and binding judgment.

III.) Delivery Period, Delay in Delivery

- 1.) The delivery period ensues from the agreements made by the contracting parties. The precondition for compliance therewith by the supplier is that all commercial and technical questions between the contracting parties have been clarified and the customer has met all obligations incumbent on it, such as the production of the required official certificates and permits or the payment of a deposit. If this is not the case, the delivery period shall be reasonably extended. This shall not apply if the supplier is responsible for the delay.
- 2.) Compliance with the delivery period is subject to the reservation of correct and punctual delivery of supplies to the supplier.
- 3.) The delivery period is complied with if the delivery item has left the supplier's works by the expiration of the delivery period or if readiness for dispatch has been notified. Insofar as acceptance is required, the date of acceptance is authoritative – save in the case of justified refusal to accept – alternatively the date of notification that the goods are ready for acceptance.
- 4.) If the dispatch or the acceptance of the delivery item is delayed for reasons for which the customer is responsible, any costs incurred as a result of the delay, starting one month after notification that the delivery is ready for dispatch or acceptance, shall be charged to the customer.
- 5.) If non-compliance with the delivery period is due to force majeure, industrial action or other events outside the supplier's sphere of influence, the delivery period shall be reasonably extended. The supplier shall notify the customer of the start and end of any such circumstances as soon as possible.
- 6.) The customer may withdraw from the contract without specifying a period of time if it becomes finally impossible for the supplier to effect the entire performance prior to the passing of the risk. In addition, the customer may withdraw from the contract if, in the case of an order, the execution of one part of the delivery becomes impossible and the customer has a justified interest in rejecting partial delivery. If this is not the case, the customer has to pay the contract price attributable to the partial delivery. The same shall apply in the event of the supplier's inability. In other respects section VII. 2 shall apply. If the impossibility or the inability occurs during default of acceptance or if the customer is solely or predominantly responsible for these circumstances, the customer remains obliged to effect consideration.
- 7.) If the supplier is in default and if the customer incurs a loss as a result, the customer shall be entitled to request flat-rate compensation for default. It shall amount to 0.5% for each full week of the delay, but in total to no more than 5% of the value of that part of the complete delivery which cannot be used in due time or according to the contract as a consequence of the delay. If the customer grants the supplier in default a reasonable time period for performance – taking into account statutory exceptional cases – and if the time period is not met, the customer is entitled to rescind the contract within the scope of statutory provisions. Any further claims arising from default of delivery are governed exclusively by section VII. 2 of these Terms and Conditions.

IV.) Passing of the Risk and Acceptance

- 1.) The risk is passed to the customer when the delivery item has left the works. This applies even in the case of partial deliveries or if the supplier has also assumed other services, e.g. forwarding charges or delivery and installation. If acceptance is required, this is authoritative for the passing of the risk. It must be carried out without delay on the acceptance date, alternatively after the supplier has notified that the delivery is ready for acceptance. The customer may not refuse acceptance if an immaterial defect exists.
- 2.) If the dispatch or the acceptance is delayed or not effected as a result of circumstances which are not attributable to the supplier, the risk shall pass to the customer from the date of the notification that the delivery is ready for dispatch or acceptance. The supplier undertakes to take out the insurance requested by the customer at the expense of the customer.
- 3.) Partial deliveries are admissible insofar as they are reasonably acceptable for the customer.

V.) Reservation of Title

- 1.) The supplier reserves title to the delivery item until all payments from the supply contract have been received.
- 2.) The supplier is entitled to insure the delivery item against theft, breakage, fire, water and other risks at the customer's expense, unless the customer has provably taken out the insurance itself.
- 3.) The customer may neither pledge the delivery item nor assign it by way of security. The customer must notify the supplier without delay of any attachment or seizure or other acts of disposal by third parties.
- 4.) If the customer acts in breach of contract, in particular in the case of default of payment, the supplier is entitled to take back the delivery item after sending a reminder and the customer is obliged to return the item. The assertion of the reservation of title and the attachment of the delivery item by the supplier shall not be deemed to constitute rescission of the contract.
- 5.) If the customer combines any goods from the supplier with other goods to make them into a single thing, it is deemed agreed that the customer transfers co-ownership proportionally to the supplier as defined in section 947 paragraph 1 BGB and that the customer holds the object safely for the supplier free of charge.
- 6.) In the event of the products being sold, the customer assigns to the supplier the claims resulting from reselling the products in the amount of the value of the item delivered by the supplier, including any ancillary rights.

- 7.) If a petition for insolvency proceedings is filed, the supplier shall be entitled to withdraw from the contract and to demand the immediate return of the items delivered.

VI.) Liability for Defects

The supplier provides a warranty against defects as to quality and defects of title in the delivery to the exclusion of further claims – subject to section VII – as follows:

Defects as to Quality

- 1.) All those parts which prove to be defective as a result of a circumstance prior to the passing of the risk must be rectified or replaced free of charge at the supplier's option. The supplier must be notified without delay in writing when any such defects are identified. Any replaced parts become the property of the supplier.
- 2.) Following agreement with the supplier, the customer must allow the supplier the requisite time and opportunity to effect any rectifications and replacements the supplier considers necessary; otherwise the supplier shall be exempted from liability for the consequences resulting therefrom. The customer only has the right to remedy the defect itself or to have it remedied by third parties and to demand reimbursement of the requisite expenses from the supplier in urgent cases where operating safety is in jeopardy or to avert disproportionately large losses, whereby the supplier must be notified hereof immediately.
- 3.) Of the direct costs incurred due to the rectification or replacement, the supplier shall bear – provided that the complaint proves to be justified – the costs of the replacement part including shipping and reasonable costs of dismantling and installation. In addition, if this can be reasonably requested according to the situation of the individual case, the cost of providing any fitters and auxiliary staff required.
- 4.) The customer has the right to rescind the contract within the scope of statutory provisions if the supplier – taking into account the statutory exceptional cases – allows a reasonable deadline given to the supplier for rectification or replacement on account of a defect as to quality, to elapse in vain. If the defect is only immaterial, the customer only has the right to reduce the contract price. Otherwise the right to reduce the contract price remains excluded. Further claims are governed by Section VII. 2.
- 5.) No warranty is given in the following cases in particular: Unsuitable or improper use, defective assembly or putting into operation by the customer or third parties, natural wear and tear, incorrect or negligent handling, improper maintenance, unsuitable means of operation, defective construction work, unsuitable building foundation, chemical, electrochemical or electric influences, provided that the supplier is not responsible for them.
- 6.) If the customer or a third party rectifies any defects improperly, the supplier has no liability for the consequences resulting therefrom. The same applies to any modifications made to the delivery item without prior consent by the supplier.
- 7.) In the event that non-original spare parts are used and a defect arises as a consequence thereof, the customer has the burden of proof to show that the non-original spare part used did not cause or jointly cause the defect. If the customer cannot furnish such proof, the supplier has the right to refuse all claims resulting therefrom.

Defects of title

- 8.) If the use of the delivery item leads to an infringement of industrial property rights or copyrights within Germany, the supplier shall, in principle, procure at its expense the right for the continued use by the customer or modify the delivery item in a way that is reasonably acceptable for the customer so that the infringement of the property right no longer exists. If this is not possible under economically reasonable conditions or within a reasonable period, the customer shall be entitled to rescind the contract. Subject to the aforementioned preconditions, the supplier also has the right to rescind the contract. In addition, the supplier shall indemnify the customer against undisputed claims and claims by the proprietors of the property rights concerned recognized by final and binding judgment.
- 9.) The supplier's obligations set forth in section VI. 7 are final for the case of infringements of property rights and copyright, subject to section VII. 2. They shall only exist if
 - a) the customer notifies the supplier without delay of claimed infringements of property rights or copyright,
 - b) the customer supports the supplier to a reasonable extent in defending against the claims asserted or enables the supplier to carry out the modification measures in accordance with section VI. 7,
 - c) the supplier remains entitled to take all defence measures including extra-judicial settlements,
 - d) the defect of title is not based upon an instruction by the customer and
 - e) the infringement of the right was not caused by the customer modifying the delivery item arbitrarily or using it in a manner not in accordance with the contract.

VII.) Liability

- 1.) If the customer cannot use the delivery item in accordance with the contract through the supplier's fault because suggestions or advice given before or after conclusion of the contract were executed incorrectly or because of the failure to execute such suggestions or advice, or through the violation of other collateral contractual obligations – in particular operating and maintenance instructions for the delivery item – the provisions of sections VI and VII. 2 shall apply accordingly, to the exclusion of any further claims by the customer.
- 1.) The supplier is only liable for damage not caused to the delivery item itself – for whatever legal grounds –
 - a) in the case of intent,
 - b) in the case of gross negligence by the owner / the executive bodies or officers,
 - c) in the case of culpable injury to life, body or health,
 - d) in the case of defects which were concealed fraudulently or the absence of which was guaranteed,
 - e) in the case of defects to the delivery item insofar as the Product Liability Act provides for liability for personal injury or for property damage to objects for personal use.

In the case of a culpable violation of material contractual obligations, the supplier shall also be liable for gross negligence by non-managerial employees and for slight negligence. In the latter case this is limited to reasonably foreseeable damage typical for contracts. Any further claims are excluded.

VIII.) Limitation

All claims by the customer - for whatever legal grounds – become statute-barred after 12 months. The statutory periods apply to claims for damages pursuant to section VII. 2 a - e. They also apply to defects to a building and to delivery items which were used for a building according to their customary use and which caused its defectiveness.

IX.) Use of Software

If any software is included in the scope of delivery, the customer is granted a non-exclusive right to use the software supplied including its documentation. It is provided for use on the delivery item it is intended for. Using the software on more than one system is prohibited. The customer may only duplicate, revise, translate or convert the software from the object code into the source code to the extent permitted by law (section 69 a et seq. German Copyright Act (UrHG)). The customer undertakes not to remove manufacturer details – in particular copyright marks – or to modify them without the prior express consent of the supplier. All other rights to the software and the documentation including copies remain with the supplier or with the software supplier. Granting sublicenses is not admissible.

X.) Place of Performance, Place of Jurisdiction and Applicable Law

The supplier's registered office is the place of performance for both parties. The courts having jurisdiction at the supplier's registered office shall decide on any disputes which may arise.

The supplier, however, also has the right to take legal action at the customer's registered office. The laws of the Federal Republic of Germany apply to the contractual relationship. The application of the UN Sales Convention (United Nations Convention of 11/04/1980 on Contracts for the International Sale of Goods) is excluded. In the case of legal action taken at foreign courts having jurisdiction at the customer's registered office, the supplier may waive the application of German law, whereby the Terms and Conditions of Delivery and Payment presented by the supplier shall be applied.

XI.) Repeat Orders

These Conditions of Delivery shall also apply to repeat orders and repair orders which are not expressly confirmed in writing.