

Terms and Conditions of Delivery and Payment

Applicable to: companies, legal entities under public law and special funds under public law.

Section 1 Contract Offer and Conclusion

1. WE PERFORM OUR SERVICES SOLELY ON THE BASIS OF THESE GENERAL TERMS AND CONDITIONS OF DELIVERY. The following Terms and Conditions of Delivery apply to any and all contracts between us and the Buyer, if and when the subject of said contracts concerns the order of goods by the Buyer. They shall also apply to any and all future contracts, even if no explicit reference has been made to their application. Agreements and terms and conditions deviating from or supplementing these Terms and Conditions, in particular deviating terms and conditions of the Buyer, shall apply only if and when we have confirmed their application in writing or, in individual cases, they have been discussed and negotiated with us and this has been confirmed in writing. Objection is hereby expressly raised to the application of the Buyer's terms and conditions of purchasing.

a) Any and all agreements which have been reached between us and the Buyer concerning performance of this order have been set down in writing in this contract.

b) Any objection to our order confirmation must be raised immediately, i.e., within a maximum period of eight days.

2. We retain title of ownership and utilisation rights under copyright law without limitation to cost estimates, drawings and any and all other documents attached to the offer which are entrusted to the Buyer. Specially prepared documents may not be made accessible to third parties and must be returned in the event the order is not placed.

3. Our offers are subject to change and non-binding unless they are expressly noted in writing as binding or contain a specific deadline for their acceptance.

4. Subsidiary agreements, declarations and other agreements between the Parties shall not be binding unless in writing. Agreements which amend or modify these General Terms and Conditions of Delivery and Payment shall not be effective unless personally signed by authorised representatives of both parties. The form requirements shall also apply to any change in the above provisions.

Section 2 Scope of the Delivery Obligation

1. Our written order confirmation is solely and exclusively authoritative for the scope of the delivery.

2. Unless expressly designated as binding, any technical data shall be given solely as approximate values. Dimensions and weights are subject to deviation permissible according to technical rules or to the DIN tolerances for dimensions, shape and weight. Any and all other documents such as pictures and drawings are only approximate unless expressly designated as binding.

3. We reserve any and all titles of ownerships and copyrights to any and all documents, especially drawings, related to the product which have been entrusted to the Buyer. They may not be used for any purpose other than that of the contract without our consent. In particular, they may not be made accessible to third parties. The documents shall be returned upon our request.

4. The unloading of the parts and their transport from the unloading point to the point of utilisation are the responsibility of the Buyer and shall be carried out at his expense even if and when we deliver carriage free.

Section 3 Prices, Terms and Conditions of Payment

1. Unless otherwise specified by special agreement, prices are shown ex works or ex warehouse as net prices, excluding legal VAT at the current rate. The legal VAT must be added. Unless otherwise expressly agreed, the prices on our price lists valid at the agreed time of delivery plus legal VAT will be charged.

2. Unless otherwise expressly agreed, invoices are due and payable without deductions and free of any fees within fourteen days of the invoice date.

3. If the Buyer does not pay by the due date, he shall without further notice be deemed in default of payment upon lapse of the period stipulated in Clause 2 above or of a payment period defined according to the calendar. Otherwise, he shall be deemed in default of payment upon being issued a written request for payment (dunning notice) from us, but at the latest if he has not effected payment within 30 days of receipt and due date of an invoice or equivalent payment notice. If the Buyer is in default of payment, we will be entitled to charge default interest at a rate of 8% above the basic interest rate of the German Federal Bank or, in the event of its discontinuation, at a successor interest rate of the European Central Bank which is comparable. If the Buyer has not paid the sum owed upon lapse of a payment period of one month which we have set for him, we may rescind the contract by means of simple written notification and request damage compensation of up to 25% of the value of the relevant part of the delivery item as determined in the contract. If it is possible for us to prove a greater default loss or other loss, we will be entitled to assert this loss. However, the Buyer shall be entitled to prove that we did not incur any, or only a significantly lower, loss as a consequence of the default of payment or the rescission of the contract.

4. The Buyer shall be entitled to set off counterclaims only if and when they have been finally determined by a court of law, are undisputed, are ready for a decision in court proceedings or have been acknowledged by us. Moreover, he shall be authorised to exercise a right of retention to the extent that his counterclaim arises from the same contractual relationship, provided that it has been finally determined by a court of law, is undisputed, is ready for a decision in court proceedings or has been acknowledged by us. If and when the Customer's counterclaim is based on objections due to defects, he may retain payments only in a scope which is in reasonable relationship to the defects which have been asserted.

5. We accept bills of exchange and cheques only on the basis of special agreements and only on account of performance. The Buyer shall bear any and all discount expenses and any and all costs incurred by the redemption of the bill of exchange and of the cheque.

6. We are entitled to request adequate security for our claims at any time. Any and all of our claims shall become immediately due, independently of the term of any accepted bills of exchange or cheques, if and when the Buyer is in default of payment of a claim or is in breach of contractual agreements, to the extent that this breach or the defaulted claim is not only of a minor nature, or if and when there is a significant worsening of the Buyer's financial position which would endanger our claim to the consideration.

7. If and when reasonable doubt concerning the Buyer's ability to perform, in particular his solvency or creditworthiness, becomes apparent after conclusion of the contract, indicating a risk of the Buyer's failure to fulfil his obligations, and if and when the Buyer, despite a relevant request, is not prepared to make advance payment or provide suitable security, we will be entitled, upon fruitless lapse of a reasonable subsequent period, to cancel the contract after setting a reasonable period for payment.

8. We will also be entitled to these rights if and when the Buyer's company submits a petition for the initiation of bankruptcy proceedings or such a petition is dismissed due to lack of assets, or if and when the Buyer's company is dissolved or liquidated for reasons other than bankruptcy proceedings, or if and when debt execution measures of more than minor scope are levied against part of the Buyer's assets.

9. We will also be entitled to the rights described in Clause 7 if and when bankruptcy proceedings are initiated against the Buyer's company.

Section 4 Packaging

1. Shipping and packaging shall be carried out at the Buyer's expense. Packaging will be selected at our discretion and according to our best judgment. If packaging in wooden crates is required, we will charge for the crates at cost.

2. If and when shipment in rail containers, containers or other special packaging is prescribed or sensible, the costs for the packaging shall be borne by the Buyer.

Section 5 Retention of Title

1. We retain title of ownership to the delivery item until any and all of our claims from the business relationship, including claims arising in the future from contracts concluded simultaneously or at a later time, have been paid.

2. The Buyer may neither pledge nor assign as security the delivery item. The Buyer shall notify us without delay of any liens, confiscations or other seizures by third parties.

3. In the event of Buyer's conduct in breach of the contract, in particular default of payment, we will be entitled, after issuing a dunning notice and setting a period, to request return of the goods, and the Buyer shall be obligated to surrender the goods. Our exercise of the retention of title and attachment of the delivery item shall not be deemed a withdrawal from the contract.

4. The Buyer shall be entitled to sell the reserved goods in the ordinary course of business. The Buyer hereby assigns to us any and all claims against third parties arising from the disposal, confiscation or other legal actions related to the goods to which we have title of ownership or co-ownership.

5. The Buyer shall be obligated to pay compensation for any and all losses and costs which we suffer or incur as a consequence of a breach of the obligations undertaken by him or his customers or of intervention measures against attachment by third parties.

6. If and when the value of the security exceeds that of the secured claims by 20%, we undertake to release the security. The realisable value (security value) shall be authoritative for assessment of the security. The current value of the security, in each case based on the sales price we originally invoiced and to the extent that it involves products on the current price list, is calculated as follows:

- Goods in unopened original packaging 90%

- Goods in opened original packaging 50%

- Bulk goods without packaging 20%

The claims from the further sale of the reserved goods shall be set at 90% of their nominal value.

7. The petition for the initiation of bankruptcy proceedings shall entitle us to withdraw from the contract pursuant to Section 3, Clause 7, and to request the immediate return of the delivery item.

Section 6 Delivery Period and Transfer of Risk

1. The period for deliveries or performances shall begin on the day on which agreement regarding the order and any and all points relevant to the contract between the Buyer and us is available in writing, but not before receipt of any agreed advance payment. If and when these pre-conditions have not been fulfilled in due time, the delivery period shall be extended accordingly.

2. The day on which the goods are dispatched or reported as ready for dispatch shall be deemed the day of delivery. Partial deliveries are permitted unless the Customer cannot reasonably be expected to accept them.

3. Goods which are ready for shipment must be released immediately by the Buyer upon notification; otherwise, we will be entitled to store the goods at the Buyer's expense and risk according to our judgment and to bill the goods as delivered.

4. The delivery period shall be extended by a reasonable period in the event of measures taken within the scope of industrial action, in particular in case of strike and lock-out, and in the event of occurrence of unforeseen hindrances beyond our control, regardless of whether such events occur in our works or in those of our suppliers – e.g., operational disruptions, delays in the delivery of essential raw materials and supplies and hindrances which are verifiably of significant influence on the manufacture or delivery of the delivery item. We will not be accountable for the circumstances described above even if they occur at a time when we are already in default of delivery. We will notify the Buyer of the beginning and end of such hindrances as soon as possible if they are not merely minor in nature.

5. Compliance with the delivery period presumes the fulfilment of contractual obligations, especially compliance with agreed deadlines, by the Buyer.

6. The risk of loss of or damage to the goods shall be transferred to the Buyer upon its surrender to the person specified to carry out the shipment or, in case of pick-up by the Buyer, when the goods have been made available for shipment in our works or delivery warehouse and the Buyer has been notified of its readiness for pick-up, even if and when partial deliveries are being made or we have assumed, at the Buyer's request, other services, e.g., the shipping costs or delivery to the location and installation. At the Buyer's request, we will insure the consignment at his expense for theft, breakage, transport and water damage as well as for other insurable risks.

7. If shipment is delayed due to circumstances for which the Buyer is responsible, the risk shall be transferred to the Buyer as of the day of the notification of readiness for shipment; however, we are obligated to obtain the insurance policies requested by the Buyer at his request and expense.

8. If and when the shipment is delayed at the request of the Buyer or due to other reasons for which he is accountable, we will be entitled to bill him for the storage costs incurred for storage in our works, beginning one month after notification of readiness for shipment; the minimum charge shall be 0.5% of the invoice amount per month. We expressly reserve the right to assert more extensive damage compensation claims. However, the Buyer shall be entitled to prove that we have not suffered any loss, or only a significantly lower loss, as a consequence of the delay in acceptance. Nevertheless, we will be entitled, after the setting and fruitless lapse of a reasonable period, to dispose otherwise of the delivery item and to deliver to the Buyer within a reasonably extended period.

Section 7 Inspection and Complaint Obligations

1. The Buyer shall inspect the goods after their delivery without delay as is possible in the orderly course of business. He shall notify us in writing of any defects without delay, no later than within seven calendar days after delivery.

2. The Buyer shall notify us in writing without delay, no later than seven calendar days after discovery, of any defects which cannot be recognised within the scope of an inspection in accordance with Section 7, Clause 1 above and which appear at a later time.

3. If and when the Buyer fails to submit the notification required pursuant to Section 7, Clauses 1 and 2, the goods shall be deemed accepted in consideration of the relevant defect.

4. Goods about which complaint has been made must be returned to us without delay.

Section 8 Liability for Defects in the Delivery

We are liable for defects in the delivery, excluding further claims except in the cases of Section 9, Clause 2, as follows:

1. Subsequent improvement/repair of the goods we have delivered is not possible. In case of timely and justified complaint of defects, we will provide solely substitute delivery for defects in the goods against immediate return of the defective products. We will deliver, at our discretion, any and all parts which are proven to be unusable or impaired in their usability to more than a minor extent due to circumstances occurring before the transfer of risk, in particular due to defective design, poor construction materials or poor manufacture. We must be notified in writing of the determination of such defects immediately. Replaced parts become our property. If, without prejudice for the legal exceptional cases, we are not prepared to make substitute delivery despite a period for subsequent fulfilment set for us by the Buyer, or if the delivery is delayed beyond reasonable periods due to reasons for which we are accountable, or if the substitute delivery fails for other reasons or becomes impossible, the Buyer shall be entitled in accordance with legal provisions to cancel the contract or to request reduction of the price. If there is only a minor defect, the Buyer shall be entitled only to request reduction of the price.

2. Our liability for essential third-party products shall be limited to the assignment of the liability claims to which we are entitled against the supplier of the third-party product. This provision shall not apply if and when the assertion of the claims against the supplier is not successful for the Buyer.

3. Claims due to defects shall be time-barred one year after the transfer of risk. In deviation from the above provision, the legal statutes of limitations shall apply in all cases of Section 9, Clause 3. This provision is without prejudice for Section 479 BGB (German Civil Code).

4. We will not assume any warranty for damage caused by the following: unsuitable or improper use, defective installation or commissioning by the Buyer or third parties, natural wear and tear, incorrect or negligent handling, in particular excessive use, unsuitable operating materials, replaced materials, chemical, electrochemical or electrical factors, unless they are a consequence of culpable action on our part.

5. The Buyer must grant us the required time and opportunity to carry out any substitute deliveries which according to reasonable judgment appear necessary; otherwise, we will be released from the liability for defects. The Buyer shall have the right to remedy the defect himself, or to have it remedied by third parties, and to request reimbursement of the necessary costs solely in urgent cases in which operating safety is threatened and to prevent disproportional damage.

6. Of the costs incurred directly for the substitute delivery, we will bear – to the extent that the complaint is determined to be justified – the costs of the replacement part, including shipping costs, plus reasonable costs for removal and installation, as well as, if this can reasonably be demanded according to the circumstances of the individual case, the costs for any provision of required technicians and support personnel. The Buyer shall bear all other costs himself.

7. Our subsequent fulfilment shall not be interpreted as an acknowledgement of the Buyer's claims due to defects. We will provide the same warranty for the replacement part as for the delivery item, whereby claims due to a defect of the replacement part shall be time-barred six months after the delivery or manufacture, but no earlier than the lapse of the original period of limitation. The period for liability due to defects in the delivery item shall be extended by the duration of the operational interruption caused by the subsequent improvement work.

8. Damage compensation claims due to defects are subject to the restrictions of Section 9.

Section 9 Liability

1. If and when, because of our fault, the Buyer is unable to use the delivery item in accordance with the contract as a consequence of omitted or defective realisation of suggestions and advice received before or after conclusion of the contract and of other contractual subsidiary obligations, in particular instructions for operation and servicing, the regulations of Section 8 and Clause 2 below shall apply mutatis mutandis, excluding any further claims by the Buyer.

2. We will be liable for loss or damage which does not result to the delivery item itself, irrespective of the legal reason, solely

- in cases of intention;

- in cases of gross negligence on the part of the owner, the company organs or the executive employees;

- in cases of defects in the delivery item to the extent that the Product Liability Act mandates liability for personal injury or material damage to objects used privately;

- in the case of defects which we have fraudulently concealed or which we have guaranteed to be absent, or if we have assumed a guarantee for the quality of the item;

- in cases of culpable injury to life, body, health.

3. In cases of culpable breach of essential contractual obligations (cardinal obligations), we will also be liable for gross negligence of non-executive employees and for slight negligence.

4. The liability for loss or damage caused by the breach of an essential contractual obligation shall be limited to loss or damage which can typically be expected to occur within a framework of a contract such as this one.

5. The Parties agree the loss or damage which can typically be expected shall not exceed €3,000.

6. This limitation of liability shall not apply in case of default of delivery if and when a commercial transaction for delivery by a fixed date has been agreed. Further claims are excluded.

7. The above limitations of liability shall also, in their reason and amount, apply in favour of our legal representatives, employees and other vicarious agents in the event of a direct claim against them by the Buyer.

Section 10 Our Right to Cancellation

If and when unforeseen events in the sense of Section 6, Clause 4 of these Terms and Conditions of Delivery occur, provided that the events significantly change the commercial importance or the content of the performance or have a significant effect on our operation, and in the event that it is retroactively determined that the performance is impossible or that capability of performance does not exist, the contract shall be reasonably amended. If and when this is commercially not reasonable for us, we will be entitled to cancel the contract, in whole or in part.

Section 11 Limitation Period

With the exception of claims due to defects, which become time-barred in accordance with Section 8, Clause 3, any and all other claims of the Buyer, irrespective of the legal reason, shall become time-barred after a period of 12 months. The legal limitation statutes shall apply to damage compensation claims asserted in accordance with Section 9, Clause 2.

Section 12 Miscellaneous

Unless opposed by verifiable secrecy or other important interests of the Buyer, we may, after giving advance notice, inspect the equipment we have delivered in the Buyer's operation, learn of the operating results and show the equipment to our potential customers.

Section 13 Final Provisions and Jurisdiction

1. Unless otherwise agreed, sole proper law shall be the law of Germany, excluding application of the provisions of the United Nations Convention on the International Sale of Goods of 11/04/1980 (CISG).

2. If and when the Buyer is a full merchant, a legal entity under public law or a special fund under public law, legal action shall be brought before the court which has jurisdiction at our headquarters or at the branch office performing the delivery for the resolution of any and all disputes arising from the contractual relationship. We will also be entitled to file suit at the Buyer's headquarters. This provision shall also apply to legal action related to bills of exchange and cheques.

3. If any provisions of this contract, in whole or in part, should be, or become, invalid, or if the contract should contain any gaps, this shall not affect the validity of the remaining provisions. A legally valid substitute regulation which is based on the will of the Parties as discernible in this contract, the commercial intent and purpose of the invalid regulation and of the contract as a whole, or which comes closest to the invalid provision, shall take the place of the invalid contract provision or fill the gap. The above provision shall also apply if the invalidity of a provision is a consequence of a performance or time specification; a legally permissible measurement of performance or time which comes closest to the intended purpose should then be deemed agreed.