

General Terms and Conditions - Terms and Conditions of Delivery

I. General information

1. These Terms and Conditions apply to all agreements made with the Customer in relation to supplies and services. The Customer's terms and conditions do not apply even if we have not expressly refuted them on an individual basis.
2. No oral agreements have been made.
3. Additional agreements and amendments must be confirmed in writing by the Supplier.

II. Offers / price / handling surcharges

1. Our offers are subject to confirmation. Unless otherwise agreed, an agreement is established with the written order confirmation of the Supplier.
2. If no contrary special agreement has been made, prices are stated ex works and are subject to VAT charged at the applicable statutory rate. Additional costs such as packaging, shipment, insurance, customs duty and assembly are charged separately.
3. We reserve the right to adjust the price in respect of increases in costs (in particular in relation to wages and salaries, materials and energy) and changes to exchange rates occurring following conclusion of the agreement.
4. We reserve the right to levy a handling surcharge in respect of orders that fall below the minimum order volume and/or the minimum order value specified in our valid price list as may be amended from time to time.

III. Payments

1. Unless otherwise agreed elsewhere, payments are to be rendered immediately without deduction to one of our accounts.
2. The Customer only has a right to withhold payments or to set them off against counterclaims where its counterclaims are non-contested, ready for a decision or determined through a non-appealable legal judgement.
3. By exceeding the agreed date for payment the Customer is legally in default, unless payment has not been rendered due to a circumstance for which it is not responsible.
4. If the customer is in default in respect of a particular payment, all our claims to payment thereby become due. During the period of the default, before continuing to perform the order and/or performing delivery, the Supplier can make this conditional upon the payment of an advance equal to the value of the rendered works or the payment of collateral security. If the Customer fails to render the demanded advance payment or the collateral security within the stipulated period, we are entitled to terminate the agreement and demand compensation. The same applies where, following conclusion of the agreement, it becomes evident that the Customer's financial situation has deteriorated significantly.

IV. Delivery periods / delay / call orders / partial deliveries

1. Delivery periods start to run from the time that the order is confirmed, but in any case no earlier than when final agreement has been reached with the Customer with respect to the pre-production clarification of outstanding questions and the fulfilment by the Customer of its duties of co-operation (such as the provision of documentation and information, and the notification of circumstances significant to the rendering of contractual performance).
2. Unforeseen hindrances for which we are not responsible (such as force majeure, labour disputes, operational interruptions, rejected work, delays in relation to sub-Suppliers) entitle us to extend the delivery period for a time equal to the duration of the hindrance. We will inform the Customer as soon as possible with regard to the start and end of hindrances of this kind. If circumstances of this nature make it significantly more difficult or impossible to perform delivery and the hindrance is more than merely temporary, the Supplier is entitled to rescind the agreement. If, as a result of the delay caused by such circumstances, it is no longer reasonable for the Customer to accept the delivery, it may rescind the agreement by issuing an immediate written declaration to the Supplier.
3. Compliance with the delivery period is established if, prior to its expiry, the delivery has been dispatched from the Supplier's works or readiness for shipment has been notified. Where acceptance is required - unless where acceptance is justifiably refused - the date of acceptance is decisive, or alternatively, upon the notification of readiness to accept.
4. If the shipment or acceptance of the delivery is delayed for reasons for which the Customer is responsible, it will be charged in respect of those costs caused by the delay starting one month from the notification of readiness to ship/accept.
5. If the Customer is entitled to compensation due to delay, in the case of slight negligence on the part of the Supplier this claim is limited to 0.5 % of the value of the outstanding delivery for each full week of the delay, up to a maximum of 5 % of the value of that part of the total delivery which could not be utilised in accordance with the agreement as a result of the delay. We reserve the right to demonstrate that the Customer suffered no loss or that the actual loss is lower than above. Paragraph IX applies accordingly.
The customer may only rescind the agreement under the applicable statutory provisions in the event of delay where we are actually at fault for the delay to the delivery.
6. If an agreement is made with the Customer that, within a specific period ("contractual period"), a fixed agreed volume is to be delivered and the Customer is entitled to determine the respective delivery dates, the deliveries

must be called no later than 12 weeks prior to the desired delivery date. Following the expiry of the contractual period we are entitled to deliver and bill the outstanding (non-called) volume to the Customer.

7. Partial deliveries are permissible provided this is reasonable for the Customer.

V. Packaging/ shipment / acceptance / transfer of risk

1. Delivery is performed EXW (within the definition of the Incoterms as may be amended from time to time) from the location specified by us; the choice of the packaging materials and the packaging type is at our discretion.
2. Palettes, containers and other reusable packaging items remain our property and must be returned promptly by the Customer free of charges to our point of delivery. Disposable packaging is charged at cost price. Where we are obliged under the packaging regulations to take back disposable packaging, the Customer will dispose of this on our behalf.
3. The Customer will bear the additional costs of express and small item shipments.
4. Risk passes to the Customer once the delivery has left the works, including where partial deliveries are performed or the Supplier is providing other services, including the costs of shipment or delivery or set-up for example. Where acceptance is to take place, the risk will also transfer at the time of acceptance. It must take place directly upon the date for acceptance, or alternatively following the notification of the Supplier of the readiness to accept. The Customer is not entitled to refuse acceptance on the basis of an insignificant defect.
5. If the delivery or acceptance fails or is delayed due to circumstances for which the Supplier is not responsible, the risk shall pass to the Customer on the day that readiness for delivery or acceptance is notified. If so requested, the Supplier undertakes to arrange insurance on the Customer's behalf at the latter's cost.

VI. Retention of Title

1. We retain the ownership of all of the goods delivered by us until the settlement of all claims arising from the business relationship with the Customer (goods subject to retention of title). With current accounts, the retained ownership also serves to secure the payments on account. Where payment is made with bills of exchange, the retention of title is not extinguished until the bill is redeemed by the customer as acceptant.
2. If, by means of a combination, the goods subject to retention of title become part of a new item that belongs to the Customer, it is deemed agreed that the Customer assigns us co-ownership in the new item and will keep it in custody for us free of charge. Our proportion of ownership is determined according to the ratio of the value of the goods subject to retention of title to the value of the new item.
3. The Customer is entitled to dispose of the object of the delivery within the normal course of its business. The Customer here and now assigns to us all claims accruing to it by reason of the resale of the goods subject to retention of title vis-à-vis the purchaser or by reason of any other legal basis connected with the goods subject to retention of title (e.g. insurance claims, claims in tort). If the goods subject to retention of title are resold together with other goods not belonging to us, the Customer will assign to us that portion of the resulting claim corresponding to the invoiced sum of the goods subject to retention of title. If goods subject to retention of title, to which we only have part ownership, are resold, the proportion of the receivables due to us from the resale is based on our ownership share.
4. The Customer remains revocably authorised to collect the receivables due from the resale. It must, upon demand, notify its purchasers as to the assignment and provide us with all information and documentation required for the assertion of our rights.
5. We may withdraw the authorisation of resale and collection of receivables if the Customer is in default of payment or if a significant deterioration becomes apparent in its financial situation or creditworthiness.
6. We undertake to release the collateral security to which we are entitled, to the extent that its realisable value exceeds the claims secured by more than 10%.
7. It is not permitted to use the goods subject to retention of title for the purposes of collateralisation or to otherwise use these as security. If the goods subject to retention of title or the claims assigned to us are collateralised or if our rights are in any way prejudiced by any third party, the Customer must give notice of our rights and inform us of the situation immediately. The Customer is liable for the costs and losses incurred herein.
8. The Supplier may only use the retention of ownership to demand surrender of the object of delivery if it has rescinded the agreement.
9. The Supplier is entitled to withdraw from the agreement and to demand the immediate return of the object of delivery upon a petition for the commencement of insolvency proceedings.
10. Where mandatory legal provisions of the respective State do not provide for a retention of title within the definition of this Paragraph VI. 1-9, but do provide for other rights for securing billed receivables, these rights are reserved in our favour. The Customer is duty bound to co-operate with measures for the protection of our right of ownership or other rights in lieu of these with respect to the goods subject to retention of title.

VII. Lien

If contract works are agreed, on the basis of our claims a contractual lien is created in our favour in respect of the articles that come into our possession as a result of the agreement. If through the contract work we become owner of the new articles or if items installed by us are not significant elements of the contractual object, the retention of ownership as set out in Paragraph VI will apply to that extent.

VIII. Claims due to defects

1. Information given in catalogues, printed materials, advertisements or other general information does not constitute a warranty or no-fault procurement risk.
2. The Customer's claims for defects are conditional upon it having fulfilled its statutory duties of examination and the notification of defects (Section 377 German Commercial Code). Apparent defects (including incorrect delivery and a shortfall in delivery) must be notified immediately in writing, but no later than within a period of two weeks from the time of delivery. This notice period requirement is met if the notification is dispatched within the specified time. Hidden defects which cannot be detected during an immediate examination must be reported in writing immediately, but no later than within two weeks of discovery. If the Customer fails to make this notification, our liability is excluded with respect to the reported defect.
3. In the event of defects we will render subsequent performance either through subsequent improvement or replacement delivery, the choice being at our discretion. The Supplier will bear the costs inherent in the subsequent performance including the costs of the Customer for disassembly and installation. This obligation to bear the costs of direct disassembly and installation does not exist in relation to foreign locations. In urgent cases, e.g. where operational safety is at risk or to prevent disproportionate damage, the Customer has the right itself to rectify the defect and to demand that we reimburse the costs objectively required therein. We must be notified immediately and if possible in advance of any such self-performance. The right to self-performance does not exist if we would have been entitled to refuse a corresponding subsequent performance under the statutory provisions.
4. If subsequent performance proves unsuccessful, the Customer, at its discretion, may demand a reduction of the contractual price (diminution) or rescission of the agreement (withdrawal). There is no right of rescission, however, in respect of an insignificant defect.
5. Claims of the Customer to compensation or the reimbursement of fruitless expenditure are only available as set out under Paragraph IX. They are otherwise excluded.
6. All claims in respect of defects expire one year following the delivery of the object in question. This does not apply to claims in accordance with Paragraph IX and rights of recourse pursuant to Section 478 German Civil Code.
7. There are no claims for defects in respect of: unsuitable and improper use, incorrect assembly or operational start-up on the part of the Customer or a third party, usual wear and tear, unsuitable operating conditions (e.g. temperature, air humidity), incorrect or negligent handling, unsuitable equipment or substitute materials as well as the use of replacement parts that do not meet the original specifications.

IX. Other liability

To the extent we are made duty bound under the agreement or pursuant to statute, we are liable for personal injury and death resulting from at least the negligent breach of a contractual duty. We are furthermore liable – within the limits of losses typical and predictable for this type of contract – for at least the minimum breach of a significant duty, i.e. a duty the fulfilment of which is crucial to the object of the agreement and on the performance of which the Customer could normally expect to depend. In relation to other duties we are only liable for intentional or grossly negligent breaches of contractual duties. A breach of a contractual duty performed by its legal representatives or vicarious agents is deemed to be a breach committed by the Supplier. The foregoing is without prejudice to the fraudulent concealment of a defect, from the assumption of a warranty or a no-fault procurement risk and the provisions of the product liability laws.

X. Software use

Where software is included in the scope of delivery, the Customer is granted a non-exclusive, non-assignable, time-limited right, in accordance with the regulations of the scope of delivery, to use the software, including its documentation, in connection with the delivered article intended for that purpose. It is not permitted to use the software with more than one delivered article. It is prohibited from granting sub-licenses. The Customer may only copy, rework, or translate the software or convert it from the object code into the source code to that extent permitted by statute (Sections 69 a ff. German Copyright Law). The Customer undertakes not to remove, or, without our prior written consent, to change manufacturer details – in particular copyright notices. We reserve all other rights to the software and the documentation including copies thereof.

XI. Documentation / non-disclosure and ownership

1. The Customer and we shall each treat the information received from the other Party as confidential. This also applies following the end of this supply agreement. This duty does not apply in respect of information of which the receiving Party was already duly in possession without being subject to a duty of non-disclosure, or of which it subsequently takes due possession without being subject to a duty of non-disclosure or which, without any contractual breach by any of the parties, is or becomes part of the public domain.
2. Each Party retains ownership to all applicable rights to the information, documentation, samples, estimates, drawings and data carriers it has provided to the other Party. Copying and passing on of such documentation and data carriers is only permissible with the consent of the Party that provided them.

XII. Miscellaneous

1. The place for performance is the place from which we deliver pursuant to Paragraph V.1. Place of performance for payment is the Supplier's place of business.
2. Disputes arising out of and in connection with the agreement will be heard before that court with jurisdiction for the Supplier's registered address. We reserve the right to pursue claims against the Customer before that court with jurisdiction for its registered address.
3. The contractual relationship is governed by the law of the Federal Republic of Germany. The uniform law for international sales under the United Nations Convention is expressly excluded.
4. The complete, partial or delayed assertion of any right under this supply agreement does not constitute a waiver of this or any other right.
5. If any provision is ineffective, or proves in the future so to be, the validity of the remaining provisions remains hereby unaffected.
6. We give notice that we store personal data in compliance with the statutory regulations and use it for processing business transactions.

General Terms and Conditions - Terms and Conditions of Purchase

I. General

Unless otherwise expressly agreed, our orders are subject to the following terms and conditions. The Supplier's conditions are not applicable even if, in specific cases, we have not expressly repudiated them or have accepted deliveries unreservedly.

II. Order

1. Our orders and amendments thereto are only valid if they have been awarded or confirmed in writing.
2. The Supplier must confirm the order and its amendments in writing within a period of 2 weeks following receipt (acceptance). Delayed acceptance constitutes a new offer and is subject to our acceptance.

III. Delivery time and delivery, transfer of risk, force majeure

1. Agreed delivery dates are binding. The Supplier is obliged to inform us immediately with respect to any foreseeable delays to delivery.
2. The Supplier must enclose the relevant German versions of the material safety data sheets with every delivery.
3. Partial deliveries are only permissible if we have consented to them or if it is reasonable to expect us to accept them.
4. In the event of a delay to delivery we are fully entitled to our applicable statutory claims (including the right of cancellation and compensation claims as a substitute for performance following fruitless expiry of a reasonable extension of time).
5. Risk is transferred, including where shipment is agreed, only once the goods are received at the delivery address specified by us.
6. Unforeseen hindrances for which we are not responsible (such as force majeure, labour disputes, operational interruptions) entitle us to postpone deliveries for the duration of the hindrance. If these hindrances endure for a time than is longer than merely temporary, with the result that we are unable to utilise the deliveries taking the commercial aspects into consideration, we are entitled to cancel the agreement wholly or partially.

IV. Prices and payment

1. The agreed prices are fixed prices. Unless otherwise agreed, delivery will be ex (our) works including packaging. The Supplier is duty bound at our request to take back the packaging material at its own cost.
2. We will render payment following the contractually compliant receipt of goods (including any formal acceptance required) and receipt of the proper and verifiable invoice with a 2% cash discount within 14 days or without discount within 30 days following receipt of invoice.
3. We are not liable to pay standard due date interest. In the event that we are in default the Supplier must always issue us with a reminder.
4. We remain fully entitled to statutory rights of set-off and retention as well as the plea of unperformed contract.
5. The Supplier is not permitted to assign to any third Party its claims established by this contractual arrangement. Cash receivables are excluded from this.

V. Notification of defects, rights in relation to defect and warranty

1. Our duty of examination is restricted to defects that are apparent upon an external check performed during our goods-in inspection including the shipping documents, or during our quality controls undertaken on a sample basis (e.g. damage during shipping, incorrect delivery and a shortfall in delivery). Otherwise it depends on the extent to which an examination is feasible given the particular circumstances of the specific case within the course of normal business. Our duty of notification for subsequently discovered defects remains unaffected. In all cases our notification of defects is deemed to be immediate and on time if it is made to the Supplier within 10 working days of receipt of the goods or discovery of the defect.
2. In relation to defects we are fully entitled to the relevant statutory claims. The limitation period for defect claims, however, constitutes 36 months from the time that risk is transferred.
3. The limitation period for claims based on defects is suspended upon receipt of our written notification of defects. The suspension ends upon our receipt of the defect-free delivery.
4. With replacement delivery and the rectification of defects, the limitation period begins to run anew in respect of replaced and post-improved parts, unless given the conduct of the Supplier we have to assume that it did not act under the assumption of a contractual duty but rather that the replacement delivery or defect rectification was undertaken out of good will or for other similar reasons.
5. If the Supplier fails within the reasonable additional period stipulated by us to render subsequent performance - either rectification of the defect (subsequent improvement) or the delivery of a defect-free article (replacement delivery), the said choice lying with us -, we then become entitled to rectify the defect ourselves or have it repaired by a third party and to demand compensation from the Supplier for the expense incurred herein. In urgent cases (where operational safety is at risk or to prevent disproportionate damage) no stipulation of an additional period is necessary; we will inform the Supplier immediately with respect to such measures.

VI. Product liability

The Supplier will indemnify us with respect to all product liability claims which are based on the defective product delivered by it. If, due to a fault in a product delivered by the Supplier, we are required to undertake a recall campaign in relation to third parties, the Supplier will bear all the costs inherent in the said campaign. The Supplier undertakes to arrange suitable insurance with adequate cover. The Supplier will, upon demand, provide us with a copy of the liability insurance policy.

VII. Third-party industrial property rights

1. The Supplier will ensure that in using or reselling the goods delivered by it, we are not infringing any domestic or foreign copyright laws, patents or other third party industrial property rights.
2. The Supplier will indemnify us in relation to all claims that third parties raise against us for any infringement of industrial property rights as detailed in sub-paragraph 1, and it will reimburse us for all necessary expenses connected with these claims, if and to the extent that such claims relate to a culpable breach of a duty on the part of the Supplier or where the Supplier has assumed a warranty of quality with respect to the absence of defective titles.

VIII. Documentation / non-disclosure

1. We retain ownership to any models, samples, drawings, plans and other documentation, information and resources that we may provide. These may only be used within the terms of the agreement and must be returned immediately following execution of the order.
2. These documents etc. may not be disclosed to any third parties. This duty of non-disclosure is extinguished if and to the extent that the documentation or information was already in the public domain or was already known to the Supplier without it having breached any contractual duties.

IX. Retention of Title

1. Enhanced or extended retentions of title on the part of the Supplier are excluded. Payment in respect of the delivered goods results in the ownership thereto passing to us.
2. Any processing, mixing or combination by the Supplier of articles provided by us is performed on our behalf. If third party rights of ownership endure following a processing, mixing or combination with third parties' articles, we acquire co-ownership of the new article. Our proportion of co-ownership is commensurate with the value of the articles provided by us in relation to that of the other articles.

X. Applicable law, court of jurisdiction

1. All legal relations between the Orderer and the Supplier shall be governed solely by the laws of the Federal Republic of Germany as applicable for legal relations between domestically-based Contractual Parties, to the exclusion of the uniform law for international sales under the United Nations Convention.
2. Disputes arising out of the agreement will be heard before that court with jurisdiction for the Orderer's registered address. The Orderer is, however, entitled to initiate claims before that court with jurisdiction for the Supplier's main registered address.