

General Terms and Conditions of Business and Delivery

I. General

1. The following terms and conditions of business and delivery only apply to a person who acts in the course of his trade or self-employed occupational activity (entrepreneur), a corporate body under public law or a special fund under public law.
2. These terms apply to the quotations of the supplier and the orders placed with him. The buyer accepts these terms and conditions as binding by placing an order and accepting the order confirmation as well as again by accepting the delivery. A buyer's objection by using a form - particularly in his own conditions of purchase - is unremarkable.
These general terms of business and delivery apply exclusively. We hereby reject all opposed conditions of our clients.
3. The supplier has reserved all proprietary and copy rights for drawings, plant layout, calculations, forms and similar information in tangible or intangible form - also in electronic form. This information may not be made accessible to third parties. The supplier is obliged to treat information designated as confidential, confidentially and not to make it available to third parties without the buyer's consent.
4. Changes of or additions to these terms as well as the waiver of the requirement of written form require the written form.

II. Offer / Scope of Supply

The scope of products to be supplied pursuant to an offer, which are always non-binding until the written order confirmation, results from the service description specified in the quotation. If the contract comes into effect because the supplier accepts an order of the buyer by order confirmation, the service description specified in the order confirmation is decisive.

III. Prices and Payment

1. Except as otherwise expressly agreed, the prices are ex works including packaging and excluding assembly at buyer's site, plus statutory value-added tax.
2. Except as otherwise expressly agreed, payments must be made without deductions, within 30 days after the invoice date.
3. If production progress during the manufacture of the delivery item is not possible due to an event for which the buyer bears fault (for example because of unavailable technical documents and specifications, unavailable releases or unavailable provisions of sample materials), and if contractually agreed payment milestones are not reached due to this, the supplier reserves the right to claim a partial payment as counter value to the production progress already carried out not later than one month after the originally agreed date of payment.
4. The buyer shall not have the right to withhold payments or to offset payments against counterclaims, unless his counterclaims are undisputed or legally valid.

IV. Delivery Time

1. The delivery time shall be as specified in the agreements between the parties. The delivery time specified by the supplier starts - unless not specified as a calendar date - with the posting of the order confirmation. Adherence to the delivery period by the supplier assumes that all commercial and technical issues between the contractual partners have been resolved and the buyer has met all the obligations accruing to him, such as the provision of documents, drawings, samples, authorisations, releases or other services to be supplied by him as well as entrance of an agreed deposit. If this is not the case the delivery time is extended by a reasonable period. This does not apply if the delay is caused by supplier's default.
2. The time for delivery has been complied with if, prior to its expiry, the delivery item has been provided to the buyer at the supplier's site or at another specified location (plant, warehouse, etc.), or notice of the delivery item's availability at such a location has been provided. If the non-observance of the delivery time is attributable to events beyond the supplier's control, the delivery time is extended by a reasonable period.
3. Partial deliveries are permissible.
4. The supplier must notify the buyer about emerging delays in delivery as soon as possible.
5. If shipping of the delivery item is delayed for reasons for which the buyer is at fault, any costs accruing from the delay shall be charged to the buyer, starting one month after reporting of the readiness for shipping.

V. Acceptance of Delivery Item

In case of default in acceptance, the supplier is entitled to request the customer to make payment according to the originally agreed payment date.

VI. Passing of Risk, Acceptance of Delivery Item

1. Risk passes to the buyer when the delivery item is provided to the buyer at the supplier's site or at a different specified location (plant, warehouse, etc.) without the goods being cleared for export and loaded onto a carriage vehicle for departure (according to Incoterms 2010 "EXW"). This also applies if partial deliveries are made or the supplier has taken over other services, for example shipping costs or delivery and commissioning at the buyer's site.
2. Insurance against damage in transit shall only be purchased at the express written agreement and at the buyer's expense.
3. After delivery - if there is no significant defect - the customer is obliged to immediately accept the delivery item after the readiness for acceptance and to sign the acceptance report provided by the supplier.
4. If acceptance is delayed due to reasons for which the supplier is not responsible, products shall be deemed as completed 4 weeks after notice of readiness for acceptance.

VII. Retention of Title

1. The supplier retains ownership of the delivery item until all payments - also, where required, for additional ancillary services due - under the delivery contract have been received.
2. The supplier is entitled to insure the delivery item against theft, breaking, fire, water and other damages at the buyer's cost, unless the buyer can prove having executed this insurance himself.
3. The buyer may neither sell nor pledge nor assign the delivery item as a security. In case of distraints as well as detention or other acts of disposal by a third-party, he has to inform the supplier immediately.
4. In the event of a breach of contract by the buyer, especially a delay in payment, the supplier is entitled to demand return/surrender of the delivery item after sending a reminder and the buyer shall be obliged to surrender the goods.
5. If an application is made for the opening of insolvency proceedings, the supplier is entitled to withdraw from the contract and demand the immediate return of the delivery item.
6. The buyer may process the goods subject to retention of title in the proper course of business and resell them under the agreement of extended retention of title. He is not entitled to other provisions, especially pledges or transfers by way of security are prohibited. The buyer is also not entitled to agree a prohibition of assignment or other requirements complicating the cession (for example approval requirement) with his customer.
The buyer's powers of disposal and processing expire if he is in arrears for payment with regard to the supplier, grossly violates the contracts agreed with the supplier otherwise or if he falls into forfeiture of assets.
The buyer shall - by way of security - immediately upon confirmation of an order assign to the supplier any claims resulting from the resale or any other legal foundation regarding the goods subject to retention of title in their entirety or to the proportion of the co-ownership share. The supplier accepts the assignment.
Processing or transformation of the delivery item in the area of the buyer are always carried out for us as manufacturer but without obligations for the supplier.
7. The customer retains custody of the (co-) ownership of the seller free of charge.

VIII. Claims

1. The buyer's warranty rights are based upon the proper fulfilment of this legally required inspection and notification obligations. Deliveries of goods are subject to § 377 HGB (German Commercial Code). Additionally, defects must be reported without delay, not later than seven days after detection. The posting of the claim is decisive.
2. All parts that have proven to be defective due to a circumstance arising before the passing of risk shall be repaired or replaced with non-defective parts at the supplier's discretion free of charge.
3. In order for the supplier to make repairs and replacement deliveries as necessary, the buyer must provide sufficient time and opportunity in coordination with the supplier. Otherwise the supplier is not liable for the resulting consequences. Only in urgent cases in which the safety of his factory is at risk or in order to avoid unreasonable damages, shall the supplier be notified immediately, the buyer is entitled to repair the defect himself or engage third parties to do so and to demand reimbursement from the supplier.
4. If the complaint proves to be justified, the supplier bears the costs of the replacement part including transport costs. The supplier shall also bear the costs of disassembly and assembly and for the provision of the supplier's required assemblers and helpers including transportation costs, additional costs and expenses unless disproportionate charging accrues to the Supplier.
5. Replaced parts become the property of the supplier.
6. The limitation period for all defects reported in a timely manner is twelve months from the passing of risk.
7. No guarantee is given for the following cases in particular: unsuitable or improper use of the delivery item, incorrect assembly or operation by the buyer or third parties, normal wear and tear, incorrect or negligent handling, improper maintenance, unsuitable supplies, defective construction work, unsuitable foundations, chemical, electrochemical or electrical influences, unless they are the responsibility of the supplier.
8. If the buyer or a third party carries out repairs incorrectly, the supplier is not liable for the resulting consequences. This also applies to changes the buyer made to the delivery item without the supplier's prior consent.
9. For substantial third-party products within the scope of a delivery, liability is limited to the assignment of liability claims to which the supplier is entitled against the sub-supplier. The supplier will disclose the contents of these claims to the buyer upon request. The supplier is only liable according to these terms after the unsuccessful legal action against the sub-supplier on the part of the buyer.
10. a) If the intended use of the delivery items delivered by the supplier causes an infringement of intellectual property rights (patent, copy or other industrial property rights of a third-party), the supplier will, at his cost and choice, either procure the right for the customer to continue to use the product or modify or replace the delivery item in a manner acceptable to the customer so that the copyright infringement no longer exists.
In addition, the supplier shall indemnify the buyer against undisputed or legally enforceable claims from the relevant owners of the property rights.
b) The supplier's undertakings in the preceding subparagraph 10.a) are in force only if
 - the buyer immediately notifies the supplier of asserted breaches of industrial property rights or copyrights,
 - the buyer supports the supplier to the appropriate extent in the defence against asserted claims and if he enables the supplier to carry out the modification or replacement of the product in accordance with number 10.a),
 - the supplier retains the right to take all defensive measures including out-of-court settlements,,
 - the deficiency in title is not due to an instruction from the buyer, and
 - the infringement of rights was not caused by the buyer modifying the product on his own authority or using it in a manner in breach of contract.c) If the buyer discontinues the utilisation of the delivery item due to the alleged violation of intellectual property rights for reasons of loss minimization or other important reasons, he shall provide notice to the third party claiming the violation of industrial property rights, that the discontinuation of utilisation does not involve a confession of the alleged violation of property rights.

IX. Compensation

1. For damages other than to the delivery item the supplier is only liable on whatever legal grounds for:
 - intent,
 - gross negligence on the part of the owner / board members or senior managers,
 - culpable damage to life, body, health,
 - defects which the supplier fraudulently concealed,
 - within the scope of a guarantee promise,
 - defects of the delivery item to the extent that liability exists pursuant to the German Product Liability Act for damages to persons or personal property.In cases of culpable breach of primary contractual duties, the supplier is also liable for gross negligence of other staff members and for simple negligence; the latter is limited to typical damages for the type of contract and which could reasonably have been foreseen.
2. Other claims are excluded.

X. Limitation

All claims by the client on whatever legal grounds expire 12 months after passing of risk. They also apply for defects to a building or for delivery items which in accordance with their normal use were used for a building and caused its defect. The relevant statutory periods shall apply for compensation claims.

XI. Software

1. If included in the scope of supply, the buyer shall be granted a single, non-exclusive right to permanently use the supplied software specified in the contract including its documentation. All rights related to the Software and the accompanying documentation, especially the exercise of all proprietary rights, belong exclusively to the supplier.
2. The buyer may only use the software for the operation of the machines and plants included in the scope of delivery. Transfer to third-parties or disclosure is expressly forbidden. The right of translation, decompilation, modification or each other form of changing the software as well as the creation of derivative works is exclusively reserved for the supplier. The supplier expressly notifies the buyer that even small interventions in the software can lead to significant, unforeseeable failures in the flow of the software and the system environment. Here, failures causing personal injuries can occur. Therefore, the buyer is warned of unauthorised modifications of the software. In this regard, the risk lies entirely with the buyer.

XII. Miscellaneous

1. Place of fulfilment is Dresden.
2. These terms and conditions of business and delivery are subject to the laws of the Federal Republic of Germany with the exception of the uniform UN Convention on Contracts for the International Sale of Goods (CISG).
3. Place of jurisdiction is Dresden. The supplier is also entitled to take legal action at the buyer's headquarters.
4. Customer data is saved in accordance with the regulations of the Federal Information Protection Law.
5. Should individual provisions of these conditions be invalid, the remaining valid legal provisions are valid unless the parties agree otherwise. The foregoing is without prejudice to the effectiveness of the contract or other written agreement.