

General Conditions of Sale, Delivery and Payment

Unless other agreements have expressly been confirmed in writing, the following conditions shall apply exclusively.

I. Offer

Any documents and illustrations, drawings, indications of weight and dimensions relating to the offer are only approximate and not authoritative, unless they are expressly described as binding. The supplier reserves the right to ownership and copyright of quotations, drawings and other documents; they must not be made accessible to third parties. The supplier shall be obliged only to make accessible to third parties any plans described by the customer as confidential with the customer's consent.

SCREENING TESTS: The customer shall be obliged to provide the supplier free of charge with an adequate quantity of the material to be processed for test purposes, if required. This material and the values determined hereby are the basis of the delivery.

II. Prices and Payment

In the absence of any special agreement, the prices shall be Ex Works excluding packaging and loading. VAT at the respective statutory rate is added to the prices.

In the event of an increase of commodity prices, wages, freight rates or similar, the supplier has the right to request a reasonable surplus price. Bills of exchange, cheques or other securities as well as assignments of claims and other collateral shall only be accepted by the supplier subject to full payment/redemption in due time. If accepting bills of exchange and cheques, the supplier shall not be liable for presentation and protesting in due time. In case of assignments, the supplier shall not be obliged to pursue the assigned claims by legal actions. Only payments made to the supplier directly shall have a debt releasing effect.

Default interest to the amount of the respective bank interest and charges for unsettled business loans shall be charged in the event of the credit period being exceeded, subject to the assertion of any further rights, without the requirement of the customer being put in default. If a payment is not made in due time or only made partially in the case of agreed payments by instalments, the entire amount still outstanding shall become due for immediate payment. Irrespective of the agreed payment method, the supplier shall be entitled at his option to request immediate payment of the entire purchase price or to retain the delivery until the full purchase price has been paid or to withdraw from the contract, if after conclusion of the contract, the claim arising from the purchase price is put in danger owing to the customer's circumstances, irrespective of whether the danger arose before or after conclusion of the contract. One case of such danger is in particular if a bill of exchange accepted by the customer is protested. It is not admissible to withhold payments or to make a set-off owing to any counterclaims of the customer disputed by the supplier.

III. Delivery Time, Delay in Delivery

1. The delivery time ensues from the agreements made by the contracting parties. Its observance by the supplier shall be on the basis of any commercial and technical questions between the contracting parties having been clarified and the customer having met any duties incumbent on him, such as the production of the required certificates or permits from an authority, or the payment of a deposit. If this is not the case, the period of delivery shall be reasonably extended. This shall not apply, if the supplier is responsible for the delay.
2. Observance of the delivery period is subject to correct delivery of supplies to the supplier in due time.
3. The delivery period is met, if the item for delivery has left the supplier's works at the expiration of the period or it has been reported as ready for dispatch. Provided acceptance is required, the date of acceptance is authoritative - save in the case of legitimate rejection - alternatively the notification that the customer is ready to accept the item for delivery.
4. If the dispatch or the acceptance of the item for delivery is delayed for reasons the customer is responsible for, any costs incurred as a result of the delay shall be charged to the customer's account starting one month after notification that the delivery is ready for dispatch or acceptance.
5. If the non-adherence of the delivery schedule is attributed 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. Without fixing a period, the customer may withdraw from the contract, if it becomes finally impossible for the supplier to effect the complete performance prior to 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 the partial delivery. If this is not the case, the customer shall have to pay the contract price allotted to the partial delivery. The same shall apply if the supplier is unable to perform. In other respects section VII. 2 shall apply. If the impossibility or the inability occurs during the default in acceptance or if the customer is solely or predominantly responsible for these circumstances, he shall continue to be obliged to make counter-performance.
7. If the supplier is in default and as a result, the customer incurs a loss, he 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 no more than 5% of the value of the 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 period for the performance - considering the statutory exemptions - and the time limit is exceeded, the customer is entitled to rescind the contract within the scope of the statutory provisions.
Any further claims based on default in delivery are governed exclusively by section VII. 2 of these conditions.

IV. Passing of the Risk and Acceptance

1. The risk is passed to the customer, when the item for delivery has left the works. This includes delivery in instalments or if the supplier has also assumed other services, e.g. the forwarding charges or delivery and installation. If an acceptance test is required, it shall be authoritative for the passing of the risk. It must be carried out without undue delay at the date for taking delivery, alternatively after the supplier has reported the delivery ready for acceptance. The customer must not refuse to take delivery if a non-essential defect exists.
2. If the dispatch or the acceptance is delayed or does not occur as a result of circumstances, which are not attributed to the supplier, the risk shall pass to the customer from the date the delivery has been reported as ready for dispatch or acceptance. The supplier undertakes to effect the insurance requested by the customer at the expense of the customer.
3. Delivery in instalments shall be admissible, in so far as it is reasonable for the customer.

V. Reservation of Title

1. The supplier reserves the title to the item for delivery until all payments from the supply contract have been received.
2. The supplier shall be entitled to insure the item for delivery against theft, breakage, fire, water and other damage at the expense of the customer, provided the customer cannot prove that he has taken out any insurance policies himself.
3. The customer must neither pledge the item for delivery nor assign it by way of security. The customer must notify the supplier immediately of any seizure or attachment or other orders by third parties.
4. If the customer behaves contrary to the terms of the agreement, in particular in the case of delay in payment, the supplier shall be entitled to take back the item after a reminder and the customer shall be obliged to return the item. The assertion of the reservation of title or the attachment of the item for delivery by the supplier shall not be considered rescission of a contract.
5. If the customer joins any goods from the supplier with other objects to make them into a single object, it shall be considered as agreed that the customer transfers co-ownership proportionally to the supplier as defined by §947 paragraph 1 of the German Civil Code and that the customer free of charge keeps the object safely for the supplier.
6. In the case of the products being sold, the customer shall assign the claims resulting from reselling the products to the supplier to the amount of the object's value delivered by the supplier including any ancillary rights.
7. If a petition for insolvency proceedings has been filed, the supplier shall be entitled to withdraw from the contract and to request immediate return of the delivered item(s).

VI. Liability for Defects

The supplier warrants material defects and defects of title of the delivery to the exclusion of any further claims - subject to section VII - as follows:

Material defects

1. Any parts, which turn out to be defective as a result of circumstances prior to the passing of the risk, must be rectified or redelivered free of charge at the supplier's option. The supplier has to be notified immediately in writing when any defects have been identified. Any replaced parts become the property of the supplier.
2. Following agreement with the supplier, the customer shall have to allow the required time and opportunity to the supplier to perform any rectification of defects and substitute deliveries the supplier considers necessary; otherwise the supplier shall be discharged from the liability for the resulting consequences. The customer only has the right to remedy the defect himself or to have it remedied by third parties and to request reimbursement of the required expenses from the supplier in urgent cases where industrial safety is endangered or to avert disproportionately large losses. In these cases, the supplier has to be notified immediately.
3. Of the costs incurred due to the rectification or substitute delivery, the supplier shall bear - provided the notice of defect proves justified - the costs of the replacement part including shipping and fair costs of dismantling and installing. 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 the statutory provisions, if the supplier - taking into account the statutory exceptions - lets a reasonable deadline given to him for rectification or substitute delivery because of a material defect pass without result. If the defect is only immaterial, the customer only has the right to reduce the contract price. The right to lower the contract price remains otherwise excluded.
5. In particular, no warranty shall be given in the following cases:
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 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 resulting consequences. The same applies to any modifications made to the object for delivery without prior consent by the supplier.

Defect of title

7. If the use of the object for delivery leads to any violation of commercial or copyrights within the country, the supplier shall procure the right to continued use for the customer at his cost or modify the object for delivery in a way that is reasonable for the customer and so that the violation of the protective right does no longer exist.

If this is not possible in economically reasonable conditions or within a reasonable period, the customer shall be entitled to rescind the contract. Under the conditions stated, the supplier also has a right to rescind the contract.

In addition, the supplier shall release the customer from undisputed claims or claims recognised by declaratory judgement of the proprietor of protective rights concerned.

8. The supplier's obligations stated in section VI. 7 are subject to section VII. 2 in the event of property right or copyright violation concluding.

They are only in force, if

- the customer notifies the supplier immediately of asserted property or copyright violations,
- the customer supports the supplier to a reasonable extent in averting the asserted claims or enables the supplier to carry out the modification measures according to section VI. 7,
- the supplier reserves all rights to measures taken to avert claims including extra-judicial regulations,
- the defect of title is not based upon instructions by the customer and
- the infringement of the right was not caused by the customer modifying the object for delivery arbitrarily or by the customer having used it in a manner not in accordance with the contract.

VII. Liability

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

In the case of culpable violation of essential contractual obligations, the supplier shall also be liable for gross negligence of non-managerial employees and for slight negligence. In the latter event this is limited to the reasonably foreseeable loss typical for contracts.

Any further claims shall be excluded.

VIII. Limitation

Any claims by the customer - for whatever legal grounds - become statute-barred after 12 months. The statutory periods apply to intentional or fraudulent behaviour and in the case of claims according to the Product Liability Act. They shall also apply to defects of a structure or to objects for delivery, which were used according to their usual application for a structure and have 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 left to the customer for use on the object for delivery it was designed 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 (§§ 69 a ff. Copyright Act). The customer shall be obliged not to remove or modify manufacturer details - in particular copyright notes - without prior expressive consent by the supplier.

Any other rights to the software and the documentation including the copies shall remain with the supplier or the software supplier. It is not admissible to grant sublicenses.

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

The supplier's place of business is the place of performance for both parts. The courts having jurisdiction for the supplier's place of business shall decide any differences.

However, the supplier shall also be entitled to sue at the customer's place of business. The law of the Federal Republic of Germany shall apply to the contractual relationship. The application of the UN Sales Convention (United Nations Convention from 11/04/1980 on Contracts for the International Sale of Goods) shall be excluded. In the case of legal actions at foreign courts having jurisdiction for the customer's place of business, the supplier may renounce the application of German law. The delivery and payment conditions presented by the supplier shall be applied to the admissible extent.

XI. Repeat Orders

These terms of delivery shall also apply to repeat orders or repair orders, which are not expressly confirmed in writing.

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