

General Terms and Conditions of Supply



As of January 1 2002

The following Terms and Conditions are only valid for use with business owners as provided for by § 14 of the German Civil Code, legal persons under public law or separate assets in accordance with public law.

The Supplies – which include services, proposals, advice and ancillary services - shall only be made under the following terms and conditions. These nullify any Customer's terms and conditions to the contrary; these shall not be recognised even if the Supplier does not oppose them again on receipt.

I. Offer

The documents forming part of the offer, such as drawings, plans, weights and measurements, are definitive within the usual tolerances accepted within the industry, provided they are not expressly designated as binding. The Supplier shall reserve ownership rights and copyrights to all quotations, drawings and other documents; such documents must not be made accessible to any third parties. The Supplier shall be obliged not to disclose to third parties any plans designated by the Customer as confidential, without the consent of the Customer. Any subsidiary agreements must be made in writing, including any alteration to this clause requiring written form.

Contractual agreements on the quality of the products may not be understood as a warranty for the purposes of § 276 (1) of the German Civil Code, unless any assurances to the contrary are expressly made at the request of the Customer.

II. Scope of supply

The Supplier's written order confirmation shall govern the scope of supply, in the case of an offer by the Supplier with binding timescale and acceptance of the offer by the due time, insofar as the order is not confirmed in good time.

If import and export licences or foreign exchange permits or similar permits or licences are necessary for the execution of the contract, the party responsible for obtaining the same shall make every reasonable effort to obtain the necessary licences or permits in good time.

III. Price and payment terms

- (1) In the absence of a specific agreement, the prices shall apply ex works, inclusive of loading at the works but exclusive of packaging. Statutory value added tax shall be added to the prices at the rate in force at the time.
- (2) In the absence of a specific agreement payment shall be in net cash to the Supplier's bank as follows,
 - 30 % down payment on receipt of the order confirmation,
 - 60 % as soon as the Customer has been advised that the main parts are ready for shipment,
 - the remaining balance within a further month.
- (3) The Customer shall have no right of retention or setoff unless the Customer's claims are uncontested or have been confirmed by a final judgement.
- (4) In the case of overdue accounts receivable the Supplier shall be entitled to declare all accounts receivable to be immediately due and payable. All accounts receivable shall likewise be immediately due and receivable in the event of a subsequent deterioration of the Customer's creditworthiness.

IV. Delivery period

- (1) The delivery period shall commence from the dispatch of the order confirmation, but not prior to the submission of the documents, permits and clearances to be obtained by the Customer, or prior to receipt of any agreed advance payment.
- (2) The delivery period shall be deemed complied with if, prior to its expiration, the goods for delivery have left the works, or the Customer has been advised that the goods are ready for dispatch.
- (3) The delivery period shall be reasonably extended in the event of any action relating to industrial disputes, in particular strikes or lock-outs, and upon the occurrence of unforeseen obstacles due to causes beyond the Supplier control, and other cases of force majeure insofar as such obstacles can be proved to have a substantial impact on the completion or dispatch of the goods for delivery. This shall also apply if these circumstances affect any subcontractors.

The above circumstances shall likewise be outside the Supplier's liability if they arise during an existing delay. In important cases the Supplier shall notify the Customer as soon as possible of the start and end of such obstacles.

- (4) In the event of a delay in shipment at the request of the Customer, starting one month from the notification of readiness for shipment, all storage costs incurred shall be charged to the customer; however in the case of storage at the Supplier's premises this shall be calculated at at least 0.5 % of the invoice amount for each month, maximum 5 % of the invoice amount, unless the Customer can prove lesser damages. However, after a reasonable time limit has been set and elapsed without result, the Supplier shall be entitled to dispose otherwise of the goods for delivery, and to effect delivery to the Customer within a reasonably extended delivery period.

- (5) Fulfilment by the Customer of its contractual obligations shall be a prerequisite for compliance with the delivery period.

V. Transfer of risk and acceptance

- (1) The risk shall pass to the Customer at the latest on dispatch of the parts for delivery. This also applies in the event of any partial shipments or if the Supplier undertakes any additional performance, e.g. shipping costs or delivery and installation.

At the request and the expense of the Customer, the Supplier may insure the shipment against theft, breakage, damage in transit, fire and water damage and other insurable risks.
- (2) In the event of a delay in delivery due to circumstances for which the Customer is responsible, the risk shall pass to the Customer as of the date of readiness for dispatch; however, the Supplier shall be obliged, at the request and expense of the Customer, to take out any insurance desired by the latter.
- (3) Objects delivered, even if slightly defective, shall be accepted by the Customer without prejudice to any rights under Section VII.
- (4) Partial shipments are permitted, provided this is reasonable for the Customer.

VI. Retention of title

- (1) The products remain the property of the Supplier pending receipt of all payments arising from the business relationship.
- (2) All accounts receivable accruing to the Customer from the delivery to a third party of Goods under Title Retention are herewith assigned to the Supplier for security purposes in an amount equivalent to the accounts receivable of the Supplier from the overall business relationship.
- (3) If the Customer processes the goods of the Supplier, the latter shall be deemed the manufacturer and acquire ownership of the new goods being created. If such processing involves the use of other materials, the Supplier shall acquire co-ownership at the ratio of the invoice value of the Supplier's goods to the invoice value of the other materials used. If in the event of the combining or mixing of the Supplier's goods with an object of the Customer, such object is considered the principal object, with the co-ownership of the object devolving on the Supplier at the ratio of the invoice value of the Supplier's goods to the invoice value or – in the absence of such – the fair market value of the principal object. In these cases the Customer shall be deemed to hold any such goods subject to the Supplier's co-ownership.
- (4) The Supplier shall be entitled to insure the goods delivered, at the expense of the Customer, against fire, breakage, fire and water damage and other damage, unless the Customer shows that it has taken out such insurance itself.
- (5) The Customer may neither pledge the goods for delivery nor assign them for security purposes. The Customer shall notify the Supplier immediately if the goods are attached, seized or otherwise disposed of by a third party.
- (6) In the event of any conduct by the Customer in breach of contract, in particular default in payment, the Supplier, having issued a reminder, shall be entitled to take back, and the Customer obliged to surrender, the goods.

The assertion of the right of retention and the attachment of the goods for delivery by the Supplier shall not be deemed to be a withdrawal from the contract.

VII. Warranty

In the case of defects of quality or title of the goods, or in the case that delivery is delayed or becomes impossible, the Supplier offers the following warranty, to the exclusion of any further claims and without prejudice to Section VIII:

Defects of quality:

- (1) Any parts which prove to be defective due to circumstances prior to the transfer of risk shall be improved or replaced, at the Supplier's reasonable discretion, free of charge. The Supplier must be informed immediately, in writing, of the discovery of such defects. Parts which have been replaced become the property of the Supplier.
- (2) The Customer shall give the Supplier sufficient time and opportunity, by arrangement, to undertake any the improvements and deliveries of replacement parts which the Supplier deems necessary; failing this, the Supplier shall be released from any consequential liability arising

therefrom. Only in urgent cases of danger to the operational safety or for the prevention of comparatively major damage, in which case the Supplier must be notified immediately, shall the Customer have the right to rectify the defect itself, or have it rectified by a third party, and to demand repayment of the necessary costs from the Supplier.

- (3) Of the costs arising from the improvements and/or deliveries of replacements, the Supplier shall bear the following, provided the claim is proved to be justified: the cost of the replacement part including dispatch and the reasonable costs of removal and re-installation, and in addition, provided this may reasonably be required depending on the individual circumstances, the costs of making available any necessary fitters and ancillary staff.
- (4) Within the scope of the legal provisions, the Customer has the right to withdraw from the contract if the Supplier - taking account of the legal exceptions - allows a reasonable period, which may have been set for it to carry out improvements or supply replacement parts due to a defect, to elapse without result. If only a slight defect arises, the Customer has only a right to reduce the contractual price. In all other circumstances the right to reduce the contractual price is excluded.
- (5) There shall be no warranty for any damage occurring for the following reasons:
 - unsuitable and improper use,
 - incorrect assembly or start-up by the Customer or a third party,
 - normal wear and tear,
 - incorrect or negligent treatment,
 - incorrect maintenance,
 - use of inappropriate operating materials,
 - defective construction work, unsuitable subsoil,
 - chemical, electrochemical or electrical influences, insofar as these are not due to a fault of the Supplier.
- (6) If the Customer or a third party makes improper improvements or repairs, the Supplier shall not be liable for the consequences. The same applies to any changes to the products supplied, undertaken without the prior consent of the Supplier.

Defects in title:

- (7) If the use of the products supplied leads to a breach of intellectual property rights or copyrights in Germany, the Supplier shall, at its own expense, obtain the right for the Customer to continue to use the product, or modify the product, to an extent reasonable for the Customer, in such a way that it is no longer in breach of the intellectual property rights.

If this is not possible under reasonable economic conditions, the Customer shall be entitled to withdraw from the contract. Under such conditions, the Supplier shall also be entitled to withdraw from the contract.

Moreover, the Supplier shall indemnify the Customer against the effects of any claims by the owner of the relevant intellectual property rights which are uncontested or confirmed by a final judgement.

- (8) The obligations of the Supplier specified in Section VII 7 apply subject to the provisions of Section VIII 2 in the case of breach of intellectual property rights or copyrights.

These obligations shall only exist provided

- the Customer informs the Supplier immediately of any breaches of intellectual property rights or copyrights claimed,
- the Customer supports the Supplier to a reasonable extent in defence against the claims made, or allows the Supplier to undertake modifications in accordance with Section VII 7,
- the Supplier retains the right to all preventive measures, including out-of-court settlements,
- the defective title is not due to instructions received from the Customer,
- the infringement has not been caused by the Customer altering the products supplied without proper authority, or using them in a way which is not in accordance with the contract.

Inability to deliver, delay in delivery:

- (9) The Customer may withdraw from the contract if the Supplier becomes unable to make final and complete delivery prior to transfer of risk. The same applies in the case of insolvency of the Supplier. The Customer may also withdraw from the contract, if, in the case of an order of a batch of similar goods, it is impossible to supply a part of

the total number, and the Customer has a justified interest in refusing a partial shipment; if this is not the case, the Customer may reduce the payment accordingly.

- (10) If the inability to deliver arises during a delay in acceptance, or due to the fault of the Customer, the Customer shall still be obliged to pay.
- (11) If the Customer suffers loss or damage due to a delay resulting from a fault by the Supplier, the Customer shall be entitled to demand compensation for the delay. This shall be equal to 0.5 % for each full week of the delay, but no more than 5 % in total, of the value of that part of the overall shipment which cannot be used at the agreed time or in accordance with the contract. Any additional damages shall only apply under the circumstances described at in Section VIII 2.
- (12) If the Supplier is in delay - taking account of the legal exceptions - and the Customer grants a reasonable period for performance, and such period is not complied with, the Customer shall be entitled to withdraw from the contract within the scope of the legal prescriptions. Further claims arising from delay or inability to deliver shall be determined exclusively in accordance with Section VIII 2 of these Terms and Conditions

VIII. Liability

- (1) If the products supplied cannot be used by the Customer in accordance with the contract due to breach of contractual accessory obligations, in particular the provision of instructions for the operation and maintenance of the products supplied, the provisions of Sections VII and VIII 2 shall apply accordingly, to the exclusion of any further claims by the Customer.
- (2) The Supplier shall only be liable - regardless of the legal grounds - for damages arising other than to the actual products supplied
 - in the case of intent,
 - in the case of gross negligence by the proprietor / managing body or senior employees of the Supplier,
 - in the case of culpable physical injury or damage to health,
 - in the case of defects which it has kept silent about, or in respect of which it has warranted their absence,
 - insofar as liability exists in accordance with the Product Liability Law governing personal injury or damage to property in respect of objects for private use, and this can be traced back to defects in the products supplied.

In the case of culpable neglect of essential contractual obligations, the Supplier shall also be liable in case of gross negligence of non-senior employees, and in the case of ordinary negligence; in the latter case liability shall be limited to contractually typical, reasonably foreseeable damage.

Any further claims are excluded.

IX. Limitation

The Customer's entitlement to make any claim - regardless of the legal grounds - shall expire in 12 months. In the case of negligent or malicious behaviour, and in the case of claims in accordance with the Product Liability Law, the legally-prescribed periods apply. These also apply in the case of defects to a structure, or to products supplied which are used for a structure in accordance with their normal use, which have caused defects in the said structure.

X. Final provisions

- (1) The place of performance for payments and other obligations is the location of the Supplier's works.
- (2) The place of jurisdiction, including in respect of any proceedings relating to bills of exchange or cheques, is Würzburg. The Supplier is also entitled to initiate litigation proceedings at the location of the Customer's head office.
- (3) The laws of the Federal Republic of Germany shall apply.
- (4) The German text is definitive.
- (5) Should any of the above provisions be or become invalid, this shall not affect the validity of the remaining provisions of the General Terms and Conditions of Payment and Delivery. In such a case the parties shall be obliged, in place of the invalid clause, to agree on a valid clause which approximates as closely as possible to the economic intent of the original. The same shall apply in the event of an omission in the provisions of these General Terms and Conditions.

