

Terms and Conditions for Sale and Delivery

I. General

1. All supplies and performances are based on these conditions as well as any separate contractual agreements. Any Customer purchasing conditions that deviate from these terms and conditions are not included in the contents of this contract on acceptance of an order. A contract comes into being – in the absence of a special agreement – with the written order confirmation from the Supplier. The invalidity of any one condition does not affect the validity of the remaining conditions.
2. The Supplier retains ownership rights and copyrights over samples, cost estimates, drawings and such like, as well as over physical and virtual information (including information in electronic format); the aforementioned may not be made accessible to third parties. The Supplier is obliged to make information and documents that are designated by the Customer as confidential accessible to third parties only with the agreement of the Customer.

II. Price and Payment

1. In the absence of any special agreement, prices apply ex-works and include loading at the factory, but exclude packing and unloading. Prices are plus turnover tax at the correspondingly applicable legal amount.
2. In the absence of a special agreement, payment is to be made to the Supplier's account following delivery without any discount. The Customer bears the costs. Field staff of the Supplier are not authorized to collect.
3. Surrendering a bill of exchange or cheque is not considered payment until the paper amount is redeemed. The Customer bears the costs for discounting and collection.
4. Payments are charged for older debts first. If costs and interest have arisen, then the Supplier is authorized to charge for payment of costs, then of the interest and last of the main debt.
5. The Customer has the right to retain payments or offset with counter-claims only to the extent that his counter-claims have been determined as indisputable or final and absolute.

III. Supply Period, Supply Delays

1. The supply period is determined by agreements between the contract parties. Compliance by the Supplier presupposes that all commercial and technical queries between the contract parties have been resolved and that the Customer has fulfilled all obligations incumbent on him, such as e.g. procuring the requisite, official certifications or authorizations or making an advance payment. If this is not the case, then the supply period is extended appropriately. This does not apply if the Supplier is responsible for the delay.
2. Compliance with the supply deadlines is with the proviso that the Supplier receives their own supplies in a timely manner and in good order.
3. The supply deadline is complied with if the contract item has left the Supplier's factory by expiry of said deadline or has been registered as ready for dispatch. If an acceptance procedure must be carried out, then (except in cases of justifiable refusal of acceptance) the acceptance deadline is the deciding factor, alternatively notification of readiness for acceptance.
4. If shipping or acceptance of the contract item is delayed for reasons attributable to the Customer, then the costs resulting from this delay will be invoiced to him starting one month after notification of readiness for dispatch or acceptance.
5. If non-compliance with the supply time is due to Force Majeure, industrial disputes or other events outside of the influence of the Supplier, then the supply period is extended appropriately. The Supplier will inform the Customer about the start and finish of such circumstances at the earliest opportunity.
6. The Customer can withdraw from the contract without setting any time limit if the Supplier finds the entire performance of his duties before transfer of risk definitely impossible. Furthermore, the Customer can withdraw from the contract if, with regard to an order, it is impossible to carry out part of the supply and he has a justified interest in refusing partial supply. If this is not the case, then the Customer must pay the contract price due for the partial supply. The same applies in the event that the Supplier is unable to perform his duties. In other respects, Section VII applies. 2. The Customer is obligated to make a counter-performance if the impossibility or inability to perform occurs during acceptance delay or if the Customer is solely or for the most part responsible for these circumstances.
7. If the Supplier falls behind schedule and damages arise for the Customer as a result of this, then the Customer is entitled to demand a flat-rate damage compensation fee. This fee amounts to 0.5 % for each full week of delay, however, as a whole it will be at the most 5 % of the value of the respective part of the total delivery, where that delivery can not be used on schedule or in accordance with the contract as a result of delay. If the Customer grants the Supplier who is experiencing delays an appropriate deadline for performance (while taking into account the legal cases for exception) and if the deadline is not complied with, then the Customer is entitled to withdraw from the contract within the context of the legal guidelines. Any other claims arising from delivery delay are determined exclusively in accordance with Section VII. 2 of these terms and conditions.

IV. Transfer of Risk, Acceptance

1. The risk transfers to the Customer when the contract item has left the factory and also in those cases when partial deliveries are made or the Supplier has taken on other performances, e.g. shipping costs or delivery and set-up. If an acceptance procedure is to be carried out, then this is decisive for the transfer of risk. Acceptance must be carried out immediately on the acceptance deadline, alternatively after notification by the Supplier about readiness for acceptance. The Customer may not refuse acceptance unless a considerable defect is present.
2. If dispatch or acceptance is delayed or does not take place as a result of circumstances that are not attributable to the Supplier, then the risk transfers to the Customer from the day of notification of readiness for shipping or acceptance. The Supplier is obligated to arrange insurance policies requested by the Customer which are then charged to the Customer.
3. Partial deliveries are permitted as long as these are reasonable for the Customer.

V. Retention of Title

1. All goods supplied remain the property of the Supplier (goods subject to the retention of title) until the fulfillment of all demands, in particular the respective account balance demands, which he is entitled to within the context of business relations (balance reservation), as well as the demands that are accounted for by the insolvency administrator unilaterally in the sense of the choice of fulfillment. This also applies to demands that arise in future and are conditional, e.g. acceptor's bills, and also if payments are made on debts that are specified in particular. This balance reservation expires finally on reconciliation of all debts still open at the time of payment and recorded by this balance reservation.
2. For the Supplier, handling and processing the goods subject to retention of title are in the terms of § 950 BGB (German Civil Code), without any obligation incumbent on him. The handled and processed goods are considered goods subject to the retention of title in the terms of No. 1. If the goods subject to the retention of title are processed, combined or mixed with other goods by the Customer, then the Supplier is entitled to co-ownership rights proportional to the new object in relation to the invoice value of the goods subject to the retention of title against the invoice value of the other goods used. If the Supplier's property rights expire through combination or mixing, then the Customer transfers to the Supplier the property rights to which he is entitled for the new object or item to the degree of the invoice value of the goods subject to retention and holds them in custody for the Supplier free of charge. The co-ownership rights of the Supplier apply as goods subject to the retention of title in the terms of No 1.
3. The Customer may only sell the goods subject to the retention of title in the course of normal business according to his usual business conditions and as long as he is not in default of payment, provided that the demands arising from reselling are transferred to the Supplier in accordance with No.s 4 to 6. He is not entitled to other means of disposal regarding the goods subject to the retention of title.
4. The debts arising from reselling the goods subject to the retention of title, together with all securities that the Customer acquires for the demand, are ceded to the Supplier at this point in time already. They are used as security to the same degree as the goods subject to the retention of title. If the goods subject to the retention of title are sold by the Customer together with other goods that were not purchased from the Supplier, then the debt arising from reselling will be ceded to the Supplier relative to the invoice value of the goods subject to the retention of title against the invoice value of the other goods sold. In the case of reselling goods where the Supplier has proportional co-ownership rights according to No. 2, the Supplier will be ceded a part corresponding to his co-ownership interest. If the goods subject to the retention of title are used by the Customer to fulfil a factory contract, then the debt arising from the factory contract is ceded in advance to the Supplier to the same degree.
5. The Customer is entitled to redeem any debts from reselling. This entitlement to redemption expires in the case of revocation by the Supplier, however, at the latest on default of payment, non-redemption of a bill of exchange or application to instigate an insolvency procedure. The Supplier will only then make use of his right to revocation if following conclusion of the contract it becomes apparent that the payment claim of the Supplier from this or other contracts with the Customer is endangered as a result of his insufficient ability to perform his duties. On request by the Supplier, the Customer is obliged to inform his customers immediately about the transfer to the Supplier and to give the Supplier the documents required for redemption.
6. Transfer of debts arising from reselling is not permitted, unless the matter concerns transference in the sense of genuine factoring which is reported to the Supplier and whereby the factoring proceeds exceed the value of the secured debt of the Supplier. The Supplier's demand is due immediately with the credit note for the factoring proceeds.
7. The Customer must inform the Supplier immediately about any seizure or other inhibiting activities by third parties. The Customer bears all costs that must be expended to revoke access or to transport back goods subject to the retention of title, as far as these are not replaced by third parties.
8. If the Customer becomes in default of payment or does not redeem a bill of exchange by its due date, then the Supplier is entitled to take back the goods subject to the retention of title and, if necessary, to enter the Customer's business premises for this purpose. The same applies if, following conclusion of this contract, it becomes apparent that the payment claim of the Supplier arising from this or other contracts with the Customer is endangered by his insufficient ability to perform his duties. Taking goods back does not signify withdrawal from this contract. Guidelines of the insolvency ordinance remain unaffected. Application for instigation of the insolvency procedure entitles the Supplier to withdraw from the contract and to demand the immediate return of the contract item.
9. If the invoice value of the existing securities exceeds the secured demands including subsidiary demands (interest; costs or such like) by a total of more than 50 %, then the supplier is obliged in as far as that goes, on request by the Customer, to release securities as chosen by the Supplier.

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VI. Warranty

The Supplier guarantees for material defects and defects of title of the delivery to the exclusion of any further claims – except for Section VII:

Material defects:

1. All those parts that prove to be faulty as a result of circumstances before transfer of risk are to be improved or redeveloped, depending on the choice of the Supplier, free of charge. Once said defects have been determined they are to be reported immediately in writing to the Supplier. Replaced parts become the property of the Supplier.
2. In order to carry out all the improvements that appear necessary to the Supplier and replacement supplies, the Customer must state the necessary time and opportunity following agreement with the Supplier; otherwise, the Supplier is released from any liability for consequences resulting from this. Only in urgent cases where operational safety is endangered or in order to avert excessively large damage where the Supplier must be informed immediately, then the Customer has the right to remove the defect by their own efforts or by a third party and to demand compensation for the necessary expenditures from the Supplier.
3. The Supplier bears the costs arising from improvement work or replacement delivery – in as far as the claim proves to be justified - and the costs of the replacement part including dispatch and the appropriate costs for dismantling and installation. Furthermore, if the individual case calls for it, the demand can rightly be made to include the costs for any necessary provision of his mechanics and auxiliary staff.
4. Within the context of the legal guidelines, the Customer has the right to withdraw from the contract if the Supplier (while taking into account legal cases of exception) allows an appropriate deadline to expire without any results where that deadline was set for him to improve or replace the delivery because of material defects. If the defect is not considerable, then the Customer merely has a right to have the contract price reduced. Otherwise, the right for a reduction in the contract price remains excluded.
5. No guarantee is assumed in particular for the following cases:
Unsuitable or improper use, faulty assembly or commissioning by the Customer or a third party, natural wear, faulty or negligent handling, incorrect maintenance, unsuitable operating materials, faulty construction work, unsuitable site, chemical, electro-chemical or electrical influences – in as far as the Supplier is not responsible for these.
Used contract items are carefully checked before being sold; nevertheless, liability for material defects is excluded.
Certain components are subject to wear and tear during operation. No claims based on defects can be made valid for wear due to operation.
6. If the Customer or a third party makes any improper improvements, then the Supplier is not liable for any consequences resulting from this.
The same applies for any changes made to the contract item that have been undertaken without previous agreement by the Supplier.

Defect of title:

7. If using the contract item leads to an infringement of industrial property rights or copyrights at home (as opposed to abroad), then at his own expense, the Supplier will procure in principle the right to further use for the Customer or modify the contract item in a way reasonable for the Customer so that the property right infringement no longer exists.

If this is not possible for economically appropriate conditions or is not possible within an appropriate period of time, then the Customer is entitled to withdraw from the contract. Under these specified prerequisites, the Supplier also has a right to withdraw from the contract.

Furthermore, the Supplier will release the Customer from any undisputed claims or claims recognized by declaratory judgement by the relevant owner of the industrial property rights.

8. The Supplier's obligations stated in Section VI. 7 subject to Section VII. 2 for the case of infringements of property rights and copyrights are final.

They only exist if

- The Customer informs the Supplier immediately about any valid infringements of property rights or copyrights,
- The Customer supports the Supplier to the appropriate degree in defending against the contended claims, or makes it possible for the Supplier to carry out modification measures in accordance with Section VI. 7,
- The Supplier retains all rights regarding defence measures including extra-judicial regulations,
- The defect of title is not based on any instruction from the Customer, and
- The infringement of rights was not caused as a result of the Customer making any changes himself to the contract item or using it in a manner not in compliance with the contract.

VII. Liability

1. The regulations of Sections VI and VII. 2 apply accordingly to the exclusion of further claims by the Customer if the contract item can not be used by the Customer in compliance with the contract due to a fault attributable to the supplier as a result of omitted or faulty implementation of suggestions and advice made before or after conclusion of contract, or as a result of infringement of other contractual collateral obligations – in particular instructions for operation and maintenance of the contract item.
2. For any damage which does not actually occur on the contract item itself, the Supplier is only liable – for whatever legal reasons – in the following cases:

- In case of malice aforethought,
- In case of gross negligence of the owner / representatives or executive employees,
- In case of culpable injury to life, body, health,
- In case of defects that have been fraudulently concealed or the absence of which the Supplier has guaranteed,
- In cases of contract item defects in as far as personal and material defects on privately used objects are covered by liability according to the product liability law.

In case of culpable infringement of essential contractual obligations, the Supplier is also liable for gross negligence of non-executive employees and for a slight degree of negligence - in the latter case limited to reasonable, predictable damage typical for the contract.

All other claims are excluded.

VIII. Limitation of Actions

All Customer claims – for whatever legal reasons – expire in 12 months. The legal deadlines apply for deliberate or fraudulent behaviour as well as for claims made in accordance with the product liability law. They also apply for defects in a building structure or for contract items that were used for a building structure in accordance with their usual mode of use and have caused its defectiveness.

IX. Use of Software

In as far as software is included in the scope of delivery, the Customer is being granted a non-exclusive right to use the software supplied including its documentation. The right is transferred for use on the contract item it is determined for. Use of the software on more than one system is prohibited.

The Customer may only reproduce, revise or translate the software or transform the object code into the source code within the context of the legally permissible scope (§§ 69 a ff. UrhG [German copyright law]). The Customer is obliged not to remove the manufacturer's information – in particular the copyright marks – or change said information without previous, explicit agreement by the Supplier.

The Supplier and/or the software suppliers retain all other rights on the software and documentation including copies thereof. Allocation to sub-licensees is not permitted.

X. Applicable law, Place of Jurisdiction

1. The law of the Federal Republic of Germany which is authoritative for legal relations between domestic parties applies exclusively for all legal relations between the Supplier and the Customer.
2. Place of fulfilment for supply and payment (also for bills of exchange and cheque complaints) is the head office of the Supplier.
3. Place of jurisdiction is the court responsible at the headquarters of the Supplier. However, the Supplier is entitled to institute legal proceedings at the head office of the Customer.

Status 01/2002

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