

I. Scope

1. These Terms and Conditions for Sale and Delivery apply exclusively to entrepreneurs, legal entities under public law or special funds under public law within the meaning of § 310 (1) of the German Civil Code (BGB).
2. Special agreements made with the Customer in individual cases (including collateral agreements, supplements and amendments) take precedence over these Terms and Conditions for Sale and Delivery in all cases. Subject to proof to the contrary, a written contract or our written confirmation is authoritative for the content of such agreements.

II. 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.

III. 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.
3. The Customer has the right to retain payments only to the extent that his counter-claims have been determined as indisputable or final and absolute.
4. The Customer has the right to offset with counter-claims from other legal relations only to the extent that they have been determined as indisputable or final and absolute.

IV. 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. The supplier has to inform the customer as soon as possible of any delays that become apparent.

3. The supply period is met 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 all other respects, Section VIII. 2 applies.

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 cannot 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. The Customer commits to declare within a reasonable period of time at the Supplier's request whether he will exercise his right to withdraw from the contract.

Any other claims arising from delivery delay are determined exclusively in accordance with Section VIII. 2 of these terms and conditions.

V. 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.

VI. Retention of Title

1. We reserve title to the delivered item until full payment of all claims arising from the delivery contract. This also applies to all future deliveries, even if we do not always expressly refer to this. We are entitled to take back the object of sale if the customer acts in breach of the contract.
2. As long as ownership has not yet passed to the customer, the customer is obliged to treat the purchased goods with care. If maintenance and inspection work has to be carried out, the customer must carry this out in good time at his own expense. As long as ownership has not yet passed to the customer, the customer must inform us immediately in writing if the delivered item is seized or otherwise subject to intervention by third parties. Insofar as the third party is not in a position to reimburse us for the judicial and extra-judicial costs of an action pursuant to § 771 ZPO (German Code of Civil Procedure), the customer is liable for the loss incurred by us.
3. The customer is entitled to resell the reserved goods in the normal course of business. The customer hereby assigns to us the claims against the customer arising from the resale of the goods subject to retention of title in the amount of the final invoice amount agreed with us (including value added tax). This assignment applies regardless of whether the purchased goods have been resold without or after processing. The customer remains authorized to collect the claim even after the assignment. Our authority to collect the claim ourselves remains unaffected. However, we will not collect the claim as long as the customer meets his payment obligations from the collected proceeds, is not in default of payment and, in particular, no application for the opening of insolvency proceedings has been filed or payments have not been suspended.
4. The processing or transformation of the object of sale by the customer is always carried out in our name and on our behalf. In this case, the customer's expectant right to the object of sale continues in the transformed object. If the object of sale is processed with other objects not belonging to us, we acquire co-ownership of the new object in the ratio of the objective value of our object of sale to the other processed objects at the time of processing. The same applies in the event of mixing. If the mixing is carried out in such a way that the customer's item is to be regarded as the main item, it is agreed that the customer transfers co-ownership to us on a pro rata basis and keeps the sole ownership or co-ownership thus created for us. In order to secure our claims against the customer, the customer also assigns to us such claims against a third party which accrue to him through the connection of the reserved goods with a property; we accept this assignment already now.
5. We commit ourselves to release the securities to which we are entitled at the request of the customer insofar as their value exceeds the claims to be secured by more than 20 %.

VII. Claims for defects

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

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 replaced free of defects, 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 - if the complaint proves to be justified - the expenses necessary for the purpose of subsequent performance, if this does not result in a disproportionate burden on the Supplier. If the expenses increase due to the fact that the Purchaser has taken the purchased goods to a place other than the place of performance after delivery, any additional costs incurred as a result must be borne by the Supplier. In the event of the sale of a newly manufactured item, the Supplier also reimburses, to the extent of its legal obligation, the expenses incurred by the Customer in the context of claims under a right of recourse in the supply chain.
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. Further claims are determined exclusively in accordance with Section VIII. 2 of these Terms and Conditions.
6. No warranty 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.
7. 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:

8. 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.

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

10. They only exist if
 - a. The Customer informs the Supplier immediately about any valid infringements of property rights or copyrights,
 - b. 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 VII. 7,
 - c. The Supplier retains all rights regarding defence measures including extrajudicial regulations,
 - d. The defect of title is not based on any instruction from the Customer, and
 - e. 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.

VIII. Liability of the supplier, Exclusion of liability

1. The regulations of Sections VII and VIII. 2 apply accordingly to the exclusion of further claims by the Customer if the contract item cannot 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:
 - a. In case of malice aforethought and gross negligence,
 - b. In case of culpable injury to life, body, health,
 - c. In case of defects that have been fraudulently concealed,
 - d. Within the framework of a warranty commitment,
 - e. 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 the case of culpable infringement of essential contractual obligations, the Supplier is also liable for slight negligence, but limited to reasonable, predictable damage typical for the contract.

All other claims are excluded.

IX. Limitation period

All Customer's claims - on whatever legal grounds - expire by limitation after 12 months; this also applies to the limitation of claims under a right of recourse in the supply chain pursuant to Section 445b (1) of the German Civil Code (BGB), in case the last contract in this supply chain is not a consumer goods purchase. The suspension of the statute of limitations according to § 445b para. 2 BGB remains unaffected. The statutory time limits apply to claims for damages in accordance with Section VIII. 2 a-c and e. They also apply to defects in a building or to delivery items which have been used for a building in accordance with their normal use and have caused its defectiveness.

X. 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.

XI. 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 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.

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