

General Terms and Conditions of Business

For use with regard to:

1. a person who acts in pursuit of his commercial or self-employed vocational activity (businessman) on conclusion of the contract;
2. legal entities under public law.

I. General provisions

1. All deliveries and services shall be based on these terms and conditions if no separate contractual agreements have been concluded. Deviating purchasing terms and conditions of the Buyer are also not provisions of the contract through order acceptance. Collateral agreements and amendments shall require written confirmation of the Supplier for their validity.
2. A contract shall come into force – in the absence of separate agreement – on receipt of the Supplier's written order confirmation. The Supplier's written order confirmation shall prevail for the scope of the delivery or the quotation shall prevail in the event of a quotation by the Supplier subject to a fixed term and timely acceptance if no prompt order confirmation results.
3. The Supplier shall retain proprietary rights and intellectual property rights to samples, drawings, cost estimates and other information of a tangible and intangible kind - even in electronic form; they should not be made available to third parties.
4. The Supplier shall undertake to only make information and documents available to third parties with the Buyer's consent where they are designated as confidential by the Buyer.

II. Price and payment

1. In the absence of specific agreement, prices shall apply ex-works including loading in the plant, but excluding packaging. Value added tax at the prevailing statutory level shall be added to the prices.
2. In the absence of specific agreement, payment should be made to the Supplier's account without any deduction and indeed:
 - 1/3 advance payment on receipt of the order confirmation,
 - 1/3 as soon as the Buyer is notified that the main components are ready for dispatch,
 - the balance within one month after transfer of risk within the meaning of Section IV.
3. The right to withhold payments or to offset with counterclaims shall only be due to the Buyer in so far as its counterclaims have been established to be beyond dispute or legally valid.

III. Delivery time, delayed delivery

1. The delivery time shall result from the agreements between the parties to the contract. Compliance with it by the Supplier presupposes that all the commercial and technical issues between the parties to the contract are clarified and the Buyer has fulfilled all the obligations incumbent on it, such as furnishing the required official certifications or approvals or the furnishing of an advance payment. If this is not the case, the delivery time shall be appropriately extended. This shall not apply if the Supplier is responsible for the delay.
2. The delivery date shall be complied with if the delivery item has left the Supplier's plant before its expiry or readiness for dispatch is notified to the Buyer. If acceptance has to take place, the acceptance date shall prevail - except in the event of legitimate refusal to take delivery - or alternatively the Supplier's notification of readiness for acceptance.
3. If the dispatch or acceptance of the delivery item is delayed for reasons for which the Buyer is responsible, costs accruing due to the delay are charged to it, starting one month after notification of the readiness for dispatch or acceptance.
5. If non-compliance with the delivery time is attributable to force majeure, industrial disputes, lack of or non-timely self-supply or other events that are beyond the Supplier's control, the delivery time shall be appropriately extended. The Supplier will notify the Buyer about the commencement and end of such circumstances as soon as possible.
6. The Buyer may withdraw from the contract without the fixing of a deadline if complete performance ultimately becomes impossible for the Supplier before transfer of risk. Furthermore, the Buyer may withdraw from the contract if the execution of a part of the delivery becomes impossible with an order and it has a legitimate interest in the rejection of partial delivery. If this is not the case, the Buyer must pay the contract price apportionable to the partial delivery. Otherwise, Section VII. 2 shall apply. If the inability occurs during the default in acceptance or if the Buyer is solely or largely responsible for these circumstances, it shall remain obliged to the consideration.
7. If the Supplier falls into arrears and a loss accrues to the Buyer therefrom, it shall be entitled to request a lump-sum compensation for delayed performance. It shall amount to 0.5%, overall, for each full week of delay but a maximum of 5% of the value of that proportion of the total delivery that cannot be used in time or in accordance with the contract as a result of the delay.

If the Buyer sets a reasonable deadline to perform for the Supplier - taking into account exceptional statutory cases - after the due date and if the deadline is not complied with, the Buyer shall be entitled to withdrawal within the framework of the statutory provisions.

Further claims from delay in delivery shall be determined exclusively in accordance with Section VII. 2 of these terms and conditions.

IV. Transfer of risk, acceptance

1. The risk shall transfer to the Buyer if the delivery item has left the plant and, indeed, even if partial deliveries take place or the Supplier has assumed even more performances, e.g. the shipping costs or delivery and installation.

If an acceptance has to take place, this shall be decisive for the transfer of risk. It must be carried out immediately on the acceptance date or alternatively after the Supplier's notification about the readiness for acceptance. The Buyer may not refuse acceptance in the event of the existence of an insignificant defect.

2. If dispatch or acceptance is delayed or does not occur as a result of circumstances not attributable to the Supplier, the risk shall transfer to the Buyer from the day of notification of the readiness for dispatch or acceptance. The Supplier shall undertake to conclude the insurance policies that the Buyer requests at the latter's expense.

3. Partial deliveries shall be permitted if reasonable for the Buyer.

V. Reservation of title

1. The Supplier shall retain ownership of the delivery item until receipt of all the payments from the supply contract.

2. The Supplier shall be entitled to insure the delivery item against theft, breakage, fire, water and other losses, at the Buyer's expense, unless the Buyer itself has demonstrably concluded the insurance policy.

3. The Buyer may neither sell, pledge nor assign the delivery item as security without the Supplier's agreement. It must immediately notify the Supplier in the event of seizures and confiscation or other injunctions by third parties.

4. In the event of conduct by the Buyer contrary to the terms of the contract, particularly in the event of delay in payment, the Supplier shall be entitled to the return of the delivery item after a warning and setting of an appropriate deadline and the Buyer shall be obligated to restitution.

5. In view of the reservation of title, the Supplier may only reclaim the delivery item if it has withdrawn from the contract.

6. The application for commencement of insolvency proceedings shall entitle the Supplier to withdraw from the contract and to request the immediate return of the delivery item.

VI. Claims arising from defects

For material and title defects of the delivery, the Supplier shall guarantee as follows with the exclusion of additional claims and subject to Section VII:

Material defects

1. All those parts, which transpire to be defective because of a circumstance before the transfer of risk, should be repaired or replaced free from defects at the Supplier's option at no cost. Discovery of such defects should be notified to the Supplier in writing without delay. Replaced parts shall become the Supplier's property.

2. To carry out all the rectifications and replacements that appear necessary to the Supplier, the Buyer must give the necessary time and opportunity after agreement with the Supplier; otherwise the Supplier shall be released from liability for the consequences arising therefrom. The Buyer shall only have the right to remedy the defect itself or to have it done by third parties and to request compensation for the necessary expenditure from the Supplier in urgent cases of endangerment of operational safety or for the defence of excessively severe damage, whereby the Supplier should be notified immediately.

3. Of the direct costs accruing due to the rectification or replacement, the Supplier shall bear the costs of the replacement item including dispatch - if the notice of defect transpires to be justified. In addition, it shall bear the costs of dismantling and fitting as well as the costs of the provision possibly required of the necessary assemblers and auxiliary personnel including travel expenses, if no excessive encumbrance of the Supplier thereby arises.

4. The Buyer shall have a right to withdrawal from the contract, within the framework of the statutory provisions, if the Supplier - taking into account exceptional statutory cases - permits a reasonable deadline set for it for rectification or replacement due to a material defect to expire in vain. If there is only an insignificant defect, the Buyer shall only be entitled to a right for reduction of the contract price. The right to reduction of the contract price shall otherwise be excluded.

Other entitlements shall be determined by Section VII. 2 of these terms and conditions.

5. No guarantee is provided in the following cases in particular:

Inappropriate or improper use, incorrect assembly or commissioning by the Buyer or third parties, wear and tear, incorrect or negligent handling, incorrect maintenance, unsuitable operating materials, defective construction work, unsuitable building land, chemical, electrochemical or electrical influences - if the Supplier is not responsible for them.

6. If the Buyer or a third party rectifies incorrectly, the Supplier shall not be liable for the consequences arising therefrom. The same shall apply for changes to the delivery item made without the Supplier's prior agreement.

Defects in title

7. If use of the delivery item results in the infringement of industrial proprietary rights or intellectual property rights in the home market, the Supplier will essentially provide to the Buyer at its own cost the right to further use or will modify the delivery item in an appropriate way for the Buyer in such a way that the infringement of proprietary rights no longer applies.

If this cannot be guaranteed at economically reasonable terms or within an appropriate period, the Buyer shall be entitled to withdrawal from the contract. Under the specified circumstances, the Supplier shall also be entitled to a right to withdrawal from the contract.

Furthermore, the Supplier will release the Buyer from claims of the concerned owners of intellectual property rights established to be beyond dispute or legally valid.

8. The obligations of the Supplier specified in Section VI. 7 shall be conclusive in the event of the infringement of proprietary or intellectual property rights subject to Section VII. 2.

They shall only apply if

- the Buyer immediately notifies the Supplier of asserted infringements of proprietary or intellectual property rights,
- the Buyer supports the Supplier to an appropriate extent in the defence of asserted claims or makes it possible for the Supplier to carry out the modification measures as per Section VI. 7,
- all the defence measures including non-judicial arrangements remain reserved to the Supplier,
- the defect in title is not based on an instruction of the Buyer and
- the infringement of rights was not caused because the Buyer has arbitrarily changed the delivery item or used it in a way not as provided in the contract.

VII. Liability

1. If, through negligence of the Supplier as a result of omitted or incorrect execution of recommendations and advice carried out before or after conclusion of the contract or due to the infringement of other contractual ancillary obligations - particularly instructions for servicing and maintenance of the delivery item - the delivery item cannot be used by the Buyer as provided in the contract, the arrangements of Sections VI and VII. 2 shall apply accordingly with the exclusion of the Buyer's additional claims.

2. For damage that has not arisen to the delivery item itself, the Supplier shall be liable – for whatever legal reasons - only

- a) in the event of wilful intent,
- b) in the event of gross negligence of the owner/executive bodies or senior executives,
- c) in the event of negligent harm to life, body, health,
- d) in the event of defects that it has fraudulently concealed or the absence of which it has guaranteed,
- e) in the event of defects to the delivery item if there is liability according to the German Product Liability Act [Produkthaftungsgesetz] for bodily injuries or property damage to objects in private use.

In the event of negligent infringement of specific contractual obligations, the Supplier shall also be liable for the gross negligence of non-senior executives and for ordinary negligence, limited in the latter instance to losses that are typical for the contract and reasonably foreseeable.

VIII. Statute of limitations

All the Buyer's claims - for whatever legal reasons - shall become statute-barred in 12 months. The statutory deadlines shall apply for compensation claims as per Section VII. 2 a to e.

IX. Software usage

If software is included in the scope of delivery, the Buyer is granted a non-exclusive right to use the supplied software including its documents. It is assigned for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited.

The Buyer may only duplicate, rework or translate the software or convert it from the object code into the source code to the legally-permitted extent (Sections 69a et seq. of the German Copyright Act [Urheberrechtsgesetz]). The Buyer shall undertake not to remove the manufacturer's details - particularly copyright notices - or to alter them without the Supplier's prior explicit agreement.

All other rights to the software and documents including copies shall remain with the Supplier or the software suppliers. The granting of sublicences is not permitted.

X. Applicable law/legal venue

1. The law of the Federal Republic of Germany applicable for the legal relationships of German parties between each other shall exclusively apply for all legal relationships between the Supplier and the Buyer.

2. The legal venue shall be the competent court for the Supplier's headquarters. However, the Supplier shall be entitled to lodge an action at the Buyer's registered office.