

General terms and conditions

Section 1 Area of applicability

- (1) Our general terms and conditions (terms and conditions) shall apply to the provision of deliveries and services to merchants, legal entities under public law or special funds under public law.
- (2) Our terms and conditions apply exclusively; any conflicting or deviating terms and conditions of the customer are not acknowledged unless we have explicitly agreed to their applicability. Our terms and conditions shall also apply if we unconditionally perform the deliveries and services upon knowledge of conflicting or deviating terms and conditions of the customer.

Section 2 Offer and conclusion of contract - declarations - prohibition of assignment

- (1) The customer's order constitutes a binding offer. Any offers or cost estimates made by us beforehand shall be non-binding. We can accept orders or purchase orders within fourteen days upon receipt.
- (2) Verbal confirmations made by our representatives or other assistants shall be confirmed in writing by us.
- (3) Statements made by us on the object of delivery or service (e.g. weights, measurements, values in use, load-bearing capacity, tolerances and technical data) as well as our illustrations of the same (e.g. drawings and images) are only approximate unless applicability for the purpose contractually envisaged requires precise conformity.
- (4) Descriptions of the object of the agreement or of the scope of delivery and performance, specifications of features and technical data shall not constitute a quality guarantee.
- (5) Contractual entitlements cannot be assigned by the customer without our written consent unless the regulation of Section 354 a HGB [Handelsgesetzbuch = German Commercial Code] applies.

Section 3 Services – Customer's Obligations to Cooperate

- (1) Deviations according to custom and usage and deviations resulting from legal provisions or deviations constituting technical improvements, as well as replacement of components with equivalent parts are permissible provided they do not impair usability for the contractually agreed purpose.
- (2) Any and all work activities shall be performed at normal working times, at places and at times where the construction works section at the site is freely accessible.
- (3) Electricity, water, toilets and, on the condition that any assembly works must be performed at a height of more than two metres, scaffolds, working platforms and ladders shall be provided by Customer free of charge.
- (4) Customer shall be obligated to expressly release any working drawings. Any and all released working drawings include a rebuttable assumption of the specification of services agreed upon.
- (5) We reserve all rights in ownership and copyrights in illustrations, drawings, calculations and other documents. This shall also apply to written documents which are identified as confidential. Before forwarding them to third parties, the customer requires our explicit written consent.

Section 4 Usage of Software Programs

- (1) To the extent to which the scope of delivery includes any software programs and to the extent to which no separate contract is concluded in this respect, Customer's rights in relation to the use of such software programs shall be subject to this paragraph.
- (2) Customer shall be granted a non-exclusive right to the use of any delivered software programs, including any related documentation. Such software programs are provided for the use on the respective delivery item and the use on more than one system is hereby expressly prohibited.
- (3) Customer shall have the right to reproduce, process or translate the software programs or convert their object code to the source code only to the extent to which this is admissible on the basis of the law (section 69a et seq. UrhG [Urheberrechtsgesetz – German Copyright Act]). Customer undertakes to refrain from removing or changing any manufacturer information – in particular any copyright notices – without having previously obtained our express written approval.
- (4) Any other rights in relation to the software programs and their related documentation, including any copies thereof, shall remain with us and/or with the software program provider. Customer shall be prohibited from granting any sub-licences.

Section 5 Prices

- (1) Any and all prices shall be applicable to the scope of services and deliveries agreed upon; possible additional or special services shall be invoiced separately. Unless expressly agreed upon between the Parties, any costs for on-site assembly works shall be invoiced on the basis of the actual working time in compliance with our applicable hourly rates, plus any surcharges due to difficulties; the same shall be applicable to commissioning times.
- (2) Our prices are quoted in Euro ex works, plus packaging and delivery costs, applicable value-added tax, customs duties for any expert deliveries, charges and other public fees.
- (3) Should the goods or services be delayed by more than four months upon conclusion of the agreement and should the costs for wages, material, packaging material, freight, taxes or duties have increased in the meantime, the agreed price can be adjusted according to the influence of the aforementioned cost factors. If the agreed prices are based on our list prices and the goods or services are not made until more than four months after the conclusion of the agreement, our list prices valid upon delivery or performance shall apply (in each case less the agreed percentage or fixed discount). If the price thus changes by more than 5 % vis-à-vis the contractually agreed price, the customer shall be entitled to withdraw from the agreement, provided we insist on an increased price in spite of the announcement of the intention of withdrawal.

Section 6 Terms and conditions of payment

- (1) The customer is obliged to pay the price upon receipt of the goods or other service immediately without deduction of any cash discount.
- (2) The customer shall only have a right to set off if their counterclaims are legally binding, uncontested or acknowledged by us.
- (3) Any right of retention on the part of the customer is excluded unless the counterclaim of the customer originates from the same contractual relationship and is uncontested or legally binding.
- (4) In the event of legally admissible or contractually agreed payments in instalments or payments in account, we may terminate the contractual relationship without notice if the customer
 - a) is in default with the payment of the deduction or the rate for two consecutive deadlines or
 - b) is in default with the payment of a deduction or a rate in the amount of the deduction or the rate for two due deadlines in a period which extends over more than two deadlines.
- (5) Should it become apparent after the conclusion of the agreement that our purchase price entitlement is at risk due to insufficient financial status of the customer (e.g. due to a request for the opening of insolvency proceedings), then, according to statutory regulations, we are entitled to refuse service and - if applicable after setting a deadline - to withdraw from the agreement (Section 321 BGB; Bürgerliches Gesetzbuch = German Civil Code). For contracts concerning the production of unreasonable objects (custom-made productions), we may withdraw immediately; the legal regulations about the dispensability of setting a deadline shall remain unaffected.

Section 7 Performance and time of performance

- (1) Binding dates for delivery or services require our written confirmation for evidence purposes. To the extent to which a cooperation obligation of the customer is required, any stipulated performance period shall not begin before the customer has complied with this obligation.
- (2) We shall be entitled to make partial deliveries if
 - the partial delivery can be used by the customer within the scope of the contractual intended use
 - the delivery of the remaining ordered goods is guaranteed and
 - the customer does not accrue any material additional expenses (unless the customer declared its readiness to assume these costs).
- (3) If, despite proper provision, we do not receive deliveries or services of our sub-suppliers or subcontractors at all, in improper condition or late due to reasons for which we are not responsible or in the event of force majeure, we shall inform the customer in due time. In this case, we shall be entitled to defer the delivery or performance of services for the duration of the impediment or to completely or partially withdraw from the agreement due to the part not yet fulfilled, provided that we have complied with our above-specified information duties and have not assumed the procurement or production risk. Equivalent to force majeure are strikes, lock-outs, official intervention, shortages in energy and raw materials, transport bottlenecks and operational hindrances for which we are not responsible, e.g. by means of fire, water and mechanical damages and all other hindrances which, in objective terms, have not been culpably caused by us.
- (4) If a date of delivery or performance or a period of delivery or performance is agreed as binding or if the agreed date or period of delivery or performance is exceeded by more than four weeks or if the customer cannot be objectively expected to continue the agreement with a non-binding date of performance, the customer is entitled to withdraw from the agreement with respect to the part not yet performed. There shall be no further rights, in particular claims for damages, of the customer in this case.

Section 8 Liability for default - representation

- (1) If the assertion of rights of the customer requires that a reasonable grace period be set, such grace period shall be at least two weeks.
- (2) Should we come into default, our liability for the compensation of the default damage is limited to 5 % of the contract price in case of simple negligence. Further claims of the customer shall remain unaffected.
- (3) If the article to be supplied is only specified according to generic terms, we shall only be liable for compensation of damage if we do not prove that we are not responsible for the subsequent performance, delay of the delivery or the defectiveness of the article. The regulations of Section 11 shall apply in addition.
- (4) Only if we are responsible for any such violations of contractual obligations shall Customer have the right to withdraw from this Contract in compliance with statutory provisions.

Section 9 Performance - transfer of risk - acceptance - default of acceptance

- (1) Any and all deliveries shall be made ex works and this shall also be the place of fulfilment, unless we are obligated to perform any erection and/or assembly works.
- (2) At the request and expense of the customer, the goods shall be sent to another destination (sale to destination). Unless otherwise agreed, we shall be entitled to determine the type of shipment (in particular transport company, shipment route, packaging) ourselves. The shipment is insured by us against theft, breakage, transport, fire and water damages or any other insurable risk only at the explicit request and expense of the customer.
- (3) The risk of accidental loss and accidental deterioration of the goods shall pass to the customer upon handover at the latest. In case of a sale to destination, however, the risk of accidental loss and accidental deterioration

of the goods and the risk of delay shall pass to the forwarding agent, carrier or any other person or institution engaged with the execution of the shipment upon delivery of the goods.

- (4) If an acceptance has been agreed, such acceptance is relevant for the transfer of risk. Apart from that, the statutory provisions on contracts for work and services (Werkvertragsrecht) shall apply mutatis mutandis for the agreed acceptance.
- (5) If a test run has been agreed, the risk passes to the customer after successful completion of the test run, provided that the test run is effected immediately upon operational mounting and assembly. It is deemed equivalent to the handover or acceptance if the customer is in default of acceptance.
- (6) Only if we are responsible for any such violations of contractual obligations shall Customer have the right to withdraw from this Contract in compliance with statutory provisions.
- (7) If the customer is in default of acceptance or fails to perform an act of cooperation, or if the delivery is delayed for other reasons for which the customer is responsible, we shall be entitled to claim compensation for damage incurred including additional expenses (e.g. storage costs). In this respect, we will charge a flat-rate compensation in the amount of 0.25 % of the invoice amount of the articles of delivery to be stored per full week starting from the period of delivery or - in the absence of such period - from the notification of readiness for shipment of the goods. The proof of higher damages and our statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination) shall remain unaffected; however, the flat rate shall be offset against further monetary claims. The customer is reserved the right to provide evidence that we have not suffered any damage at all or that such damage is significantly lower than the aforementioned flat rate.

Section 10 Liability for defects - Statute of limitations

- (1) The customer shall comply with the obligations according to Section 377 HGB. Defects recognisable upon delivery shall also be reported to the transport company and the acceptance of the defects must be arranged by this company. The notice of defects must contain a detailed description of the defect. Any notice of defects that fails to comply with the time limit shall exclude any claim by the customer for defects.
- (2) We do not assume any liability for public statements, recommendations or advertisements of the manufacturer or other third parties; they are not deemed to be a contractually guaranteed declaration of quality of the goods.
- (3) Upon commencement of handling, processing, combining or mixing with other goods, the goods delivered are deemed approved by the customer according to the contract. The same shall apply if the goods are reshipped from their original destination.
- (4) Our liability for breaches of duty is excluded if defects and the resulting damages cannot be proved to be based on defective material, defective construction or defective execution or defective mounting instructions. Warranty and liability in particular are excluded for the consequences of incorrect use (especially where use is not state-of-the-art and in disregard of the mounting instructions) or natural wear and tear of the goods, excessive use or inappropriate equipment and the consequences of physical, chemical or electrical influences that do not correspond with expected average standard influences.
- (5) Claims of the customer for expenses required for the purpose of subsequent performance, in particular transportation, routing, labour and material costs are excluded if expenses increase because the object of the delivery has been forwarded afterwards to a place other than the customer's place of business unless the transfer corresponds to its designated use.
- (6) Any regress claims by the customer made in the event of resale of the goods vis-à-vis us are only applicable to the extent to which the customer has not made any agreement with its purchaser which exceeds the statutory claims for damages.
- (7) In the event of an unjustified complaint of defects, we shall be entitled to request compensation for our expenses in this respect from the customer. In this respect, the remuneration for the test run expenses is charged according to our price list as applicable.
- (8) We do not provide any warranty for used objects. Apart from that, the statute of limitations for claims for defects is 12 months. This shall not apply to building contracts, to articles that, according to their usual manner of application, are used for a building and have caused its defectiveness, to claims for injury of life, body and health and to at least grossly negligent violations of obligations by us or one of our legal representatives or vicarious agents. Statutory special regulations for in rem claims to return of third parties (Section 438 I, no. 1 BGB), fraudulent intent of the seller (Section 438 III BGB) and for claims of recourse against the supplier for final delivery to a consumer (Section 479 BGB) shall also remain unaffected.

Section 11 Liability for damages

- (1) We shall be liable without limitation for damages - irrespective of their legal grounds -
 - a) for intentional acts,
 - b) for culpable injury of life, body or health,
 - c) for defects which we have fraudulently concealed or the absence of which we have guaranteed,
 - d) for defects in the object of delivery if liability exists under the Product Liability Act for personal injury or damage to property for privately used articles.
- (2) In the event of culpable breach of essential contractual obligations, we shall also be liable; in the event of simple negligence, however, our liability is limited to damages that we have foreseen as possible consequence of a violation of the agreement upon conclusion of the agreement or which we should have foreseen by applying due care and attention and which are typically expected when the article delivered is used for its intended purpose. Material contractual obligations are obligations which protect the legal positions of the customer which are material to the contract and which have to be granted to the customer under the contract in terms of subject matter and purpose and such obligations whose fulfilment facilitates the proper performance of the contract in the first place and the observance of which the client regularly relies on and may rely on.
- (3) We are also liable for damages caused by gross negligence. If, however, contractual obligations other than material contractual obligations are violated and legal interests other than life, body or health are affected as well, our liability in the event of gross negligence is also limited to damages that we have foreseen as a possible consequence of a violation of the agreement upon conclusion of the agreement or which we should have foreseen by applying due care and attention and which are typically expected when the article delivered is used for its intended purpose.
- (4) Further claims are excluded.
- (5) The disclaimers and limitations of liability specified in para. 1 to 3 shall also apply mutatis mutandis to breaches of duty committed by our vicarious agents.
- (6) If the liability for damages against us is excluded or restricted, this shall also apply in view of the personal liability for damages of our organs, legal representatives, employees and other vicarious agents.

Section 12 Retention of title

- (1) We reserve the title to the sold goods until full payment of all of our current and future claims from the purchase contract and a current business relationship (secured claims) is effected.
- (2) The goods subject to retention of title may neither be pledged nor assigned to third parties by way of security prior to complete payment of the secured claims. The buyer shall immediately inform us in writing if and to the extent to which third parties access the goods that are our property. This shall also apply to all other kinds of impairments. Independent from that, the customer shall inform third parties in advance about the rights existing in connection with the goods. The costs of any intervention by us shall be borne by the customer if the third party is unable to reimburse them.
- (3) The customer shall be entitled to resell and/or further process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition:
 - a) The retention of title extends to the products which are produced by processing, mixing or combining our goods at their full value, we being deemed the manufacturer. In case of processing, mixing or combining our goods with products of a third party, the title of which is retained, we shall acquire co-ownership in proportion to the invoice value in such processed, mixed or combined goods. Apart from this, the same shall apply for the resulting product as for the goods delivered under retention of title.
 - b) The customer herewith assigns the claims against third parties resulting from the resale of the goods or the product to us by way of security in total or in the amount of our possible co-ownership share according to the above para. a). We accept the assignment. The obligations of the customer specified above in para. 2 shall also apply in view of the assigned claims.
 - c) Apart from us, the client remains entitled to collect the claim. We undertake not to collect the claim as long as the customer meets their payment obligations towards us, is not in default of payment, has not filed a request for the opening of insolvency proceedings and their performance is not impaired in any other way. Should this be the case, however, we may demand that the customer disclose the assigned claims and their debtors to us, that the customer furnish all information required for collection, provide the related documents and inform the debtors (third parties) about the assignment.
 - d) If the realisable values of the securities granted exceeds our claims by more than 10 %, we shall release securities at our selection upon request of the customer.

Section 13 Third-party industrial property rights

- (1) Should any third party assert claims on grounds of industrial property rights or copyrights (hereinafter referred to as industrial property rights) vis-à-vis the customer on grounds of the products delivered by us and if the contractual utilisation of the products by the customer is impaired or not allowed in this respect, the customer shall inform us immediately. The customer shall not acknowledge the alleged infringement and conduct all disputes with the third party about the infringement of the industrial property right in agreement with us. Should the customer cease utilisation of the product for reasons of minimization of damage or on other important grounds, they shall be obliged to inform the third party that the suspension of use does not involve any acknowledgement of an infringement of industrial property rights.
- (2) The customer shall not have any claims on grounds of infringement of industrial property rights if the infringement of industrial property rights is caused by them, by special fixed parameters of the customer, by an application not provided in the product documentation or by the fact that the product is used by the customer in a modified manner or together with other products not delivered by us.

Section 14 Choice of law - place of jurisdiction

- (1) This Contract shall be subject to the material law of the Federal Republic of Germany; the law of conflicts and the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
- (2) The court competent for our place of business shall be the exclusive place of jurisdiction.