

General Terms and Conditions

I. General Provisions

1. All goods or services (hereinafter called "deliveries") shall be based solely on the following general terms and conditions. The written declarations by both parties shall apply to the scope of the deliveries. General terms and conditions of the purchaser shall only apply, however, if the supplier or party furnishing the services (hereinafter called "supplier") has expressly confirmed them in writing. These general delivery conditions shall also apply if the supplier makes deliveries to the purchaser unconditionally in the knowledge of contrary conditions of the purchaser or conditions of the purchaser, which differ from these general delivery conditions.
2. All agreements reached between the supplier and purchaser for the purpose of implementing this contract shall be stipulated in writing in the contract.
3. These general terms and conditions shall only apply to companies within the meaning of § 310 (1) of the German Civil Code.
4. These general terms and conditions shall also apply to all future transactions with the purchaser.

II. Offer – Offer Documents

1. If the order can be qualified as an offer in accordance with § 145 of the German Civil Code, the supplier may accept it within 2 weeks.
2. The supplier shall reserve his absolute utilisation rights under property and copyright law to cost estimates, drawings and other documents (hereinafter called "documents"). The documents may only be passed on to third parties with the prior approval of the supplier and shall be returned immediately to him, on request, if the order is not placed with the supplier. Sentences 1 and 2 shall apply accordingly to documents of the purchaser. However, these documents may be passed on to third parties to whom the supplier has transferred deliveries with permission.

III. Price and Payment Conditions

1. Unless otherwise stipulated in the supplier's order confirmation, prices shall apply ex works, excluding packing, plus the valid rate of value-added tax. Packing shall be invoiced separately.
2. If the supplier has assumed responsibility for erection or installation and provided no other agreement has been reached, the purchaser shall pay the agreed remuneration and all necessary incidental costs such as travelling expenses, costs for transporting manual tools, costs of personal luggage and field allowances.
3. The deduction of discounts shall require the express written approval of the supplier.
4. Unless otherwise stipulated in the order confirmation, the net purchase price shall become due for payment (without deductions) within 30 days from the date of the invoice. The legal provisions relating to the consequences of default in payment shall apply.
5. The purchaser shall only have rights of setoff if his counterclaims are absolute and final, are undisputed or have been accepted by the supplier. The purchaser shall also only be entitled to exert a right of retention if his counterclaim is based on the same contractual relationship.

IV. Delivery Periods; Delay in Delivery

1. Compliance with delivery periods shall depend on timely receipt of all documents, necessary permits and approvals to be supplied by the purchaser, especially plans, as well as compliance with the agreed terms of payment and other obligations by the purchaser. If these requirements are not satisfied on time, the periods shall be extended appropriately; this provision shall not apply if the supplier is responsible for the delay.
2. If non-compliance with the delivery periods is due to force majeure, e.g. mobilisation, war, revolution or similar events such as strikes or lockouts, the delivery periods shall also be extended appropriately.
3. In the event of default by the supplier, the purchaser may, if he provides credible proof that this incurred damage, demand compensation of 0.5% for every complete week of default, but at most 5% of the price for that part of the delivery which could not be used for its intended purpose due to default.
4. Both compensation claims by the purchaser due to delayed delivery and compensation claims in lieu of performance, which go beyond the limits stipulated in No. 3, shall be excluded in all cases of delayed delivery, even after the expiry of a period of grace which has been granted to the supplier for delivery. This provision shall not apply in cases where there is a legal liability on account of intent, gross negligence, death, physical injury or damage to health. The purchaser may only legally withdraw from the contract if the supplier is responsible for delayed delivery. The above-mentioned provisions shall not entail any change in the burden of proof to the detriment of the purchaser.
5. At the request of the supplier, the purchaser shall be obliged to state within a reasonable period of time whether he is withdrawing from the contract due to delayed delivery or is insisting on delivery.
6. If the purchaser requests that the dispatch or delivery of the goods be delayed by more than 1 month after notification of readiness for dispatch, storage charges amounting to 0.5% of the price of the goods to be delivered, but at most 5%, may be invoiced to the purchaser for every commenced month. The contracting parties shall be at liberty to provide evidence of higher or lower storage charges.

V. Transfer of Risk - Packaging

1. Unless otherwise stipulated in the order confirmation, risk shall pass – even in the case of a carriage paid consignment - to the purchaser as follows:

a) In the event of deliveries or erection or installation, if they have been dispatched or collected. At the request and expense of the purchaser, deliveries shall be insured by the supplier against normal transport risks;

b) In the event of deliveries with erection or installation on the date of acceptance at the purchaser's own company or, if agreed, after a faultless trial run.

2. Risk shall pass to the purchaser if dispatch, delivery, the start and performance of erection or installation, acceptance at the purchaser's own company or a trial run is delayed due to reasons for which the purchaser is responsible or if the purchaser is in default of acceptance for other reasons.
3. Transport packaging and all other packaging according to the Packaging Ordinance be obliged to dispose of packaging at his own expense.

VI. Erection and Installation

Unless otherwise agreed, the following provisions shall apply if the supplier has accepted responsibility for erection and installation:

1. The purchaser shall provide the following at his own expense in good time:
 - a) All earthworks, building work and other work not customary in his trade, including the required specialists and auxiliary workers, building materials and tools;
 - b) The equipment and materials required for erecting and using scaffolding, as well as lifting devices, other jigs and fixtures, fuels and lubricating agents;
 - c) Energy and water at the utilisation site, including connections, heating and lighting;
 - d) Sufficiently large, suitable, dry and lockable rooms at the installation site for storing the machine parts, apparatus, materials, tools, etc. and suitable work and rest rooms for the installation personnel including reasonable sanitary facilities appropriate to the circumstances; in order to protect the possessions of the supplier and the installation personnel on the building site, the purchaser shall take the same measures as those which he would perform to protect his own possessions;
 - e) Protective clothing and protective equipment which are required as a result of special circumstances at the site of installation.
2. Before the start of the installation work, the purchaser shall provide without request the necessary information on the position of concealed power, gas and water lines or similar installations; the purchaser shall also automatically supply the necessary static information.
3. Before the start of installation or assembly, the materials and equipment required to commence work shall be available at the site of installation or assembly, and progress on all preparatory work prior to the start of erection shall be such that work can start on the installation or assembly as agreed by contract and can be performed without any interruption. The access roads and the place of installation or assembly shall have been levelled out and cleared.
4. If erection, installation or commissioning is delayed due to reasons for which the supplier is not responsible, the purchaser shall pay reasonable costs for waiting times plus any additional travels by the supplier or his installation personnel.
5. The purchaser shall certify the supplier immediately every week about the duration of the work of the installation personnel and the end of erection, installation or commissioning work.
6. If the supplier demands that the delivery be accepted after completion, the purchaser shall do so within 2 weeks. If the purchaser fails to comply with this request, acceptance shall be deemed to have taken place. Acceptance shall also be deemed to have taken place if the purchaser starts using the delivery – if necessary after the completion of an agreed test phase.

VII. Acceptance

The purchaser may not refuse to accept deliveries due to minor faults.

VIII. Liability for Defects (Material Defects)

The supplier shall be liable as follows for material defects:

1. The supplier shall be entitled to either rework or replace free of charge all those goods and services containing a material defect within the period of limitation – without recourse to the period of operation – if this defect was caused at the time of transfer of risk.
2. Liability for defects shall be limited to 12 months. This shall not apply if the law prescribes longer periods of time in accordance with section 488 Paras. 1 No. 2 (Structures and Items for Structures), section 479 Para. 1 (Claims of Recourse) and section 634 a Para. 1 Item 2 (Defects) of the BGB (German Civil Code) or in cases of injury to life, limb or health, in the event of wilful or gross violation of obligation on the part of the Contractor, and in the event of fraudulent concealment of a defect. The statutory regulations governing suspension of expiration of prescription, hindrance and restart of periods shall remain unaffected hereby.
3. The purchaser shall immediately inform the supplier in writing about any material defects.
4. In the event of notification of defects, the purchaser may withhold payments in reasonable proportion to the material defects that occurred. The purchaser may only withhold payments in the case of a notification of defects which is fully justifiable. If the purchaser makes an unjustified notification of defects, the supplier shall be entitled to request the purchaser to reimburse the expenses which he (supplier) incurred.
5. The supplier shall first be given the opportunity to rework goods or provide additional services within a reasonable period of time.

6. If the rework or additional services prove unsuccessful, the purchaser may withdraw from the contract or reduce the remuneration, irrespective of any claims for compensation according to Article XI.

7. Defect claims shall not be accepted in the case of minor deviations from the agreed state, minor impairment of usability, natural wear and tear or damage which occur after the transfer of risk as a result of incorrect or negligent handling, excessive loading, unsuitable operating resources, defective building work, unsuitable building ground or special external influences which are not covered by the contract. Defect claims shall also not be accepted for non-reproducible software errors. If the purchaser or third parties carry out improper changes or repair work, no defect claims shall be accepted for this work or the resulting consequences.

8. Claims by the purchaser for expenses incurred in connection with rework or the provision of additional services, especially transport costs, travelling expense, work costs and material costs, shall be excluded if the expenses increase because the subject of the delivery was subsequently taken to a location other than the branch of the purchaser, unless transportation corresponds to its use in accordance with the regulations.

9. The purchaser shall only have rights of recourse against the supplier according to § 478 of the German Civil Code (withdrawal of the entrepreneur) if he has not reached any agreements with his customer over and beyond the statutory defect claims. No. 8 shall also apply analogously to the extent of the purchaser's right of recourse against the supplier according to § 478 (2) of the German Civil Code.

10. Article XI (Other Compensation Claims) shall apply to compensation claims. The purchaser shall not be entitled to assert further claims or claims other than those stipulated in this Article VIII against the supplier and his agents due to a material defect.

IX. Industrial Property Rights and Copyright; Defects of Title

1. Unless otherwise agreed, the supplier shall be obliged to effect delivery solely in his own country free of industrial property rights and copyright of third parties (hereinafter called "property rights"). If a third party asserts justified claims against the purchaser due to the infringement of property rights by a delivery that was furnished by the supplier and used according to the provision of the contract, the supplier shall have the following liability towards the purchaser within the period specified in Article VIII No. 2:

a) The supplier shall be free to acquire, at his own expense, a utilisation right for the deliveries in question, or either change or replace them in such a way that the property right is not infringed. If the supplier is unable to do this under reasonable conditions, the purchaser shall be legally entitled to withdraw from the contract or reduce the remuneration.

b) The supplier's obligation to pay compensation shall be based on Article XI.

c) The above-mentioned obligations of the supplier shall only arise if the purchaser immediately informs the supplier in writing about claims enforced by third parties, does not acknowledge an infringement and the supplier retains all rights to take defensive action and reach a compromise. If the purchaser stops using the goods due to damage reduction reasons or other important reasons, he shall be obliged to inform the third parties that the cessation of use does not represent any acknowledgement of the infringement of property rights.

2. Claims by the purchaser shall be excluded if he is responsible for infringing property rights.

3. Claims by the purchaser shall also be excluded if the infringement of property rights is due to special stipulations by the purchaser, an application that the supplier could not have foreseen or the fact that the delivery is changed by the purchaser or is used together with products not provided by the supplier. In the event of infringements of property rights, the provisions of Article VIII Nos. 4, 5 and 9 shall apply analogously to the purchaser's claims regulated in No. 1a).

4. The provisions of Article VIII shall apply analogously if other defects of title occur.

5. The purchaser shall not be entitled to assert further claims or claims other than those stipulated in this Article IX against the supplier and his agents due to a defect of title.

X. Impossibility of Performance; Adaptation of Contract

1. If the supplier is unable to effect delivery, the purchaser shall be entitled to demand compensation, unless the supplier is not responsible for non-performance. However, the purchaser's claim for compensation shall be restricted to 10% of the value of that part of the delivery which cannot be used for its intended purpose due to non-performance. This restriction shall not apply in cases where there is a legal liability on account of intent, gross negligence, death, physical injury or damage to health. This shall not involve any change in the burden of proof to the detriment of the purchaser. The right of the purchaser to withdraw from the contract shall not be affected.

2. If unforeseen events within the meaning of Article IV No.2 substantially change the economic meaning or the contents of the delivery or have major effects on the supplier's operations, the contract shall be adapted accordingly according to the principles of good faith. If this is not economically feasible, the supplier shall be entitled to withdraw from the contract. If the supplier wants to make use of this right of withdrawal, he shall inform the purchaser as soon as he acquires knowledge of the extent of the event, i.e. even if an extension of the delivery period was initially agreed with the purchaser.

XI. Other Compensation Claims

1. The purchaser shall not be entitled to assert claims for compensation and expenses (hereinafter called: compensation claims) for whatever legal reason, but especially in connection with the infringement of duties from the obligatory relation and from tortious action.

2. This provision shall not apply if there are compelling grounds for liability, e.g. according to the Product Liability Law, in cases of intent, gross negligence, death, physical injury, damage to health or the infringement of material contractual obligations. Compensation claims for the infringement of material contractual obligations shall, however, be limited to the typical foreseeable damage, unless action was committed intentionally or through gross negligence or there is liability due to death, physical injury or damage to health. The above-mentioned provisions shall not involve any change in the burden of proof to the detriment of the purchaser.

3. If the purchaser is entitled to assert compensation claims according to this Article XI, they shall become statute-barred at the end of the period of limitation applying to material defect claims according to Article VIII No. 2. The legal statute of limitations shall apply to compensation claims under the Product Liability Act.

XII. Reservation of Title

1. The supplier shall retain title to the object of purchase until all payments from the delivery contract have been received. If the purchaser acts contrary to the terms of the contract, especially failure to pay on the due date, the supplier shall be entitled to take back the object of purchase. If the supplier takes back the object of purchase, this shall not entail withdrawal from the contract, unless he expressly stated this in writing. Withdrawal from the contract shall always take place if the supplier levies execution on the object of purchase. After taking back the object of purchase, the supplier shall be entitled to exploit it. The proceeds from such exploitation shall be offset against the purchaser's liabilities less any reasonable exploitation costs.

2. The purchaser shall be obliged to handle the object of purchase carefully. In particular, the purchaser shall be obliged to insure the object of purchase sufficiently against damage caused by fire, water and theft at their replacement value. If maintenance work and inspections are required, the purchaser shall carry them out in good time at his own expense.

3. The purchaser shall immediately inform the supplier in writing about any attachments or other interventions by third parties, so that the supplier can take legal action according to § 771 of the German Code of Civil Procedure. If the third party is unable to reimburse the supplier for the judicial and non-judicial costs of legal action according to § 771 of the German Code of Civil Procedure, the purchaser shall be liable for the loss incurred by the supplier.

4. The purchaser shall be entitled to resell the object of purchase in the ordinary course of business. However, the purchaser assigns herewith to the supplier all claims amounting to the final invoice amount (including VAT) of the supplier's claim, which accrue to him (purchaser) against his customers or third parties from resale, i.e. irrespective of whether the object of purchase was resold without or after processing. The purchaser shall still be authorised to collect this claim even after it has been assigned. The right of the supplier to collect the claim himself shall not be affected. The supplier shall, however, give an undertaking not to collect the claim as long as the purchaser meets his payment obligations from the collected proceeds, does not get into arrears and, in particular, no application is made to open bankruptcy, composition or insolvency proceedings, or payments have been suspended. If this occurs, however, the supplier may request the purchaser to inform him about the assigned claims and their debtors, provide all information required to collect the claims, hand over the related documents and inform the debtor (third party) about assignment.

5. The purchaser shall always process or transform the object of purchase for the supplier. If the object of purchase is processed with other products that do not belong to the supplier, the supplier shall acquire joint ownership to the new product in relation to the value of the object of purchase (final invoice amount, including VAT) to the other processed products at the time of processing. The provisions relating to the object of purchase supplied under reservation shall also apply to the product created through processing.

6. If the object of purchase is inseparably mixed with other products that do not belong to the supplier, the supplier shall acquire joint ownership to the new product in relation to the value of the object of purchase (final invoice amount, including VAT) to the other mixed goods at the time of mixing. If mixing takes place in such a way that the purchaser's product can be regarded as the main product, it shall be deemed to have been agreed that the purchaser transfers joint ownership proportionately. The purchaser shall store the sole property or joint property thus created for the supplier.

7. The purchaser also assigns herewith the claims to secure the claims of the supplier against him, which arose through the connection of the object of purchase with a property against a third party.

8. At the request of the purchaser, the supplier shall be obliged to release the securities due to him if the attainable value of the supplier's securities exceeds the claims to be secured by more than 10%. The supplier shall be free to choose the securities to be released.

XIII. Place of Jurisdiction – Place of Performance

1. The head office of the supplier shall be the place of jurisdiction if the purchaser is a merchant. However, the supplier shall be entitled to take legal action against the purchaser at the court in the latter's place of residence.

2. The law of the Federal Republic of Germany shall apply without giving effect to the Principals and Provisions of Conflict of Law thereunder. The UN Sales Convention shall not apply.

3. Unless otherwise stipulated in the order confirmation, the head office of the supplier shall be the place of performance.