

General Terms and Conditions of Business

I. General Provisions

1. All deliveries or services (hereinafter: "Deliveries") shall be made exclusively on the basis of the following General Terms and Conditions of Business. The mutual declarations in text form are decisive for the scope of the deliveries. However, the Purchaser's general terms and conditions shall only apply if the Supplier or service provider (hereinafter: "Supplier") has expressly agreed to them in text form. These terms and conditions of delivery shall also apply if the Supplier carries out the delivery to the Purchaser without reservation in the knowledge that the Purchaser's terms and conditions conflict with or deviate from these terms and conditions of delivery.
2. All agreements made between the Supplier and the Purchaser for the purpose of the execution of this contract are set out in writing in this contract.
3. These terms of delivery shall only apply to companies as defined in section 310 (1) BGB (German Civil Code).
4. These terms of delivery shall also apply to all future transactions with the Purchaser.

II. Offer – Offer Documents

1. If the order is to be qualified as an offer pursuant to section 145 BGB (German Civil Code), the Supplier may accept it within 2 weeks. A minimum order value of EUR 100.00 applies. For orders that fall below this value, we will charge a handling surcharge of EUR 33.00.
2. The Supplier reserves its unrestricted property and copyright exploitation rights to cost estimates, drawings and other documents (hereinafter: Documents). The Documents may only be made accessible to third parties with the prior consent of the Supplier and, if the order is not placed with the Supplier, must be returned to the Supplier immediately upon request. Sentences 1 and 2 shall apply mutatis mutandis to Documents of the Purchaser; these may, however, be made accessible to third parties to whom the Supplier has permissibly assigned Deliveries.

III. Prices, Terms of Payment

1. Unless otherwise stated in the Supplier's order confirmation, prices are ex works, excluding packaging, plus the applicable statutory value added tax. Packaging will be invoiced separately.
2. If the Supplier has undertaken the erection or assembly and unless otherwise agreed, the Purchaser shall bear, in addition to the agreed remuneration, all necessary ancillary costs such as travel expenses, costs for the transport of tools and personal luggage as well as daily allowances.
3. The deduction of a cash discount requires the consent of the Supplier in text form.
4. Unless otherwise stated in the order confirmation, the net purchase price (without deduction) is due for payment within 30 days of the invoice date. The statutory rules concerning the consequences of default in payment shall apply.
5. The Purchaser shall only be entitled to set-off rights if its counterclaims have been legally established, are undisputed or have been recognised by the Supplier. Furthermore, it is authorised to exercise a right of retention insofar as its counterclaim is based on the same contractual relationship.

IV. Time limits for Deliveries; Default

1. The observance of deadlines for Deliveries presupposes the timely receipt of all Documents to be provided by the Purchaser, necessary approvals and releases, in particular of plans, as well as the observance of the agreed terms of payment and other obligations by the Purchaser. If these preconditions are not fulfilled in due time, the periods shall be extended accordingly; this shall not apply if the Supplier is responsible for the delay.
2. If non-compliance with the deadlines is due to force majeure, e.g. mobilisation, war, riot or similar events, e.g. strike or lockout, the deadlines shall be extended accordingly.
3. If the Supplier is in default, the Purchaser may, provided that it can credibly demonstrate that it has suffered a loss as a result, claim compensation of 0.5% for each full week of default, but in no case more than a total of 5% of the price of that part of the Deliveries, which, owing to the default, could not be put to the intended use.
4. The Purchaser's claims for damages due to delayed Deliveries as well as claims for damages in lieu of performance exceeding the limits specified in paragraph no. 3 above shall be excluded in all cases of delayed Deliveries, even upon expiry of a time set to the Supplier to effect the Deliveries. This does not apply to the extent that liability is mandatory in cases of intent, gross negligence or injury to life, body or health. The Purchaser may only withdraw from the contract within the scope of the statutory provisions if the Supplier is responsible for the delay in delivery. A change in the burden of proof to the detriment of the Purchaser is not associated with the above provisions.
5. At the Supplier's request, the Purchaser is obliged to declare within a reasonable period of time whether it intends to withdraw from the contract due to the delay in delivery or insist on delivery.
6. If collection or dispatch or delivery is delayed at the request of the Purchaser by more than 1 month after notification that the goods are ready for collection or dispatch, the Purchaser may be charged storage costs of 0.5% of the price of the items of the delivery for each month commenced, but not more than a total of 5%. The contracting parties are at liberty to prove higher or lower storage costs.

V. Transfer of Risk – Packaging

1. Unless otherwise stated in the order confirmation, the risk – even in the case of carriage paid delivery – shall pass to the Purchaser as follows:
 - a) In the case of deliveries without installation or assembly, when they have been brought for dispatch or collected. At the request and expense of the Purchaser, deliveries shall be insured by the Supplier against the usual transport risks;
 - b) In the case of deliveries with installation or assembly, on the day of takeover in our own works or, if agreed, after a faultless trial run.
2. If the dispatch, the collection, the delivery, the start, the performance of the installation or assembly, the taking over in the Purchaser's own works or the trial run is delayed for reasons for which the Purchaser is responsible or if the Purchaser is in default of acceptance for any other reason, the risk shall pass to the Purchaser.
3. Transport packaging and all other packaging in accordance with the Packaging Ordinance will not be taken back, with the exception of pallets. The Purchaser shall be obliged to dispose of the packaging at its own expense.

VI. Installation and Assembly

If the Supplier has assumed responsibility for installation and assembly, the following provisions shall apply unless otherwise agreed in text form:

1. The Purchaser shall take over and provide in good time at its own expense:
 - a) all earthworks, construction work and other ancillary work outside the trade, including the skilled and unskilled labour, building materials and tools required for this;
 - b) the commodities and materials for scaffolding, lifting gear and other equipment, fuels and lubricants required for assembly and commissioning;
 - c) energy and water at the point of use, including connections, heating and lighting;
 - d) at the assembly site for the storage of machine parts, equipment, materials, tools, etc. sufficiently large, suitable, dry and lockable rooms and for the installation staff adequate working and recreation rooms including sanitary facilities appropriate to the circumstances; in all other respects the Purchaser shall take the same measures to protect the property of the Supplier and the assembly personnel on the site which it would normally take to protect its own property;
 - e) protective clothing and protective devices required as a result of special circumstances at the assembly site.

2. Prior to the start of the installation work, the Purchaser shall provide the necessary information on the location of concealed electricity, gas and water lines or similar installations as well as the required structural data without being requested to do so.
3. Prior to the commencement of assembly or erection, the materials and objects required for the commencement of the work must be available at the site of assembly or erection and all preparatory work must have progressed to such an extent that assembly or erection can be commenced as agreed and carried out without interruption. Access roads and the installation or assembly site must be levelled and cleared.
4. If assembly, erection or commissioning is delayed due to circumstances for which the Supplier is not responsible, the Purchaser shall bear the reasonable costs of any additional travelling of the Supplier or the assembly personnel required for waiting times.
5. The Purchaser shall immediately certify to the Supplier on a weekly basis the duration of the working hours of the assembly personnel and the completion of the erection, assembly or commissioning.
6. If the Supplier demands acceptance of the delivery after completion, the Purchaser shall carry this out within 2 weeks. If this does not happen, acceptance shall be deemed to have taken place. Acceptance shall also be deemed to have taken place when the delivery has been put into use – if applicable after completion of an agreed test phase.

VII. Acceptance

The Purchaser may not refuse to accept Deliveries due to insignificant defects.

VIII. Liability for Defects (Material Defects)

The Supplier shall be liable for material defects as follows:

1. All parts or services which show a material defect within the limitation period – irrespective of the period of operation – shall, at the Supplier's discretion, be repaired, replaced or provided again free of charge, provided that the cause of the defect already existed at the time of the transfer of risk.
2. Claims for material defects are subject to a limitation period of 12 months. This shall not apply insofar as the law pursuant to sections 438 (1) (2) BGB (German Civil Code) (buildings and things used for a building), 445b (1) BGB (right of recourse) and 634a (1) (2) (defects of a building) BGB prescribes longer periods as well as in cases of injury to life, body or health, in the event of a wilful or grossly negligent breach of duty by the Supplier and in the event of fraudulent concealment of a defect. The statutory provisions on suspension of expiry, suspension and recommencement of time limits shall remain unaffected.
3. The Purchaser shall immediately notify the Supplier in text form of any material defects.
4. In the event of notices of defects, payments by the Purchaser may be withheld to an extent that is in reasonable proportion to the material defects that have occurred. The Purchaser may only withhold payments if a notice of defect is asserted about the justification of which there can be no doubt. If the notification of defects is unjustified, the Supplier shall be entitled to demand reimbursement of the expenses incurred by it from the Purchaser.
5. The Supplier shall first be given the opportunity to remedy the defect within a reasonable period of time.
6. If the subsequent performance fails, the Purchaser may – without prejudice to any claims for damages pursuant to Art. XI - withdraw from the contract or reduce the remuneration.
7. Claims for defects shall not exist in the case of only insignificant deviations from the agreed quality, in the case of only insignificant impairment of usability, in the case of natural wear and tear or damage occurring after the transfer of risk as a result of incorrect or negligent handling, excessive stress, unsuitable operating materials, defective construction work, unsuitable building ground or due to special external influences which are not assumed under the contract as well as in the case of non-reproducible software errors. If the Purchaser or third parties carry out improper modifications or repair work, there shall also be no claims for defects for these and the resulting consequences.
8. The Purchaser shall have no claim with respect to expenses incurred in the course of supplementary performance, including costs of travel, transport, labour, and material, to the extent that expenses are increased because the delivered item has subsequently been brought to another location than the Purchaser's branch office, unless doing so complies with the normal use of the delivered item.
9. The Purchaser's right of recourse against the Supplier pursuant to section 478 BGB of the German Civil Code (recourse of the entrepreneur) shall only exist to the extent that the Purchaser has not entered into any agreements with its customer exceeding the statutory claims for defects. Furthermore, paragraph no. 8 shall apply mutatis mutandis to the scope of the Purchaser's right of recourse against the Supplier pursuant to section 478 (2) BGB.
10. For claims for damages, Art. XI (other claims for damages) shall apply. Further claims or claims other than those regulated in this Art. VIII against the Supplier and its vicarious agents on account of a material defect are excluded.
11. Liability for material defects is excluded for used delivery items.

IX. Industrial Property Rights and Copyrights; Defects of Title

1. Unless otherwise agreed, the Supplier is obliged to provide the Delivery free of industrial property rights and copyrights of third parties (hereinafter: Property Rights) only in the Supplier's country. If a third party asserts a justified claim against the Purchaser based on an infringement of an Industrial Property Right by the Deliveries made by the Supplier and used in conformity with the contract, the Supplier shall be liable to the Purchaser within the time limits set out in Art. VIII. paragraph no. 2 as follows:
 - a) The Supplier shall, at its option and expense, either obtain a right of use for the Deliveries concerned, modify them so that the Industrial Property Right is not infringed, or replace them. If this is not possible for the Supplier under reasonable conditions, the Purchaser shall be entitled to the statutory rights of withdrawal or reduction.
 - b) The Supplier's obligation to pay damages shall be governed by Art. XI.
 - c) The aforementioned obligations of the Supplier shall only exist insofar as the Purchaser immediately notifies the Supplier in text form of the claims asserted by the third party, does not acknowledge an infringement and all defensive measures and settlement negotiations remain reserved for the Supplier. If the Purchaser ceases to use the Deliveries in order to mitigate damages or for other good cause, it shall be obliged to point out to the third party that such cessation of use does not constitute an acknowledgement of any infringement of the Industrial Property Right.
2. Claims of the Purchaser shall be excluded insofar as the Purchaser is responsible for the infringement of the property right.
3. Claims of the Purchaser shall also be excluded if the infringement of the Industrial Property Right is caused by specifications made by the Purchaser, by an application not foreseeable by the Supplier or by the Deliveries being modified by the Purchaser or being used together with products not provided by the Supplier. In the event of infringements of Industrial Property Rights, the claims of the Purchaser set out in paragraph no. 1a) shall otherwise be governed by the provisions of Art. VIII paragraph nos. 4, 5 and 9 which shall apply mutatis mutandis.
4. In the event of other defects of title, the provisions of Art. VIII shall apply accordingly.
5. Further claims or claims other than those regulated in this Art. IX by the Purchaser against the Supplier and its vicarious agents on account of a defect in title are excluded.

X. Impossibility; Adjustment of the Contract

1. Insofar as delivery is impossible, the Purchaser shall be entitled to claim damages, unless the Supplier is not responsible for the impossibility. However, the Purchaser's claim for damages shall be limited to 10% of the value of that part of the delivery which cannot be put to the intended use due to the impossibility. This limitation shall not apply to the extent that liability is assumed in cases of intent, gross negligence or injury to life, body or health; this shall not entail a change in the burden of proof to the detriment of the Purchaser. The Purchaser's right to withdraw from the contract remains unaffected.

2. If unforeseeable events within the meaning of Art. IV paragraph no. 2 significantly change the economic significance or the content of the delivery or have a significant effect on the Supplier's business, the contract shall be adjusted appropriately in good faith. Insofar as this is not economically justifiable, the Supplier shall be entitled to withdraw from the contract.
If the Supplier intends to exercise this right of withdrawal, it shall notify the Purchaser thereof without undue delay as soon as it recognises the consequences of the event, even if an extension of the delivery period had initially been agreed with the Purchaser.

XI. Other Claims for Damages

1. Claims for damages and reimbursement of expenses by the Purchaser (hereinafter: Claims for Damages), irrespective of the legal grounds, in particular due to breach of duties arising from the contractual obligation and from tort, shall be excluded.
2. This shall not apply in cases of mandatory liability, e.g. under the Product Liability Act, in cases of intent, gross negligence, injury to life, limb or health, or breach of essential contractual obligations. However, the Claim for Damages for the breach of essential contractual obligations is limited to the foreseeable damage typical for the contract, unless there is intent or gross negligence or liability for injury to life, limb or health. A change in the burden of proof to the detriment of the Purchaser is not associated with the above provisions.
3. Insofar as the Purchaser is entitled to Claim Damages under this Art. XI, they shall become time-barred upon expiry of the limitation period applicable to claims for material defects pursuant to Art. VIII paragraph no. 2. In the case of Claims for Damages under the Product Liability Act, the statutory limitation provisions shall apply.

XII. Retention of Title

1. The Supplier retains ownership of the purchased item until receipt of all payments under the delivery contract. If the Purchaser acts in breach of contract, in particular in the event of default in payment, the Supplier shall be entitled to take back the purchased item. The taking back of the purchased item by the Supplier does not constitute a withdrawal from the contract, unless the Supplier has expressly declared this in writing. The seizure of the purchased item by the Supplier shall always constitute a withdrawal from the contract; after taking back the purchased item, the Supplier shall be entitled to realise it; the realisation proceeds shall be set off against the Purchaser's liabilities – less reasonable realisation costs.
2. The Purchaser is obliged to treat the purchased goods with care; in particular, it is obliged to insure them at its own expense against damage by fire, water and theft at their replacement value. If maintenance and inspection work is required, the Purchaser must carry this out in good time at its own expense.
3. In the event of seizures or other interventions by third parties, the Purchaser shall immediately notify the Supplier in text form so that the Supplier can take legal action in accordance with section 771 of the ZPO (German Code of Civil Procedure). Insofar as the third party is not in a position to reimburse the Supplier for the court and out-of-court costs of an action in accordance with section 771 ZPO, the Purchaser shall be liable for the loss incurred by the Supplier.
4. The Purchaser shall be entitled to resell the purchased item in the ordinary course of business; however, it hereby assigns to the Supplier all claims in the amount of the final invoice amount (including VAT) of the Supplier's claim accruing to it against its customers or third parties from the resale, irrespective of whether the purchased item has been resold without or after processing. The Purchaser shall remain authorised to collect this claim even after the assignment. The authority of the Supplier to collect the claim itself remains unaffected by this. However, the Supplier undertakes not to collect the claim as long as the Purchaser meets its payment obligations from the proceeds collected, is not in default of payment and, in particular, no petition in bankruptcy or composition or insolvency proceedings has been filed or payments have not been suspended. If this is the case, however, the Supplier may demand that the Purchaser informs the Supplier of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.
5. The processing or transformation of the purchased item by the Purchaser shall always be carried out for the Supplier. If the purchased item is processed with other objects not belonging to the Supplier, the Supplier shall acquire co-ownership of the new object in the ratio of the value of the purchased item (final invoice amount, including VAT) to the other processed objects at the time of processing. The same applies to the object created by processing as to the purchased item delivered under retention of title.
6. If the purchased item is inseparably mixed with other objects not belonging to the Supplier, the Supplier shall acquire co-ownership of the new object in the ratio of the value of the purchased item (final invoice amount, including VAT) to the other mixed objects at the time of mixing. If the mixing takes place in such a way that the Purchaser's item is to be regarded as the main item, it is hereby agreed that the Purchaser shall transfer proportionate co-ownership to the Supplier. The Purchaser shall hold the sole ownership or co-ownership thus created in safe custody for the Supplier.
7. The Purchaser shall also assign to the Supplier the claims to secure the Supplier's claims against him which arise against a third party as a result of the connection of the purchased item with a plot of land.
8. The Supplier undertakes to release the securities to which it is entitled at the Purchaser's request insofar as the realisable value of the Supplier's securities exceeds the claims to be secured by more than 10%; the Supplier shall be responsible for selecting the securities to be released.

XIII. Place of Jurisdiction – Place of Performance

1. If the Purchaser is a merchant, the exclusive place of jurisdiction for actions brought against the supplier shall be the Supplier's place of business; however, the Supplier shall also be entitled to sue the Purchaser at the court of the Purchaser's place of residence.
2. The law of the Federal Republic of Germany shall apply to the exclusion of the conflict of laws provisions; the UN Convention on Contracts for the International Sale of Goods shall not apply.
3. Arbitration proceedings with regard to the contractual relationship or these General Terms and Conditions of Business shall not be conducted. Only legal recourse shall apply.
4. Unless otherwise stated in the order confirmation, the place of performance shall be the Supplier's place of business.