

# General Terms and Conditions

## I. Offer

Documents included in the offer, like diagrams, figures, weight and measurement details are only approximately decisive until they have not been specified exclusively as binding. The ownership and copy right to quotations, diagrams and other documents is retained by the supplier and these should not be made accessible to any third party. The supplier is obliged to share plans specified as confidential by the buyer only with his consent.

## II. Scope of the Delivery

The written order confirmation from the supplier is decisive for the scope of the delivery, in case of an offer by the supplier with limited term and timely acceptance, so far as no timely order confirmation is available. Collateral agreements and changes require a written confirmation from the supplier.

## III. Price and Payment

- The prices on the day of the supply are applicable. The price includes the statutory VAT. The prices are ex works and do not include the costs for packaging, loading and unloading, transport and installation including insurance.
- Payments must be carried out as agreed.
- In the absence of special agreement for orders above 10,000 Euro the payment must be made in cash without any deductions in cash at our payment office, and namely:  
1/3 payment after receipt of the order confirmation  
1/3 as soon as it has been communicated to the customer that the goods are ready for delivery the remaining amount within a further month.  
In case of orders less than 10,000 Euro the payment is due within 14 days after invoice date with 2% discount or 30 days after successful delivery net cash.
- In case of exceeding of the payment due date or in case of delay in payment by the customer we are authorised to levy interest as per the respective bank rate for overdraft facility, at the minimum however interest to the tune of 6 percent above the prime rate of the Deutschen Bundesbank [German Central Bank], unless the customer can prove lower loss. The enforcement of further damage caused by delay is reserved.
- All our demands will become immediately due irrespective of any accepted and credited bills of exchange if the buyer does not adhere to the payment conditions or if we gain knowledge of circumstances that give rise to the assumption that the creditworthiness of the buyer has reduced. WE also are then authorised to deliver

outstanding deliveries only against advance payments. Additionally we can forbid resale and processing of the delivered goods and their return or demand the transfer of the indirect possession of the delivered goods at the cost of the buyer. We are authorised in the specified cases to enter the factory of the customer to take away the delivered goods and to best sell them by way of auction to offset the outstanding claims less any costs incurred. The removal does not constitute withdrawal from the contract.

- The customer may not offset counter-claims which are disputed or not legally binding. The retention of payments due to such counter-claims is ruled out so far as these claims are not based on the same contractual relationship.
- Bills of exchange or cheques will be accepted in lieu of payment, charges will be borne by the customer.
- The supplier shall open an account for the buyer. Regardless of the point of origination of the individual demands the payments by the customer are firstly booked for costs, interests and a part of the principal demand which is not secured through the reservation of title and lastly for the secured principal demand.
- In case the customer delays the payments then the delivery will be withheld. The right to withhold or a right to offset is allowed to the customer if the counter-claims made by him are not contested by the supplier or is legally established.

## IV. Delivery Period

- The delivery period begins with the dispatch of the order confirmation, however not before procurement of documents, approvals, releases to be procured by the buyer as well as the receipt of the agreed down payment.
- The delivery period is deemed to be adhered to when the object of delivery has left the supplier's plant or the supplier has notified his readiness to ship. The delivery period shall be suitably extended in the event of measures within the scope of industrial disputes, especially strikes or lock-outs as well as in case of as well as upon the occurrence of unforeseeable obstacles which are beyond our will, as far as such obstacles have a provable influence on the manufacturing or delivery of the delivery object. This also applies when such circumstances occur with sub-contractors.
- The circumstances mentioned above cannot be represented by the supplier if they occur during an already delayed delivery. The customer shall be

immediately notified by the supplier about the beginning and end of such obstacles in important cases.

- If delivery is delayed due to the fault of the supplier and the customer thus suffers damage, then the customer is entitled to the exclusion of further claims to demand compensation for the delay. This would amount to 0,5% for every full week, in total, however not more than 5% of the invoice amount for the part which cannot be used in good time or as agreed in the contract as a result of this delay.
- If the shipment is delayed upon the customer's request, then he will be charged the cost of storage beginning one month after the notification of readiness for shipment in case of storage at the plant of the supplier a minimum of 0.5% of the invoice amount for every month. The supplier is however, authorised after setting and expiry in vain of a reasonable period to dispose the goods elsewhere and then to supply the customer with a reasonably extended time period.
- The adherence of the delivery period presupposes the fulfilment of the contractual obligations.

## V. Transfer of risk and Acceptance

- The risk is transferred to the customer at the latest with the dispatch of the supply parts, and also then, when partial deliveries are carried out or still other services e.g. shipping costs or transportation and installation have been assumed by the supplier.  
If requested by the buyer the delivery shall be insured - at the cost of the buyer - against theft, breakage, transport, fire and water damage and other insurable risks.
- In case the delivery is delayed due to circumstances for which the buyer is responsible, the risk shall pass to the buyer from the day of notification of readiness to ship; however the supplier is obliged to procure any insurance which the buyer requests at the buyer's expense.
- Delivered items, even they exhibit minor defects must be accepted by the buyer, without prejudice to his rights referred to in Section VIII.
- Partial deliveries are permitted.

## VI. Reservation of Titles

- The supplier shall retain the title to the goods until all receipt of all payments arising from the supply contract.
- Further, the supplier shall retain the title to all the items delivered to the buyer till full and final payment of all, also demands occurring in the future, regardless from which legal basis, also

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those arising from §§ 946 ff. BGB in case of payment made by cheque or bill of exchange till their final encashing. For this time period the buyer shall insure all the delivered items at his expense. The buyer shall hereby assign to the supplier in advance his claims against the insurer for payment of amount of compensation.

3. So far as the buyer combines the delivery item to other items, this can happen, so far as legally permitted, only for a temporary purpose. In case the buyer combines, processes or mixes the final delivery item, the buyer obtains joint ownership as per the value of the items delivered by him including installation costs to the value of the entire item. Moreover, also the supplier and the buyer are agreed that the supplier obtains direct ownership.
4. All access to the items belonging to the supplier by any third party or receivables assigned to him are to immediately informed including the documents. The buyer shall bear the costs for the defence of such access.
5. So far as the buyer still owes something he shall not resell the delivered items unless the buyer has purchased these from the supplier for resale. In the last case the buyer is obliged to reserve the ownership towards his buyers till the final payment of the purchase price to the supplier.
6. All claims arising from the resale, also from bill of exchange and cheques, are assigned to the supplier with the resale.
7. The buyer shall not mortgage nor use as security any of the delivery items. In case of mortgaging and confiscation or other injunctions through a third party he should immediately inform the supplier.
8. In case of behaviour contrary to the contract by the buyer, especially in case of delay of payment, the supplier is authorised to repossess the goods after reminders and the buyer is obliged to surrender.  
The enforcement of the reservation of the title as well as the mortgage of the delivery items by the supplier do not constitute withdrawal from the contract.

## VII. Securities Release

The supplier is obliged to release the securities belonging to him even before their demands are met, as far as the liquid value of all securities does not temporarily exceed 120% (cover limit) of the confirmed demands. A release is not considered so far as the securities are not divisible in nature or the liquid value of a security after release exceeds the cover limit. In the last case the buyer is authorised to demand the release of

securities with the provision of low-value replacement securities, which are acceptable to the supplier, so far as the liquid value of all securities then covers 120% of the secured claims.

So far as the liquid value of the securities falls short of the cover limit, the buyer has to provide the supplier on his request securities acceptable to him, which leads to the fact that the cover limit is again reached. For the determination of the liquid value of claims their face value is decisive, for items with net purchase price (without VAT) under consideration of a security discount, for new items amounting to 30% per annum and for used items amounting to 25% per annum from the purchase for every year commenced from respectively previous value.

## VIII. Liability for defects in the Delivery

With the exclusion of further claims, the supplier is liable for defects including the lack of assured properties irrespective of X, 4 as follows:

1. All the parts that, within 6 months from commissioning become unusable or can only be used with significant limitations due to a situation present before the transfer of risk, in particular due to incorrect design, poor materials or inadequate finish will be improved or replaced at the supplier's discretion. The determination of such defects must be informed immediately to the supplier in writing. Replaced parts are the property of the supplier.  
Should delivery, installation or commissioning be delayed due to circumstances for which the supplier is not responsible then liability shall expire at the latest 12 months after the transfer of risk. For any essential third party products, the liability of the supplier shall be limited to the assignment of the warranty claims accruing to which the supplier is entitled against the supplier of third party products.
2. The right of the buyer to enforce claims due to defects shall expire in all cases after 6 months from the date of timely notification of defects but at the earliest on expiry of the guarantee period.
3. No warranty is given for damage resulting from any of the following causes: Improper or inappropriate use, faulty installation or commissioning by the buyer or third party, natural wear and tear, improper or negligent handling, inappropriate operating resources, substitute materials, defective construction work, unsuitable foundation, chemical, electronic or electrical effects, insofar as these circumstances are beyond the control of the supplier. In consultation with the supplier the buyer has to provide sufficient time and

opportunity to the supplier to carry out all the repairs and replacements as deemed necessary at his discretion, otherwise the supplier shall be relieved of the defects liability. Only in urgent cases that endanger the operational safety and for averting disproportionately large damage, of which the supplier needs to be informed immediately, or when the supplier is in delay with rectifying the defects then the buyer has the right to rectify the defects himself or allow a third party to rectify the defects and to demand appropriate reimbursement of the necessary costs.

4. Of the costs arising from the repair or replacement, the supplier shall, in the event that the complaints are proven to be justified, be responsible for the costs of the replacement item including freight as well as reasonable costs for the removal and installation; furthermore if this can reasonably be demanded under the circumstances of the individual case, the cost of availing the services of the fitters and auxiliary personnel. Apart from that, the supplier shall bear the costs.
5. The warranty period for the replacement part and the repair will be 3 months, it runs at least till the termination of the original warranty period for the delivery item. The liability period for defective item shall be extended by the duration of the business interruptions caused by the repair work.
6. In case of improper use on the part of the buyer or a third party without prior consent of the supplier, where modifications or commissioning is undertaken, then there is no liability for any or all consequences as may arise.
7. Further claims of the buyer, especially claims to compensation for damages, not actually occurring on the delivery item are excluded. This liability disclaimer shall not apply in case of intent or gross negligence on the part of the owner or the executive employee as well as in case of culpable breach of contractual obligations.  
In case of culpable breach of major contractual obligations the supplier is liable - excluding cases of intentional acts or omissions, gross negligence of the owner or executive employees - only for reasonably foreseeable damages typical of contracts.  
The liability disclaimer additionally does not apply in those cases where under the product liability laws there is liability in the event of defects in the items supplied in case of personal injury or damage to property relating to privately used items. It shall also not apply in case of absence of properties that are expressly promised when the warranty was given with the intent of protecting the buyer from any damage not resulting from the delivered item itself.

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## **IX. Liability for Secondary Obligations**

Where the items supplied cannot be used by the buyer as provided for in the contract as a result of non-performance or faulty execution of proposals and consultations, before or after conclusion of the contract or of any contractual secondary obligations - especially instructions for operating and maintaining of the items supplied - then the provisions contained in Section VIII and X shall apply accordingly with the exclusion of further claims by the buyer.

## **X. Buyer's right of Revocation, Rescission and other Supplier's Liabilities**

1. If, in exceptional circumstances, we agree to take back the goods, we will invoice a minimum of 15% of the net value, however at least 250,- Euro - to cover our costs.  
We principally do not take back custom-made products.
2. The buyer can withdraw from the contract, if the entire service becomes impossible for the supplier before transfer of risk. The same also applies in case of incompetence of the supplier. The buyer can also withdraw from the contract, if items of the same kind are ordered and execution of the part of the delivery becomes impossible due to the quantity ordered and he has a vested interest in refusing a partial delivery. If this not the case then the buyer can appropriately reduce the compensation.
3. Where performance is delayed in the sense of Section IV of the conditions of delivery and if the buyer grants the supplier in arrears a suitable period of grace with the express declaration that that he will reject acceptance Of the services following expiry of the said period and if this period of grace is not adhered to by the supplier, then the buyer is entitled to withdraw from the contract.
4. Should the inability to perform occur during the delay in acceptance or by any fault of the buyer, then the buyer shall remain obligated to make the payment.
5. The buyer shall also be entitled to revoke the contract if the supplier, after having been granted a reasonable extension of time for repair or replacement in conjunction with a defect he is responsible for in the sense of conditions of delivery, lets the said extension pass to no avail due to his fault. The buyer's right of revoking the contract shall also be enforceable in all other events of repair or replacement failures by the supplier.
6. All other extensive claims of the buyer are excluded, in particular to cancellation or reduction as well as damages of any kind, which do not occur on the delivered item itself.

This liability disclaimer shall not apply in case of intent or gross negligence on the part of the owner or the executive employee as well as in case of culpable breach of contractual obligations. In case of culpable breach of major contractual obligations the supplier is liable - excluding cases of intentional acts or omissions, gross negligence of the owner or executive employees - only for reasonably foreseeable damages typical of contracts.

The liability disclaimer additionally does not apply in those cases where under the product liability laws there is liability in the event of defects in the items supplied in case of personal injury or damage to property relating to privately used items. It shall also not apply in case of absence of properties that are expressly promised when the warranty was given with the intent of protecting the buyer from any damage not resulting from the delivered item itself.

## **XI. Force majeure**

If the occurrence of force majeure leads to an interruption of the work, the parties shall be released from their obligations under this contract for the period of the interruption of the work. If, in the event of the occurrence of force majeure, the performance of the work is permanently and completely prevented, the parties shall be entitled to terminate the agreement. In this case, all materials and work performed up to the time of the interruption, as well as all unavoidable expenses, shall be compensated. Upon payment, the materials and work results procured up to that point will be handed over to the buyer. Claims for damages are excluded regardless of the legal basis.

The following events in particular shall be considered force majeure: war, acts of God, outbreak of epidemics, sabotage, strikes and lockouts, natural disasters, geological changes and impacts such as earthquakes, volcanic eruptions, tsunamis, as well as weather influences such as storms, hurricanes, floods, masses of snow, etc.

Each party is obliged to inform the other party immediately after the occurrence of a case of force majeure with all details. In addition, the parties must discuss appropriate measures to be taken and find an amicable solution.

## **XII. Court of Jurisdiction**

For all disputes arising from the contractual relationship, if the customer is a business, a legal entity under public law or a special fund under public law, then legal action must be taken before the court which has jurisdiction in the place where the supplier has his principal place of business. The supplier is also authorised to file complaints at the buyer's head office.