

GENERAL TERMS AND CONDITIONS OF BUSINESS **for supplies in Germany and the EU**

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1. General

- 1.1. These terms and conditions and any possible separate contractual agreements form the basis of all supplies and services. Differing conditions of purchase issued by the buyer do not become the subject matter of a contract even when the order is accepted.

In the absence of a special agreement, a contract is formed once the seller confirms the order in writing.

- 1.2. All samples, cost estimates, drawings and similar information, be they corporeal or incorporeal or in electronic form, as well as the copyright thereto, remain the sole property of the seller: they must not be made available to third parties. The seller undertakes to only allow third parties access to information and documents marked by the buyer as confidential if he has the buyer's approval for this.

2. Price and payment

- 2.1. In the absence of a special agreement, the prices are effective ex works and include loading at the factory. They do not include however packing and unloading. Sales tax is added to the prices at the statutory rate that is valid at the time.

- 2.2. In the absence of a special agreement, payment is to be made to the seller on account and with no deductions as follows:

30 % advance payment following receipt of the order confirmation
30 % after half the delivery period has elapsed
30 % after the goods are ready for dispatch
10 % 30 days after arrival of the delivered item at the place of assembly.

- 2.3. The buyer only has the right to withhold payments or to offset them against counterclaims if his counterclaims are undisputed or legally established.

3. Delivery period, delivery delay

- 3.1. The delivery period is stated in the agreements between the contracting parties. Adherence thereto by the seller is dependent upon all commercial and technical queries between the contracting parties being clarified and upon the buyer honouring all the obligations that are incumbent upon him, such as for example, supplying the required official certificates or permits or paying an advance payment. If this is not the case, then the delivery period will be reasonably extended unless the seller is responsible for the delay.

- 3.2. Adherence to the delivery period is subject to correct and prompt self-supply. If delays become evident, the seller will inform the buyer as soon as possible.

- 3.3. The delivery period is adhered to if the delivered item has left the seller's factory before it expires or the buyer has been notified that the goods are ready for dispatch. If an acceptance test is to be carried out, the acceptance test date prevails - except in the case of justified non-acceptance - alternatively notification that the goods are ready for the acceptance test prevails.

- 3.4. If dispatch and/or acceptance of the delivered item is delayed for reasons for which the buyer is responsible, he will be charged for the costs incurred due to the delay, starting one month after notification that the goods are ready for dispatch and/or acceptance.

- 3.5. If non-adherence to the delivery period is due to an Act of God, industrial disputes or other events that are beyond the seller's control, then the delivery period will be extended for a reasonable period. The seller will inform the buyer of the start and end of such circumstances as soon as possible.

- 3.6. The buyer can, without setting a time limit, withdraw from the contract if it finally becomes impossible for the seller to fully perform before risk passes over. In addition, the buyer can withdraw from the contract if, following an order, it becomes impossible to execute part of the delivery and he has a justified interest in refusing the partial delivery. If this is not the case, the buyer must pay the contractual price that applies to the partial delivery. The same applies if the seller is unable to supply. In all other cases Section 7.2 applies.

If impossibility or inability occurs during the acceptance delay or if the buyer is solely or mainly responsible for these circumstances, he remains obliged to counter-perform.

- 3.7. If the seller falls behind with deliveries and the buyer incurs a loss as a result, then he is entitled to demand flat-rate compensation for delayed performance. For each complete week of delay, this amounts to 0.5 % in total, with a maximum however of 5 %, of the value of that part of the total delivery that cannot be used in good time or in accordance with the contract as a result of the delay.

Taking into account the statutory exceptional cases, if the buyer sets a reasonable time limit for performance by the seller after due date and if the time limit is not adhered to, the buyer is entitled to cancel the contract within the scope of the statutory provisions.

Further claims due to delayed delivery are determined exclusively by Section 7.2 of these terms and conditions.

4. Passing over of risk, acceptance test

- 4.1. The risk passes over to the buyer when the delivered item has left the factory, even if there have been partial deliveries or the seller has provided additional services, for example, meeting the dispatch costs or delivering to the buyer's works and installing the delivered item. If an acceptance test is to be carried out, this is decisive for the passing over of risk. This must be carried out promptly on the acceptance test date or after the seller has notified the buyer that the delivered item is ready for the acceptance test. The buyer may not refuse acceptance in the event of a minor defect.
- 4.2. If dispatch and/or acceptance is delayed or fails to take place due to circumstances beyond the seller's control, the risk passes over to the buyer from the day that he is notified that the goods are ready for dispatch or acceptance. The seller undertakes to take out the insurance cover requested by the buyer and at the buyer's expense.
- 4.3. Partial deliveries are allowed if these are acceptable to the buyer.

5. Retention of title

- 5.1. The goods remain the property of the seller until payment in full of all amounts owed under the contract, including accessory claims, claims for damages and the cashing and honouring of cheques and bills of exchange. The retention of title continues to exist even if individual amounts owed to the seller are included in a current account and the balance is drawn and accepted.
- 5.2. If the buyer combines, mixes or processes the reserved goods with a new movable, then this takes place for the seller without the seller being obligated as a result. The buyer does not acquire ownership of the new item in accordance with §§ 947 and following of the German Civil Code as a result of combining, mixing or processing the reserved goods. If the reserved goods are combined, mixed or processed with items that do not belong to the seller, the seller acquires co-ownership of the new item in the proportion of the invoiced value of his reserved goods to the total value.
- 5.3. If a central settlement office assuming the del credere is involved in the business transactions between the seller and the buyer, the seller transfers ownership to the central settlement office when the goods are dispatched subject to the condition precedent that the purchase price is paid by the central settlement office. The buyer shall only be released from obligation after payment has been made by the central settlement office.
- 5.4. The buyer is only entitled to resell or further process the goods taking into account the following conditions.
- 5.5. The buyer may only sell or process the reserved goods when carrying out his business activities in accordance with the regulations and only if his financial circumstances do not deteriorate markedly.
- 5.6. The buyer hereby assigns the amount owed from the resale of the reserved goods, together with any accessory rights - including any possible balance claims - to the seller.

If the goods were combined, mixed or processed and if the seller has acquired co-ownership thereof to the extent of his invoiced value, he is entitled to the purchase-money claim that is proportionate to the value of his rights to the goods.

If the buyer has sold the amount owed by way of non-recourse factoring, the buyer assigns to the seller the amount owed by the factoring company in its place and passes on his sales proceeds to the seller in the proportion of the value of the seller's rights to the goods. The buyer is obliged to inform the factoring company of the assignment if he is more than 10 days overdue with the settlement of an invoice or if his financial circumstances deteriorate substantially. The seller accepts this assignment.

- 5.7. The buyer is authorised to collect the assigned receivables provided that he honours his payment obligations. The collection authorisation expires if the buyer is in default or if the buyer's financial circumstances deteriorate substantially. In this case the seller is hereby authorised by the buyer to inform the customers of the assignment and to collect the receivables himself. In order that the seller can claim the assigned receivables, the buyer must provide the information required and allow this information to be checked. In particular, if requested by the seller, he must hand over to the seller a detailed list of the receivables to which he is entitled, with the name and address of the customer, the amount of the individual receivables, invoice date etc.
- 5.8. If the value of the securities in favour of the seller exceeds all the amounts owed to the seller by more than 10 %, then, if requested by the buyer, the seller is obliged to release securities according to his choice.
- 5.9. Pledging or collateral assignment of the reserved goods or the assigned receivables are not allowed. The seller is to be informed of seizures immediately whilst naming the distrainer.
- 5.10. If when exercising his right of retention the seller takes back the delivered item, withdrawal from contract only takes place if the seller declares this expressly. The seller can pay off the amounts owed to him by privately selling the reserved goods taken back.

The buyer keeps the reserved goods safe for the seller free of charge. He must insure them against the usual risks, such as for example, fire, theft and water and to the usual extent. The buyer hereby assigns his claims for damages of the kind described above, which he is entitled to make against insurance companies or other parties liable, to the seller, the amount being equal to the invoiced value of the goods. The seller accepts the assignment.

6. Notice of defect, claims arising from defects

In the event that the delivered goods contain material defects and defects in title, to the exclusion of further claims and subject to Section 7, the seller warrants as follows:

Material defects

- 6.1. All those parts that turn out to be defective due to a circumstance that existed before the risk was passed on, are to be remedied or replaced free of defects and free of charge, according to the seller's choice. The seller is to be informed immediately and in writing if such defects are detected. Replaced parts become the property of the seller.
- 6.2. In order that the seller can carry out the remedial work and replacement deliveries that he deems necessary, the buyer, following agreement with the seller, must allow the seller time and give him the opportunity to carry out such measures; otherwise the seller is not liable for the consequences ensuing therefrom. The buyer only has the right to remove the defect himself or to arrange for a third party to remove it and to demand a refund of the necessary costs from the seller in urgent cases, where operational safety is jeopardised or in order to avert excessive damage, and the seller must be informed of this immediately.
- 6.3. As regards the costs that ensue directly as a result of the defect being remedied or the delivery being replaced, the seller bears the costs of the replacement including the dispatch, if the notice of defect proves to be justified. He also bears the costs of dismantlement and installation and the costs of making available the required fitters and auxiliary personnel, including travel costs, provided that as a result the seller does not incur a disproportionate expense.
- 6.4. Within the scope of the statutory provisions, the buyer has a right to withdraw from the contract if the seller - taking into account the statutory exceptional cases - lets a reasonable set time limit for the remedial work or replacement delivery on account of a material defect expire with no such work or delivery taking place successfully. If the defect is only minor the buyer is only entitled to reduce the contract price. Otherwise the right to reduce the contract price remains excluded.

Further claims are determined by Section 7.2. of these terms and conditions.

- 6.5. No warranty is provided particularly in the following cases:

Unsuitable or improper use, incorrect assembly by the buyer or third parties, natural wear and tear, incorrect or careless handling, maintenance work that is not in accordance with the rules, unsuitable machines and equipment, defective building work, unsuitable building site, chemical, electrochemical or electrical influences unless the seller is responsible for these.

- 6.6. If the buyer or a third party carries out improper remedial work, the seller is not liable for the ensuing consequences. The same applies to changes made to the delivered item without the prior approval of the seller.

Defects in title

- 6.7. If use of the delivered item results in a breach of industrial property rights or copyrights in Germany, the seller will in principle, at his expense, grant the buyer the right to further use the delivered item or he will modify the delivered item in a way that is appropriate for the buyer so that the breach of the protective right no longer exists.

If this is not possible within a reasonable period of time or according to terms that are financially and commercially reasonable, the buyer and the seller are entitled to withdraw from the contract.

In addition, the seller will indemnify the buyer against undisputed or legally established claims made by the registered proprietor concerned.

- 6.8. The seller's obligations referred to in Section 6.7 are, subject to Section 7.2, final and definitive in the event of a breach of industrial property rights or copyrights.

They only exist if

- the buyer informs the seller immediately of asserted breaches of industrial property rights or copyrights,
- the buyer supports the seller to a reasonable extent when defending the asserted claims and/or allows the seller to carry out modification measures in accordance with Section 6.7,
- the seller retains the right to take any defensive measures including arranging out-of-court settlements,
- the defect in title is not due to an instruction from the buyer and
- the infringement of a right is not due to the fact that the buyer has changed the delivered item without proper authority or has used it in a way that is not in accordance with the contract.

7. Liability

- 7.1. If the delivered item, through the fault of the seller as a consequence of failing to follow or following incorrectly proposals and advice provided by the buyer before or after the contract is concluded or due to the breach of other contractual accessory obligations, particularly instructions concerning the servicing and maintenance of the delivered item, cannot be used by the buyer in accordance with the contract, the regulations contained in Sections 6. and 7.2. apply accordingly to the exclusion of further claims by the buyer.

- 7.2. The seller is only liable for damages that have not occurred to the delivered item itself, for whatever legal reasons
- a) in the event of intent,
 - b) in the event of gross negligence by the owner/the executive bodies or executive personnel,
 - c) in the event of culpable injury to life, body or health,
 - d) in the event of defects which he has fraudulently concealed or whose absence he has guaranteed,
 - e) in the event of defects in the delivered item he is liable in accordance with the product liability law for personal or material damages to privately used objects.

In the event of culpable breach of fundamental contractual duties, the seller is also liable in the event of gross negligence by non-executive personnel and in the event of slight negligence, in the latter case liability is limited to contract-typical reasonably foreseeable damage.

Further claims are ruled out.

- 7.3. Within the scope of and subject to the regulations contained in this Section, the seller is liable for any damages caused when implementing the contract and for direct and indirect consequential damages, but not however for loss of production, loss of orders or loss of profit.

8. Statutes of limitation

All claims by the buyer, for whatever legal reasons, become statute-barred in 12 months. The statutory periods apply to claims for damages according to Section 7.2. a) - e). They also apply to defects in a construction or to delivered items which were used for a construction according to their usual manner of use and which caused its defectiveness.

9. Use of software

If software is included in the scope of supplies, the buyer is granted a non-exclusive right to use the delivered software including its documentation. The buyer is allowed to use the software in the delivered item for which it is intended. The software cannot be used in more than one system.

The buyer may only duplicate, rework or decode the software or convert it from object code to source code to the extent that the law allows (§§ 69 a and following of the Copyright Act). The buyer undertakes not to remove the manufacturer's particulars, particularly copyright statements, or to change them without the prior express approval of the seller.

Any other rights to the software and the documentation, including copies, remain with the seller and/or the software supplier. The issuing of sublicences is not allowed.

10. Applicable law, place of jurisdiction

- 10.1. The law of the Federal Republic of Germany which is authoritative for legal relationships between German parties applies exclusively to all the legal relationships between the seller and the buyer.
- 10.2. The place of jurisdiction is the court that has jurisdiction over the seller's registered office. The seller is entitled however to institute legal proceedings at the buyer's headquarters.

11. The applicability of the UN purchase law is explicitly excluded.