

Conditions of Sale, Delivery and Payment

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Unless otherwise explicitly confirmed in writing, the following conditions shall apply exclusively. Any conditions of purchase deviating from these conditions shall not become part of the contract upon acceptance and execution of the order.

1. Offer

Any documents relating to this offer, such as figures, drawings, weight specifications and dimensions, are approximations only, except where such documents are explicitly marked as binding. The Contractor shall retain ownership and copyright over any cost estimates, drawings and other documents. These documents must not be made accessible to third parties.

The Contractor may only disclose plans marked as confidential by the Client to third parties with the Client's consent.

Where necessary, the Client shall be obligated to provide the Contractor with a sufficient quantity of the materials to be processed for test purposes free of charge. This material and the values derived from it shall be used as the basis for delivery.

2. Prices and payment

Unless otherwise agreed, the prices stated shall be ex works excluding packaging and shipping. VAT shall also be applied to prices in the relevant statutory amount.

Where order confirmation and the agreed production start date are longer than six months apart, or where production takes longer than six months, the Contractor shall be entitled to increase the agreed price by no more than five (5) per cent where raw material prices, employee salaries, freight charges or prices for components to be purchased by the Contractor increase after order confirmation.

In the event of assignment of claims for payment, the Contractor shall not be obligated to take legal action to recover the transferred claims. Only payments that are made directly to the Contractor shall constitute a discharge of obligations.

In the event of failure to pay by the target date, subject to other rights and without the need for a notice of default, interest shall be applied in the amount of eight (8) per cent above the base rate in accordance with Section 247 BGB [German Civil Code]. Where partial payments have been agreed, failure to make a payment, in full or in part, on time, shall result in the full outstanding balance becoming payable immediately. Without regard to the agreed payment method, the Contractor shall, at their discretion, be entitled to request immediate payment of the full purchase price, withhold delivery until payment of the full purchase price, or withdraw from the contract where, upon entering into the contract, it is believed that the claim for payment of the purchase price is at risk due to the Client's circumstances, regardless of whether this risk arose before or after entering into the contract.

The Client shall not be entitled to withhold payments due to counterclaims, or use such claims to offset payment, except where these counterclaims are undisputed or have been established by way of a final judgement.

3. Delivery time and default of delivery

- a. The delivery time shall be specified in the agreements between the contracting parties. To ensure compliance with the delivery time on the part of the Contractor, all business-related and technical queries between the contracting partners must be resolved. The Client must also ensure that they meet all obligations incumbent upon them, such as the provision of the necessary official certifications, approvals or

the payment of any down payments. Failure to do so will result in the delivery time being extended accordingly. This does not apply where the Contractor is responsible for the delay.

- b. Compliance with the delivery deadline shall be subject to correct and punctual delivery by the Contractor's own suppliers.
- c. The delivery deadline shall be deemed as met where the delivery item has left the Contractor's plant or notification of readiness for dispatch has been sent before expiry of the deadline. Where acceptance is required, the date of acceptance, or alternatively notification of readiness for acceptance, shall be taken as the relevant date of delivery, except in cases of authorised refusal to accept.
- d. Where shipment and/or acceptance of the delivery item is delayed for reasons for which the Client is responsible, they, starting one month after notification of readiness for delivery or acceptance, shall be charged for any costs arising as a result of the delay.
- e. Where failure to meet the delivery deadline is a result of force majeure, industrial action or other events beyond the Contractor's control, the delivery deadline shall be extended accordingly. The Contractor shall notify the Client of the start and end of such circumstances immediately.
- f. The Client may withdraw from the contract without notice where the Contractor becomes definitively unable to render the full service agreed prior to the transfer of risk. The Client may also withdraw from the contract where part of the delivery for an order cannot be fulfilled and they have a legitimate interest in refusal of the partial delivery. If this is not the case, the Client must pay the contractually agreed price applicable for the partial delivery. The same shall apply in the case of incapacity on the part of the Contractor. Otherwise, Section 7. b. applies. Where inability or incapacity on the part of the Contractor arises during the delay in acceptance, or where the Client is solely or largely responsible for such circumstances, the latter shall remain obligated to provide consideration.
- g. Where the Contractor is in default and the Client, taking into account the legal cases of exception, grants the former an appropriate deadline by which to render the service and this deadline is subsequently not met, the Client shall be entitled to withdraw from the contract in accordance with the statutory provisions. Any further claims arising from default in delivery shall be governed exclusively by Section 7. b. of these Conditions.

4. Transfer of risk and acceptance

- a. Risk shall be transferred to the Client when the delivery item leaves the plant, even in the case of partial delivery or where the Contractor assumes other services, such as shipping costs or delivery and installation. Where acceptance is required, the point at which this is communicated shall be taken as the point of risk transfer. Acceptance must be completed immediately on the acceptance date, or alternatively following notification by the Contractor of readiness for acceptance. The Client may not refuse acceptance in the event of a minor defect.
- b. In the event of delay or failure to perform delivery and/or acceptance due to circumstances for which the Contractor is not at fault, risk shall be transferred to the Client from the day of notification of readiness for dispatch or acceptance. The Contractor shall be obligated to take out any insurance policies requested by the Client at the cost of the latter.
- c. Partial deliveries shall be permissible where these are reasonable for the Client.

5. Reservation of ownership

- a. The Contractor shall reserve ownership of the delivery item up until all payments arising from the delivery contract have been received.
- b. The Contractor shall be entitled to insure the delivery item against theft, breakage, fire damage, water damage and any other damage at the cost of the Client unless the Client can prove that they have taken out the relevant insurance policies themselves.

- c. The Client may not pledge the delivery item nor assign it as security. The Client must notify the Contractor immediately in the event of seizure, confiscation or any other third-party disposal.
- d. In the event of conduct that is deemed to be in breach of the contract, in particular default in payment, the Contractor shall, following a reminder to make payment, be entitled to take back the delivery item. In such cases, the Client shall be obligated to surrender the item. The assertion of any reservation of ownership and seizure of the delivery item by the Contractor shall not constitute a withdrawal from the contract.
- e. Where the Contractor's goods are combined by the Client with other items to form one unified item, it shall be deemed as agreed that the Client will transfer co-ownership proportionately to the Contractor in accordance with Section 947 (1) BGB and hold the item in safe custody for the latter free of charge.
- f. Where such products are sold, the Client shall transfer any claims for payment arising from this resale to the Contractor in the amount of the value of the delivery item delivered by the Contractor.
- g. An application to open insolvency proceedings on the part of the Client shall authorise the Contractor to withdraw from the contract and request the immediate return of the delivery item from the Client.

6. Warranty

In the event of material defects or defects of title, the Contractor, under exclusion of all further claims and subject to Section 7., shall provide the following warranty:

Material defects

- a. Any parts that are discovered to be defective owing to circumstances occurring prior to the transfer of risk must, at the discretion of the Contractor, be repaired or replaced. The Contractor must be notified of the discovery of such defects immediately in writing. Replaced parts shall remain under the ownership of the Contractor.
- b. Upon agreement with the Contractor, the Client must allow the necessary time and opportunity to undertake all of the repairs and replacement deliveries deemed necessary by the Contractor. The Contractor shall be otherwise released from liability for any consequences arising from such defects. Only in urgent cases where there is a risk to operational safety and/or to avoid any disproportionately serious damage, whereby the Contractor must be immediately notified, the Client shall have the right to repair the defect themselves or have it repaired by a third party and request compensation for any necessary expenses from the Contractor.
- c. With regard to the direct costs arising from repairs and/or replacement delivery, the Contractor shall, insofar as the complaint is deemed to be valid, bear the costs of the replacement, including shipment and any appropriate removal/installation costs where this can be reasonably requested in the individual case in question, as well as the costs for the provision of any required service engineers and workers.
- d. The Client shall have the right to withdraw from the contract in line with statutory provisions where the Contractor, taking into account any legal cases of exception, fails to perform any necessary repairs or replacement delivery as a result of a material defect within a reasonable period of time set by the Client. The Client only has the right to request a reduction in the contract price in the event of a minor defect. The right to reduction of the contract price shall otherwise remain excluded. Further claims shall be governed by Section 7. b.

- e. No warranty shall be provided in the following cases:
- unsuitable or improper use;
 - faulty installation and/or commissioning by the Client or a third party;
 - natural deterioration;
 - erroneous or negligent handling;
 - improper maintenance;
 - unsuitable equipment;
 - faulty construction works;
 - unsuitable installation site; or
 - chemical, electrochemical or electric influences where these are not the fault of the Contractor.
- f. The Contractor shall not be liable for any consequences arising from any incorrect repairs performed by the Client or a third party. The same shall apply for any changes made to the delivery item without the prior consent of the Contractor.
- g. In the event of a defect caused by the use of non-original replacement parts, the Client shall be obligated to prove that the non-original replacement parts used did not cause or contribute to the defect. Where the Client is unable to provide this proof, the Contractor shall be entitled to refuse all resulting claims.

Defects of title

- h. Subject to Section 7. b., the obligations on the part of the Contractor outlined in Section 6. g. shall be final in cases of infringements of property rights or copyrights. These obligations shall only arise where:
- I. the Client immediately informs the Contractor of claimed property right or copyright infringements;
 - II. the Client supports the Contractor in the defence of such claims to a reasonable extent or makes it possible for the Contractor to take modification measures in accordance with Section 6. g.;
 - III. the Contractor reserves the right to take all defence measures, including out-of-court settlements;
 - IV. the defect of title is not a result of any instruction on the part of the Client; or
 - V. the infringement of rights was not caused by unauthorised changes made by the Client or as a result of use outside the scope of the contract.

7. Liability

- a. Where the delivery item cannot be used by the Client as intended under the contract due to the Contractor's failure to implement suggestions and advice, or insufficient implementation of such, before or after entering the contract, or as a result of an infringement of any other secondary contractual obligations, in particular pertaining to instructions for operation and maintenance of the delivery item, the provisions outlined under Section 6. and 7. b. shall apply accordingly, excluding any further claims on the part of the Client.
- b. For damages not to the delivery item itself, the Contractor shall, on whatever legal grounds, only be liable in the event of:
- I. intent;
 - II. gross negligence on the part of the owner or executive employee;
 - III. culpable injury to life, body or health;
 - IV. defects that the Contractor disingenuously concealed (including where the Contractor guaranteed that there were no such defects); and
 - V. delivery item defects where the Contractor is liable for personal injury or material damage to privately used items under the German Product Liability Act.

In the event of a culpable breach of significant contractual obligations, the Contractor shall also be liable for the gross negligence of any non-executive employees. The Contractor shall also be liable for minor negligence, whereby liability is limited to damages that could have been reasonably foreseen and which are typical for the type of contract. Further claims are excluded.

8. Statute of limitations

All Client claims, whatever the legal grounds, shall expire by limitation 12 months after delivery. The statutory limitation periods shall apply for claims for compensation in accordance with 7. b. I. to V. These periods shall also apply for any defects of structures or delivery items that were used for a structure in line with their normal use and caused such defects.

9. Software use

Where included as part of delivery, the Client shall be granted the non-exclusive right to use the delivered software, including any related documentation. This software shall be provided for use with the designated delivery item. Use of the software on multiple systems is not permitted.

The Client may only reproduce, edit or translate the software, or convert its object code to source code, within the legally permissible scope (Section 69 a et seqq. German Copyright Act). The Client must not remove manufacturer information, in particular any comments pertaining to copyright, or modify this information without the prior explicit consent of the Contractor.

The Contractor and/or software supplier shall retain all other rights to the software and documentation, including copies of such. The provision of sub-licences is not permitted.

10. Place of performance, place of jurisdiction and applicable law

The place of performance for both parties shall be the legal domicile of the Contractor. Any potential disputes shall be resolved by the competent courts with jurisdiction over the Contractor's legal domicile.

The Contractor shall, however, be entitled to file a complaint within the jurisdiction of the Client's legal domicile. The contractual relationship shall be subject to the law of the Federal Republic of Germany. The United Nations Convention on the International Sale of Goods of 11 April 1980 shall not apply. For legal action brought before the relevant foreign courts within the Client's legal domicile, the Contractor may choose to waive the application of German law, whereby the Contractor's Conditions of Delivery and Payment shall be applied to the extent permitted.

11. Follow-up orders

These Conditions of Delivery shall also apply for follow-up orders or repair orders that are not explicitly confirmed in writing.