

§ 1 General

These supply and payment conditions only apply to the business transactions with entrepreneurs mentioned under § 310 section 1 BGB as well as to legal entities under the Public Law or special properties governed by the Public Law.

All the offers, order confirmations, deliveries and services are based on these conditions and special contractual agreements, if any. Deviating purchase conditions of the ordering party / customer shall not be included in the contract even with the acceptance of the contract.

A contract shall become effective with a special agreement after getting the written or telephonic order confirmation from the supplier. This shall also apply to amendments, modifications or subsidiary agreements. With the issuance of the invoice, the order shall be considered as confirmed.

These terms and conditions shall also apply to all the future business relationships, although these are not expressly agreed upon again.

Any acknowledgement from the side of the customer referring to his own business or purchase conditions will be hereby expressly rejected.

Any deviations from these conditions shall become effective only if the supplier confirms these in writing.

The supplier's offers will be subject to changes. The order number or item number will be based on the latest version of the supplier's documents such as catalogues or brochures, which also put forth further technical specifications. The right to make technical changes is expressly reserved. We do not give any guarantee for a precise compliance with the unit weights, dimensions and output data partially given in the catalogue.

If, upon the conclusion of the contract, it is detected that the supplier's claim for return service may not be fulfilled due to lack of efficiency on part of the customer - particularly because the latter has exceeded the credit limit or has not settled invoices that are long overdue - the supplier will have the right to refuse the fulfilment of the contract till the customer offers return services or gives guarantee of their fulfillment. The supplier will have the right to withdraw from the contract if the customer fails to provide the return services or fulfil the obligation of providing security even after the expiry of a reasonable term, expressly rejected.

The supplier reserves the right to invoice the contract goods via letter post or as electronic bill.

§ 2 Pricing and payment

The prices mentioned by the supplier in his offers are subject to changes. Unless mentioned otherwise in the order confirmation, the prices shall be applicable ex-works / ex-warehouse exclusive of the packing, postage, freight costs, other shipping costs, insurances and customs duty. These costs will be invoiced separately. The packing will be invoiced at the cost price. It will not be taken back. The legally applicable VAT is not included in the supplier's price. It will be invoiced separately according to the official rate.

All the invoices of the supplier shall be payable in Euro at the paying office of the supplier within 30 days from the date of invoice, net without deductions or within 14 days from the date of invoice after the deduction of 2% discount. No discount shall be applicable if the purchase price receivables from previous invoices are still pending.

Notwithstanding a deviating clause of the customer, the supplier will have the right to first offset the incoming payments against the previous dues. If costs and interests have already been incurred, the supplier will have the right to offset the payments first against the costs, then interests and finally against the main service.

If the customer does not make the payment in time, or if the supplier gets to know of some other circumstances, which question the creditworthiness of the customer, then the supplier has the right to collect the remainder of the debt or to demand security.

Cheques and bills will be accepted as payment, however bills only after prior agreement.

§ 3 Offsetting

The customer can exercise the right to withhold payments or offset them against counter-claims only if the claims raised by him are undisputed or established as final and absolute.

§ 4 Delivery period, delay in delivery

The delivery period is determined on the basis of the agreements between the contractual parties. The supplier will be able to comply with the delivery deadline only if all the commercial and technical issues between the parties to the contract are clarified and the customer has fulfilled all his obligations, e.g. procurement of the required official certificates or approvals, rendering of service or payment of the invoices. If these pre-requisites are not fulfilled, the delivery period shall be extended reasonably. However, this shall not apply if the supplier is in arrears.

The compliance with the delivery deadline on our part will depend upon correct and punctual delivery by our supplier. If delays are apparent, the supplier must inform the customer as soon as possible.

It is considered that the delivery deadline has been complied with, if the delivery object has left the supplier's factory before the expiry of this deadline or if the supplier has notified the readiness for shipping on his part. If the delivered goods must undergo an acceptance procedure, the date of acceptance shall be decisive, or alternatively, the notification of the readiness for acceptance, except in the event of justified rejection of acceptance.

If the delay in the dispatch or acceptance of the delivery object is due to reasons, for which the customer is responsible, he is charged for the costs incurred due to the delay, beginning with the month after the notification of the dispatch or readiness for acceptance.

If the non-compliance with the date of delivery is caused by acts of God, industrial disputes or other events, which lie outside the area of influence of the supplier, the delivery period shall be extended reasonably. The supplier shall communicate the time of commencement and conclusion of such circumstances to the customer as soon as possible.

The customer can withdraw from the contract without giving notice if the supplier is unable to provide the services completely before the transfer of risk. The customer can also terminate the contract if the supplier is unable to deliver a part of the consignment and if the customer has a justified interest in rejecting the partial delivery. If not, the customer shall pay the contract price for the partial delivery. This shall also apply in the event of incapacity of the supplier to make the delivery. For the rest, § 8 shall apply.

If the incapacity or impossibility on part of the supplier is due to the delay in acceptance or if the customer is solely or largely responsible for the same, he shall be liable to provide return service.

If, after taking into account the legal exceptions, the customer extends the term for the provision of services reasonably (after the expiry of the original term), and if the supplier fails to comply with this term too, the customer shall have the right to withdrawal within the framework of the legal guidelines.

Other claims resulting from the delayed delivery are determined exclusively in conformance with § 8 of these conditions.

§ 5 Transfer of risk, acceptance

The transfer of risk to the customer takes place when the delivery object leaves the plant / warehouse, also in the event of partial deliveries, or even when the supplier assumes other services, e.g. shipping costs or delivery and installation. If an acceptance procedure has to be carried out, this is decisive for the transfer of risk. This process must take place immediately on the planned date of acceptance, alternatively after the supplier gives the notification of readiness for acceptance. The customer may not reject acceptance if there are no major faults / defects.

In the event of delay or failure of the dispatch or acceptance on grounds, for which the supplier is not responsible, the risk will be transferred to the customer from the day of notification of the dispatch or readiness for acceptance on part of the supplier. If the customer demands, the supplier shall take out the insurances at the cost of the customer.

Part deliveries may be made, but only if the customer finds these reasonable.

§ 6 Retention of title

The delivered goods shall remain the property of the supplier till the customer pays all the liabilities resulting from this business relationship.

As the manufacturer, the supplier shall be responsible for processing and altering the goods, though not liable. If the co-ownership of the supplier expires due to amalgamation, it is agreed that the co-ownership of the customer on the common object shall be transferred to the supplier depending upon the corresponding percentage value of the invoice. The customer shall preserve the ownership or co-ownership of the supplier free of cost.

The customer shall preserve and protect the ownership / co-ownership of the supplier against deterioration, mitigation or loss with utmost care, like an orderly businessman.

The customer has the right to process and sell the goods subject to retention of title during a regular business transaction. However, he does not have the right to pledge the goods or transfer them by way of security. The customer shall assign the receivables earned by him from the resale of goods subject to retention of title or from any other legal grounds pertaining to these goods completely to the supplier by way of security, along with all the ancillary rights.

If third parties are given access to the goods subject to retention of title, the ownership right of the supplier on these goods is brought to the notice of the customer and the supplier is informed immediately of this interference. The customer shall bear the costs incurred and compensate for the resultant damages.

In the event of default of payment on part of the customer, the supplier will have the right to withdraw from the contract and take back the goods at the customer's cost or, if required, demand an assignment / transfer of the handover claims of the customer against the third party. The supplier's right to demand compensation of damages shall remain unaffected. This shall also apply if the customer carries out activities contrary to the contract.

If the customer demands, the supplier shall release the securities at his disposal such that the realisable value of his remaining securities exceeds the receivables to be secured by more than 20%. The supplier decides which securities he will release.

If the customer behaves contrary to the terms of the contract, particularly if he is default of payment, the supplier is entitled to take back the delivered goods after sending a corresponding reminder. In that case, it is obligatory for the customer to hand over the goods.

If the customer files an application for initiating insolvency proceedings, the supplier shall have the right to withdraw from the contract and demand immediate handover of the delivery object.

§ 7 Claims for defects

Excluding all the other claims, the supplier gives the guarantee for material defects and defects of title, subject to § 8.

Material defects

The supplier shall repair or replace all parts that are proved as defective due to certain circumstances prevalent before the transfer of risk, as per the supplier's discretion. The customer shall immediately notify the supplier in writing of such defects. The replaced parts will be the property of the supplier.

The customer shall discuss with the supplier and agree upon a specific period and provide him with the requisite facilities for the apparent repairs or replacement deliveries to be made; if the customer fails to do so, the supplier will not be liable for the consequences. However, in cases of extreme emergency, when the operational safety is at risk or there is a possibility of an even greater damage, whereby the supplier must be immediately informed, the customer has the right to eliminate the defect himself or involve the services of a third party and demand compensation of the expenses incurred from the supplier.

Return deliveries of goods should be generally free; freight forwarded consignments will not be accepted. If reclamation is justified, the postal charges are compensated.

The supplier shall bear the direct costs for the repairs or replacement delivery and, if the claim is justified, also the costs for the replacement as well as the shipping costs. Besides, the supplier shall bear the installation and dismantling costs, the costs required for the provision of the corresponding technicians and assistants and transportation costs, provided that this does not put an unreasonably high burden upon the supplier.

Within the framework of the legal guidelines, the customer has the right to withdraw from the contract if the supplier fails to carry out the repair operations or make the replacement delivery following a material defect within the reasonable term assigned for this purpose (whereby the legal exceptions will be taken into account). If the defect is insignificant, the customer only has a right to reduce the contract price. In all other cases, the right to reduce the contract price is excluded.

Other claims are specified in § 8 of these terms and conditions.

The supplier does not give any guarantee for the delivered goods in the event of:

Inappropriate use, incorrect assembly or commissioning by the customer or a third party, natural wear, faulty or careless handling, inappropriate maintenance, unsuitable operating resources, chemical, electro-chemical or electric influences, provided that the supplier is not responsible for the same.

If the repair operations are undertaken by the customer himself or by a third party, the supplier shall not assume any liability for the consequences.

The same shall apply if the customer makes changes to the delivery object without the prior consent of the supplier.

Defects of title

If the use of the delivery object leads to a violation of the industrial property rights or copyrights within the country, the supplier shall, at his own cost, procure and grant the customer the right to further use or modify the delivery object (in a manner reasonably acceptable to the customer), so that there is no violation of the industrial property rights.

If this is not possible under economically reasonable conditions or within a reasonable period of time, the customer is entitled to withdraw from the contract. Under the given pre-requisites, the supplier also has the right to withdraw from the contract.

Moreover, the supplier shall exempt the customer from undisputed or legally ascertained claims of the respective proprietor.

The obligations of the supplier mentioned in § 7 are subject to § 8 with respect to the violation of the industrial property right or copyright.

These obligations are valid if

- the customer immediately notifies the supplier of the asserted violations of industrial property rights or copyrights,
- the customer supports the supplier to a reasonable extent in the process of warding off the asserted claims or the supplier allows the modification measures as defined under § 7,
- all the defence measures including out-of-court settlements remain reserved for the supplier,
- the defect of title is not the result of a direction of the customer and
- the infringement was not because of an unauthorised modification made by the customer to the delivery object or an inappropriate use (not in conformance with the contractual terms) of the object.

§ 8 Liability

If the customer is unable to use the delivery object in conformance with the contract due to a fault on part of the supplier, e.g. as a result of incomplete or wrong suggestions and consultation offered before or after the conclusion of the contract or due to the violation of other incidental contractual obligations (particularly of the operating and maintenance instructions for the delivery object), the terms mentioned under §§ 7 and 8 shall apply accordingly under exemption of other claims of the customer.

The supplier shall assume the liability for damages that are not directly caused to the delivery object (on any legal grounds whatsoever) only under the following circumstances:

- purposeful act
- gross negligence on part of the owner / institution or managerial employee
- if there is culpable injury to life, physical injury or damage to health
- if defects are found in the delivery object, which the supplier has hidden with malicious intent or whose absence he had guaranteed in writing
- if defects are found in the delivery object, for which liability must be assumed in conformance with the Product Liability Law in the event of damage to life or property during the private use of objects.

In the event of culpable violation of important contractual obligations, the supplier shall also assume the liability for negligence as well as gross negligence on part of the non-managerial employees, for the former case limited to the reasonably foreseeable damages typical to the contract.

No other claims are valid.

§ 9 Statute of limitation

All claims raised by the customer, resulting from any legal grounds whatsoever, shall expire in 12 months. For damage compensation claims as mentioned under § 8, the legal terms shall apply.

§ 10 Confidentiality

The customer shall handle all the information, know-how and other business secrets revealed to him in the course of execution of the respective order in a strictly confidential manner. He shall not forward any information, drawings, sketches or other documents or make these accessible to a third party without the express consent from the supplier.

§ 11 Industrial property rights, usage right and patent rights

As long as the supplier manufactures goods on the basis of an order as per the instructions and guidelines given by the customer and delivers these to the customer, the customer shall guarantee the supplier that the goods and services provided by him will not lead to an infringement of the industrial property rights of third parties. The customer shall exempt the supplier from all the third-party claims and compensate for the damages borne by him.

If the supplier provides the customer with tools, proposals for installation, drawings or other documents along with the goods, he shall retain the ownership of these as well as all the industrial property rights and usage right. The customer may use these only within the scope of the agreement to sale. However, he shall not have the right to reproduce such objects or make these accessible to third parties.

§ 12 Final clauses

The supplier has the right to store and process all data about the customer acquired in the process of development of contract for his own purpose under observance of the Federal Data Protection Act.

If individual clauses of this contract are rendered ineffective, the parties to the contract shall replace the ineffective clause with a clause that comes closest to fulfilling the commercial aim strived at with the former clause.

The Court of jurisdiction is Stuttgart.

Unless specified otherwise in the order confirmation, the place of fulfilment will be the business location of the supplier.

All the legal relationships between the supplier and the customer shall be governed by the German Law.