

GENERAL TERMS OF SALE AND DELIVERY

I. GENERAL PROVISIONS

1. The written declarations made by both parties shall be authoritative for the scope of the deliveries or services (hereinafter referred to as Deliveries). The ordering party's general terms of business shall only apply, however, in so far as the supplier or service provider (hereinafter referred to as the Supplier) has expressly agreed to them in writing.
2. The Supplier unrestrictedly reserves his right of exploitation of property and copyright with regard to estimates of cost, drawings and other documents (hereinafter referred to as Documents). The Documents shall only be made accessible to a third party with the prior consent of the Supplier and shall be returned to the latter immediately on demand if the order is not given to the Supplier. Items 1 and 2 shall apply accordingly to the ordering party's Documents; the latter may, however, be made accessible to third parties to whom the Supplier has, with permission, entrusted Deliveries.
3. The ordering party has the non-exclusive right to use standard software with the agreed features, in unaltered form on the agreed devices. The ordering party shall be entitled to make a backup copy without an express agreement to this effect.
4. Partial deliveries are permitted in so far as they are acceptable to the ordering party.

II. PRICES AND TERMS OF PAYMENT

1. Prices are ex works, excluding packaging, and plus the respective applicable legal turnover tax.
2. In the event that the Supplier has assumed the responsibility for erection or installation and there has been no other agreement made, then in addition to the agreed remuneration, the ordering party shall bear all necessary additional costs such as travel expenses, the cost of transporting hand tools and personal luggage, as well as living expenses.
3. Payments shall be made to the Supplier's independent paying agent.
4. The ordering party shall only be able to offset such claims as are uncontested or recognised by declaratory judgement.

III. RETENTION OF TITLE

The delivered goods shall remain our property until all our claims arising from the business relationship have been settled. They may only be sold in the due course of business either for cash or with further reservation of ownership. They may not be pledged or assigned or transferred by way of security by the customer.

The goods delivered with reservation of title may be processed by the customer on our behalf. They shall not become the customer's property in accordance with Section 950 of the German Civil Code (BGB). If the goods are combined or mixed with other objects, we shall acquire co-ownership of the new article corresponding to the value of our reserved goods in relation to the value of the other goods at the time of processing.

The customer herewith assigns to us all his future claims from release of the reserved goods. This assignment shall apply both for the full value and for the part value corresponding to our co-ownership share of the goods sold. The assignment shall remain valid until all our claims have been paid in full. We hereby accept this assignment.

Despite the above assignment and our right of collection, the customer shall be entitled to collect payments as long as he continues to discharge his obligations towards us and does not become insolvent. The sums received shall be transferred to us immediately if our claims are due.

The customer shall immediately inform us of any third-party judicial enforcement measures against the reserved goods or claims assigned to us in advance. Such information must be accompanied by the documentation required for intervention.

At the customer's request, we shall release the claims assigned to us by way of security insofar as they exceed the value of our secured claims by more than 20%.

IV. PERIODS OF TIME FOR DELIVERIES; DELAY

1. Compliance with set periods for Deliveries presupposes the punctual submission of all Documents, necessary approvals and permits, particularly with regard to plans, that are to be supplied by the ordering party, plus compliance on the part of the ordering party with the agreed conditions of payment and other obligations. If these preconditions are not satisfied promptly, then the periods of time shall be increased accordingly; this shall not apply if the Supplier is responsible for the delay.
2. If the periods of time are not observed as a consequence of force majeure, e.g., mobilization, war, insurrection, or other similar events such as strikes or lock-out, then the periods of time shall be extended accordingly.
3. In the event that the Supplier delays performance, then the ordering party shall be entitled – providing he is able to prove that he has incurred damages as a result – to demand for each complete week of delay damages of 0.5%, but at the most amounting to a total of 5%, of the price of that part of the Deliveries that could not be put into useful operation as a result of the delay.
4. Both claims for damages on the part of the ordering party for delay in delivery, and claims for damages in place of performance, that exceed the limits stated in Item 3 are excluded in all cases of delayed delivery, including after the expiry of any set period for delivery given to the Supplier. This shall not apply in so far as there is absolute liability in cases of intent or gross negligence or in the event of fatal or bodily injury or injury to health. The ordering party shall only be able to withdraw from the contract within the framework of the legal provisions in so far as the Supplier is responsible for the delay in delivery. No change in the burden of proof to the disadvantage of the ordering party is associated with the above regulations.
5. The ordering party shall undertake to explain at the request of the Supplier and within a reasonable period, whether as a result of the delay he is withdrawing from the contract or is insisting on the delivery.
6. In the event that dispatch or delivery are delayed at the request of the ordering party by more than a month after notification of readiness to deliver, it shall be possible to invoice the ordering party for storage for each month commenced amounting to 0.5%, but not more than a total of 5%, of the price of the objects to be delivered. The parties to the contract remain free to prove higher or lower storage costs.

V. PASSING OF RISK

1. The risk, including for carriage paid delivery, is passed to the ordering party as follows:
 - a) in the case of Deliveries without erection or installation, when they are taken to or fetched from dispatch. At the request and expense of the ordering party Deliveries will be insured by the Supplier against the usual transportation risks;
 - b) in the case of Deliveries including erection or installation on the day of acceptance within the ordering party's premises, or, if agreed, after a fault-free test operation.
2. If the ordering party is responsible for delays in dispatch, delivery, the commencement or execution of the erection or installation, acceptance onto the ordering party's premises or the trial operation, or if the ordering party delays acceptance for any other reason, then the risk shall be transferred to the ordering party.

VI. ERECTION AND INSTALLATION

Unless otherwise agreed in writing, the following provisions shall apply for erection and installation:

1. At his own costs the ordering party shall undertake and promptly provide the following:
 - a) all earth work, structural and other additional extraneous works, including the necessary specialist and auxiliary staff, building materials and tools,
 - b) requisite items and materials necessary for installation and commissioning such as scaffolding, cranes and elevators and other contrivances, fuels and lubricants,
 - c) power and water at the point of use, including connections, heating and lighting,
 - d) sufficient large, suitable, dry and lockable premises at the point of installation to store machinery parts, equipment, materials, tools etc., and reasonable premises for work and leisure for the installation staff including sanitary facilities suited to the circumstances; in addition, the ordering party shall take such measures for the protection of the property of the supplier and the installation personnel on the site as he would take for the protection of his own property,
 - e) protective clothing and safety apparatus required as a result of the special conditions at the site of installation.
2. Before commencement of the installation work, the ordering party shall make available without request the necessary details about the location of concealed electricity, gas and water conduits or lines, or similar facilities, plus the necessary statistical details.
3. Before commencement of erection or installation the additional facilities and items required for the start of work must be located at the site of erection or installation, and all preparatory work prior to the beginning of construction must have progressed sufficiently for the erection or installation to begin as agreed and to be carried out without interruption. Access routes and the site of erection or installation must be levelled and cleared.
4. In the event that the erection, installation or commissioning are delayed for circumstances for which the Supplier is not responsible, then the ordering party shall bear reasonable costs of waiting times and additional necessary trips made by the Supplier or installation staff.
5. Each week the ordering party shall immediately certify to the Supplier the duration of the hours of work carried out by the installation staff, plus the conclusion of the erection, installation or commissioning.
6. The ordering party shall accept Delivery following completion within two weeks of being asked to do so by the Supplier. Acceptance shall be deemed given if there has been no response at the expiry of the two weeks. Acceptance shall also be deemed given if the Delivery – where applicable after the conclusion of an agreed test phase – has been brought into service.

VII. TAKING DELIVERY

The ordering party may not refuse to accept Deliveries for the reason of slight defects.

VIII. MATERIAL DEFECTS

The Supplier shall accept liability for material defects as follows:

1. Providing their cause was already present at the time of the transfer of risk, all those parts or services that demonstrate a material defect within the limitation period, regardless of the service life, shall at the discretion of the Supplier be repaired, replaced or carried out again.
2. Claims for material defects are subject to a limitation period of 12 months. This shall not apply in so far as the law prescribes longer periods in accordance with §§ 438, Par. 1 No. 2 (Bauwerke und Sachen für Bauwerke [Buildings and Items for Building]), 479 Par. 1 (Rückgriffsanspruch [Right of Recourse]) and 634a Par. 1 No. 2 (Baumängel [Building Defects]) of the BGB [German Civil Code], and in cases of injury to life, health or bodily injury, in the event of an intentional or grossly negligent neglect of duty on the part of the Supplier, and in the event of fraudulent concealment of a defect. Legal regulations concerning suspension of expiration of prescription, suspension of the running time and recommencement of the period of time shall remain unaffected.

3. The ordering party shall provide the Supplier with notice of any defects immediately and in writing.
4. In the event of notice being given of a defect, the ordering party shall be entitled to withhold payments to an extent that is in reasonable proportion to the material defects that have occurred. The ordering party shall only be entitled to withhold payments if notice of defects is asserted and its justification cannot be doubted. If the notice of defects proves to be unfounded, then the Supplier shall be entitled to demand that the ordering party compensates him for expenses that have arisen as a result.
5. The Supplier shall first be guaranteed an opportunity to remedy the defects within a reasonable period of time.
6. If the attempt to remedy the defects fails, then the ordering party shall be able, without prejudice to any claims for compensation in accordance with Item XI, to withdraw from the contract or to reduce the remuneration.
7. Claims for defects do not exist for only minor deviation from the agreed quality, or for only minor impairment to fitness for use, or for natural wear and tear, or for damage arising after the transfer of risk as a result of faulty or negligent handling, excessive stress, unsuitable operating materials, defective building works, unsuitable building ground, or occurring as a result of special external influences that have not been presumed according to the contract, nor for software errors that cannot be reproduced. In the event that the ordering party or third party carries out inexpert repairs or changes, there shall exist no claims for defects for these works or the consequences of them.
8. Claims on the part of the ordering party for expenses necessary for the purpose of remedying defects, in particular costs of transport, tolls, labour and material, are excluded in so far as the expenses increase because the object of Delivery has afterwards been taken to a place other than the premises of the ordering party, unless such movement complies with his use in accordance with the regulations.
9. The ordering party's rights of recourse against the Supplier in accordance with § 478 BGB (Rückgriff des Unternehmers [Contractor's Recourse]) only exist in so far as the ordering party has made no agreements with his buyer that extend beyond the legal claims for defects. For the scope of the ordering party's rights of recourse against the Supplier in accordance with § 478 Par. 2 BGB, Item No. 8 shall also apply analogously.
10. Item XI (Other Claims for compensation), shall also apply for claims for compensation. Further claims on the part of the ordering party or claims other than those regulated by Item VIII in this document that are made against the Supplier and his vicarious agents with regard to a material defect are excluded.

IX. INDUSTRIAL PROPERTY RIGHTS AND COPYRIGHTS; DEFECTS OF TITLE

1. Unless otherwise agreed, the Supplier shall undertake to carry out the Delivery solely in the country of the place of Delivery clear of third party industrial property rights and copyrights (hereinafter referred to as Property Rights). In so far as a third party presents justified claims against the ordering party for infringement of Property Rights through Deliveries made by the Supplier and used in accordance with the contract, then within the period of time determined in Item VIII No. 2 the Supplier shall be liable to the ordering party as follows:
 - a) The Supplier shall at his discretion and at his cost either obtain a right of use for the Deliveries concerned, or alter them so that the Property Right is not infringed, or exchange them. In the event that this is not possible for the Supplier on fair terms, then the ordering party shall have recourse to the right of legal withdrawal from the contract or reduction of the purchase price.
 - b) The Supplier shall be obliged to pay damages in accordance with Item XI.
 - c) The obligations listed above on the part of the Supplier shall only exist in so far as the ordering party informs the Supplier of claims asserted by a third party immediately and in writing, does not admit any infringement and all measures of defence and negotiated settlement are still left to the Supplier. In the event that the ordering party discontinues the use of the Delivery for reasons of the reduction of damages or other important reasons, he shall undertake to indicate to the third party that no admission of an infringement of Property Right is associated with the discontinuation of use.
2. Claims on the part of the ordering party are excluded in so far as he is responsible for the infringement of Property Rights.
3. Furthermore, claims on the part of the ordering party are excluded in so far as the infringement of Property Rights is caused by special instructions given by the ordering party, or by application that could not be foreseen by the Supplier, or by the fact that the ordering party has made changes to the Delivery or used it together with products not supplied by the Supplier.
4. In the case of infringements of Property Rights, the provisions made in Item VIII Nos. 4, 5 and 9 shall also apply analogously to claims made by the ordering party that are ruled by No. 1a).
5. The provisions of Item VIII shall apply analogously in the event of the existence of other defects of title.
6. Further claims on the part of the ordering party or claims other than those regulated by Item IX in this document that are made against the Supplier and his vicarious agents with regard to a defect of title are excluded.

X. IMPOSSIBILITY; ADAPTATION OF CONTRACTS

1. In so far as Delivery is impossible, the ordering party shall be entitled to demand compensation, unless the Supplier is not responsible for the impossibility. The claim for damages on the part of the ordering party is, however, limited to 10% of the value of that part of the Delivery that cannot be put into appropriate operation owing to the impossibility. This limitation shall not apply in so far as there is absolute liability in cases of intent or gross negligence or in the event of fatal or bodily injury or injury to health; this is not associated with any change in the burden of proof to the disadvantage of the ordering party. The right of the ordering party to withdraw from the contract remains unaffected.
2. In so far as unforeseeable events in the sense of Item IV No. 2 significantly change the economic importance or content of the Delivery or have a significant effect on the working activities of the Supplier, the contract shall be adapted within reason and under the observance of good faith. If this is not economically justifiable, the Supplier shall have the right to withdraw from the contract. If he wishes to avail himself of this right to withdraw from the contract, then he shall undertake to inform the ordering party of the fact immediately, having determined the extent and consequences of the event; this shall also apply if an extension of the delivery time has first been agreed with the ordering party.

XI. OTHER CLAIMS FOR COMPENSATION

1. Claims on the part of the ordering party for compensation and expenses (hereinafter referred to as Claims for Compensation), irrespective of the legal reason, and in particular with regard to infringement of duties arising from the contractual obligation and arising from a tortious act, are excluded.
2. This shall not apply in so far as there is absolute liability, e.g., in accordance with the Product Liability Act, in cases of intent or gross negligence or in the event of fatal or bodily injury or injury to health, or owing to infringement of essential contractual obligations. The claim for compensation or the infringement of important contractual obligations is, however, limited to foreseeable damages typical of the contract, unless there exists intent or gross negligence or liability for injury to life, health or bodily injury. No change in the burden of proof to the disadvantage of the ordering party is associated with the above regulations.
3. In so far as claims for compensation are due to the ordering party in accordance with this Item XI, they shall become statute-barred on the expiry of the applicable limitation period for claims for material defects stated in Item VIII No. 2. The legal statute of limitations shall apply in the case of claims for compensation in accordance with the Product Liability Act.

XII. PLACE OF JURISDICTION AND APPLICABLE LAW

1. If the ordering party is a trader, the sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the domicile of the Supplier. The Supplier shall, however, also be entitled to bring an action at the domicile of the ordering party.
2. German substantive law shall apply to the legal relationships connected with this contract, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

XIII. BINDING FORCE OF THE CONTRACT

Even if individual provisions in the contract become legally ineffective, the remaining parts of the contract shall remain binding. That shall not apply if adhering to the contract would represent unreasonable hardship for one of the parties.

XIV. GENERAL INFORMATION

Prices apply exclusive of packaging for orders up to Euro 600 net (not including VAT). In the case of orders greater than Euro 600 net (not including VAT) we deliver free German rail receiving station, including packing, for sealed collection in one consignment. Haulage at the place of reception is at the expense of the customer. An additional reduced quantity charge of Euro 10 net (not including VAT) per order is levied on minimum orders under Euro 100 net (not including VAT). The minimum-sized packaging or packing drums are made to suit requirement and are sold only in a complete state. A surcharge to cover expenses of Euro 5 net (not including VAT) is levied per unit (packaging or packing drum) for orders that deviate from the standard packaging unit sizes.

Deliveries to erection sites go freight prepaid. The prepaid freight costs are invoiced if the conditions for freight paid delivery in accordance with Point 3 are not achieved. Unless otherwise agreed, all payments must be made within 10 days of the date of the invoice for 3% discount, within 30 days for 2% discount, or within 45 days net and without deduction. This regulation assumes that our invoice has not been dispatched before delivery. In the event that the invoice has been dispatched in individual cases prior to delivery, the periods for payment shall be calculated from the day of delivery.

In the event that the customer delays payment, then he shall pay interest on payments in arrears amounting to the interest rate for a general current account overdraft calculated by the commercial banks, but at least amounting to 4% above the relevant Deutsche Bundesbank bank rate.

If the ordering party does not meet his obligations to pay, e.g., does not honour a cheque or suspends his payments, or if other circumstances are made known to us that put his creditworthiness into question, then the entire residual debt shall become due, even if bills exist that have a later maturity date or other agreements have been made regarding extension of the term of payment.

In this case we shall not be obliged to make further Deliveries unless the customer offers payment concurrently with Delivery. In the event that the customer does not offer a cash payment, then we shall be entitled to claim damages for non-performance.

As on 01/2003