

General

Contracts of sale and other supply contracts are concluded exclusively on the basis of our General Conditions of Sale and Delivery as set out below. They apply only to entrepreneurs legal entities under public law, and special funds under public law. Upon concluding the contract with us, the purchaser/party ordering (referred to below as "Customer") declares its acceptance of our General Conditions of Sale and Delivery. We hereby reject any counter-confirmations, counter-offers or other references of the Customer by invoking its own terms and conditions; any conflicting terms and conditions of the Customer shall not apply unless they have been expressly confirmed by us. Our General Conditions of Sale and Delivery shall also apply to future contracts of sale and other supply contracts, even when not expressly referenced. Where the requirement of the written form is provided for in these terms and conditions, it shall also be deemed to be satisfied where transmission takes place by means of telecommunications (e-mail, telefax).

I. Offers / Quotations

Our offers, including their accompanying items of documentation, such as images, drawings and measurements, are not binding. We reserve the rights of ownership and copyright to cost estimates, drawings and other documents. They may not be made accessible to Third parties

II. Scope of supply / waste disposal

1. Our written order confirmation is authoritative with regard to our deliveries. To be valid, any subsidiary agreements and agreed amendments must be set out in writing.
2. We shall be entitled to make partial deliveries, provided that this is reasonable for the Customer. They shall be deemed reasonable in particular where a partial delivery is usable by the Customer pursuant to the designated purpose set out in the contract and the Customer does not incur significant added expense as a result of the partial delivery. Partial deliveries shall be without prejudice to the Customer's right to have the remainder of the deliverables supplied as provided for in the contract.

III. Prices, invoicing and payment

1. Our prices and the amount payable by the Customer upon execution of the order are dependent on the general development of prices or values of goods and services on the market, which have a direct impact on our cost prices for the execution of the order (i.e. collective wage agreements, changes in material prices, etc.). Changes (increases or reductions) in such input costs will be passed on to our Customers to the full extent insofar as they affect our prices as a cost element. We will furnish proof of any such changes at the Customer's request. The foregoing right to adjust prices shall not apply where the product is to be supplied within four months upon the conclusion of the contract.
2. Invoices are issued as soon as we have completed everything required to fulfil the contract so that the actual physical control of the item to be supplied can pass to the Customer.
3. Payment shall not be deemed to have been effected until we are able to dispose of the funds.
4. Where the Customer falls into arrears with payment, whether in whole or in part —i.e. with a whole instalment in the event of agreed payment by instalment — we may, without prejudice to our rights under VI. 4., withdraw from the contract after a reasonable period of grace set by us with passed without result and demand compensation in lieu of performance.
5. The interest payable on arrears shall amount to 9 percentage points above the base interest rate. Lump-sum damages of €40.00 shall be payable for outstanding claims for payment. This sum will be credited towards the compensation owed where the loss is founded upon the costs of bringing legal action to collect payment. We reserve the right to claim higher damages for arrears and default.
6. The Customer shall not be entitled to offset claims against outstanding amounts owed us, unless the Customer's claims for set-off are undisputed or final and non-appealable, or they originate from the same contract as our claim. The Customer may assert the right to withhold payment only for claims arising from the same contract.

IV. Delivery time, reservation of self-supply

1. Delivery time specifics are non-binding, unless they are otherwise agreed to be binding. Agreed delivery times shall begin with the sending of our confirmation of order, though not before receipt by us of all documents, approvals, releases to be obtained by the Customer and of an agreed advance payment. The delivery time shall be deemed to have been observed if the item to be supplied has left the works before this time has lapsed or notice has been given of readiness for dispatch.
2. The Customer may set us a reasonable grace period in writing four weeks upon the passing of a non-binding delivery date. After the lapse of the grace period without result the Customer may withdraw from the contract by giving us notice in writing, where the delay is attributable to us.

3. In the event of force majeure or other unforeseeable events hampering delivery, the delivery time shall be extended accordingly provided that these circumstances are not attributable to us. In the event that we are unable to effect delivery within four months of the non-binding delivery date initially indicated by us, the Customer and we shall be entitled to withdraw from the contract either in whole or in part, in keeping with the products and services affected by the delay; we will refund any payments made by the Customer to this effect without undue delay. This shall also apply in the event that we should be unable to effect delivery within three months of the delivery date initially agreed upon.
4. Where and for as long as we have not been supplied by our upstream suppliers —suppliers with whom we have agreements for covering deliveries and services required for supplying the Customer as set out in the supply contract — for reasons beyond our control, we may withdraw from the contract if we are unable to come to an agreement with the Customer on an alternative solution, such as postponing delivery to a later date. We will inform the Customer of any non-delivery or delayed deliveries by our upstream suppliers without undue delay. In the event that we withdraw from the contract we will immediately refund the Customer for payments already made by it, as provided for by law.
5. Where the Customer delays shipment, storage costs of 0.5% of the invoice amount monthly shall be payable as from the second month.

V. Passage of risk / acceptance

1. We effect delivery FCA (free carrier) at the registered office of our company or another location designated by us as provided for by Incoterms, in the currently valid version as amended upon the conclusion of the contract. If requested by the Customer, we will insure the items at the Customer's expense against breakage, damage in transit, and fire and water damage. We will commission the freight carrier on behalf and at the expense of the Customer, unless the Customer organizes transport on its own.
2. The Customer shall be entitled to reject acceptance of the items supplied if and only if they manifestly differ from what was ordered.

VI. Retention of title

1. We reserve title to all items supplied by us until receipt in full of all payments due under the supply contract. Where the Customer is a merchant as defined by the German Commercial Code, we reserve title to all items supplied by us until we have received payment in full for all outstanding amounts arising from the business relationship with the Customer.
2. Processing of items supplied by us and to which we still have title is always done on our behalf, however without any obligation arising for us. Where items, to which we retain title, are blended, processed or joined with other items, we shall attain co-ownership in the new item in relation to the invoice value of our items compared to the invoice amounts of other processed, blended or joined items. Where our items are commingled with other movable objects so that they become a single unified item that may be considered to constitute the main item, the Customer shall assign to us already now co-ownership in the main item in the same proportion and shall store the item carefully and free of charge on our behalf.
3. The Customer may sell goods owned by us in the ordinary course of commerce only if it is not in arrears with payment. Already upon concluding the contract, the Customer shall assign to us all amounts receivable including collateral security and ancillary rights that accrue to the Customer from or in connection with the resale of goods subject to the retention of title against the Customer's customer or other Third parties. Where the goods subject to the retention of title are sold along with other items, the claim against the respective debtor shall be deemed to be assigned in the amount of the supply price agreed between us and the Customer. We hereby accept this assignment. The Customer shall remain entitled to collect the amount receivable as long as it is not in arrears with payment towards us.
4. The Customer shall be obligated to keep the goods subject to the retention of title in good condition for the duration of the reservation of title and carry out any required maintenance or repairs without undue delay. The Customer shall provide for sufficient insurance of the goods subject to the retention of title, at their replacement value, against fire, theft and escape of water, and provide proof of coverage should we so request. Where the Customer falls into arrears with payment or does not comply with its obligations associated with the retention of title, we may withdraw from the contract after a reasonable grace period granted by us has expired without result and claim the items supplied back from the Customer.
5. Goods subject to the retention of title may not be pledged, assigned as security, leased or passed to third parties unless with our written consent.
6. In the event of third parties having access to goods subject to the retention of title, in particular in the event of attachment and seizure, the Customer shall notify us immediately in writing and advise the Third party of our retention of title. The costs for the actual and legal pursuance of our ownership transferred for security purposes shall be assumed by the Customer, insofar as these costs cannot be recovered from third parties.
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VII. Warranty / liability for material defects

We shall assume liability as follows for defects of the item supplied, to the exclusion of further claims, notwithstanding section IX:

1. The Customer shall inspect goods immediately upon receipt and notify us of any defects in writing without undue delay. In the event that the items supplied are defective at the time of the passage of risk, we shall be entitled at our discretion to remedy the defect or supply a fault-free replacement. Replaced parts shall become our property and shall be returned to us.
2. In going about remedying the defect, the Customer is obligated to enable us to locate and eliminate the defect, i.e. give us access to the item supplied in the Customer's possession. Where our products are integrated in other components or joined together with same, the Customer shall stipulate a period within which we are to remove the product, unless having to stipulate a deadline for removal would cause the Customer to be faced with imminent significant damage or loss, e.g. production outage or shutdown of the facility, and immediate removal of the product would enable the Customer to avoid such damage or loss.
3. The Customer shall not be entitled to remedy the defects on the Customer's own or have them remedied by third parties, unless we are in default with remedying the defect or the Customer is forced to remedy the defect to avert imminent danger. In this case, remedying of the defect may only be done by properly qualified personnel.
4. If the repairs or replacements fail to produce the desired results for reasons attributable to us or if we fail to meet a deadline for remedying defects for reasons attributable to us, the Customer may at its discretion reduce the contractually agreed price or withdraw from the contract pursuant to applicable statutory provisions.
5. The Customer shall not be entitled to enter any claims for alleged defects where it has violated the terms of sections VII. 1 to 4.
6. No claims for alleged defects will be accepted by us for improper installation, start-up, usage, handling, storage, maintenance or servicing, repair, reconditioning or modification of the supplied item(s) by the Customer or Third parties, for damage to these item(s) due to normal wear and tear, use of unsuitable operating media, or for other circumstances attributable to the Customer or Third parties. We will assume no liability for the suitability for use of the item(s) supplied or their suitability for incorporation into any system, or for interfaces with any systems. In the case of prototypes, our responsibility for the results of the design and development work shall terminate upon the prototypes being released for production.
7. The place of performance for remedying defects shall be the place of performance of our key obligation under the contract. However, we shall be entitled to remedy defects at the respective site where the item is located.

VIII. Limitation period

All claims for defects on the part of the Customer shall become time-barred one year after the date on which risk is transferred. Any remedying of defects shall have no bearing on this limitation period. The statutory periods shall apply to wilful, gross negligent or fraudulent conduct as well as to claims under the German Product Liability Act (ProdHaftG), as well as to rights relating to an item that is used for a building in accordance with its customary use. These statutory periods shall also apply in the event of negligent causation of harm to life, limb and health.

IX. Liability

1. We shall assume liability in cases of wilful misconduct and gross negligence. Moreover, we shall also assume liability for defects fraudulently concealed or whose absence has been guaranteed, or in cases of negligent causation of harm to life, limb and health, or the violation of a material contractual obligation. Obligations considered material to the contract are those whose performance is vital to the proper execution of the contract and upon which the Customer may routinely rely.
2. This shall be without prejudice to mandatory liability, including, but not limited to, liability under the German Product Liability Act (ProdHaftG).
3. Otherwise we disclaim all liability, regardless of the legal grounds on which any such liability may be founded. In the event that we should negligently breach any material contractual obligation, our liability shall be limited to the reasonably foreseeable loss.
4. We will accept no lump-sum compensation where this is not provided for by law.

X. Indemnity clause (release from liability)

To the extent that third parties assert claims against us and we have not acted in a premeditated manner or gross negligently, or fraudulently concealed defects or guaranteed their absence, or engaged in the negligent causation of harm to life, limb and health, or violated a material contractual obligation, the Customer shall indemnify us and hold us harmless against these claims including any costs.

XI. Right to refuse performance

We shall be entitled to refuse to render performance where and insofar as doing so would be unreasonable, due to circumstances beyond our control. Rendering of performance shall be deemed to be unreasonable and frustrated in particular in the event that we would be forced to do so in a country for which the German Ministry of Foreign Affairs has issued a travel warning or a travel advisory containing safety and security recommendations equivalent to a travel warning.

XII. Engaging the services of Third parties

Unless the circumstances of an individual case should dictate otherwise, we shall be entitled to commission third parties to render the products and services incumbent upon us under the contract.

XIII. Place of performance, place of jurisdiction, applicable law, business code, miscellaneous provisions

1. The place of performance shall be the registered office of our company. This shall also be the exclusive place of jurisdiction for all disputes arising from the business relationship with the Customer. However, we also reserve the right to bring action against the Customer at the Customer's domicile. The relations between the Customer and us shall be governed and interpreted exclusively in accordance with the laws of the Federal Republic of Germany, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
2. If any of the above provisions should prove void or unenforceable, it shall not affect the validity or enforceability of any other provision hereof.