

General Terms and Conditions of Business

I. General

1. All deliveries and services are subject to these terms and conditions and to any separately contracted agreements.
None of the Purchaser's deviating merchandise terms shall become essential terms of contract, even upon acceptance of order.
2. The Vendor reserves all property rights and copyrights to samples, preliminary estimates, drawings, and similar information of a physical and non-physical kind – including those in electronic form; these must not be made accessible to third parties. The Vendor undertakes not to make any information and documents identified by the Purchaser as confidential accessible to others, except with the Purchaser's consent.

II. Quotation

Any documents constituting an element of the quotation, such as illustrations, drawings, weight and dimension specifications, are only approximations, unless they are expressly stated as being binding.

III. Price and Payment

1. Unless otherwise individually agreed, prices are ex works, including loading at the plant, but exclusive of packaging and unloading. The statutory rate of Value Added Tax must be added to the prices, respectively.
2. Unless otherwise separately agreed, payment is to be effected to the Vendor's account, without deduction, as follows:
1/3 down payment upon receipt of confirmation of order;
1/3 once the Purchaser has been advised that the main parts are ready for shipment;
The remaining amount within one month of transfer of risk.
3. The Purchaser is only entitled to hold back payment or to offset the same with counterclaims provided his counterclaims are uncontested or have been finally and conclusively declared.

IV. Delivery Time

1. The delivery time is based on the agreements reached between the contracting parties. Adherence by the Vendor to such delivery times is conditional on all commercial and technical questions between the contracting partners being clarified and the Purchaser having fulfilled all obligations incumbent upon him, such as e.g. submission of the required official certificates or licences or the payment of a down payment. If this is not the case, the delivery time shall be extended appropriately. This shall not apply if the Vendor is accountable for this delay.
2. Adherence to the delivery term is under the proviso of the Vendor itself receiving correct, punctual deliveries. Any delays that become apparent are to be notified by the Vendor at the earliest possible time.
3. The delivery term shall be deemed as observed if the object of supply has left the premises of the Vendor up to the expiry of that term or the readiness for dispatch has been disclosed.
4. If shipment or acceptance of the object of supply are delayed for reasons for which the Purchaser is responsible, any costs arising as a result of the delay shall be charged to him, commencing one month following notification of readiness for shipment or for taking delivery.
5. Whenever non-adherence to the delivery time is the result of Force Majeur, industrial disputes or other occurrences which are outside the influence of the Vendor, the delivery time shall be extended accordingly. The Vendor shall advise the Purchaser of the commencement and the end of such circumstances at the earliest possible date.
6. The Purchaser may withdraw from the contract without according a respite if the Vendor is definitively not capable of complete discharge prior to transfer of risk. In addition, the Purchaser may withdraw from the contract if the execution of delivery of any part of an order is not possible and he has a justified interest in rejecting a partial delivery. If this is not the case, the Purchaser shall pay the contractual price apportionable to the partial delivery. The same shall apply in the event of the Vendor's incapacity. Section VII shall apply to the remainder.
If such an impossibility or incapacity occurs during the delay in taking delivery, or if the Purchaser alone is responsible or primarily responsible for these circumstances, he shall remain obligated to consideration.
7. If the Vendor is in default and the Purchaser accrues a loss as a result, the latter is entitled to demand lump-sum compensation for the delay amounting to 0.3% in total for each full week of the default, though at most 3% of the value of that part of the entire delivery that cannot be used in time or not as set out in the contract as a result of the delay.
Should the Purchaser grant the Vendor – under consideration of statutory exemptions – a reasonable term of respite following the due date and this term is not observed, the Purchaser is entitled to withdraw from the contract to the extent permitted by law.
No further claims arising from default of delivery are admissible. Section VIII.2 of these Terms and Conditions shall apply for the remainder.

V. Transfer of Risk, Acceptance

1. All risk is transferred to the Purchaser once the object of supply has left the factory, also in the event that part deliveries are effected or the Vendor has assumed further obligations, e.g. transport costs or delivery and erection. If acceptance is to take place, this shall be determinant for the transfer of risk. Acceptance must be effected without delay on the date of taking delivery, alternatively subsequent to notification of readiness for delivery on the part of the Vendor. The Purchaser may not refuse to take delivery if there is an immaterial fault.
2. Should the acceptance or acceptances be delayed or not effected due to circumstances for which the Vendor is not accountable, the risk shall pass to the Purchaser on the date of shipment or readiness for delivery. The Vendor undertakes to take out any insurance cover requested by the Purchaser at the expense of the latter.
3. Partial deliveries are permissible if these are reasonable for the Purchaser.

VI. Reservation of Ownership

1. The Vendor retains the ownership to the object of supply until receipt of all payments arising from the contract.
2. The Vendor is entitled to insure the object of supply against theft, breakage, fire, water and other damage at the expense of the Purchaser, unless the Purchaser has not provably taken out such insurance himself.
3. The Purchaser is not entitled to sell, pledge, or assign the object of supply as security. By attachments or seizures or other dispositions on the part of third parties, he shall immediately notify the Vendor of the same.
4. In the event of practices by the Purchaser in contravention of the contract, in particular upon default of payment, the Vendor is entitled to take back the object of supply subsequent to dunning, and the Purchaser is obligated to surrender the same.
5. Based on the retention of ownership, the Vendor may only reclaim the object of supply if he has withdrawn from the contract.
6. An application for instituting insolvency procedures shall entitle the Vendor to withdraw and demand the immediate return of the object of supply.

VII. Liability for Defects in the Delivered Goods

The Vendor grants the following warranty for quality defects and defective title of the goods supplied to the exclusion of any further claims – with the exception of Section VIII – as follows:

Quality Defects:

1. All parts that have proven to be defective as the result of a circumstance prior to the transfer of risk are to be reworked or replaced by faultless goods free of charge, at the option of the Vendor. The Vendor is to be notified immediately in writing of the discovery of such defects. Any parts that have been replaced become the property of the Vendor.
2. In agreement with the Vendor, the Purchaser shall allow the Vendor the requisite time and opportunity to conduct all rework and replacement deliveries he may regard as necessary; otherwise the Vendor is exempt from liability for any consequences arising from the same. The Purchaser is only entitled to remedy faults or have them remedied by others and to request compensation for the required expenditure from the Vendor in urgent cases of danger to operational safety or to avert excessive damages, in which event the Vendor is to be notified immediately.
3. Of the costs arising directly as a result of the rework or replacement delivery, the Vendor shall bear the costs of the replacement part, including transport – provided the claim proves to be justified. In addition, he shall bear the costs of dismantling and installation as well as the costs of any necessary provision of assembly and other workers, including travelling expenses, unless this would cause a disproportionate burden on the Vendor.
4. The Purchaser has the right to withdraw from the contract within the scope of statutory provisions if the Vendor – taking statutory exceptions into account - allows any reasonable term set for reworking or providing replacement for a quality defect to lapse fruitlessly. If there is only a minor

fault, the Purchaser is entitled only to a reduction of the contract price. Otherwise the right to a reduction of the contract price is excluded. Section VIII.2 of these provisions shall apply to the remainder.

5. In particular in the following events, no warranty shall be granted:
Unsuitable or improper use, faulty assembly or operational start-up by the Purchaser or third parties, natural wear and tear, incorrect or negligent treatment, incorrect maintenance, inappropriate operating materials, faulty structural work, unsuitable building ground, chemical, electro-chemical or electrical influences – insofar as these do not lie within the responsibility of the Vendor.
6. If rework is incorrectly carried out by the Purchaser or a third party, the Vendor shall not accept any liability for consequences arising from the same.
The same applies for changes to the object of supply carried out without the prior consent of the Supplier.

Defective Title

7. Should the use of the object of supply lead to the violation of industrial property rights or copyrights, the Vendor shall in principle, at his own expense, obtain the right for the Purchaser to continue to use the object of supply or offer an appropriate solution. If this is not possible under economically reasonable conditions or within a suitable term, the Purchaser is entitled to withdraw from the contract. The Vendor is also entitled to withdraw from the contract under the aforementioned conditions. Additionally, the Vendor shall indemnify the Purchaser from any undisputed or conclusively determined claims on the part of the relevant patent owner.
8. The obligations of the Vendor stated in Section VII.7 are conclusive, subject to Section VIII.2 in the event of any violation of patent rights or copyrights.
These shall only apply if
 - the Purchaser notifies the Vendor immediately of the assertion of violations of patent rights or copyrights,
 - the Purchaser supports the Vendor to a reasonable extent in averting the enforced claims, or makes it possible for the Vendor to carry out modification measures according to Section VII.7,
 - all averting measures, including extrajudicial arrangements, remain reserved for the Vendor,
 - the violation of rights was not caused by the fact that the Purchaser arbitrarily changed the object of supply or used the same in a way that was not designated in the contract.

VIII. Liability

1. If the object of supply cannot be used by the Purchaser as set out in the contract due to negligence on the part of the Vendor as a result of neglected or defective performance of proposals and consultancy prior to and following conclusion of contract or as a result of violating other accessory obligations of the contract – in particular operating and maintenance instructions of the object supplied by the Vendor – the provisions of Sections VII and VIII.2 shall become applicable to the exclusion of any further claims on the part of the Purchaser, accordingly.
2. The Vendor shall only be held liable for damages which have not occurred on the object of supply itself – regardless of legal grounds:
 - a) in the event of intent,
 - b) by gross negligence on the part of the proprietor / his executive agents or senior employees,
 - c) in the event of culpable injury to life, body, health,
 - d) in the event of defects which he has fraudulently concealed or for which he has guaranteed the products to be free of,
 - e) in the event of defects on the object of supply to the extent that product liability legislation provides for liability for personal or property damage of privately used objects.

In the case of culpable violation of essential contractual obligations, the Vendor shall also be held liable for gross negligence on the part of non-executive employees and by slight negligence, in the latter case restricted to the damage which is reasonably foreseeable and typical for such contracts.

All and any further claims are excluded.

IX. Statute of Limitations

All claims on the part of the Purchaser shall be barred by the statute of limitations after 12 months, irrelevant of legal grounds. The statutory terms shall apply to any claims for damages. The same shall be applicable for defects of any construction, or objects of supply which have been used in a construction in compliance with their normal method of deployment, and caused defectiveness of the same.

X. Software Utilisation

If any software is included in the scope of supply, the Purchaser shall be granted a non-exclusive right to use the supplied software together with the documentation for the same. It shall be assigned for use on the object of supply specified for the same. Any utilisation of the software on more than one system is not permitted.

The Purchaser is only permitted to copy, revise, translate or convert the software from the code of the object to the source code within the legally permissible scope. The Purchaser undertakes not to remove any details of the manufacturer – in particular copyright notices – nor alter the same without the previous express consent of the Vendor.

All other rights to the software and the documentation, including copies, remain with the Vendor, or with the software supplier, respectively. It is not permitted to grant any sub-licences.

XI. Applicable Law, Venue

1. The laws of the Federal Republic of Germany shall apply exclusively to all legal relationships between the Vendor and the Purchaser. Application of the United Nations Convention of 11/04/1980 on Contracts for the International Sale of Goods (CISG) are excluded.
2. The legal venue shall be exclusively the court competent for the headquarters of the Vendor; the Vendor is, however, also entitled to institute an action at the headquarters of the Purchaser.