

General purchasing, sales, delivery and payment conditions

Status 1st January 2012

I. General aspects

1. The conditions mentioned hereinafter shall apply for our services, if nothing to the contract has been agreed upon in writing explicitly.
2. All arrangements shall have legal force, if they have not been confirmed by us in writing.
3. Potential purchasing conditions of ordering parties shall be objected to herewith. The said shall not obligate us either, if they are not rejected explicitly once again upon conclusion of the contract. At the latest with the acceptance of our goods, our conditions shall be considered accepted.

II. Offer

1. If they are not explicitly marked otherwise, all offers shall be non-binding up to the final order confirmation. Prior sale shall be reserved in case of offers for stock goods.
2. The documents belonging to the offer, such as illustrations, drawings, weights and dimensional data, information on the process, consumption and performance shall be approximate unless the said have been called binding explicitly.

III. Scope of delivery

1. Our written order confirmation shall be decisive for the scope of delivery; in case of an offer with time commitment and acceptance on due date the offer itself, provided no order confirmation is available in due time. Collateral agreements and modifications shall require our written confirmation.
2. If certain instructions for dispatch have not been given in the order, the goods shall be shipped by the cheapest freight to the best of knowledge without any obligation. The shipment shall be caused as soon as possible after completion of the goods.
3. Packaging shall be charged cost price, provided the said is necessary with the type of goods.

IV. Price and payment

1. Provided nothing to the contrary has been agreed upon, the prices shall apply ex works including loading in the works, however, without packaging, insurance, freight, customs duty or other expenses. The value added tax in the legally due amount shall be added.
2. If changes of the price basis occur until the delivery day, we reserve a corresponding adaptation of the prices, limited to the additional costs occurring for us. For order, for which no prices have been agreed upon, the prices on the delivery day shall be applicable.
3. If nothing to the contrary has been agreed upon, the payment shall have to be effected in cash within thirty days without any deductions free payment point of the supplier:
 - one third down payment after receipt of order confirmation
 - one third as soon as the ordering party is informed that the main parts are ready for shipment
 - the remaining amount within another month

that is independent of any potential notice of defects and under exclusion of a right of retention or setoff, unless it is an uncontested or legally established claim.

4. The retention of payment or setoff due to potential counterclaims of the ordering party contested by the supplier shall not be permitted.
5. In case of the target date of payment is exceeded, we shall be permitted to charge default interest to the amount of five percent above the base interest rate in conformity with Section 247, Paragraph I of the German Civil Law Code.
6. Interest shall not be paid on advance payment and instalment payment.
7. We reserve the right to request information on the financial circumstances of the ordering party. If the information indicates that the financial circumstances of the ordering party give rise to concern, we may request a change of the terms of payment, payment in advance or sufficient safeguard of the invoiced amounts without the ordering party having the right of withdrawal. If our claims are not met, we shall be permitted to withdraw from the contract without the ordering party having a claim for damages for non-fulfilment.

V. Delivery time

1. The delivery time shall start with the dispatch of the order confirmation, however not before the ordering party has provided the documents, approvals, releases as well as receipt of the down payment agreed upon.
2. The delivery time shall be met when the delivery item has left the works by its expiry, the readiness for shipment has been informed or the delivery item has been prepared for acceptance.
3. The delivery time shall increase reasonably in case of force majeure and measures within the framework of industrial disputes, in particular strike and lock-out as well as occurrence of unforeseen hindrances which is outside of the will of the suppliers, provided such hindrances have provenly considerable influence on the completion or shipment of the delivery item. This shall apply also when the circumstances occur with subcontractors. The supplier shall not be responsible for the circumstances mentioned hereinbefore either, if the said occur during a delay already present. The ordering party shall be notified of the beginning and end of such hindrances in important cases as soon as possible.
4. If the ordering party sustains damage, which is caused by the own fault of the suppliers, the said shall be permitted to claim delay compensation under exclusion of additional claims. For every full week of delay, the said shall be 0.5 percent of the total, but maximum five percent of the value of the respective part of the entire delivery which due to the delay cannot be used in time or according to contract. The ordering party shall have to provide proof for the damage and the damage amount. Any exceeding compensation claims shall be subject to Paragraph IX.
5. If shipment is delayed upon request of the ordering party, the said shall be charged with the costs occurring for the storage beginning with the month after the notification of the readiness for shipment; for storage in our works at least 0.5 percent of the invoice amount for every month. However, we shall be permitted to dispose of the delivery item in conformity with the statutes and fruitless expiration of a reasonable deadline and to deliver the ordering party with an extended reasonable deadline.
6. The observation of the delivery deadline requires the fulfilment of the contractual obligations of the ordering party.

VI. Transfer of perils and acceptance

1. The peril shall be transferred to the ordering party at the latest when the delivery item is shipped, and also when partial deliveries are carried out or the supplier has taken over other services as well, such as shipping costs or transport and erection.
2. Upon request of the ordering party and at his or her costs, the shipment shall be ensured by the supplier against theft, damage caused by breakage, transport, fire and water as well as against other insurable risks.

3. If the shipment is delayed due to circumstances which the ordering party is responsible, the peril shall pass to the ordering party on the day of readiness for dispatch.
4. Objects supplied shall have to be accepted by the ordering party even if there is evidence of minor faults, regardless of the rights arising from Section IX.
5. Partial deliveries shall be permissible and may be charged separately.

VII. Retention of title

1. We shall retain title to the delivery items until all claims deriving from the business relationship are met, including future claims also from contracts concluded at the same time or later. This shall apply also, if individual or all claims of the supplier have been included in one current invoice and the balance has been struck and accepted.
2. Processing shall be done by us. If the matter belongs to other third parties as well, we shall be co-proprietors in conformity with Section 947 of the German Civil Law Code.
3. The ordering party shall be permitted to resell the delivery item in the proper course of business. The said shall now already assign all claims which arise to him by the resale to the buyer or third parties, however only to the amount of the value share of the reserved goods in case processing and blending.

VIII. Assembly

1. If the assembly and the initial operation is not carried out by us, we cannot watch correct work and will not accept any complaints which refer to assembly. In this case as well no claims by the customers cannot be derived from the missing parts which were noticed during the assembly.

IX. Liability for defects of the delivery

1. For defects of the delivery, which shall include explicitly the absence of properties assured, the supplier shall be liable under exclusion of further claims regardless of Section X as follows: All parts shall be repaired or newly delivered free of charge according to our equitable discretion, which within six months after initial operation have proved to be unusable or which shall be considerably affected in their usability due to a circumstance prior to the transfer of risk - in particular due to faulty type, bad building materials or poor workmanship. The detection of such defects shall have to be reported to us in writing immediately. Replaced parts shall be our property. If the shipment, erection or initial operation is delayed without our fault, the liability shall expire at the latest twelve months after transfer of perils.
2. For significant third-party products our liability shall be limited to the assignment of the claims on liability which are due to us against the supplier of the third-party product. The rules of the German VDE shall apply for electrical materials.
3. The right of the ordering party of asserting claim based on defects shall be time-barred in all cases at the point of delivery within the legal period as stipulated in the German Civil Law Code.
4. No liability shall be accepted for damage which has been caused for the following reasons:
 - Unsuitable or inappropriate use
 - Faulty assembly and/or initial operation by the ordering party or third parties
 - Natural wear
 - Faulty or negligent treatment - excessive load in particular
 - Unsuitable operating materials

- Replacement materials
 - Faulty building work
 - Unsuitable building site
 - Chemical, electro-technical or electric influences
- provided they are not caused by our fault.
5. In order to undertake the necessary repairs and replacement deliveries appearing to be necessary according to our equitable discretion, the ordering party shall have to give us the necessary time and opportunity according to our understanding, otherwise we are freed of defect liability. It is only in urgent cases of endangerment of the operating safety and to ward off disproportionately large damage, whereby we shall have to be informed immediately, or when we are in delay with the removal of defects, that the ordering party shall have the right to have the defect removed himself or herself or by a third party and to demand from us reasonable replacement of the necessary costs, however limited to the cost which would have been caused in conformity with Section IX (6).
 6. From the costs occurring for the repair and/or replacement delivery we shall bear - if the complaint proves to be justified - the costs of the individual parts including the shipment as well as appropriate costs for installation and removal, moreover, if this could be cheaper in individual situations, the costs for potential delegation of fitters and helpers. Otherwise the ordering party shall bear the costs.
 7. For the replacement parts and the repair, the warranty period shall be three months which shall apply at least to the expiry of the original warranty period for the delivery item. The period for the defect liability for the delivery item shall be prolonged for the duration of the business interruption caused by the improvement work. Otherwise the notice of defects shall not cause any suspension or interruption of the limitation period.
 8. We can refuse the removal of the defects for as long as the ordering party has not fulfilled its duties.
 9. The liability for any modifications or repair work carried out in an inexpert manner by the ordering party or third parties without previous approval of the supplier shall be cancelled for any resulting consequences.
 10. In case of shipment to third parties and deliveries to countries outside Germany, which applies also for goods with special quality specifications, the acceptance shall take place in our works without our previous invitation. If this is not carried out, the goods shall be considered correctly delivered and accepted when leaving the works.
 11. For a potentially existing replacement obligation, the ordering party shall have to present the reason and amount of the replacement claim.
 12. Other claims of the ordering party, in particular a claim for replacement of damage, which has occurred not at the delivery item itself, shall be ruled out, even if they are legally permissible.

X. Right of withdrawal of the ordering party

1. The ordering party may withdraw from the contract, if the entire performance becomes impossible for us prior to transfer of risk. The said party may withdraw from the contract also, if upon ordering identical objects the execution of a part of the delivery is impossible due to numbers, and the said party has a justified interest in rejecting a partial delivery; if this is not the case, the ordering party shall reduce the return correspondingly.
2. If service is delayed on our part in the sense of Section V of the delivery conditions, and if the maximum limit of a delay compensation in conformity with Section V, Point (4) has been reached, and if the ordering party grants appropriate grace period with the explicit assertion that he or she shall reject the acceptance of the service after expiry of the period, and the grace period is not kept, the ordering party shall be permitted to withdraw, however not if the delivery item is not completed by the expiry of the period in keeping with Section V, Point (2).
3. If the impossibility occurs during the acceptance delay or by the fault of the ordering party, the said party shall be obligated to return.

4. Moreover, the ordering party shall have the right of withdrawal, if we let a suitably set grace period pass fruitless for the repair or replacement delivery with respect to a defect in the sense of the delivery conditions we are responsible for, and the ordering party has an interest in withdrawal, and the replacement of the lower value cannot be reasonably expected to be accepted. The reasonable grace period shall not start until the fault of the ordering party has been established and subsequently our intervention duty is recognized by us in writing. The right to withdraw of the ordering party shall exist also in case of impossibility or inability of repair or replacement delivery by the supplier.
5. Excluded thereof, if legally permissible, all other further claims of the ordering party, in particular conversion, termination or reduction as well as compensation of damage of any kind, i.e. of such damage which has not occurred on the delivery item itself.

XI. Right of the supplier to withdraw

1. The contract shall be adapted reasonably in case of unforeseen events in keeping with Section (V) of the delivery conditions provided the economic significance or the content of the services are changed considerably or our operation is significantly affected, and the impossibility of the execution is established subsequently. If this is not acceptable from an economic point of view, the supplier shall have the right to withdraw from the contract in total or partially.
2. Compensation for damages of the ordering party shall not exist due to such a withdraw. If we want to make use of our right to withdraw, we shall have to immediately inform the ordering party depending on the consequences of the event, even if a prolongation of the delivery period has been arranged with the ordering party first of all.

XII. Miscellaneous and legal venue

1. In case of all disputes resulting from the contractual relationship, the suit shall be filed with the corresponding court located in the German town of Heilbronn, if the ordering party is a registered trader, a legal entity under public law or of special fund. The supplier shall also be permitted to sue at the registered office of the ordering party.
2. Contracts with customers outside Germany shall be subject to general delivery conditions for the export of machines and plants arranged and recommended by the United Nations for Europe in Geneva, Switzerland.
3. For a potential fault of vicarious agents in production and delivery, we shall be liable to the same extent as rendered in the conditions hereinbefore.
4. Information rendered by us on measurements, weights, consumptions and performance shall be approximate and shall be no reason for complaints, unless the said has been recognised as being binding. Construction changes which appear to be necessary on account of experience made in the mean time shall be expressly reserved. Equally, we reserve the right of change of the tolerances specified for scaling of sheet metal, bar iron, etcetera by the rolling mills as well as of the manufacturing tolerances permissible in keeping with German standard DIN.
5. We reserve the right of ownership and copyright in cost estimates, drawings and other documents. These documents shall not be made accessible to third parties.
6. The conditions hereinbefore shall remain effective in total also in case of legal invalidity of individual parts.