

General provisions

In placing a purchase order the Buyer accepts that all goods supplied and services rendered by the Seller shall, even if not so expressly stated in subsequent orders, be governed solely by the terms and conditions set out hereafter and as supplemented by the provisions of the Federal German Commercial Code as it applies to transactions between traders.

I. General information

1. Documents included in quotations such as illustrations, drawings, and specifications of weight and size shall be understood as mere approximations unless they have been expressly designated to be binding.
2. All deliveries and services shall be subject to these terms and conditions as well as other separate contractual agreements. Deviating conditions of purchase of the Buyer shall not become part of the contractual content, even if the order has been accepted.
A contract shall be concluded — in the absence of a special agreement — by the Seller's written order confirmation.
3. The Seller holds the proprietary and copyrights to samples, cost estimates, drawings and other tangible and intangible information — including electronic information; these must not be rendered accessible to third parties. In respect of information and documents designated by the Buyer as confidential, the Seller shall be obligated to render such information inaccessible to third parties unless the Buyer's express consent has been obtained.

II. Pricing and payment

1. In the absence of a special agreement, prices are applicable ex works, including loading at the plant, however excluding packaging and unloading. Prices do not include the legally applicable amount of value-added tax.
2. In the absence of a special agreement, payment is due to the Seller's account 30 days net as of invoice date without any deductions.
3. The Buyer is entitled to retain payment only insofar as his claims are undisputed. However, he can only retain a maximum of 10 percent of the invoice amount, if the delivery item can be utilized.
4. Setoff with accounts receivable owed is only admissible insofar as such is determined by the Seller to be current and due, or valid.
5. In the event of a delay in payment, the Buyer is charged an interest rate of 8 percent p. a. in addition to the basic interest rate as of the due date.

III. Time of delivery, delay in delivery

1. Time of delivery shall ensue from the agreements reached by the contracting parties. The Seller's compliance with the terms stipulated prerequisites that all financial and technical concerns between the contracting parties have been settled and that the Buyer has met all of his obligations, such as for example technical specifications (dimensions, weights) necessary to design the delivery item or has made a down payment. Should this not be the case, then the time of delivery shall be delayed accordingly. This shall not apply insofar as the Seller is responsible for the delay.
2. Compliance with the time of delivery shall be subject to receiving correct and timely shipments of subsuppliers. The Seller shall notify the respective parties as soon as possible of delays that may become apparent.

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3. The time of delivery has been met, if the delivery item has left the Seller's plant before the due date has elapsed, or if the readiness to ship has been reported. If there is to be an acceptance test, the acceptance deadline shall be the decisive factor, alternatively the notification of readiness to accept — unless acceptance has been legitimately refused.
4. Should shipping or acceptance of the delivery item be delayed due to reasons the Buyer is responsible for, the Buyer shall be charged with accrued costs caused by the delay, beginning one month after notification of readiness to ship or accept respectively.
5. If the time of delivery cannot be complied with due to force majeure, labour disputes or other events beyond the Seller's sphere of influence, then the delivery time shall be delayed accordingly. The Seller shall inform the Buyer of the beginning and the end of such circumstances as soon as possible.
6. Without fixing a specific term, the Buyer shall be able to cancel the order, if the Seller is unable to deliver the entire order altogether before passage of risk. In addition, the Buyer is entitled to withdraw from the contract, if an ordered part of the consignment becomes impossible to deliver and if the Buyer has a legitimate reason to refuse a partial shipment. Should this not be the case, then the Buyer shall have to pay the price due for the partial delivery according to the contract. Likewise the same applies if the Seller is unable to perform. Furthermore, section VII.2 applies.
Should the Seller be unable or if it becomes impossible for him to comply with the delivery during the delay in acceptance, or should the Buyer be mainly or solely responsible for the circumstances then the Buyer shall remain obligated to render compensation.
7. Should the Seller experience a delay in delivery and should the Buyer thus suffer proven damage, then the Buyer is entitled to — while excluding additional claims — demand a flat amount of compensation for the delay, as of the 3rd week of the delay. The compensatory amount for each full week is a total of a maximum of 0.5 percent; however, at the most 5 percent of the value of the respective part of the entire shipment, which as a result of the delay was not shipped in time or was not delivered in accordance with the contract.
Within the bounds of statutory exemptions, the Buyer is entitled to withdraw from the contract if after the due date and under consideration of statutory cases of exemptions he has stipulated a feasible deadline to deliver, which did correspond with the complexity of the product and if subsequently the deadline has not been kept .

Additional claims as a result of a delay in delivery are exclusively determined in accordance with section VII.2 of these terms and conditions.

IV. Passage of risk, acceptance

1. The risk passes to the Buyer, once the delivery item leaves the plant, including the instance of shipping partial deliveries and even if the Seller has agreed to render additional services such as to pay shipping postage, or to deliver and install the delivery item. Insofar as an acceptance test is to take place, it shall be the decisive factor for the passage of risk. It has to be conducted without delay at the time scheduled for acceptance, alternatively on the Seller's notification of readiness of acceptance. The Buyer must not refuse acceptance unless substantial deficiencies are evident.
2. Should the shipment or the acceptance respectively be delayed or not take place altogether as a result of circumstances beyond the sphere of control of the Seller, then the risk shall pass to the Buyer as of the date of notification of readiness to ship or accept respectively. At the Buyer's expense, the Seller shall be obligated to take out insurance coverage, as requested by the Buyer.

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3. Partial deliveries are admissible, if reasonable to the Buyer.

V. Reservation of ownership

1. The object of delivery remains property of the Seller until all payments due including additional costs and interest arising out of the business relation have been paid in full. This includes the time period until bills of exchange or cheques for payment have cleared. In the event of a current account, reservation of ownership shall secure the account balance for the Seller.
2. The conditional goods are processed for the Seller without resulting in subsequent obligations to the Seller. In the event of processing, combining or mixing the object of delivery with other goods not germane to the Seller, the Seller shall be entitled to partial ownership rights of the new matter according to the relation of the invoiced value of the conditional goods to the value of the other processed goods at the time of processing, combining or mixing. Should the Buyer acquire the sole ownership of the new matter, then the Buyer shall pass the partial ownership rights of the new matter to the Seller from this time forth, according to the relation of the invoice value of the reserved goods to the value of the remaining processed goods at the time of processing, combining or mixing. The Buyer shall maintain these for the Seller with commercial diligence.
3. Resale of the object of delivery, regardless of whether it has been processed, used in a compound, mixed or not, is only permitted to resellers in their course of usual business practice and under reservation of ownership and only if the receivables arising out of the resale are conveyed to the Seller. The Buyer is prohibited from pledging or assigning accounts as security, as well as reaching an agreement regarding assignment or non-assignment without the consent of the Seller within the scope of factoring. The Buyer shall hereby assign to the Seller in advance all of his receivables due, current or later arising from the resale or from any other statutory base with respect to the object of delivery supplied by the Seller at the time of accrual in the amount of the value of the conditional goods. The Seller accepts the assignment. The value of the conditional goods equals the invoiced amount plus a security mark-up of 10 percent, which shall not be applied if there should be conflicting rights of third parties. However, the entitlement of the Buyer to collect or resale or reprocess expires should he not duly meet his obligations to the Seller stipulated in the contract. If requested by the Seller, the Buyer shall be obligated to inform his purchasers of the assignment and to provide the Seller with any and all necessary information and documents needed to enforce any and all lawful claims with respect to the purchasers.
4. The Buyer is obligated to insure the conditional goods adequately, in particular against damage caused by fire, theft, breakage, water and other harms. From this time forth, the Buyer shall hereby assign to the Seller any claims against the insurer to the extent of the value of the conditional goods. To this effect, the value of the conditional goods shall amount to our applicable price, not including VAT, on the day the damage occurred. The Buyer shall have to inform the insurer of the claim assignment. The Seller shall be entitled to insure the conditional goods at the Buyer's expense.
5. The Buyer must neither pledge the object of delivery as security nor assign it as security. The Buyer shall have to inform the Seller immediately of the instance of seizure or confiscation or other third party disposals.
6. Should the Buyer breach the contract, in particular in the case of delay in payment, the Seller shall be entitled to take back the delivery item after requesting payment and the Buyer shall be obligated to comply.
The Seller enforcing his claim of reservation of ownership or pledging the object of delivery as security, in effect shall not be regarded as his withdrawal from the contract.

VI. Claims for defects

The Seller shall grant guaranty of the quality and the title for the consignment, while excluding additional claims — subject to section VII — as follows:

Quality defects

1. All parts, which are determined to be defective as a result of a circumstance prior to the time of the passage of risk, shall be reworked or replaced free of defects at the Seller's option. The Seller is to be informed in writing immediately on the detection of such defects. Replaced parts become property of the Seller.
2. On notifying the Seller of defects, the Buyer has to provide sufficient time and opportunity to perform all necessary rework or replacement deliveries that the Seller deems appropriate; otherwise the Seller shall be released from liabilities ensuing from consequences thereof. Solely in the event of urgent safety hazards to the operational reliability or to prevent disproportionately large damage respectively — whereby the Seller is to be informed immediately — shall the Buyer be entitled to remove the defect on his own or by a third party and demand reimbursement of the required expenses.
3. Of the immediate expenses arising out of the rework or replacement delivery respectively, the Seller shall bear — insofar as the complaint has been ascertained to be valid — the expenses for the replaced item including shipping. He shall also bear the expenses for dismounting and mounting as well as the expenses for the possibly required assemblymen and supporting staff, including travel expenses, unless the Seller would be disproportionately burdened thereby.
4. Within the bounds of statutory specifications the Buyer is entitled to withdraw from the contract, if the Seller — under consideration of statutory exemptions — has fruitlessly let elapse an appropriate deadline set forth for him to perform rework or replacement delivery in respect of a quality defect. In the case of an insignificant defect, the Buyer shall only be entitled to request a reduction in the contract price. An entitlement to reduce the contract price shall be excluded otherwise.

Additional claims shall be determined in accordance with section VII.2 of these terms and conditions.

5. In particular, no guarantee shall be granted in the following cases:
used objects of delivery, inappropriate or improper use, faulty mounting or commissioning respectively by the Buyer or a third party, normal wear and tear, faulty or negligent treatment, improper maintenance, inappropriate operating resources, inadequate construction work, inappropriate building lot and floor, chemical, electrochemical or electrical effects — insofar as the Seller is not responsible for them.
6. The Seller shall not be held liable for consequences resulting from the Buyer or a third party having rectified a defect improperly. The same applies to any changes made to the object of delivery without the prior consent of the Seller.

Defects of title

7. Should the use of the object of delivery result in the infringement on domestic commercial property rights or copyrights, the Seller shall — at his expense — procure the right for the Buyer to further use the object of delivery or he shall modify the object of delivery in a way reasonable to the Buyer so that an infringement on property rights shall no longer exist.

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If this is impossible within the appropriate economic conditions or within an appropriate deadline, the Buyer shall be entitled to withdraw from the contract. Under the prerequisites mentioned, the Seller is also entitled to withdraw from the contract.

In addition the Seller shall release the Buyer from any undisputed claims or claims determined to be valid under an act by the affected holders of industrial property rights.

8. The obligations of the Seller mentioned in section VI.7 apply with the provision of section VII.2; in the instance of infringing on industrial property rights or copyrights they are final.

They shall only apply if

- the Buyer informs the Seller immediately of claims raised with respect to infringement on industrial property rights or copyrights;
- the Buyer supports the Seller to an appropriate extent in the defense against claims raised or to enable the Seller to perform modifications in accordance to section VI.7;
- the right to use all measures of defense including extrajudicial agreements shall be reserved to the Seller;
- the defect of title is not based on the instructions of the Buyer and the defect of title has not been caused thereby, and that the Buyer has not made unauthorized modifications to the object of delivery on his own, or has used the object of delivery in a manner not conforming to the terms of the contract.

VII. Liability

1. If the object of delivery cannot be used by the Buyer in accordance with the contract, due to the Seller's negligence which has resulted from an omitted or faulty design that was based on suggestions or consultations prior to or after finalising the contract, or from violating other contractual secondary obligations — in particular operating instructions and maintenance of the object of delivery — then the regulations of sections VI and VI.2 shall apply respectively, while excluding any additional claims of the Buyer.
2. The Seller shall only be held liable for damages that have not been incurred on the object of delivery itself — regardless of whichever statutory base — if the damage was caused
 - a. intentionally,
 - b. by gross negligence of the proprietor / agents or executive employees,
 - c. by culpable injury to life, body, health,
 - d. by defects, which he has fraudulently kept secret or which absence he has guaranteed,
 - e. by defects in the object of delivery, insofar as the extent of liability includes liability for privately used objects as pursuant to product liability laws for bodily and material damages.

In the instance of culpable violation of essential contractual obligations, the Seller shall be also held liable for gross negligence of non-executive employees and for slight negligence, in the case of the latter limited to the contract-typical and reasonably foreseeable damage.

Additional claims are excluded.

VIII. Limitation period

All claims of the Buyer — based on whichever statutory base — are limited to 12 months after passage of risks (according to IV.1). The statutory deadlines shall apply to claims for compensation according to section VII.2 a. They also shall apply to defects in a construction or in objects of delivery, which have been employed according to their usual application for a construction and thus have caused the defect in the construction.

IX. Use of software

Insofar as software has been included in the scope of delivery, a nonexclusive right shall be extended to the Buyer to use the software supplied, inclusive of its documentation. It is provided to be used on the object of delivery designated for such. Using the software on more than one system is prohibited.

The Buyer shall duplicate, rework, translate or change from the object code to the source code only within the bounds of statutory authorisations (§§ 69 a ff. UrhG (Law on copyright)). The Buyer shall be obligated not to remove manufacturer's data — in particular references to copyrights — without the Seller's prior express consent.

All other rights to the software and documentation including the copies remain with the Seller or the software supplier respectively. Providing sublicenses is not authorised.

X. Applicable law, jurisdiction

1. The authoritative Laws of the Federal Republic of Germany concerning the legal relations of domestic parties among themselves shall apply exclusively to all legal relations between the Seller and the Buyer.
2. The Seller's competent court shall be the place of jurisdiction. However, the Seller shall be entitled to institute an action at the place and location of the Buyer's headquarters.
3. This contract shall be construed and operate according to the Laws of the Federal Republic of Germany with the exception of the provisions contained in the introductory law.

The Buyer waives a priori and to the extent permitted by the Laws of its place of domicile (or native country) all substantive and adjective pleas and objections which oppose the validity of a verdict passed by a Federal German Court of Law, or any other title to distraint against the Buyer at the latter's place of business or domicile. Substantive objections arising after issue of the decree shall be allowed the Buyer.

Place of performance and jurisdiction, including summary proceedings concerning bills of exchange and cheques, will be Münsingen, Germany.