

Terms of Sale and Delivery

General provisions:

These general terms shall be exclusively binding for both contractual parties. They shall apply both to the delivery of goods and to services. Any other agreements and covenants by field staff and/or sales representatives shall not be effective unless confirmed in writing by both parties.

1. Offers and orders:

All offers shall without obligation and non-binding. A contractual obligation shall only be deemed to have been entered into upon a written order confirmation by the seller, even in case of prior agreements via telephone. Oral collateral agreements shall not be effective. The seller reserves the title and copyright to cost estimates, drawings and other documents; they may not be made accessible to third parties. Upon receipt of the order confirmation and through acceptance of the ordered goods, the ordering party accepts the seller's terms of sale and delivery. The customers terms of contract are not binding for us, even if we do not disagree.

2. Contract for delivery:

The contract for delivery shall be deemed to have been concluded once the order has been confirmed in writing and has not been objected to by the buyer within 7 days (evidence required). The seller's written confirmation shall also be binding for the contents of the contract for delivery. In case of custom-made products (commissioned work), the extent of the order may be reasonably undercut or exceeded, depending on the degree of difficulty. The delivered quantity shall be invoiced accordingly. Any amendments to the orders or cancellations cannot be taken into consideration anymore after start of production and/or upon material requirements planning has been realised. Partial deliveries are possible.

3. Call-off orders:

In case of call-off orders, the seller must be informed in time before the requested date of delivery of the call order. Only in such cases can a binding term of delivery be adhered to. In case of calls not effected within the closing term, the seller reserves the right to deliver and invoice the goods after expiry of such term. This shall especially apply to custom-made products.

4. Sub-contract work:

In the case of sub-contract work, i.e. for the manufacture of parts that are not clearly documented and categorized by us, special agreements are required. The sub-contract work will be carried out to the best possible standards. For losses on the delivered materials, respectively workpieces, (e.g. due to analysis, tests, rejects etc.), the following allowances for material loss or rejects are permissible. Lots of under 100 pieces = 15-20%; over 100 pieces = 10-15% according to the degree of complicity of manufacture for the whole range within sub-contract.

5. Price:

Unless otherwise agreed upon, the prices shall apply ex works and shall exclude shipping package, shipping costs and value insurance. This shall apply analogously to partial and express deliveries. Unless otherwise agreed upon, the prices are based on the costs at the time the prices are quoted. Should the costs have changed at the time of delivery, such changes shall be for the benefit and/or at the expense of the buyer.

6.

Payments:

Payments are to be rendered within 30 days of invoice date, in cash, without deductions and transaction fees. We award 2% discount when the cash payments are rendered within 14 days of invoice date, as far as the customer is not in arrears on other payments. Sub-contract work is payable immediately deductions. The inclusion of bills of exchange can only take place on the basis of explicit agreement. Settling with acceptances is not recognized as a cash payment. There is no claim on discount for this.

Interest at the current highest legal rates (at the moment 8% over the basic interest rate of the Central European Bank), can be raised, subject to further claims, when payments are overdue, even when the terms of payment have been extended. A payment is in arrears 30 days after the invoice date, therefore no further action on our behalf is required to give notice.

Every valid order is within itself an independent contract and cannot be set off against each other. Partial payment or claims are not recognized by us can only be set off by claims that have been raised in a court of law. Failure to adhere to payment conditions, or circumstances that are first known after closing the contract, that lead to fear that payments may not be placed within the agreed time, give us the right to demand security for all claims arising out of the delivery contract without consideration of expiry dates, and until security has been given, to stop production on the object of delivery.

7.

7.1

Periods and terms of delivery:

Unless otherwise agreed upon, the period of delivery begins at the latest of the following dates:

- the date of the written order confirmation,
- the date of the fulfilment of all of the buyer's commercial, technical and financial requirements
- the date on which the seller receives the advance payment to be made before the delivery of goods and/or the issue of a payment guarantee

7.2

7.3

The seller is entitled to effect partial and advance deliveries.

In case the seller cannot deliver on the contractual date of delivery, he must inform the buyer in writing and state a new estimated date of delivery.

7.4

Should delivery be delayed due to events of force majeure or due to an act or the failure to act by the seller and/or in case the buyer is in arrears with a payment, a grace period reasonably adequate for the circumstances shall be set.

7.5

As soon as the buyer foresees that the acceptance of the delivery item will be impossible, he must inform the seller immediately in writing. The buyer must state the reasons and if possible a date on which he can accept delivery.

Even if the buyer does not accept the delivery item on the agreed date, he must still pay for the part of the purchase price due on delivery. The seller must see to continued storage of the delivery at the expense and the risk of the buyer and upon request, insure the delivery item at the expense of the buyer.

7.6

In case the buyer's non-acceptance is not based on force majeure, the seller can demand in writing that the buyer accepts the delivery within a reasonable period, otherwise the contract will be rescinded.

In case the buyer does not accept the goods within the agreed period for reasons not attributable to the seller's fault, the seller can, in his discretion, rescind the contract in whole or in part by informing the buyer thereof in writing. In such case, the seller shall be entitled to demand compensation for damages caused by the delay of buyer.

8. Delivery, passing of risk:

The terms of delivery must be agreed in accordance with the INCOTERMS in effect at the time the contract is concluded. Unless otherwise agreed upon, the delivery item shall be deemed to have been delivered ex works (EXW). Should the seller agree upon the buyer's request to send the delivery item to a destination, the risk shall pass not later than at the time of handing over the delivery item to the first forwarder.

9. Packaging:

Unless otherwise agreed upon,
a) the packing costs shall not be included in the prices stated
b) packaging shall be effected customarily in order to avoid damage to the goods under normal transport conditions in transit to the determined destination and at the buyer's expense and shall only be returned to the seller in case this is expressly agreed upon.

10. Retention of title:

The delivery item shall remain the seller's property until full payment. Upon the seller's request, the buyer must make every effort to support the seller and to protect the seller's title to the delivery item in the respective country. The seller shall be entitled to mark the delivery item as his property. The buyer must comply with the formal requirements for the observance of the reservation of title.

10.2
The buyer may not pledge the delivery items or transfer them by way of security unless they are fully paid for. In case of a pledge or another third party intervention, the buyer must inform the seller immediately.

10.3
Should the delivery item become a material part of an individual item through processing or combination, the seller receives co-ownership to the new item on a pro rata basis in accordance with the ratio between the value of the delivery item and the other combined or compounded items at the time of the combination or compounding. In case of a combination or compounding in which the seller's item is to be seen as the main item, he shall be deemed to have been agreed upon that the buyer transfers co-ownership to the seller on a pro-rata basis.

11. Acceptance test:

Unless otherwise agreed upon, the acceptance tests included in the contract shall be conducted at the place of manufacture during normal working hours. Insofar as no technical details for the acceptance test are agreed upon in the contract, the tests shall be subject to the general practice in the relevant sector in the country of origin.

11.2
The seller must inform the buyer about the acceptance date in time and in writing, so that the buyer can be represented in the course of the tests. In case the buyer is not present in person or represented by a representative during the test, the buyer shall receive a test report. The accuracy of this report cannot be disputed by the buyer.

11.3
In case the acceptance test shows that the delivery item does not comply with the specified requirements or in case it shows any defects, the seller must remedy any defect and restore the contractual condition of the delivery item. Only in case of major defects the buyer may request a repetition of the acceptance test.

11.4
The costs for the acceptance test at the place of manufacture, excluding special operational equipment and special tools are separately agreed in contract. Travel costs and costs for board and lodging in connection with the test must be paid by the buyer.

12. Liability for defects:

The seller has the obligation to remedy defects attributable to a fault in construction, material or workmanship. The buyer must inform the seller immediately of any defects detected.

12.2
This obligation shall only apply to defects arisen within the period of one year from the time the risk passed and/or in case of delivery with erection, from the time assembly was completed, at the latest 15 month after delivery. In case the daily operating time of the delivery item exceeds the agreed upon time, the period shall be reduced accordingly.

12.3
In case a defect of a part of the delivery item is remedied, the seller shall again be liable for defects of the delivered replacement parts for a period of one year to the same extent as in the case for the original delivery item, however, not more than 2 years after first delivery. For all other parts, the term shall be extended by the duration of the service interruption caused by the remedy of the defect.

12.4
The buyer must inform the seller immediately in writing of any defects detected. In any case, such a notice of defects must be effected within 8 days after expiry of the period stated in item 12.2. The notice of defects must include a description of the defect. In case the buyer fails to send a written notice of defects within the time period stated above, the goods shall be deemed to have been accepted and the buyer forfeits his right to a remedy of the defect and to any claims for damages or claims to avoidance on the ground of error based on defects.

In case there is a risk that damage is caused by defects incurred, the buyer must inform the seller immediately in writing. In case the buyer fails to inform the seller accordingly, he shall be liable for any damage incurred due to the failure to send such notification.

12.5
Upon receipt of a justified notification of defects, the seller must see to a remedy of defects at his own expense. It is at the seller's discretion to have the faulty part or the delivery item returned to him for repair and/or replacement.

12.6
In case special skills are required for the disassembly and assembly of a part, the seller shall have the obligation to do the work himself. In case no special skills are required, the seller shall be deemed to have fulfilled the remedy of defects by delivering the properly repaired or replaced parts.

12.7
In case the buyer sent a notification of defects due to a certain defect and no such defect for which the seller can be made liable can be detected, the buyer must reimburse the seller for all costs incurred to the seller due to such notification.

12.8
The buyer must see to the disassembly and assembly of equipment not forming part of the delivery item at his own expense and risk, insofar as this is necessary for the remedy of the defect.

12.9
Unless otherwise agreed upon, transport of the delivery item and/or the parts of the delivery item to be remedied shall be effected at the seller's expense and risk. The buyer must adhere to the seller's instructions regarding transport.

12.10
Unless otherwise agreed upon, the buyer shall cover any additional costs incurred to the seller in the course of repairs, disassembly and assembly, in case the location of the delivery item is not the contractual destination.

12.11
The defect and already replaced parts must be placed at the seller's disposal at no additional cost (carriage paid).

12.12
Should the seller not fulfil his obligation to remedy the defect within a reasonable period of time, the buyer may set a final reasonable period in writing, in the course of which he must remedy the defect.

Should the seller not remedy the defect within such reasonable grace period, the buyer may effect the required repairs himself and/or have them effected by a third party at the expense and risk of the seller. However, the seller shall receive a prior notification in writing.

Through reimbursement by the seller of all reasonable costs incurred to the buyer due to such repair, all the buyer's claims concerning the remedy of defects as well as claims for damages, if any, shall be deemed to have been satisfied.

12.13 The liability for defects not based on materials provided by the buyer (= a third party) or a construction specified by the buyer shall be excluded.

12.14 The seller shall not be liable for defects based on:
 a list prepared by the buyer or his representative not in compliance with the seller's provisions, bad maintenance, bad repairs and changes or repairs and changes effected without the seller's written consent by a third party who is not the seller or his representative, wear and tear.

12.15 Irrespective of the provisions in sections 12.1 to 12.14, the seller's liability for defects in connection with the parts of the delivery item is restricted to 2 years after the date of delivery.

12.16 Claims for damages due to minor negligence of the seller are excluded (except those concerning personal injury).
 The seller shall not assume liability for damage caused by a defect, such as a production stop, lost profits and other indirect damage.

13. Division of liability for damage caused by the delivery item:
13.1 The seller's liability for property damage caused by the delivery item after delivery was effected and the delivery item was in the buyer's possession shall be excluded. The seller shall also not be liable for damage to products manufactured by the buyer or to goods that include a product manufactured by the seller.
 Should the seller be made liable by a third party for a damage caused by the delivery item as mentioned in the paragraph above, the buyer must indemnify the seller, defend him and hold him harmless against such claim.

14. Plans and documents:
14.1 Plans, drafts, cost estimates and other technical documents provided by the seller for the manufacture of the delivery item shall remain the seller's intellectual property. Any use, copying, reproduction, dispersion and handing over to third parties, publication and demonstration shall only be permissible with the owner's express consent.

14.2 The seller shall provide the buyer with instructions and regulations concerning the erection, initial operation and maintenance of the delivery item not later than on the date of delivery. However, the seller shall not have the obligation to provide workshop drawings for the delivery item or for spare parts.

15. Force majeure:
15.1 Each of the parties has the right to suspend the fulfilment of its obligations to the extent the performance of the contract is rendered unreasonably difficult or completely impossible due to the following circumstances: Labour disputes and any circumstances not under such party's control, such as war, fire, rebellion, seizure, requisition, embargoes, energy consumption restrictions and also lacking, defective or incomplete delivery by the suppliers. Insofar as one of the circumstances stated above occurs before or after the conclusion of the contract, the relevant contractual party shall only be entitled to suspend the fulfilment of its contractual obligations if the effects of the event occurred were not foreseeable at the time the contract was concluded.

15.2 In case an event of force majeure occurs, the party affected must inform the other party immediately and in writing of the occurrence and the expected duration of such event.

Should the occurrence of an event of force majeure hinder the buyer from fulfilling his obligations, he must reimburse the seller for any costs already incurred in the course of securing and protecting the delivery item.

15.3 The buyer and the seller shall make every effort to minimise the consequences of force majeure. However, should an event of force majeure and thus the suspension of the fulfilment of the obligation last more than 6 months, each of the parties shall be entitled to rescind the contract in writing.

16. Foreseeable non-performance:
 Notwithstanding any other agreements contained in these terms of sale, each of the parties shall have the right to suspend the fulfilment of its obligations if it is foreseeable that the other party will not be able to fulfil its obligations, subject to an immediate written notification to the affected party.

17. Rescission:
 The buyer may only rescind the contract if the seller is not able to perform the contract and / or fulfil warranty claims, if the fulfilment of the delivery contract is delayed culpably by the seller despite a reasonable grace period set by the buyer.

18. Consequential damage:
 Subject to other provisions contained in these terms, the seller's liability vis-à-vis the buyer for production stops, lost profits, downtime, losses of contract or any other economic or indirect consequential damage shall be excluded.

19. Performance, jurisdiction and applicable law
 The court of law responsible for the legal obligations of both contract parties, is in the district of Wolfenbüttel, where the registered head office of the contractors exists. The court district of Wolfenbüttel is also responsible, where the costumer is a professional merchant, or a corporate person. The vendor can, however file a suit in the court district where the costumer is registered. When not explicitly otherwise agreed, the contract is subject to the laws of Federal Republic of Germany.

20. Clause of incompleteness
 As far as invalid for some reason any of the above provisions of our terms and conditions should not be affected by the Treaty in its validity and all other provisions and liabilities obese unaffected