

General Sales & Delivery Conditions

1. General

1.1. The following Sales & Delivery Conditions apply solely for all deliveries and other services; they solely apply for tradesmen in the sense of § 24 of the AGB (General Sales & Delivery Regulations).

As far as no settlements have been made in the following Sales & Delivery Conditions, the conditions allowed by law of the FRG apply; however, the General Sales and Delivery Conditions have priority over the legal regulations in as much as they consist of deviating regulations, also in part only.

1.2. Deviating conditions of the buyer which the supplier has not explicitly accepted, are non-binding, even if the supplier has not made any protest.

1.3. Written confirmation is required for other provisions, alterations and collateral agreements.

1.4. Inclusion and interpretation of these Sales and Delivery Conditions are regulated in the same way as the conclusion and interpretation of the legal transactions with the buyer himself, according to the laws of the FRG exclusively.

1.5. Should certain regulations of these Sales and Delivery Conditions prove to be invalid, the validity of the remaining rules remain unaffected. Buyer and supplier will replace the invalid rules with new rules which are legally permissible and which are as close as possible to the legal and economical sense and contended purpose.

1.6. The buyer authorizes the supplier, without prior notice, to process person-related data as far as permitted by the BDSG (Federal Data Protection Law) and as far as necessary for the execution of the contractual relationship and to remit them to the staff within the company dealing with the realization of the contractual relationship.

1.7. The supplier's place of residence is the place of fulfilment for all commitments, which derive directly or indirectly from this contractual relationship, incl. payment liability. The supplier also has the right to take legal action at the court responsible for the buyer, as well as to subjudice his claims at a Hamburg court due to the nearness to shipping services and therefore their supposed expert knowledge which can be taken for granted.

2. Tenders, Volume and Conclusion of the Agreement

2.1. All offers are subject to alteration.

2.2.1. The order confirmation only is important for the volume of the contractual service.

2.2.2. The supplier reserves his rights on changes in the construction, selection of raw materials, specifications and design, also after despatch of the order confirmation, provided that they are equivalent to the deliveries and services stated in the order confirmation and to the specifications of the buyer.

2.2.3. Part deliveries are permitted

2.2.4. It is the buyer's obligation to accept the delivered items, irrespective of his liability and warranty rights.

2.2.5. Documentation taken as a basis for the offer or the order confirmation, such as illustrations, drawings, dimensions and weights, may be seen only as approximate values, if not strictly indicated as being binding.

2.3.1. An order is considered as accepted only when confirmed by the supplier in written form or when the delivery is made on condition that it could be made or had to be made without prior order confirmation. Accepted orders are irrevocable.

2.3.2. Should a major change occur in conditions valid at the time of the agreement conclusion, the supplier can refuse delivery and/or service until an agreement can be reached between the parties on the altered deliveries and services caused by the major change and/or on the compensation, and after the buyer has provided suitable security on demand.

3. Prices and Payment Conditions

3.1. In the default of any special agreement, the prices are ex-works, including loading in the factory, however, excluding packing and other forwarding and transport expenses, plus VAT. Packing is charged as total production costs and will not be taken back.

3.2. „Prices“ are to be taken from price list effective at the time of delivery, as long as they are not fixed in the order confirmation; the proviso also applies in so far as a major change of the conditions after conclusion of the agreement (2.3.2).

3.3. In the case of „equipment“ which is not meant for „sale ex-warehouse“, the price stated in the price list as „minimum order value“ will be charged, if the order value is less than this minimum order value.

3.4. In the case of alterations requested by the customer after the order confirmation has been made, resulting additional expenses will be charged.

3.5.1. Payment is to be made within 30 days after invoice date without any deduction whatsoever or within 14 days with a 2% discount and at the latest on the payment date stated on the invoice.

3.5.2. The buyer can only balance the costs out against each other on such claims which are considered as being undisputed or legally binding.

3.5.3. Fulfilment date for all payments is the incoming day at the supplier's bank institute or when a cheque or bill of exchange reaches the supplier so that it can be honoured immediately and found suitable as an irrevocable credit slip.

3.5.4. Should the payment deadline be exceeded, interests of 4% over the respective discount rate of the German Federal Bank will be charged with the proviso of the assertion of further claims – especially for the utilization of bank credit

3.5.5. Bills of exchange and cheques are accepted only for account and are regarded as payment after unreserved credit. Bank, discount and other expenses will be borne by the buyer.

4. Delivery Terms, Acceptance and Dispatch

4.1.1. The supplier will make his best efforts to meet the indicated delivery term within a weekly period. The declaration on the time of delivery is made according to reasonable judgement, however, without commitment, unless an exact fixed date has been agreed upon in the order confirmation.

4.1.2. The delivery term begins as from the dispatch of the order confirmation. It is extended accordingly if the buyer does not provide the documentations and approvals etc. to be organized by himself on time or if he does not fulfil his other necessary contractual and payment obligations. The same applies to measures in the frame of industrial disputes, especially strike and lockout, as well as the occurrence of unforeseeable difficulties which the supplier is unable to influence or not reasonable and without extraordinary expenses,—e.g. pre-supplier's delivery delays, traffic and stoppages, lack of material and power and those which have a major influence on the production or supply of the willingness to deliver and/or service items.

4.1.3. Delivery term is met if the delivery and/or items of service have left the factory prior to the deadline or if notification of the delivery has been made.

4.1.4. The buyer's claims for damages for all cases of delayed deliveries or services are ruled out. This does not apply if the delay has been caused by the supplier's intentional or gross negligence.

4.1.5. The buyer's right of withdrawal after futile expiry of a fixed extension remains untouched.

4.1.6. Should the buyer be unable to accept delivery of the order and/or other services, also for unjustified reasons, the buyer must reimburse the supplier for total production costs for the delivery and/or for other services rendered (material, labour costs and other expenditure for such) as well as installation-supply costs, especially expenses for wages and service fees, as well as for hotel reservations, air tickets, rented vehicles and equipment etc.

If the supplier can easily and reasonably use the delivery and/or other services for other purposes, the buyer is obliged to compensate the supplier's expenses for that and possible deficits of up to the amount of the total production costs for the delivery and/or other services (materials, labour costs and other expenditure for such). The following regulations on the transfer of risk remain untouched by the a.m. regulations.

4.2.1. As long as acceptance deadlines are not agreed upon, the buyer has to accept the item of delivery and/or service within 8 days after notification of completion of same.

4.2.2. If the buyer has given a call-off order, he has to call off the item of delivery and/or service – in case he has ordered several items of delivery and/or services he has to call off all – within 12 months as from the order date. No. 4.2.1 apply accordingly. Special conditions will apply for orders for a development order.

4.2.3. If the buyer does not fulfil his obligations named in 4.2.1. and/or 4.2.2., the supplier can, without affecting his further rights, claim immediate payment, store the item of delivery and/or service at the cost and risk of the buyer or make the delivery item and/or service available to him or make other use of the item of delivery and/or service.

4.3.1. The dispatch is made ex-works at the buyer's expense and risk. Insurance for transport, breakage and theft and others will be taken out by the supplier only on explicit request and at the buyer's expense.

4.3.2. If the deadline of dispatch and/or acceptance date will be postponed by mutual agreement the buyer will be charged, starting one month after notification of the readiness for dispatch, with the storage costs in case of storage in the supplier's factory, however, at least with ½ of the invoice amount for each month.

5. Transfer of Risk

The risk is transferred to the buyer at the time of acceptance, on the day of unfounded refusal to accept, on inactivity of the buyer after expiry of the delivery term stated in the a.m. paragraph 4.2.1. and 4.2.2 or a possible specially agreed period of acceptance. If it has been agreed that the item to be delivered is to be directed to the buyer or a third party, the risk is transferred to the transporter (forwarder, railway etc) as from the take over of the item to be delivered.

In any case the risk is transferred upon use of the delivered item. Should the supplier take the goods back for reasons which he cannot justify, the buyer takes over the risk until the goods reach the supplier.

6. Reservation of the Owner's Rights

6.1. Delivered goods remain the supplier's property until fulfilment of all demands of the supplier laid down in the business terms of the parties.

6.2. The buyer may neither pledge the goods delivered on reservation of the ownership nor assign them for security reasons.

In the case of security and confiscation or other disposition by a third party he must inform the supplier immediately thereof.

6.3. If the goods have been treated by the buyer, the property proviso concerns the whole new matter (situation). In the case of processing, combining or mixing with foreign items, the supplier will obtain part ownership at the ratio which corresponds to the proportion of the value of his goods to the other items used by the buyer at the time of the processing, combining or mixing. The buyer has the right to resell the goods under the property proviso within the frame of orderly business activities. Should the buyer himself sell these goods without obtaining the full selling price in advance or in exchange for the sold item, he has to agree with his customer on a property proviso corresponding to these conditions. The buyer now already transfers his future demands arising from the reselling as well as the rights from the property proviso, which he must agree upon, to the supplier, and the supplier accepts the transfer herewith. The buyer is obliged on request of the supplier to notify his customers about the transfer and to give the supplier the information necessary for the assertion of his rights and to hand over the documents.

7. Warranty

7.1. Defect on goods and/or services delivered which are notified to the supplier within 6 months after starting up, however at the latest 9 months after transfer of risk, have to be improved by the supplier at his own choice or the supplier replaces the goods or service, which he has every right to do, after unsuccessful attempts to improve.

In the case of obvious defects the written notice on defects must reach the supplier at the latest within 14 days after handing over the goods or other services to the buyer, in the case of undetectable defects, immediately after identifying same.

The buyer reserves the right to choose either to cancel the contract or to demand a price reduction, as long as the supplier's attempts to improve and to replace fail. Spare parts or worn parts or parts for the further processing must be inspected by the buyer immediately after delivery and possible defects are to be notified immediately.

The warranty claims are not applicable for defects which could have been detected prior to the installation or processing.

7.2. Should the buyer arrange for an inspection of the delivered goods and/or other services and indicates an error, for which the supplier would be liable, according to No. 8.1., the buyer will bear the resulting costs if no defect is found.

7.3. Further claims from the buyer, especially due to damages caused by the defect, are ruled out, as long as this is not resulting from lack of guaranteed properties/characteristics. This does not apply as long as the supplier is charged of intentional or gross negligence.

7.4. Expenses for sending and returning delivered items or services, as well as for packing, will be borne by the supplier, if nothing else has been agreed between the buyer and supplier.

7.5. If delivered goods or services are not to be found within the German boundaries when the defect has to be improved, the supplier only bears those resulting costs/expenses which arise if the delivered goods would have been within the FRG boundaries only to the buyer's premises within the FRG or, as long as the premises do not exist within the FRG, only to the German sea port nearest to the supplier.

8. Liability

8.1. The buyer's claim for damages for whatever legal argument are ruled out, also such as unauthorized action or compensation from consequential damage. This does not apply if the supplier is charged with intentional or gross negligence or if he is made liable owing to a lack of guaranteed properties/characteristics

8.2. Should the buyer assert personal injuries and damage to property rights due to the Product Liability Law, which are caused by the defect of the delivered item, release from liability does not apply.

8.3. The supplier is not liable for damages which arise because of the following reasons: Unsuitable or improper use, incorrect assembly or starting up by the buyer or a third party, failure to comply with the operating instructions, incorrect or negligent treatment, normal wear, chemical, electrochemical or electrical influence, as long as these do not lead back to the supplier's intentional or gross negligence and unapproved changes or repair work.

8.4. Advisory service for the buyer, especially on the use of the delivered item, is binding for the supplier only if given in written form or if confirmed.

9. Copyright

9.1. The supplier maintains ownership of drawings, illustrations, sketches, quotations and other offers and attachments to the order confirmations. The buyer may use these only for the purpose agreed upon and may not make duplicates of same or make them available to a third party without the supplier's consent. These documents must be returned to the supplier on request together with all copies of same

9.2. Tools and/or fittings produced by the supplier also remain the supplier's property even if the costs of such have been charged fully or in part. The supplier is responsible, on the buyer's request, to refund the current value and/or part of the current value of the tools and/or fittings. Should the supplier refuse, the buyer can demand possession of same.