

Terms and Conditions of Sale and Delivery

I. General

1. The following Terms and Conditions of Business apply to any and all current and future business relationships.
2. They apply to the following persons:
 - a) Any person who, at the time of the conclusion of the contract, is conducting a commercial or freelance or professional activity (entrepreneur);
 - b) Any legal entity under public law or a special fund under public law.
3. Any deviating, contrary or modifying general terms and conditions of business, even if they are known, do not become components of the contract (even when the order is accepted) unless their application has been expressly acknowledged in writing.
4. Should individual provisions of the contract with the Buyer, including these General Terms and Conditions of Business, be, or become, invalid, in whole or in part, the validity of the remaining provisions shall not be affected. The provision which is invalid, in whole or in part, will be replaced by a regulation which comes closest to achieving the commercial results of the invalid provision.

II. Offers and Orders

Our offers are non-binding and subject to change. No orders, agreements, or commitments of any kind will become binding on us until we have issued a written order confirmation.

The documents which constitute a part of the offer such as pictures, drawings, weights, and dimensions are only approximate unless they have expressly been designated as binding.

The Supplier retains titles of ownership and copyright to samples, cost estimates, drawings and similar information of both tangible and intangible nature, including any such information in electronic form; it may not be disclosed to third parties. The Supplier covenants to disclose to third parties any information and documents designated by the Buyer as confidential solely with the latter's consent.

III. Scope of the Delivery

The Supplier's written order confirmation is decisive for the scope of the delivery; in the event that the Supplier has submitted an offer with a time limit and is has been accepted in due time, the offer is binding unless an order confirmation has been issued in due time. Subsidiary agreements and modifications shall not be binding unless confirmed in writing by the Supplier.

IV. Price and Payment

1. In the absence of specific agreements, prices are shown ex works Neuss, including loading in the plant, but excluding packaging. Prices are shown excluding statutory value-added tax. Packaging will be billed at cost or at a lump sum and cannot be returned.

The price in effect on the day of the delivery or at the readiness for dispatch will be charged. Charges will be calculated in accordance with the weights and numbers of units determined during dispatch. Any changes in the costs of raw materials or labor or other costs or public levies entitle us to adjust prices. We charge a minimum of € 25.00 per item and a minimum order value of € 100.00. The Supplier reserves the right to refuse acceptance of orders with lower values.

2. In the absence of specific agreements, payment shall be made in cash without any deduction, free of charge to the Supplier's payment point, as shown here:
 - One-third down payment after receipt of the order confirmation;
 - One-third as soon as the Buyer has been notified that the major parts are ready for shipment;
 - The remainder within one additional month.
3. The retention of payment or the offsetting against any counterclaims of the Buyer disputed by the Supplier is permitted solely if and when a claim is undisputed or has been finally decided by a court of law.

V. Delivery Time, Default of Delivery

1. The delivery period commences upon dispatch of the order confirmation, but not before the Buyer has supplied any documents, permits, releases which must be procured and not before receipt of any agreed advance payment.
2. The delivery shall be deemed in compliance with the delivery period if and when the merchandise has left the plant or if and when notification of readiness for shipment has been sent before expiration of the period.
3. The delivery period shall be extended by a reasonable time in case of events occurring within the framework of industrial action, especially strikes and lock-outs, and in case of the occurrence of unforeseen obstacles which are beyond the control of the Supplier, provided that such obstacles have a verifiable, major impact on the completion or delivery of the merchandise.

The above provision shall also apply if and when the circumstances arise at a sub-supplier's business or if and when the Buyer causes the consignment to be picked up late.

The Supplier is not accountable for the circumstances described above even if they occur during a previously existing default period. The Supplier shall notify the Buyer as soon as possible of the commencement and end of any such obstacles.

4. If and when the Buyer suffers loss or damage due to a delay caused by culpable action on the part of the Supplier, he is not entitled to request compensation for the default.

If and when the Buyer taking into account statutory exceptions, sets a reasonable subsequent period for performance by the Supplier after the due date and the Supplier fails to meet the deadline, the Buyer is entitled to cancel the contract within the scope of statutory provisions.

He undertakes to declare, upon the Supplier's request, within a reasonable period whether he intends to exercise his right of cancellation.

5. If the dispatch is delayed at the Buyer's request, he will be charged for any costs incurred for storage, beginning one month after notification of readiness for dispatch; if storage is in the Supplier's plant, the minimum monthly charge will be 0,5% of the amount of the invoice.

However, the Supplier, after the setting of a reasonable period and its fruitless expiration, is entitled to dispose otherwise of the merchandise and to deliver merchandise to the Buyer within a reasonably extended period.

6. The Buyer may cancel the contract without setting a period if and when it becomes finally impossible for the Supplier to complete the performance in full before the transfer of risk.

Furthermore, the Buyer may cancel the contract if and when the execution of a part of the delivery of an order becomes impossible and he has a legitimate interest in refusing the partial delivery.

If this is not the case, the Buyer shall pay the part of the contract price attributable to the partial delivery.

The above provision also applies in the event of Supplier's incapacity.

7. Compliance with the delivery deadline presumes that the Buyer has fulfilled his contractual obligations. If and when an acceptance procedure has been agreed, the acceptance date shall be decisive - unless there is justified refusal of acceptance - alternatively, the report of the readiness for acceptance.

IV. Transfer of Risk and Acceptance of Delivery

1. Risk transfers to the Buyer at the latest upon dispatch of the consignment parts, even if and when partial deliveries are made or the Supplier has assumed the performance of other services, e.g., shipping costs or delivery to the acceptance point and installation.

At the Buyer's request and expense, the Supplier will insure the consignment for damage or loss from theft, breakage, transport, fire and water as well as for other insurable risks.

If and when an acceptance procedure has been agreed, it is decisive for the transfer of risk. It must be carried out immediately on the acceptance date, alternatively, after the Supplier has reported readiness for acceptance.

2. If and when shipment is delayed owing to circumstances for which the Buyer is accountable, the risk transfers to the Buyer as of the day of readiness for shipping; however, the Supplier is obligated to obtain any insurance requested by the Buyer upon the latter's request and at the latter's expense.
3. Delivered items must be accepted by the Buyer, even if they display minor defects, without prejudice to the rights pursuant to Section VIII.
4. Partial deliveries are permissible.

VII. Retention of Title

1. The Supplier retains title of ownership to the merchandise until all payments - including those for any subsidiary services which are owed in addition - related to the supply agreement have been received.
2. The retention of title also extends to any products created by processing, mixing, or combining of our merchandise in their full value, whereby we are deemed to be the manufacturer. If and when third-party ownership remains effective in the event of the processing, mixing, or combining of third-party merchandise, we shall acquire co-ownership in the ratio of the invoice value of the processed merchandise.
3. The Supplier is entitled to insure the merchandise at the Buyer's expense for loss or damage from theft, breakage, fire, water, and other occurrences of loss, provided that the Buyer has not expressly excluded the insurance.
4. The Buyer may not sell, pledge, or otherwise assign by way of security the merchandise. He shall notify the Supplier immediately in the event of attachment or confiscation or other disposal by third parties.
5. In the event that the Buyer is in breach of the contract, in particular is in default of payment, the Supplier is entitled, after issuing a warning, to take back the merchandise, and the Buyer is obligated to surrender it. The Buyer shall bear any transport costs for the return. The Supplier is authorized to utilize the reserved goods after their return.

The revenue from the utilization shall be applied to the Buyer's liabilities, less reasonable costs for the utilization.
6. The Supplier may request the return of the merchandise on the basis of the retention of title solely if he has cancelled the contract.
7. The filing of a petition for the initiation of bankruptcy proceedings entitles the Supplier to cancel the contract and request immediate return of the merchandise.

VIII. Claims due to Defects

The manufacturer's description of the product is always deemed to be the agreed characteristics of the merchandise. Public statements, instructions, or advertising of the Supplier does not represent any additional contractual information regarding the characteristics of the merchandise.

The Supplier is liable for material and legal defects in the delivery, excluding any further claims - subject to the provisions of IX - as follows:

Material Defects

1. The Buyer must notify the Supplier in writing of any obvious defects within a period of two weeks as of receipt of the merchandise; otherwise, the assertion of the warranty claim is excluded. Dispatch of the notification in good time shall be deemed compliance with the deadline. The Buyer bears the full burden of proof for any and all prerequisites for claims, in particular for the defect itself, the point in time at which the defect was discovered, and the dispatch of the complaint of defects in good time.
2. Any and all parts which are determined to have been defective as a consequence of circumstances existing before the transfer of risk shall, at the Supplier's discretion, be subsequently improved or replaced by defect-free parts free of charge. The determination of any such defects shall be reported to the Supplier without delay. Replaced parts become the Supplier's property.
3. The Buyer shall allow the Supplier the required time and opportunity to carry out any subsequent improvement and substitute delivery deemed necessary by the Supplier; otherwise, the Supplier shall be released from his liability and its consequences. The Buyer has the right, with the agreement of the Supplier, to remedy the defect himself or to cause it to be remedied by third parties, and to request reimbursement from the Supplier for the necessary expenditures, solely in urgent cases of threats to operational safety or to prevent unreasonable great damage or loss; the Supplier shall be notified immediately in such cases.
4. Provided that the claim has proved to be justified, the Supplier shall bear, of the costs incurred directly by the subsequent improvement or substitute delivery, the costs of the replacement part, including shipment.
5. The Buyer has the right, within the scope of statutory provisions, to cancel the contract if and when the Supplier - taking into account statutory exceptions - allows a reasonable period set for him for subsequent improvement or substitute delivery because of a material defect to expire fruitlessly. If the defect is merely minor, the Buyer is entitled solely to reduce the contract price. The right to reduce the contract price is excluded in any other cases.
6. If and when the Buyer decides to cancel a contract because of a material defect after a failure of subsequent performance, he shall not be entitled to any damage compensation claims because of the defect. If the Buyer decides to request damage compensation after the failure of subsequent performance, the Buyer shall retain the merchandise if this is reasonable for him. The damage compensation is limited to the difference between the purchase price and the value of the defective item.
7. No liability is assumed in the following cases in particular:
Unsuitable or improper use, incorrect installation or commissioning by the Buyer or third parties, natural wear and tear, incorrect or negligent handling, improper maintenance, unsuitable operating materials, incorrect construction work, unsuitable foundation, chemical, electro-chemical or electrical factors
- provided that the Supplier is not accountable for them.

8. If and when the Buyer or a third party does subsequent improvement work improperly, the Supplier shall not be liable for the consequences of the work. The above provision shall also apply to any modifications in the merchandise made without the Supplier's prior consent.
9. If the Buyer receives incorrect installation instructions, the Supplier is obligated to provide correct installation instructions, and he is obligated to do this only if and when the errors in the installation instructions prevent correct installation.

Legal Defects:

1. If and when the utilization of the merchandise is an infringement of industrial property rights or copyrights in Germany, the Supplier shall, at his expense, obtain the right to further utilization on behalf of the Buyer or modify the merchandise in a way reasonable for the Buyer so that it no longer infringes on the protected rights.

If this is not possible under commercially acceptable conditions or within a reasonable period, the Buyer is entitled to cancel the contract. The Supplier also has the right to cancel the contract in the above circumstances.

Furthermore, the Supplier shall indemnify and hold harmless the Buyer from and against claims asserted by the relevant holder of the property rights which are undisputed or finally determined by a court of law.

2. The list of Supplier's obligations under Item 7 is exhaustive in the event of infringement of property rights or copyrights, subject to Section 9, Item 2.

The obligations shall be effective only if and when

- the Buyer notifies the Supplier immediately of the assertion of any infringement of property rights or copyrights;
- the Buyer provides support in a reasonable scope for the defense against the asserted claims or enables the Supplier to carry out the modification measures in accordance with Item 7;
- the Supplier retains the right to any and all defense measures, including out-of-court settlements;
- the legal defect is not a consequence of Buyer's instructions; and
- the legal violation was not caused by the Buyer modifying the merchandise on his own authority or utilizing it contrary to the provisions of the contract.

IX. Supplier's Liability, Exclusion of Liability

1. If and when the Buyer is unable to use the merchandise in accordance with the contract through the Supplier's fault because he failed to carry out, or carried out incorrectly, suggestions and advice submitted before or after conclusion of the contract, or because of the breach of other contractual subsidiary obligations - in particular instructions for operation of maintenance equipment - the provisions of Section VIII and IX, Item 2 shall apply, excluding any further claims of the Buyer.

2. The Supplier shall be liable for any loss or damage which does not occur to the merchandise itself - regardless of any legal reasons - solely and exclusively
 - a) in the event of malicious intent and gross negligence on the part of management, employees, vicarious agent, and any employed consultants;
 - b) for culpable injury to life, body, health;
 - c) for defects which he has fraudulently concealed;
 - d) within the scope of a warranty commitment;
 - e) for defects in the merchandise to the extent that he is liable for personal injury or material damage to privately used merchandise pursuant to the German Product Liability Act.

Any and all further claims are excluded.

X. Limitation Periods

Any and all claims of the Buyer - regardless of the legal reasons - are subject to a limitation period of 12 months.

The statutory limitation periods apply to damage compensation provisions pursuant to Section 9, Item 2. These periods also apply to defects in a structure or merchandise which was used in accordance with its usual utilization for a structure and which caused the structure to be defective.

XI. Proper Law, Venue

1. The laws of Germany applicable to the legal relationship between parties in Germany shall apply solely and exclusively to any and all legal relationships between the Supplier and the Buyer. The provisions of the UN CISG do not apply.

2. The presiding court at the Supplier's registered office shall have jurisdiction. However, the Supplier is entitled to file suit at the site of the Buyer's headquarters.