

Delivery and payment conditions (as of 07/2016)

I. Applicability

1. These General Terms and Conditions of Business (GTC) apply for the contracts we conclude with companies, legal persons under public law, or with public law special funds (hereinafter "Purchaser") and insofar as nothing to the contrary is agreed in writing. They shall also apply to all future deliveries, services or offers to the Purchaser, even if not separately agreed.
2. The Purchaser's General Terms and Conditions of Business are on no account the subject of the contract, even if we do not expressly oppose them. Even if we refer to a letter which contains the Purchaser's or a third party's terms and conditions or refers to such, this does not constitute any agreement to the application of one or more terms and conditions.

II. Offer and scope of the delivery obligation

1. Our offers are without obligation.
2. The scope of the delivery obligation is determined by our order confirmation. We reserve the right to make changes to the delivery item and deviations from the content of technical documents, insofar as they are reasonable for the Purchaser, taking our interests into consideration.
3. Our information on the subject of the delivery or service (e.g. weights, measurements, practical values, capacity, tolerances, and technical data), as well as our depictions of them (e.g. drawings and illustrations) are only approximately applicable, unless strict compliance is necessary to use it for the intended contractual purpose. These are not guaranteed characteristics, but rather descriptions or indications of the deliveries or services. Deviations which are typical for the industry, and those take place on the basis of legal provisions or which represent technical improvements, as well as the replacement of components with equivalent parts are permitted provided this does not impede usability for the intended contractual purpose.
4. If goods are ordered in special versions that we do not make under our catalogue, the numbers delivered may be short or exceeded by 10%. We do not take back goods in special versions.
5. We reserve all ownership rights and copyrights to cost estimates, drawings, catalogues, and similar documents, as well as models, tools, and aids; they may only be made accessible to third parties with our consent. There is a contractual penalty of half the value of the delivery item for each culpable breach of our ownership rights and/or copyrights to these documents. We can claim any loss exceeding this.

III. Prices

1. The prices apply net ex works, plus VAT, and do not include packaging, transport, insurance, customs duty, fees, and other public duties.
2. If the acquisition and manufacturing costs of the contractual object demonstrably increase for the deliveries and services with an agreed delivery/service period of more than six weeks after conclusion of the contract (particularly due to an increase in wage costs, material costs, or public duties), we are entitled to increase the price. The increase is permissible insofar as the increase in the acquisition and manufacturing costs has a proportional effect on the price for the contractual object and affects our cost price for acquiring and manufacturing the delivery item.

IV. Delivery and delivery period

1. If a delivery period is agreed, it begins to run on the day on which there is a written agreement between the Purchaser and us on all details of execution and the terms of the contract.
2. Delivery dates and periods are - considering the fact that we always use our personnel and other resources at full capacity - reasonably extended or postponed if a) we do not promptly receive documents and information necessary to execute the order, which the Purchaser is to provide, the Purchaser does not fulfil its obligations on time, or it requests changes to the delivery item; or b) due to force majeure or other events for which we are not responsible, we are temporarily unable to comply with the agreed delivery dates and periods.
3. We can also - irrespective of our rights arising from default - request an extension to the delivery and service periods, or a postponement of delivery and service dates from the Purchaser for the amount of time in which the Purchaser has not complied with its contractual obligations to us.

4. The date of dispatch is the date of delivery. If dispatch cannot take place for reasons within the Purchaser's responsibility, or if the Purchaser does not collect the delivery item, contrary to the contractual provisions, the date on which the Purchaser was informed that the item was ready for dispatch is deemed the date of delivery.

5. We are entitled to make part deliveries, when

- the part delivery is suitable for the Purchaser within the intended contractual purpose
- delivery of the remaining goods orders is guaranteed, and
- the Purchaser does not hereby incur considerable additional expense or additional costs (unless we agree to accept these costs).

These conditions must all be present at the same time.

6. In the case of on-demand supply contracts, if the Purchaser has not issued a release order or made an allocation after a request from us, we can set a reasonable deadline by which to issue or make the above, it being understood that after this grace period expires, we will either arrange ourselves and supply or demand compensation for non-performance due to the part of the delivery contract not yet performed. After the period has expired we can avail ourselves of one of these options at our discretion.
7. If we fall into default in providing our service, the Purchaser can set us a reasonable grace period, but at least a period of four weeks, with the declaration that it will reject our service after expiry of this period. If this grace period expires without success, the Purchaser is entitled to rescind the contract and claim compensation according to Part IX. The entitlement to the delivery is lost on expiry of the grace period.

V. Shipment and transfer of risk

1. Goods notified as being ready for delivery are to be accepted immediately, otherwise we are entitled, at our own discretion, to dispatch them, or store them at the Purchaser's expense and risk; we are also entitled to do the latter if, through no fault of our own, we are unable to carry out the shipment. If Part IV No 4 does not apply, the goods are deemed delivered a week after being stored.
2. In the absence of special instructions, we choose the means of transport and the transport route at our discretion.
3. On handover to the train, the freight forwarder, or the haulier, on the date of readiness for dispatch deemed to be the delivery date, or a week after being stored, but at the latest on leaving the facility or storage, the risk transfers to the Purchaser, even if we have assumed delivery.
4. The Purchaser bears storage costs after the transfer of risk. Where we store the goods, the storage costs are 1% of the invoice amount of the delivery items to be stored per week commenced. The right to assert and prove additional or lower storage costs is reserved.

VI. Terms of payment

1. The invoice amounts are to be paid without deduction within 30 days from the invoice date, or within 10 days with a 2% discount. If the Purchaser does not pay by the due date, interest is to be paid on the outstanding amount from the due date at 9 percentage points above the base interest rate. The application of higher interest rates and the right to claim further damages, in the event of late payment, shall remain unaffected.
2. If the Purchaser is permitted to pay the amount owed in instalments and the Purchaser falls into default with the payment of an instalment, all instalments still outstanding at this date become due for payment immediately.
3. We are entitled to cease work on all delivery items ordered by the Purchaser during the period of default. Delivery periods or delivery dates for the delivery items ordered are extended or postponed by the time the work is stopped, plus an allowance for resumption of the work.
4. We are entitled only to execute or provide outstanding deliveries or services in return for advance payment or security if, after conclusion of the contract, we become aware of circumstances which are likely to substantially reduce the Purchaser's creditworthiness, and which jeopardise the payment of the Purchaser's outstanding claims from the respective contractual relationship (including from the other individual orders where the same framework agreement applies).
5. The Purchaser can only set-off or assert a right of retention for undisputed or legally-determined claims.

VII. Retention of title

1. We retain ownership of the items we have delivered (reserved goods) until payment of all - including future - claims from our business relationship with the Purchaser.
2. If the reserved goods are combined with other items not belonging to us in such a way that they become an essential component of the new item, we become co-owner of the new item. If our ownership is lost on combination, the Purchaser hereby grants us co-ownership of the new item. It shall keep the item safe for us without charge. Our co-ownership share is in both cases determined by the ratio of the invoice value of the reserved goods to the invoice value of the other item combined with it at the date of combination.
3. If the reserved goods are processed or transformed into a new item, the Purchaser shall be acting for us as a manufacturer. We hereby transfer the Purchaser co-ownership of the title to the new item acquired in this way, and revoke the safekeeping relationship. The Purchaser's co-ownership share is determined according to the proportional value of the reserved goods to the sales value of the new item after processing or transformation.
4. The Purchaser is only permitted to re-sell the reserved goods if it occurs as part of the Purchaser's ordinary business dealings. The Purchaser is not entitled to pledge the reserved goods or to assign them as security. The Purchaser hereby assigns to us its claims from the re-sale of the purchase object, with all ancillary rights, equal to the value of the claims we are entitled to against the Purchaser. We accept this assignment. The Purchaser is entitled to collect the assigned claims as long as it fulfils its payment obligations. Where the Purchaser is in default of payment we are entitled to revoke the authorisation to collect payments.
5. If the Purchaser falls into default of payment, we are entitled to request the surrender of the delivery item without rescinding the contract, and the money paid up until this point must be refunded to the Purchaser. In this case the Purchaser is obligated to surrender the delivery item immediately. We are also entitled to use the delivery item and to credit the proceeds from realisation to the outstanding claims. Any residual proceeds left are paid out to the Purchaser. The costs for repossession and using the delivery item are borne by the Purchaser.
6. If the total from the invoice value of the reserved goods under our ownership and the claims assigned to us exceeds the sum of all the claims we have against the Purchaser by more than 10%, we undertake to release the excess security at the Purchaser's request, according to our discretion under the contract.

VIII. The Purchaser's claims in the event of defects

1. Insofar as our delivery or service lacks a guaranteed quality or we have fraudulently concealed a defect, the Purchaser is only entitled to the statutory rights in accordance with the following provisions.
2. If third parties claim rights opposed to the contractual use of the delivery item, we shall defend the delivery item against the rights claimed by the third parties. The Purchaser shall inform us immediately about such rights being asserted by third parties, and grant us all authority and power necessary to defend the delivery item against the rights asserted by third parties.
3. If our delivery or service is defective, the Purchaser can, at our choice, request repair or replacement delivery if the defect is not negligible. We are under no obligation, regardless of fault, to bear expenditure, particularly transport, road, labour, and material costs, necessary for the purpose of rectification. In this respect only Part IX applies.
4. If the defect is based on faulty materials or services which we have obtained from third parties, we assign our material defect claims against the third parties concerned to the Purchaser. In this case, the Purchaser can only bring material defect claims against us once a legal claim against the third party concerned has been unsuccessful.
5. The limitation period for material defect claims is one year. The limitation period begins with delivery of the delivery item. The reduction in the limitation period does not apply where the behaviour is deliberate.
6. Commercial duties to examine and complain are unaffected. Complaints are to be made for obvious defects within 5 working days after receipt of the delivery or service, concealed defects within 5 working days of discovery. Otherwise, the delivery and service shall be deemed accepted.

IX. Liability, compensation

1. We are liable without limit for intent, gross negligence, the fraudulent concealment of defects, the culpable injury to life, limb, and health, and for liabilities under the MiLoG [Minimum Wage Act].
2. Where we have given guarantees as to quality, we are liable in accordance with the guarantee provisions.
3. In cases of product liability we are liable according to the ProdHaftG [Product Liability Act].
4. We are also liable for the culpable breach of essential contractual duties. If we have breached an essential contractual obligation due to simple negligence, the resulting liability for compensation is limited to the foreseeable damage typical for the contract. Essential contractual obligations are those whose fulfilment is necessary to achieve the aim of the contract.
5. Apart from that, all liability for us to pay compensation - regardless of the legal basis - is excluded.

X. Final provisions

1. The contractual relationship between the Purchaser and us is exclusively subject to German law, excluding UN sales law (CISG, Convention on Contracts for the International Sale of Goods of 11/04/ 1980).
2. Should any of the provisions above be or become invalid, this shall not affect the remaining provisions.
3. The place of performance and exclusive place of jurisdiction is our company's registered office, if the Purchaser is a businessperson for the purposes of the HGB [Commercial Code], a legal person under public law, or a public law special fund, or if the Purchaser has no registered office or habitual residence in the Federal Republic of Germany when the claim is brought. Mandatory legal provisions on exclusive jurisdiction are not affected by this provision.
4. Insofar as the contract or these delivery and payment conditions contain omissions, then to fill these, those legally valid provisions are deemed to be agreed which the Parties would have agreed according to the commercial objective of the contract and the purpose of these delivery and payment conditions if they had known of the omission.

Please note:

The Purchaser notes that we store data from the contractual relationship under Section 28 BDSG [Federal Data Protection Act] for the purposes of data processing, and reserve the right, insofar as necessary to performance the contract, to transmit the data to third parties (e.g. insurers).