

## General Terms for Deliveries of Machines and Accessories

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To be applicable in business with:

1. a person who when concluding a contract is exercising their commercial or independent business functions (entrepreneur);
2. legal entities under public law or a special public law trust.

Applicable as per: June 2017

### **I. General**

1. All deliveries and services are subject to these terms alongside any separate contractual agreements. Deviating purchasing terms of the customer do not become contents of the contract even after acceptance of an order. A contract comes into effect - without any special agreement - upon written confirmation of an order by the supplier.
2. The supplier retains proprietary title and copyrights with regard to samples, cost estimates, drawings and other similar material or immaterial information - also in electronic form -; it is not permitted to make them accessible to third parties.  
The supplier gives an undertaking that information and documentation described as confidential by the customer will not be made accessible to third parties without the customer's consent.

### **II. Scope of delivery**

The order confirmation from the supplier is decisive in determining the scope of delivery; or in the case of an offer from the supplier specifying a binding commitment for a certain period and acceptance of the offer in good time, the offer, insofar as no order confirmation is issued in good time. Collateral agreements and amendments require the written confirmation of the supplier.

### **III. Prices and payment**

1. Prices apply ex works, except where agreed otherwise, including loading at the works, but excluding packing and unloading. Turnover tax (value-added tax) is to be added to the prices at the legally stipulated rate.
2. Except where agreed otherwise, payments are to be made without deductions to the account of the supplier as follows:
  - 1/3 advance payment upon receipt of the order confirmation,
  - 1/3 as soon as the customer is notified that the principal parts are ready for shipping,
  - the remainder within one month after the transfer of risk.
3. The right to withhold payments or offset against counterclaims is granted to the customer only insofar as the counterclaims are undisputed or have obtained legal force.

### **IV. Delivery time, delivery delays**

1. Delivery times are determined by the agreements reached between the parties. Their observance on the part of the supplier is based on the assumption that all technical and commercial questions have been clarified between the parties and that the customer has fulfilled all obligations on his part, for example by obtaining necessary official approvals and licenses or by effecting an advance payment. If this is not the case, then the delivery time is extended by a reasonable period. This does not apply if the delay is attributable to the supplier.
2. The observing of delivery times is under the proviso of correct and timely deliveries from sub-suppliers. The customer is informed of any possible delays as soon as they become apparent.
3. The delivery deadline is considered met if the object of the delivery has left the supplier's works before expiry of the deadline or else the customer has been notified that it is ready for shipping. If an acceptance is required, then the acceptance date is decisive - except in cases of justified refusal of acceptance - or alternatively the notification of readiness for acceptance.
4. If the shipping or acceptance of the object of the delivery is delayed for reasons attributable to the customer, then he is to bear the costs arising from the delay, starting one month after notification of the readiness for shipping or acceptance.
5. If the failure to observe the delivery time is attributable to force majeure, industrial disputes or other occurrences beyond the control of the supplier, then the delivery time is extended by a reasonable period. The supplier will notify the customer as soon as possible regarding the beginning and end of such circumstances.
6. The customer may withdraw from the contract without notice, if the supplier is finally unable to perform the whole agreed delivery before the transferring of risk. The customer is furthermore able to withdraw from the contract if performance of part of the delivery of an order becomes impossible and he has a justified interest in refusing the partial delivery. If this is not the case, then the customer must pay the part of the contract price pertaining to the partial delivery. The same applies in case of incapability on the part of the supplier. Section VIII.2 also applies. If the impossibility or incapability occurs during a delay in acceptance or if these circumstances are attributable solely or overwhelmingly to the customer, then he continues to owe a return.
7. If the supplier falls into default and if the customer suffers damage as a result, then he is entitled to demand a flat-rate compensation for the delay. This compensation amounts to 0.5% for each full week of the delay, but in total no more than 5% of the value of that part of the overall delivery which cannot be used in good time or in accordance with the contract due to the delay.

If, in the case of default, the customer sets the supplier a reasonable deadline for performance - taking into account legally stipulated exceptions - and if this extended deadline is not met, then the customer is entitled to withdraw within the framework of the legal provisions.

Further claims due to delayed deliveries are determined exclusively by Section VIII.2 of these terms.

#### **V. Transfer of risk**

1. Risk is transferred to the customer when the object of the delivery is handed over to the forwarder, carrier or transport agent, at the latest however upon leaving the manufacturer's works, also in the case of partial deliveries or where the supplier has taken on further services, e.g. shipping costs or delivery and erection.
2. If shipping is delayed or does not materialize due to circumstances not attributable to the supplier, then risk is transferred to the customer from the date of notification of readiness for shipping. The supplier undertakes to obtain insurance cover requested by the customer at the latter's expense.
3. Partial deliveries are permissible insofar as this is reasonable for the customer.

#### **VI. Reservation of title**

1. The supplier reserves title to the object of the delivery until all payments arising from the delivery contract are received.
2. The supplier is entitled to insure the object of the delivery at the customer's expense against theft, breakage, fire, water damage and other risks, insofar as the customer has not shown proof that he has already obtained such insurance cover.
3. The customer is not permitted to sell or pledge the object of the contract as security. In the case of seizure, confiscation or other disposition by third parties, he is to inform the supplier without delay.
4. In case of actions in violation of the contract on the part of the customer, and especially in case of payment default, the supplier is entitled to return of the object of the delivery after due warning and the customer is obliged to surrender possession.
5. The supplier can only demand surrender of the object of the delivery on the basis of a reservation of title if he has withdrawn from the contract.
6. An application to open insolvency proceedings entitles the supplier to withdraw from the contract and to demand immediate surrender of the object of the delivery.

#### **VII. Warranty claims**

The supplier offers the following warranty against material and legal defects in the delivery to the exclusion of further claims - subject to the provisions of Section VIII:

##### Material defects

1. All parts which are found to be defective as a result of a circumstance present before the transfer of risk are to be repaired or replaced free of charge at the discretion of the supplier. The supplier is to be notified in writing without delay should such defects be determined. Replaced parts become the property of the supplier.
2. The customer, after reaching an understanding with the supplier, is to grant the supplier the required time and opportunity to perform all remedies and replacement deliveries deemed necessary by the supplier; otherwise, the supplier is relieved of all liability for the consequences. Only in urgent cases where safety is endangered or where disproportionate damage is to be averted, whereby the supplier is to be informed immediately, is the customer entitled to have the defect rectified himself or by a third party and to demand reimbursement of the necessary expenses from the supplier.
3. Of the costs arising directly in conjunction with the remedy or replacement delivery, insofar as the claim is shown to be justified, the supplier bears the costs for the replacement part, including shipping. He also bears the costs of removal and installation and the costs of providing any necessary engineers and assistants, including travel expenses, insofar as this does not lead to an unreasonable burden on the supplier.
4. The customer is entitled to withdraw from the contract within the framework of legal provisions, if the supplier fails to observe a reasonable set deadline for remedy or replacement with regard to a material defect - taking into account legally stipulated exceptions. If only trivial defects exist, the customer is entitled merely to a reduction in the contract price. The right to reduction of the contract price is otherwise excluded, except where the supplier has fraudulently concealed the defect or has warranted the absence of such defects. Further claims are determined by Section VIII. 2 of these terms.
5. No warranty is given in particular for the following cases:  
Incorrect or improper use, faulty assembly or commissioning by the customer or third parties, natural wear and tear, improper or negligent handling, improper maintenance, unsuitable equipment, faulty building work, unsuitable building ground, chemical, electrochemical or electrical influences - insofar as they are not attributable to the supplier.
6. If the customer or a third party performs improper repairs, then the supplier is not liable for any consequences. The same applies in the case of modifications to the object of the delivery which are performed without the prior approval of the supplier.

##### Legal defects

7. If use of the object of the delivery leads to violation of inland industrial property rights or copyrights, then the supplier will at his own expense obtain a principle right for the customer to continue his use of the object of the delivery or else modify the object of the delivery in a manner reasonable for the customer such that the violation of the property rights is rectified.  
If this is not possible on economically reasonable terms or within a reasonable time, then the customer is entitled to withdraw from the contract. Under the above-mentioned circumstances, the supplier is similarly entitled to withdraw from the contract.  
The supplier will furthermore indemnify the customer against undisputed or legally determined claims by the corresponding owners of the property rights.

8. The undertakings on the part of the supplier as per Section VII. 7 are - subject to Section VIII.2 - conclusive for the case of a violation of industrial property rights or copyrights.  
They exist only if
- the customer notifies the supplier without delay of claims submitted with regard to violations of property rights or copyrights,
  - the customer assists the supplier to a reasonable extent in contesting the claims made and enables the supplier to perform modifications in accordance with Section VII. 7,
  - the supplier is able to reserve all rights to take defensive action, including out-of-court settlements,
  - the legal defect is not attributable to instructions given by the customer and
  - the violation did not arise due to the customer making unauthorized modifications or using the object of the delivery in a manner not covered by the contract.

### **VIII. Liability**

1. If the customer is unable to use the object of the delivery in accordance with the contract through the fault of the supplier as a result of failure to implement or properly implement proposals and advice proffered before or after conclusion of the contract or due to violation of other accessory contractual obligations - in particular with regard to instructions for operation and maintenance of the object of the delivery -, then the provisions of Sections VII and VIII.2 shall apply accordingly to the exclusion of further claims on the part of the customer.
2. The supplier is only liable for damage which does not arise in the object of the delivery itself - irrespective of the grounds in law - in case of
  - a. willful intent,
  - b. gross negligence on the part of the proprietor / primary agents or senior staff,
  - c. culpable injury to life, body or health,
  - d. defects which he has fraudulently concealed or whose absence he has warranted,
  - e. defects in the object of the delivery, insofar as product liability legislation provides for liability for persons or material damage to privately used objects.

In the case of culpable violation of essential contractual obligations, the supplier is also liable for gross negligence on the part of non-senior staff and for minor negligence, in the latter case limited to reasonable foreseeable damage typical to the contract.

Further claims are excluded.

### **IX. Limitation**

All claims on the part of the customer - irrespective of their grounds in law - expire by limitation after 12 months. In the case of willful intent or fraudulent action, and in case of claims under product liability legislation, the legally stipulated periods apply. They apply also for defects in a building or for objects of a delivery which were used in accordance with their usual purpose in a building and were the cause of a defect therein.

### **X. Use of software**

Where the scope of delivery contains software, the customer is granted a non-exclusive right to use the supplied software and its documentation. It is made available for use on the declared object of the delivery. It is not permitted to use software on more than one system.

The customer may only copy, modify or translate the software or convert object code into source code to the legally permissible extent (§§ 69 a ff. UrhG - German Copyright Act). The customer undertakes not to remove manufacturer references - in particular copyright notes - nor to modify them without the prior express consent of the supplier. All other rights with regard to the software and documentation, including any copies, are retained by the supplier or the software supplier. It is not permitted to grant sub-licenses.

### **XI. Applicable law, court of jurisdiction**

1. All legal relationships between the supplier and the customer are governed exclusively by the relevant legislation of the Federal Republic of Germany with regard to legal relationships between inland parties.
2. The court of jurisdiction is the court responsible at the place of the supplier's offices. The supplier is entitled, however, to enter claims to the court at the place of the customer's headquarters.

### **XII. Miscellaneous**

In the case of foreign business, the contractual relationship is governed by German law to the exclusion of UN sales law.