

TERMS OF DELIVERY AND PAYMENT

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§ 1 Scope

These general terms shall be applicable unless the contracting parties have expressly stipulated something to the contrary in writing. These are elements of the contract. Terms of business of the customer shall not be valid unless they have been expressly approved by us.

§ 2 Offers

Unless they are expressly stated to be binding, the documents enclosed to offers, such as illustrations, drawings, indications of weights and dimensions, are only approximations. The supplier reserves title and copyright to estimates, drawings and other documents; they may not be made accessible to third parties. The supplier is obliged only to make plans denoted by the customer to be confidentially accessible to third parties with the customer's agreement. The customer shall assume full responsibility for the documents to be supplied by them, such as drawings, models, templates, samples and suchlike.

§ 3 Scope of delivery

The supplier's written confirmation of order shall be authoritative for the scope of delivery. In the case of an offer by the supplier with a fixed period of acceptance and acceptance within the said period, the offer shall be valid if no confirmation of order has been submitted in due time. Ancillary agreements and amendments shall require the supplier's written confirmation.

If special models are ordered, the supplier reserves the right to effect excess or short deliveries. Part deliveries are permissible.

§ 4 Prices and payment

- a) The prices are applicable ex works, including loading at the works, however excluding packaging. The respective statutory rate of value added tax shall be levied on the prices. Packaging shall be charged at cost price and shall not be taken back.
- b) Payment is to be effected in cash, without deduction, free of charge to the supplier's paying office.
- c) Cheques and bills shall only be regarded to be payment upon the honouring of the payment. Discount charges shall be borne by the customer.
- d) The retention of payments or the offset due to any counter claims by the customer, which are disputed by the supplier, shall not be permissible.
- e) If the supplier and the customer reach an agreement that the contract is to be rescinded, then only the price stipulated in the contract, minus the expenditure saved by the supplier due to the rescission is to be paid.
- f) If the customer is in default with their payment obligations, then the supplier shall be entitled to demand customary bank interest as damages.

§ 5 Delivery period

- a) The delivery period shall commence with the dispatch of the confirmation of order, however not before the furnishing of the documents, permits, approvals, which are to be obtained by the customer and not before the receipt of an agreement.
- b) The delivery period is met if the subject matter of delivery has left the works or the readiness for shipment has been notified by its expiry.
- c) The delivery period shall be extended in an appropriate manner in the case of measures in the course of industrial disputes, especially strikes and lock-outs, and if unforeseen impediments occur which are outside the supplier's control, provided such impediments are proven to have a considerable effect on the completion or delivery of the subject matter of delivery. This shall also be applicable if the circumstances occur at subcontractors.

The above-indicated circumstances are also not the fault of the supplier if they occur when default has already taken place. The supplier shall inform the customer of the start and end of such impediments as soon as possible in important cases.

- d) If the customer suffers a loss due to a delay, which occurred due to the supplier's own fault, then it, to the exclusion of further claims, shall be entitled to demand compensation for the delay. This compensation shall be 0.5% for every full week of the delay, however, this shall, at the most, be 5% in total of that part of the overall delivery which cannot be used in due time or in accordance with the contract due to the delay.
- e) If shipment is delayed at the customer's request, then it shall be charged, commencing one month after the notification of the readiness for shipment, the costs incurred by the storage, in the case of the storage at the supplier's works at least, however, 0.5% of the invoice total for the month. The supplier is, however, entitled, after settling a reasonable deadline that is not met, to dispose of the subject matter of delivery in another manner and to effect delivery to the customer with a reasonable extended delivery period. If the subject matter of delivery is used in another manner, the supplier is entitled to demand damages for a loss of income and incurred costs.
- f) The compliance with the delivery period presupposes the performance of the customer's contractual obligations.

§ 6 Passing of risk and acceptance

- a) Risk shall pass to the customer at the latest with the dispatch of the delivery parts, namely also if part deliveries are effected or if the supplier has assumed other services, e.g. the shipment costs or transport and installation.

At the customer's request, the shipment shall be insured at their expense by the supplier against theft, breakage shipment, fire and water damage as well as against other insurable risks.

- b) If shipment is delayed due to circumstances for which the customer is responsible, then risk shall pass to the customer from the day of readiness for shipment; the supplier is, however, obliged at the customer's request and expense to activate the insurance policies which the customer requests.
- c) Delivered articles are, even if they have slight defects, to be accepted by the customer, without prejudice to the rights arising from §8.

§ 7 Reservation of title

- a) The supplier reserves title to the subject matter of delivery until the receipt of all payments from the supply agreement.
- b) The supplier is entitled to insure the subject matter of delivery at the customer's expense against theft, breakage, fire, water and other damage if the customer does not prove that it has taken out the insurance itself.
- c) The customer may neither pledge the subject matter of delivery nor assign it by way of security. In the case of attachments and also seizure or other dispositions by third parties, it must inform the supplier accordingly without delay.
- d) In the case of conduct, contrary to the terms of contract by the customer, especially in the event of default in payment, the supplier is entitled to take back the articles after issuing warning and the customer is obliged to surrender the said articles.

The assertion of the reservation of the title and also the attachment of the subject matter of delivery by the supplier shall not constitute a withdrawal from the contract unless the Customer Credit Act is applicable.

- e) The customer can sell or process the articles owned by the supplier within the ordinary course of business. This shall however be applicable as long as the customer is not default with its performance. The claims that the customer acquires from the resale against its purchasers are already assigned to the supplier. The supplier accepts this assignment and is entitled to demand information on the purchasers and on the amount of the claim. Unless otherwise stipulated by the supplier, the customer shall remain entitled together with the supplier to collect the claims against the purchasers. If the goods are resold together with other goods that do not belong to the supplier then the customers claim against the purchaser shall be regarded to be assigned in the amount of the price stipulated between the supplier and the customer.
- f) Any treatment and processing the goods subject to reservation of title shall be effected by the customer for the supplier, without the supplier thus incurring obligations. If the goods subject to reservation of title become a fundamental component of another article by joining or mixing, or a new article is created by processing or transforming, then the customer hereby already now assigns its ownership or co-ownership of this article to the supplier and undertakes to hold the article in safe keeping for the supplier within the due care of prudent businessman and free of charge. Paragraph e) shall apply accordingly to the case of resale. If co-ownership is created, the supplier's share shall correspond to the part that results from the value of the supplied goods to the value of the new article.
- g) The supplier undertakes to release the securities to which it is entitled in so far as their value exceeds the claims are to be secured by more than 25%.
- h) If the legal system of a country to which the goods are to be delivered makes provision for special requirements as a prerequisite for the validity of the reservation of title – especially also in respect of the customer's creditors – it shall be the customer's duty to do everything without delay so that the reservation of the title is created and remains in existence until payment of the complete purchase price. The customer shall bear any thus related costs.
- i) If the legal system of a country to which the goods are delivered does not permit the reservation of title, but does, however, permit the supplier to reserve other rights to the subject matter of delivery, then the supplier can exercise all rights of this nature. The customer is obliged to cooperate upon measures that the supplier wishes to make to protect its title or other rights to the subject matter of delivery.

§ 8 Liability for defects to the delivery

For defects of the delivery, which also includes the lack of expressly guaranteed characteristics, the supplier shall be liable for the exclusion of more extensive claims not withstanding §13d as following

- a) All those parts that are repaired or supplied anew free of charge at the supplier's duly exercised option which prove to be unusable or considerably impeded in their usability within 6 months (in the case of multi shift operation, within 3 months) since initial operation due to circumstance before the passing of risk – especially due to faulty construction, poor building materials or defective execution. The ascertainment of such defects is to be notified to the supplier, without delay, in writing. Replaced parts shall become the supplier's property. Liability shall, however, expire after 12 months at the latest after the passing of risk. The supplier's liability for fundamental third party products shall be restricted to the assignment of liability claims to which it is entitled against the supplier of the third party products.
- b) The customer's right to assert claims from defects shall become statute-barred in all cases in 6 months from the time when the complaint which is made in due time, at the earliest, however, with the expiry of the warranty period.
- c) No warranty shall be assumed for defects which have arisen due to the following reasons: unsuitable or incorrect use, faulty assembly or initial operation by the customer or third parties, natural wear and tear, faulty or negligent treatment, unsuitable operating materials,

- replacement materials, chemical, electro-chemical or electrical influences, unless they are due to fall on the part of the supplier.
- d) The customer, after reaching agreement with the supplier, must give the necessary time and opportunity, to undertake all repairs and substitute deliveries that the supplier deems necessary at its duly exercised discretion, otherwise the supplier shall be released from the liability for defects. Only in urgent cases of the endangerment to the operating safety and to the avert disproportionately greater losses, in which instances the supplier is to be informed immediately, or if the supplier is in default with the rectification of the defect, does the customer have the right to rectify the defect itself, or to have it rectified by third parties and to demand reimbursement of the necessary expenses from the supplier.
 - e) Of the costs directly incurred by the repair or substitute delivery the supplier shall bear – provided the complaint proves to be justified – the costs of the replacement part and also the necessary ancillary costs. In other respects the customer shall bear the costs.
 - f) The warranty period for the replacement part and the repair shall be 3 months. It shall, however, run at least until the expiry of the original warranty period for the subject matter of delivery. The period of liability for the subject matter of delivery shall be extended by the duration of the interruption to operations caused by the repair work.
 - g) Any improper alterations to repair work undertaken by the customer or third parties without the supplier's prior consent shall result in the cancellation of the liability for the thus resulting consequences.
 - h) Further claims of the customer especially a claim to the reparation of losses that have not been suffered by the subject matter of the delivery itself, are, in so far as it is legally permissible, excluded.
 - i) Claims arising from tort are, in so far as it is legally permissible, similarly excluded.

§ 9 Recourse in case of sales to commercial retailers

- a) If a customer retails the subject matter of delivery, in context with his commercial enterprise to consumers and this part requires replacement or to be reduced in price as a consequence of its defectiveness, the customer still has the warranty with the supplier, without a set time period.
- b) The customer can make a claim for expenditure incurred in replacing a part, if the defect was present when the risk was transferred from the supplier to the customer. Expenditure is especially transport, travel, work and material costs
- c) The customer has no claim for damages in the context of the recourse.
- d) Reimbursement of the expenditure is not applicable if the customer received a warranty discount.

§ 10 Product liability and technical specification of the customer according to GWB STD-1016-005

Our products have been developed and tested according to the state of the art. Their characteristics that are stated in our information documents or have been stipulated by us in writing were subject to our careful examination. The knowledge of the specific requirement profiles in respect to our product for a particular application case lies with the customer and it shall be incumbent of the customer to check the drawings and documents, which were produced by us on the basis of the customer's details, and the suitability for the scheduled purpose. The selection of types and their size stipulated by us can always only be regarded to be a recommendation. In addition, we especially refer to safety information in these work standards.

§ 11 Liability for defects upon the processing of sent-in parts

- a) In the case of the processing of sent-in material (heat treatment, meshing, grinding, etc.), the supplier shall not be liable for defects that arise from the behaviour of the material. The supplier refers to its separate regulations regarding heat treatment. If sent-in parts become unusable upon processing due to material faults or other defects, then the supplier is to be reimbursed the incurred processing costs.
- b) If a work piece cannot be processed due to circumstances for which the supplier is responsible, then it shall undertake of the processing of a similar replacement part. More extensive claims by the customer are excluded.

§ 12 Liability for secondary obligations

If through the fault of the supplier the delivered articles cannot be used by the customer in accordance with the contract through the failure to heed suggestions and advice and to meet other contractual secondary obligations before or after conclusion of the contract, or through the faulty nature of the aforementioned – especially manual for operation and maintenance of the subject matter of delivery – then the regulations of §§ 8 to 12 shall apply accordingly to the exclusion of further claims by the customer.

§ 13 Customer's withdrawal right

- a) The customer can withdraw from the contract if the complete performance finally becomes impossible for the supplier before the passing of risk. The same shall be applicable in the case of inability on the part of the supplier. The customer can also then withdraw from the contract if in the case of ordering articles of the same type it becomes impossible to execute a part of the delivery terms of units and it has a legitimate interest in rejecting a part delivery; if this is not the case then the customer can reduce the counter-performance accordingly.
- b) If default in performance as defined in section 5 of terms of delivery is applicable and if the customer grants the defaulting supplier with a reasonable additional period with the express declaration that it shall reject the acceptance of the performance after the expiry of this deadline, and if the additional period is not met, then the customer is entitled to withdraw from the contract.

- c) If the possibility occurs during the default in acceptance or through the fault of the customer, then it shall remain obliged to effect counter performance.
- d) The customer shall furthermore have a withdrawal right if the supplier lets a reasonable additional period granted to it for the repair or substitute delivery regarding a fault for which it is responsible as defined by the terms of delivery expire through its own fault without taking action. The customer's withdrawal right shall also exist in the case of impossibility or inability regarding the repair or substitute delivery by the supplier.
- e) In so far as it is legally permissible, all other more extensive claims of the customer are excluded especially to rescission, termination or a price reduction as well as the reparation of any manner of losses, namely also of such losses that were not suffered by the subject matter of delivery itself.

§ 14 Supplier's withdrawal right

In the case of unforeseen events as defined by section 5 of the terms of delivery in so far as they considerably after the economic significance of the subject matter of the performance or have a considerable effect on the supplier's plant, and in the event of impossibility of the performance which subsequently emerge, the contract shall be adapted in an appropriate manner in so far as this is economically reasonable, the supplier shall have the right to withdrawal from the contract in whole or in part. Claims or damages on the part of the customer due to such withdrawal shall not exist. If the supplier wishes to make use of the withdrawal right then it must inform the customer accordingly without delay in recognition of the consequences of the event, namely also if an extension of the delivery period was initially stipulated with the customer.

§ 15 Place of jurisdiction

- a) In the case of disputes arising from the contractual relationship, if the customer is a fully qualified merchant, a legal person under public law or a special fund under public law, action is to be raised at the court that is competent for the supplier's head office. The supplier is also entitled to raise action at the customer's head office
- b) The local court at the supplier's head office shall be exclusively competent for summary proceedings for an order to pay debts

§ 16 Miscellaneous provisions

- a) Other agreements and amendments must be made in writing to be valid.
- b) The definition of INCOTERMS 2000 including all supplements shall be valid.
- c) The contract shall be governed by the construction according to German law. The application of the "Uniform Law on the International Sale of Goods of 17.07.73" is excluded.

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