



General Terms and Conditions

I. General

1. The General Terms and Conditions agreed upon below shall apply to all – also future – business transactions, agreements and negotiations with our business partners, hereinafter briefly referred to as “customer”; the conditions take into account that our business partners are always industrialists. The terms and conditions are supplemented by the applicable law of the Federal Republic of Germany. The application of the CISG (United Nations Convention on Contracts for the International Sale of Goods) is waived, as far as the above choice of applicable law is not invalid.

2. Our conditions shall apply exclusively; we do not recognize opposing or deviating conditions of our customers. Our General Terms and Conditions shall apply even if we, though fully aware of opposing or deviating conditions of the customer, carry out a delivery to a customer without reservation. Our General Terms and Conditions shall be considered agreed upon at the latest upon acceptance of our delivery or services.

3. Any and all contracts shall only be brought about as a result of our written confirmation or with the shipment of the subject matter of the contract or with the performance of the works. Additional agreements, declarations as part of a consultation for an order, etc., as well as all other agreements, such as the assurance of characteristics, especially performance capacities of the machinery to be delivered and contractual changes, shall only be binding for us if declared or confirmed in writing by us. Modification of the written form clause can also only be done in writing.

4. The invalidity of one individual clause of these conditions shall have no effect on the validity of the remaining conditions.

5. The place of performance shall be Gescher, or the location where the goods are located for transportation purposes or for handover to the ordering party. Gescher is always the place of performance for the payment of the remuneration for our services as well as for all other of the customers' liabilities. The city of Borken/Westfalen is agreed upon as place of jurisdiction for all disputes directly or indirectly related to the business relationship, including actions in respect of bills of exchange and cheques, provided the customer is a merchant or if there is no general domestic place of jurisdiction.

II. Delivery and transfer of perils

1. Performance times quoted by us (delivery, assembly, and repair times) shall be without commitment. If, in an exceptional case, a binding performance time was promised, it shall only commence with our written order confirmation and after clarification of all open questions required for contract execution. Commencement or progress of the performance time shall be suspended as long as the customer is in default with any performances; the defence of non-performance of the contract shall be reserved. The grace period that needs to be conceded to us amounts to a minimum of six weeks. Claims for compensation of delay-related damages or claims for damages due to exceeding of the performance time shall be limited, except in cases of deliberate intent, to 0.5% for each full week of the delay, but in total shall be limited to a maximum of 5% of the value of that part of the total performance that, due to the delay, cannot be used on time or not as contractually agreed upon. In case of common negligence, liability for delays caused by us shall be excluded.

2. In case of force majeure and other unforeseeable, exceptional or other circumstances arising through no fault of ours, such as difficulties in material acquisition, disruption of operations, strike, lock-out, lack of transportation means, governmental interventions, power supply difficulties, etc., including events occurring at pre-suppliers or sub-contractors, our performance times shall be extended by the amount of time lost due to a disturbance or its repercussions. If the delay lasts longer than three months, the customer shall have the right to withdraw from the contract. If the circumstances referred to above make the delivery or the performance impossible or unacceptable, we shall be released from our liability. If the performance time is extended or if we are released from our liability, this shall not provide the customer with any rights upon which he can base claims for damages. We undertake to as far as possible inform the customer without delay of the circumstances referred to.

3. If the conditions set out in IV (3) are met or if the customer is in default of accepting a delivery or partial delivery, we have the right to execute, at our own choice, due deliveries against prepayment or surety.

4. Any packaging and loading means are chosen by us exclusive of any liability. Shipments are always arranged at our discretion, however without responsibility for the choice of transportation means and route. Packaging and loading means, with the exception of pallets, are not taken back.

5. Any agreements regarding transport and insurance charges, e.g. cif, fob, fco etc., are purely expense clauses; the risk of loss, damage or deterioration shall always pass to the customer when the shipment is delivered for shipment or when the customer is notified that the shipment is “ready for shipment” or “ready for delivery”.

6. The delivery time is met if the delivery item(s) have left the company by the time it expires, or if the customer has been notified that the shipment is “ready for shipment” or “ready for delivery”. Partial deliveries are permissible.

7. If shipment or acceptance are delayed at the request of the customer, he shall be billed for the costs associated with the storage, at least however 0.5% per cent of the invoiced amount for each commenced month in case of storage at our company's premises, commencing one month after the “ready for shipment” or “ready for delivery” notification.

8. Deliveries shall only be effected according to valid EU provisions. Safety regulations outside the EC shall not be considered.

III. Quotations and Prices

1. Our quotations are non-binding. If, in an exceptional case, a binding quotation was made, it shall expire no later than 30 days following submission unless the quotation itself states an expiration deadline beyond this period. The customer shall be bound to his quotations for 30 days, unless a commitment for a longer period arises from the circumstances.

2. Quoted prices without addition are always net prices plus the respectively valid value added tax. In the absence of any special agreement, prices shall be ex works, inclusive of loading at the factory, but exclusive of packaging and loading means. Discounts, rebates or other reductions shall only be granted in cases where this is explicitly agreed upon.

IV. Payment

1. Unless otherwise expressly agreed upon, liabilities for deliveries shall have to be paid in cash without any deductions free paying agent, in the following manner: 1/3 after receipt of order confirmation, 1/3 as soon as the customer is notified that the main components are ready for shipment or delivery, the remaining amount 30 days following the date of invoice. The day we are free to dispose of the amount shall be considered as receipt of payment.

2. Bills as well as cheques shall only be accepted for payment on the basis of special agreements. Any costs arising through the acceptance or collection shall be born by the customer. We shall not be liable for a timely and due presentation, protesting, notification as well as a possible rejection.

3. If the customer is in default with any payment obligations vis-à-vis our company, all deferral and prolongation agreements shall cease to apply; any liabilities vis-à-vis our company shall become due immediately. All rights connected to the default shall also apply if we become aware of circumstances that are suited to reduce the creditworthiness of the customer. The proof of such incidents shall be considered rendered by the information received from a reputable credit agency or bank, without the customer having the right to insist on presentation of such information.

4. Offset and retention rights of any kind shall only be due to the customer if his counterclaims have been established in a legally binding manner, are undisputed or recognized by us. The customer shall not be authorised to exercise retention rights unless his counterclaim is based on the same individual shipment. We shall be entitled to determine the order of repayment according to §§ 367, 366 II German Civil Code, despite contrary provisions of the customer.

V. Retention of Title

1. We retain ownership of the performance object (goods subject to retention of title) up to receipt of all payments from the existing business relationship with the customer. For open invoices, the retained property also serves as security for our balance claims. If we agree upon a cheque-bill transaction with the customer, the retention shall also extend to the answering of the bill of exchange and shall not expire with the credit advice for received cheques.

2. The customer has the right to resell the item in the course of normal trading; however, he already now assigns all the receivables to us, which will accrue to him from the resale from his purchasers or third parties, irrespective whether the goods subject to retention of title were resold with or without processing, in the amount of the final invoice amount (including respective value added tax) of our receivables. Provided the customer is not in default of payment, and in particular if no application for initiation of insolvency proceedings has been filed, no bankruptcy has occurred and we have not withdrawn this consent, the customer may fiduciarily collect the receivables due to us on the basis of this assignment, under the condition that he will transfer the collected sum to us up to the amount of the still existing and due receivables against him. If the authority to collect is dispensed with in the aforementioned cases, we can demand that the customer discloses the assigned receivables and the respective debtors, makes all necessary statements required for the collection, hands over the associated documents, and informs his debtors of the assignment.

3. Processing or alteration of the goods subject to retention of title by the customer is always carried out for us. If the goods subject to retention of title are processed, joined, mixed or blended with other items of which we are not the owner, we shall acquire the joint ownership of the new item at the ratio of the value of the goods subject to retention of title and the other processed etc. items at the time of processing etc. The same regulations shall incidentally apply for the new item as for the goods that are subject to retention of title. If the client manufactures new items on order from a third party using the goods that are subject to retention of title, which are to be considered as main item, the customer shall grant us joint ownership and stores the new item for us at no charge.

4. If the realisable value of our securities exceeds the receivables to be secured by more than 10%, we shall in this respect be obliged to release securities of our own choice at the request of the customer or a third party affected by the over-collateralisation.

5. We shall be entitled to inspect the goods subject to retention of title at any time at their current location. In case of the customer behaving not in conformity with the contract, especially in case of default of payment, we shall be entitled to take back the security collateral after setting an appropriate deadline. Our taking back the goods subject to retention of title does not constitute a withdrawal from the contract. After taking back the goods subject to retention of title, we shall be authorised to their realisation; the realisation proceeds shall be credited towards the customer's liabilities, minus appropriate realisation costs.

6. The customer shall be obliged to treat the goods subject to retention of title with care and to sufficiently insure them for their replacement value against the risks of fire, water, and theft at his own costs. Upon demand he shall have to assign his claims against the insurance company to us. In so far as maintenance and inspection work needs to be carried out, the customer shall carry it out in due time and at his own costs, unless different contractual arrangements were made.

VI. Claims for Defects and Liability

1. A prerequisite for claims for defects by the customer is that the latter has fulfilled the obligations due by him according to § 377 German Commercial Code for inspection and notification of defect, whereas for obvious defects that can be identified during careful inspection, a notification of defect must be filed in writing within 8 days after receipt of our delivery or service.

2. We shall only be liable for defects resulting from third party deliveries to the extent that our suppliers are liable for defects vis-à-vis us. We shall be entitled to release ourselves from any liability by assigning our claims against the supplier; our liability shall be reinstated if the demands on the supplier by our customer have finally failed.

3. Defects on one part of the shipment shall not entitle the customer to raise a claim for defects for the entire delivery, provided the part that is free of defects constitutes a self-contained, usable commodity.

4. The liability for defects extends, at our choice, only to supplementary performance or decrease of the remuneration (reduction). If the supplementary performance, executed at our discretion, fails within a reasonable time frame, the customer shall at his choice be authorised to withdraw from the contract or to reduce the purchase price.

5. In case of correction of defects, we shall be obliged to bear all expenditures necessary for correction of defects, in particular transportation or transport costs, labour and material costs, unless these are increased because the contractual consignment has been transferred to another location than the place of performance or the location specified in the contract for making the delivery. The customer guarantees, at his costs, accessibility of the defective object. We shall be entitled to check the presence of the indicated defects under practical conditions at the customer's facilities.

6. All customary manufacturer deviations and tolerances shall be considered agreed for all deliveries. The specifications in descriptions, brochures, drawings, sketches, CDs etc., compiled by us or third parties and / or taken as a basis for our quotations, shall only be considered an approximation. All specifications regarding the quality or usability of the contractual performances always have to be declared explicitly and in writing and need to be marked as agreements in the contract. Independent or dependent warranties shall be designated as such; otherwise they are quality agreements. Principally, only the manufacturer's product description shall be considered agreed upon as quality for third party manufacturers' components. Public statements, canvassing and manufacturer's sales promotions shall not constitute a contractual specification of quality. Handover of a sample too shall not contain any agreement about the quality, but the samples are simply an illustration of the type of goods. The specifications about the production, composition, mode of action, suitability and application of our performances do not exempt the customer from carrying out his own tests and examinations.

7. Results obtained while carrying out experiments, commissioning by way of trial, and similar, shall be excluded from any liability. Liability for defects caused by unqualified or improper utilisation, faulty assembly or commissioning by the customer or third parties, natural wear, faulty or careless treatment, unsuitable operating resources, replacement materials, faulty construction work, unsuitable building site, chemical, electro-chemical, electrical, electronic or weather influences shall be excluded unless these can be ascribed to our fault. We shall not be liable for damages arising from a production that the customer has suggested and approved.

8. The liability for defects for the functioning of the conveyor systems depends on an assembly by our specialised fitters. Modified, deviating utilisation compared to the requirements to be made according to the contract shall exclude a liability for defects on our part. Incidentally, we shall be liable according to the legal provisions provided the customer files claims for damages based on intent, gross negligence, or culpable violation of an essential contractual duty. As long as no intent is claimed, every liability for damages shall be limited to foreseeable, typically occurring damages.

9. Incidentally, any liability, irrespective of its legal basis, shall be excluded unless arranged differently in the aforementioned or if a liability due to culpable violation of life, body, health or according to product liability law exists; the latter shall remain unaffected.

10. The period of limitation for claims for defects shall be 12 months in one-shift operation, with a maximum of 2000 operating hours, starting with the time of notification of readiness for shipment or delivery, at the latest however at acceptance or commissioning.

11. With a view to the materials-handling positions of an installation, operating in the area of application and for the purpose specified in writing by the customer, we shall bear the responsibility for a production of the individual work pieces in accordance with state-of-the-art technology and operating instructions adapted to this. We shall not be liable for damages arising out of a production that the customer suggested and approved.