

General Delivery Conditions – Domestic Territory (03)

- Only for contracts governed by German law -

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1. **General**

- 1.1 All supplies and services are subject to these terms and conditions and any separate contractual agreements concluded in addition. Any conflicting conditions of purchase of the Purchaser shall not become a part of the contract if and when an order is accepted.
In the absence of express agreement, a contract shall be deemed formed upon Seller's written order confirmation.
- 1.2 The Seller reserves the rights of ownership and copyright to all samples, cost estimates, drawings and similar information of tangible or intangible nature – also in an electronic format – and they shall not be made available to any third party. The Seller undertakes to refrain from making any information or documentation identified as confidential by the Purchaser available to any third party without the Purchaser's consent.

2. **Prices and Payment**

- 2.1 In the absence of express agreement, prices shall be understood ex works, including loading at the works, however, not including packaging and unloading. The prices do not include the Value Added Tax at the current legal rate.
- 2.2 In the absence of express agreement, payment shall be made without any deduction on account of Seller as follows:
1/3 down payment on receipt of the order confirmation,
1/3 upon notification to Purchaser that the main components are ready for shipment,
the remaining amount within one month after passage of risk.
- 2.3 The Purchaser's right to withhold payments or setting them off against counter-claims shall be limited to those counter-claims which are uncontested or legally enforceable.

3. **Period of Delivery, Delay in Delivery**

- 3.1 The period of delivery is defined by the agreements of the contractual parties. As a prerequisite for the Seller's compliance with the delivery deadline, all commercial and technical issues must be clarified between the contractual parties and the Purchaser must have fulfilled all obligations such as, for example, submission of any required official certificates or permits, or making a down payment. If this is not fulfilled, the period of delivery shall be reasonably extended. This shall not apply insofar as the Seller is responsible for the delay.
- 3.2 Compliance with the delivery deadline is subject to the precondition of correct and timely receipt of Seller's own material supplies. Any emerging delays will be communicated by the Supplier as soon as possible.
- 3.3 The period of delivery shall be deemed kept if the delivery item has left the Seller's factory or if its readiness for shipment has been notified by the end of that period. Insofar as an acceptance is required, the date of acceptance shall be the qualifying criterion except in case of a justified refusal of acceptance, alternatively notification of readiness for acceptance.
- 3.4 If shipment and/or acceptance of the delivery item are delayed for reasons for which the Purchaser is responsible, the costs incurred by the delay shall be charged to the Purchaser, beginning one month after notification of readiness for shipment or acceptance.
- 3.5 If a failure to meet the delivery deadline is attributable to force majeure, strike/lockout or other events beyond the control of the Seller, the period of delivery shall be prolonged to a reasonable extent. The Seller will inform the Purchaser about the beginning and end of such circumstances as soon as possible.
- 3.6 The Purchaser is entitled to cancel the contract without notice if full performance should become impossible for the Seller before the passage of risk. Furthermore, the Purchaser is entitled to cancel the contract if it should become impossible to deliver a part of a purchase order and the Purchaser has a justified interest in refusing a partial delivery. If this is not the case, the Purchaser shall have to pay the contractual price corresponding to the partial delivery. The same shall apply in case of inability to perform of the Seller. The provisions of clause 7.2 shall apply accordingly in addition.
If the impossibility or inability should emerge during a delay in acceptance, or if the Purchaser should be solely or substantially responsible for these circumstances, the Purchaser shall continue to be obliged to perform his obligations.
- 3.7 If the Seller should be in delay, and if the Purchaser should suffer a loss for this reason, the latter shall be entitled to claim a flat indemnification for delay. This shall be 0.5 % for every completed week of delay, however, not exceeding 5 % of the value of that part of the delivery which cannot be used in time or in accordance with the contractual agreement as a consequence of the delay.
If the Purchaser grants a reasonable time-limit for performance to the Seller in delay – with due consideration of the statutory exceptions – and this deadline is not met, the Purchaser shall be entitled to cancel the contract subject to the legal regulations.
Any further claims for delay in delivery shall be governed exclusively by clause 7.2 of the present Terms and Conditions.

4. **Passage of Risk, Acceptance**

- 4.1 The risk shall pass to the Purchaser when the delivery item leaves the factory. This shall also apply if partial deliveries are made or the Seller is in charge of other tasks in addition, e.g. shipment, delivery on site and/or installation. If acceptance is required, this shall be the qualifying criterion for the passage of risk. It must be carried out without delay on the specified date of acceptance, alternatively after notification of readiness for acceptance from the Seller. The Purchaser shall not be entitled to refuse acceptance because of a minor defect.
- 4.2 If the shipment and/or acceptance is delayed or not effected at all as a result of circumstances not attributable to the Seller, the risk shall pass to the Purchaser on the date of notification of readiness for shipment or acceptance. The Seller agrees to take out the insurance policies requested by the Purchaser at the latter's expense.
- 4.3 Partial deliveries shall be admissible as far as they are reasonably acceptable to the Purchaser.

5. **Retention of Ownership**

- 5.1 The Seller reserves the right of ownership to the delivery item until receipt of all payments from the delivery contract.
- 5.2 The Seller shall be entitled to take out insurance policies covering theft, breakage, fire, water and other damage at the expense of the Purchaser unless the latter can furnish proof of an existing insurance to this effect.
- 5.3 The Purchaser shall not be entitled to alienate, pledge or transfer ownership of the delivery item as a security. The Seller must be informed by the Purchaser without delay in case of any order of attachment, arrest or other dispositions by a third party.
- 5.4 In case of any violation of the contract on the part of the Purchaser, in particular in case of a delay in payment, the Seller shall be entitled to recover possession of the delivery item after a reminder and the Purchaser shall be obliged to surrender possession. Assertion of the retention of ownership or attachment of the delivery item by the Seller shall not be deemed a withdrawal from the contract.
- 5.5 The Supplier can only demand surrender of possession of the delivery item on the basis of retention of ownership if the Supplier has withdrawn from the contract.
- 5.6 If bankruptcy proceedings should be initiated, the Seller shall be entitled to cancel the contract and demand immediate return of the delivery item.

6. **Claims for Defects**

The Seller warrants for defects of quality and title of the delivery, excluding any further claims and subject to the provisions of section 7 as follows:

Defects of Quality

- 6.1 All those parts shall be reworked or replaced without charge at Seller's discretion which are found to be defective as a result of a circumstance existing before the passage of risk. If such a defect is found, the Seller must be informed about this in writing without delay. Any replaced parts shall become the property of the Seller.
- 6.2 The Purchaser shall allow the necessary time and opportunity for the Seller to rectify defects and replace delivery items by agreement with the Seller; otherwise the Seller shall be relieved of the liability for the resulting consequences. The Purchaser shall only be entitled to rectify a defect himself or have it rectified by a third party and claim reimbursement of the necessary expenses in an emergency situation endangering operational safety and to prevent disproportionate damage.
- 6.3 With respect to the costs incurred as a result of rectification or replacement – if the complaint is found to be justified – the Seller will bear the costs of the replacement part including shipment as well as reasonable costs for removal and installation and – if justified for equity reasons in each specific case – the necessary costs for providing filters and auxiliary personnel.
- 6.4 The Purchaser shall be entitled to cancel the contract subject to the legal regulations if the Seller should fail to comply with a reasonable time-limit set by the Purchaser for rectification or replacement because of a defect in quality, with due consideration of the statutory exceptions. In case of a minor defect, the Purchaser shall only be entitled to a reduction of the contractual price. In all other cases, a right to reduce the contractual price shall be excluded.
- 6.5 Warranty shall be excluded in particular in the following cases:
Inadequate or incorrect use, incorrect assembly or start-up by the Purchaser or any third party, normal wear and tear, inappropriate or negligent treatment, incorrect maintenance, unsuitable operating materials, defects of construction work, unsuitable site ground as well as chemical, electrical-chemical or electrical influence factors for which the Seller is not responsible.
- 6.6 If the Purchaser or a third party should perform rectification work inappropriately, the Seller shall not be liable for any resulting consequences.
The same shall apply to any modification of the delivery item without the prior consent of the Seller.

Defects of Title

- 6.7 If the use of the delivery item should cause a violation of an industrial property right or copyright in the domestic territory, the Seller will at his own expense generally procure the right to continue using the delivery item for the Purchaser or modify the delivery item in a way which is reasonably acceptable to the Purchaser and which eliminates the violation of the property right.
If this should not be possible at economically acceptable conditions or within an acceptable period of time, the Purchaser shall be entitled to cancel the contract. The Seller shall also be entitled to cancel the contract in the above mentioned circumstances.
Furthermore the Seller shall indemnify the Purchaser against uncontested or legally enforceable claims of the owners of the corresponding property right.
- 6.8 The Seller's obligations in the case of a violation of a property right or copyright are limited to those provided in clause 6.7 and subject to the provisions of clause 7.2. They shall only apply if
- the Purchaser informs the Seller about the asserted violations of a property right or copyright without delay,
 - the Purchaser supports the Seller with reasonable efforts in the defence against the asserted claims and/or makes it possible for the Seller to carry out the modification steps provided in clause 6.7,
 - the Seller continues to be able to use any necessary defence including out-of-court settlements,
 - the defect in title is not due to a direction of the Purchaser and
 - the infringement of the right was not caused by an inadmissible modification or non-contractual use of the delivery item by the Purchaser.
- 6.9 Any claims of the Purchaser from liability for defects shall be subject to a statutory limitation of 12 months.

7. Liability

- 7.1 If the delivery item cannot be put to the contractual use by the Purchaser because of the Seller's fault as a result of omission or faulty application of suggestions or recommendations made before or after the conclusion of contract or as a result of a violation of secondary contractual obligations – in particular instructions for use and maintenance of the delivery item – the provisions of clauses 6 and 7.2 shall apply, excluding any further claims of the Purchaser.
- 7.2 The Seller shall not be liable for any damage other than to the delivery item itself – regardless of the legal basis – except
- a) in case of wrongful intent,
 - b) in case of gross negligence of the owner / corporate agents or executives,
 - c) in case of culpable violation of life, limb or health,
 - d) in case of malicious silence with regard to a defect, or misrepresentation about the absence of a defect,
 - e) in case of defects of the delivery item insofar as a liability exists for injuries to persons or damage to privately used objects pursuant to the product liability legislation.
- In case of culpable violation of essential contractual obligations, the Seller shall also be liable for gross negligence of non-executive employees and for minor negligence, in the latter case limited to the reasonably foreseeable damage typical for the type of contract.
Any further claims shall be excluded.

8. Statutory Limitation

Any claims of the Purchaser, regardless of which legal basis, shall be subject to a statutory limitation of 12 months. With regard to intentional or malicious behaviour as well as with respect to claims based on the product liability legislation or arising out of a warranty for a specific property or guaranteed useful life, the statutory limitation periods shall apply. These shall also apply for defects of a building or for delivery items used for a building in accordance with their normal use, thereby causing a defect of the building.

9. Use of Software

- 9.1 Insofar as software is included in the scope of delivery, the Purchaser is granted a non-exclusive right to use the supplied software including its documentation. It is permitted to be used on the delivery item intended for this use. Using the software on more than one system is inadmissible.
- 9.2 The Purchaser shall only be entitled to copy, edit, translate or convert the software from object code to source code to the extent permitted by law (German Copyright Act §§ 69 a ff.). The Purchaser agrees to refrain from removing or modifying any manufacturer's information, in particular copyright references, without the prior explicit consent of the Seller.
- 9.3 All other rights to the software and the documentation – also including the copies – shall remain with the Seller and/or software supplier. Sublicensing shall not be admissible.

10. Governing Law, Arbitration

- 10.1 All legal relationships between the Seller and the Purchaser shall be exclusively governed by the material law of the Federal Republic of Germany, expressly excluding the regulations of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 10.2 Any dispute arising out of or in connection with the concluded contract or its validity shall be finally settled in accordance with the rules of arbitration of the German Arbitration Institution (Deutsche Institution für Schiedsgerichtsbarkeit e. V. – DIS), excluding any recourse to the ordinary legal institutions. The place of arbitration shall be Stuttgart, Germany. For amounts in dispute of up to € 300,000.- the arbitration tribunal shall consist of one arbitrator. If the parties fail to agree on this single arbitrator, the DIS shall appoint an arbitrator on request of either party.