

General delivery and terms of sale (Status 2014)

I. General

All deliveries are subject to these conditions as well as pursuant to possible special contractual agreements; deviating conditions of purchase of the purchaser shall thereby not constitute an integral part of the contract, irrespective of the acceptance of an order. The supplier reserves the right to samples, cost estimates, drawings, etc., property rights and copyrights; they may only be made available to third parties with his/her consent and are only approximately authoritative.

II. Bound commitment of the supplier and scope of delivery

The supplier shall be bound to a written offer for a max. period of 30 days. Authoritative for the scope of delivery is the written order confirmation of the supplier, otherwise his/her offer; amendments shall require the written form.

III. Prices and payment

1. All prices are quoted ex works including loading, excluding packaging and unloading; plus the applicable statutory value-added tax.
2. The assertion of a right of retention of payments or an offsetting on the part of the purchaser, shall exclusively only be permitted in the case of claims that are undisputed or legally established as enforceable.

IV. Delivery time, delivery delay

1. Delivery dates shall not be deemed as binding, insofar as they have not been expressly confirmed by us in the written order confirmation as binding. The delivery period begins with dispatch of the order confirmation of the supplier, but not before the clarification of all commercial and technical issues and not before the purchaser has fulfilled all obligations that are incumbent upon him/her (submission of required documents, payment, etc.); in the case of delays that are attributed to the purchaser the delivery period shall be reasonably extended.

2. The delivery period shall be deemed as complied with; insofar as either the delivery item leaves the works or the supplier has sent the notice of readiness for dispatch, prior to the end of the delivery period.

3. The observance of the delivery period is subject to the correct and timely self-delivery. Insofar as the non-observance of the delivery period is due to force majeure, labour disputes or other events which are beyond the control of the supplier, the delivery period likewise also be extended as appropriate.

4. In the event of a delay of the shipping or acceptance of the delivery item due to justifiable reasons, on the part of the purchaser, the supplier shall be entitled to submit an invoice for the delay damage; valid as agreed upon in the case of the warehousing, is a monthly flat rate of 0.5% of the gross invoice sum.

5. The purchaser shall be entitled to compensation in the case of a delayed delivery; claims for damages shall be with regard to the amount be limited for each week of delay, to a max. total of 0.5% and shall moreover at the most be limited to 5% of the value of that part of the total delivery, which cannot be used on time or not in accordance with the contract due to the delay.

6. In the case of delayed delivery the purchaser shall be entitled to withdraw within the framework of the statutory provisions. He/she can withdraw from the contract without notice; insofar as the entire performance finally becomes impossible for the supplier prior to the transfer of risk. In addition, he/she may withdraw from the contract insofar as the execution of part of the delivery becomes impossible and he/she has a legal interest in rejecting the partial delivery. Insofar as this is not the case, the purchaser shall pay the pro rata contract price attributed to the partial delivery. The same shall apply mutatis mutandis in the case of the inability of the supplier. Section VIII shall moreover otherwise apply.

Insofar as the impossibility or the inability occurs during the delay in acceptance of the purchaser or insofar as the latter is solely or mainly responsible for the circumstances, he/she remains obliged to consideration.

V. Transfer of risk, acceptance

The risk shall be deemed as transferred to the purchaser pursuant to the dispatch of the notification of readiness for delivery or the dispatch of the item to the purchaser; this also applies to partial deliveries and moreover irrespective of whether the supplier has assumed other services (shipping, etc.). Partial deliveries are permissible, to the extent reasonable for the purchaser.

At the request of the purchaser, insurance can be taken out for the delivered item that has to be borne by the purchaser.

VI. Retention of title

1. The supplier reserves the right to the retention of title of the delivered item until the receipt of all payments under the contract.

2. The retention of title also applies to claims, to which we are entitled on account of our ongoing business relationships with the purchaser, including future receivables.

3. Upon cessation of the retention of title due to a resale of the item, the sold item shall be replaced with the receivables from the customer to which the purchaser is entitled on account of the sale. The retention of title is not repealed by processing and/or the combination with other items, but continues to exist pro rata in the processed item and/or in the new item that is created through the combination with other items, in the proportion of the value of the delivered item. The purchaser herewith assigns to the supplier any rights against third parties to which he/she is entitled pursuant to §§ 946-951 of the German Civil Code (BGB).

4. The supplier shall be entitled to take out insurance for the delivered item.

5. Until full payment, the purchaser shall not be permitted to resell the delivery item neither in the non-ordinary course of business, nor pledge nor assign it as security. In the event of the breach of contract on the part of the purchaser, in particular in the case of delayed payment, the supplier shall be entitled to take back the delivery item after issuing a reminder and the purchaser shall be under the obligation to surrender the delivery item.

6. The supplier undertakes to release to the purchaser at the request thereof, the above securities at the discretion of the supplier, insofar as their realisable value exceeds the claims to be secured by 20% or more.

VII. Claims for defects

The supplier subject to Section VII, herewith issues the following guarantee:

1. Material defects

All parts which turn out to be defective on account of circumstances prior to the transfer of risk, shall be reworked or replaced free of charge, at the discretion of the supplier. The identification of such defects has to be reported immediately in writing. Replaced parts shall become the property of the supplier.

The purchaser shall pursuant to consultation with the supplier, be required to grant the supplier the required time and opportunity to carry out the rework and replacement that the supplier considers necessary; otherwise the supplier shall be exempt from liability for the consequences arising therefrom. Only in urgent cases of danger to operational safety or in order to prevent disproportionately greater damage, whereby the supplier has to be notified immediately, has the purchaser the right to remedy the defect himself/herself or to arrange for the defect to be remedied by a third party and to demand compensation from the supplier for the necessary expenses. The supplier shall bear the costs arising directly from the rework or replacement and reasonable costs if a warranty claim is exists, insofar as this does not constitute an unreasonable encumbrance for the supplier.

The purchaser has within the framework of the statutory provisions the right to withdraw from the contract, insofar as the supplier — taking into account the statutory exceptions — allows a reasonable fixed period for the rework or replacement of a defect, to fruitlessly elapse. Insofar as only an insignificant defect exists, the purchaser shall only have the right to reduce the contract price. The right to reduce the contract price otherwise remains excluded. Section VIII shall moreover otherwise apply.

No guarantee is in particular given in the following cases; Unsuitable or improper use or handling, faulty installation or commissioning by the purchaser or third parties, wear, improper maintenance or equipment, faulty construction work, unsuitable foundations, chemical electrochemical or electrical influences. Insofar as improvements are improperly carried out by the purchaser or a third party, the supplier shall not be held liable for the resulting consequences.

2. Legal defects

In the case of legal defects the supplier shall at his/her own expense in principal procure for the purchaser the right to further use or modify the delivery item in a reasonable manner so that the infringement is eliminated. Insofar as this is not economically unreasonable or within a reasonable set period, the purchaser and/or of the supplier shall have the right to withdraw from the contract.

The supplier shall hold the purchaser exempt from undisputed or legally established claims of the respective legal owner.

These obligations are only final subject to Section VIII and only exist insofar as

- the purchaser immediately informs the supplier,
- the purchaser supports the supplier in the defence against such claims and allows the supplier to carry out modification measures,
- the supplier reserves the right to all defence measures,
- the legal defect is not due to an instruction, or unauthorised modification and non-conforming use on the part of the purchaser.

VIII. Liability

Insofar as the delivery item cannot be used according to the contract by the purchaser, as a consequence of the omitted or faulty execution of proposals and consultations made prior to or after the conclusion of the contract or through the breach of other secondary contractual obligations — in particular instructions for the operation and maintenance of the delivery item —, the provisions of Sections VII and VIII shall accordingly apply, subject to the exclusion of any further claims by the purchaser.

Insofar as damages exist which have not arisen on the delivery item itself, the supplier shall only be held liable - for whatever legal reasons whatsoever- for intent or gross negligence of the owner/the bodies or executives, in the case of culpable damage to life, body, health, in the case of defects that he/she has fraudulently concealed or whose absence he/she has guaranteed, in the case of defects in the delivery item to the extent liability is mandatory under product liability law for personal injury or damage for privately used items.

In case of culpable violation of substantial contractual obligations, the supplier shall also be held liable in the case of gross negligence on the part of non-executive employees and in the case of slight negligence; in the latter case this shall however be limited to the typical, reasonably foreseeable damage. Further claims are excluded.

IX. Statute of limitations

The supplier grants a warranty for a period of 1 year from the date of manufacture; the statutory periods shall apply in the case of claims for damages pursuant to Section VII and for defects in a building or for delivery items that have been used in accordance with their usual purpose for a building and have caused its defectiveness. In addition, the supplier shall assume the full statutory warranty concerning recourse in the case of the purchase of consumer goods, insofar as special arrangements are made.

X. Applicable law and place of jurisdiction

Applicable is exclusively only the law of the Federal Republic of Germany, **the place of jurisdiction** is the competent Court at the registered office of the supplier in 88239 Wangen in Allgäu.

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