

Terms and Conditions of Sale and Delivery for the Supply of Machinery, Plant, and Replacement and Assembly Components

The following terms and conditions exclusively shall apply to all our offers, sales, deliveries of goods and provision of services. By placing an order or accepting delivery, the orderer declares himself to be fully in agreement with these terms and conditions. Any divergent terms and conditions of the orderer which we have not expressly acknowledged in writing shall not be binding upon us, even if we have not expressly contradicted the same.

I. Offer

The documents forming part of the offer, such as illustrations, drawings, and indications of weight and dimension, shall only be deemed to give approximate indications in so far as they are not expressly identified as binding. The supplier retains the right of ownership and copyright with regard to cost estimates, drawings and other documents, and these may not be made accessible to third parties. The supplier shall be under a duty only to allow third parties access to plans identified by the purchaser as being confidential further to consent having been obtained from the latter.

II. Scope of delivery

With regard to the scope of delivery, the supplier's written order confirmation shall be determining. Any subsidiary agreements and amendments shall require the written consent of the supplier. Indications and assurances regarding performances etc. shall be understood to comprise the usual degree of tolerance applied in the industry, but at least $\pm 5\%$. The supplier reserves the right to effect technical alterations to the item delivered until the time of delivery for the purpose of adjustment to the state of the art.

III. Price and delivery

1. Unless otherwise agreed, prices shall be ex works, including loading at works, but excluding packaging, and including value added tax at the statutory rate.
2. Unless otherwise agreed, payment shall be made in cash immediately following transfer of risk and receipt of invoice, without discount, to the supplier's paying agent, all costs of transfer to be borne by the purchaser.
3. Where payment deadlines are exceeded and fault lies with the purchaser, the annual rate of interest charged on late payment shall be at a level of at least 8% above the respective base rate (Section 247 of the German Civil Code [BGB]).
4. Offsetting in respect of any counterclaims of the orderer disputed by the supplier and not determined res judicata by the courts shall not be permitted.
5. If the orderer requests any changes to the order, the supplier reserves the right to effect a price adjustment.

IV. Delivery times

1. Delivery times shall begin to run upon despatch of the order confirmation, but not before provision of the documents to be procured by the orderer, licences, dispensations, nor before receipt of any agreed advance payment. Delivery dates and times shall not be binding in so far as they have not been expressly stated to be fixed dates in the order confirmation.
2. The delivery time shall be extended to a reasonable degree where unforeseen obstacles arise which are outside the control of the supplier, irrespective of whether such have occurred at the works of the supplier or at the subcontractors of the same, e.g. in the event of actions occurring within the framework of labour disputes, operational breakdowns, rejects, delayed supply of essential raw and constructional materials, in so far as such obstacles are proven to have a significant influence on the completion or delivery of the item supplied. Neither shall the supplier be liable for the above circumstances if they arise during an already existing delay. In significant instances, the supplier shall notify the orderer as soon as possible as from the commencement and end of such obstacles arising.
4. If, as a result of a delay in delivery attributable to the supplier, the orderer is proven to suffer a loss, then the supplier's liability shall be limited to intent and gross negligence. To the exclusion of further claims, the indemnity payment for default shall be 0.5% for each complete week of delay, up to a maximum of 5% of the value of such part of the total consignment which cannot be used on time or in a contractual manner as a result of the delay.
5. If despatch is delayed at the request of the orderer, then commencing one month following notification of readiness for despatch, the latter shall be charged the costs of storage on a monthly basis. In the case of storage at the supplier's works, however, at least 0.5% of the invoice amount shall be charged in so far as the orderer does not provide evidence of a lesser loss.
6. Adherence to the delivery schedule shall require performance of the orderer's contractual duties. Any subsequent amendment to execution of the order at the request of the orderer shall entitle the supplier to add a reasonable extension to the delivery time.

V. Transfer of risk

1. Risk shall pass to the orderer at the latest upon despatch of the items supplied, even if part deliveries are effected or the supplier has assumed other performances, such as costs of despatch or transportation and erection. The supplier shall insure the consignment at the cost of the orderer, within the framework of his existing transportation insurance, against theft, breakage, fire and water damage.
2. If despatch is delayed as a result of circumstances not attributable to the supplier, then with effect from the date of readiness for despatch, risk shall pass to the orderer, although the supplier shall be under a duty, at the request and at the cost of the orderer, to arrange the insurance requested by the latter.
3. Delivered items, even if they shall reveal minor defects, shall be accepted by the orderer notwithstanding rights under Section VII below.
4. Part deliveries shall be permissible.

VI. Retention of ownership

1. The supplier shall retain title to the item delivered until all claims of the supplier against the orderer arising out of the business relationship have been settled.
2. The supplier shall be entitled to insure the item supplied, at the cost of the orderer, against fire, water and other losses, unless the orderer provides documentary evidence of having himself taken out such insurance.
3. The orderer may neither pledge nor assign as collateral the item supplied. In the case of attachment or garnishment or other act of disposal by a third party, he shall inform the supplier thereof immediately.
4. If the orderer shall act in breach of contract, in particular with regard to payment default, the supplier shall be entitled to take back any items delivered and to issue a default reminder, and the orderer shall be under a duty of surrender. The assertion of retention of title, as well as attachment of the item supplied by the supplier, shall not be deemed withdrawal from the contract.
5. If items sold subject to retention of title are used to fulfil a purchase contract, a contract for work and services or a contract for work and materials, then the claim arising shall be deemed to be assigned in advance to the supplier in the amount of the invoice value of the supplier's

claim. The supplier hereby accepts such assignment. The orderer shall be entitled to collect such claim until such time as it is revoked. In the event of revocation, he must surrender all documents and provide the requisite information.

VII. Liability for defects

To the exclusion of further claims, notwithstanding Section IX, paragraph 4 below, the supplier shall be liable for defects in consignments of new – not used – machinery and plant, which shall also include the absence of expressly warranted characteristics, as follows:

1. All parts shall be corrected or re-supplied free of charge, according to the supplier's reasonably exercised discretion, which parts reveal defects within the meaning of Section 434 BGB within a period of 12 months further to transfer of risk, and which defects render contractual use impossible or severely impair such use. Determination of such defects must be notified immediately in writing to the supplier. Replaced parts shall become the property of the supplier.
2. Guarantee claims of the orderer shall in all instances become statute-barred at the end of a period of 12 months following transfer of risk.
3. No guarantee shall be assumed with regard to losses arising for the following reasons: Inappropriate or improper use, defective assembly or commissioning, by the orderer or third parties, natural wear and tear, defective or negligent handling – in particular excessive stress, inappropriate operating material, substitute materials, defective construction work, unsuitable construction site, chemical, electro-chemical or electric influences - in so far as they are not due to a fault of the supplier.
4. For the purpose of execution of all corrections and substitute deliveries which the supplier shall at his reasonably exercised discretion deem to be required, the orderer must, further to agreement with the supplier, allow the requisite time and opportunity, otherwise the supplier shall be released from his liability in respect of defects. Only in urgent instances of endangerment to operational safety and to avert disproportionate losses, of which the supplier must be notified immediately, or if the supplier is in default regarding remedy of a defect, shall the orderer be entitled to remedy the defect himself or to cause the same to be remedied by third parties and to demand from the supplier reasonable reimbursement of his costs.
5. Of the costs arising on the basis of correction or substitute delivery, the supplier – in so far as the complaint shall turn out to be justified – shall bear the costs of the replacement item including despatch, as well as the reasonable costs of removal and assembly, and further, the costs of any requisite provision of his fitters and assistants, if this can reasonably be required in the particular circumstances. The orderer shall otherwise bear costs.
6. If subsequent performance in the form of reworking or substitute delivery pursuant to Section VII para. 1 of these Terms and Conditions shall be unsuccessful more than two times, then the orderer may choose to either reduce the purchase price or withdraw from the contract.
7. Any changes or overhauling improperly carried out by the orderer or third parties without the prior consent of the supplier shall mean that liability for the consequences arising therefrom shall be extinguished.
8. Any further claims of the orderer, in particular any claim to making good of losses not caused to the actual item supplied, shall be excluded in so far as permitted under the law.

VIII. Liability for collateral duties

If, due to fault of the supplier, the item delivered cannot be used by the orderer in a contractual manner as a result of omitted or defective execution of proposals and consultations from the time before or after conclusion of contract, as well as other contractual collateral duties, in particular operating and maintenance instructions relating to the item supplied, then to the exclusion of further claims of the orderer, the provisions of Sections VII. and IX. shall apply accordingly.

IX. Orderer's right of withdrawal and other liability of the supplier

1. The orderer may withdraw from the contract if it becomes definitively impossible for the supplier to complete the entire performance before transfer of risk.
2. If performance default is given within the meaning of Section IV. of these Terms and Conditions of Supply, and if the orderer shall grant the supplier – who is in default – a reasonable extension of time accompanied by an express declaration to the effect that, following expiry of such period, he shall decline to accept such performance, and if the extension of time is exceeded, then the orderer shall be entitled to withdraw from the contract.
3. If impossibility arises during delay in formal acceptance or due to fault of the orderer, then the latter shall remain under a duty to effect counter-performance.
4. The orderer shall further have a right of withdrawal if the supplier – on the basis of his own fault – allows a reasonable extension of time granted to him for correction or providing substitute delivery in respect of a defect attributable to him within the meaning of these Terms and Conditions of Supply to elapse without effect. The orderer's right of withdrawal shall also exist where it is impossible for the supplier to effect correction or substitute delivery or where the supplier is incapable of effecting the same.
5. In so far as permitted under the law, all further claims of the orderer are excluded, in particular regarding conversion, termination or price reduction, as well as to making good of losses not caused to the actual item supplied.
6. With regard to the return of ordered replacement and assembly parts, 15% of the purchase price shall be deducted for inspection and storage.

X. Assembly/repair

With regard to assembly/repair work, the Special Terms and Conditions of Supplier Assembly shall form an integral part of these Terms and Conditions.

XI. Place of jurisdiction

Place of jurisdiction shall be Bruckmühl. With regard to all disputes arising from the contractual relationship, if the orderer is a *Vollkaufmann* (registered merchant), a public legal entity, or a public special fund, then proceedings shall be instituted before the court which has jurisdiction with regard to the supplier's registered office. The supplier shall also be entitled to issue proceedings at the place of the orderer's registered office. In the event that any provision of these Terms and Conditions of Sale and Delivery or any provision contained in other agreements should be or become invalid, this shall not affect the validity of all other provisions and agreements.