

General Terms and Conditions of Business

1. Applicability

The terms and conditions which follow apply to all contracts for the delivery of goods by the supplier or other services, in particular to repair work, arising out of an on-going business relationship when, in the case of the supply of goods or the provision of services at a later date, express reference is no longer made to these terms and conditions. General terms and conditions of the customer are excluded. The absence of a response by the supplier to order confirmations which draw attention to the customer's different terms and conditions of business is not to be understood as implied acceptance of these terms. In accepting the delivery the customer irrevocably accepts the exclusive applicability of our general terms and conditions of business.

2. Offer, order, alterations

Until a contract is concluded and signed offers made by the supplier remain non-binding as long as the offer is not expressly designated as fixed. An order is deemed to have been made when the offer is accepted. Agreements made in writing constitute the contents of the contract. Employees of the supplier are not authorised to make oral ancillary agreements or promises that go beyond the written agreements. The supplier reserves the right to conclude prior sale or make technical alterations and price changes before the supply contract has become legally effective. Technical alterations are also possible after conclusion of the contract when such changes are within the framework of technical progress. Contracts are subject to the reservation that material and parts required and ordered by the supplier are delivered correctly and in time.

3. Transfer of risk, despatch

Risks are transferred to the customer when the goods leave the supplier's factory or store, this also applying to part-deliveries. If the customer collects the goods himself risks are transferred when the supplier states that he is ready to despatch. Despatch takes place at the risk of the customer; the transport is insured only if there is a special agreement to this effect and the cost is borne by the customer. In case of doubt the supplier exercises his discretion in the choice of transport.

4. Delivery time

Binding dates for supply or services (delivery dates) must be expressly agreed in writing. A period of time allowed for delivery starts only when our confirmation of order has been received by the customer. Adherence to the delivery time requires that the customer first supplies all documents, licences, releases and other information that he is required to provide for the order to be executed; in the case of orders from abroad, only after a letter of credit has been received in accordance with Section 6, paragraph 6 of these terms and conditions.

Agreed alterations or additions to the original order will lead to a corresponding delay in delivery. The period of notice for delivery is deemed to have been observed before its expiration when the ordered goods have by that time left the supplier's premises, or the supplier has informed of his readiness to despatch. Part deliveries are permissible.

The customer can terminate the contract when the supplier is in default or responsible for the impossibility to deliver if he has given the supplier a delivery time extension of at least four weeks and has declared in writing that he will refuse to accept delivery after expiration of this extended period of notice.

If a delay in delivery occurs as a result of unforeseen circumstances, such as a breakdown in the factory, labour dispute, late deliveries to the supplier, force majeure and so on, the supplier also has the right to terminate the contract. The right to withdraw can be limited to the part delivery in question unless it is unreasonable to expect the other party to accept only partial completion of the transaction. Part deliveries are permissible.

5. Complaints

In the case of justified complaints on account of defect or deficiency, the supplier will, within his normal working hours, can choose to replace, repair or supplement free of charge. If such action does not lead to removal of the defect or deficiency, the customer is entitled to reduce the price appropriately or, if he chooses, to demand cancellation of the contract.

Withdrawal is excluded when the defect or deficiency only insignificantly affects the value of the good bought or the service provided. The remedy of a defect is as a rule deemed to have failed after an unsuccessful second attempt. Otherwise, these terms and conditions of business apply.

Should the supplier be in default with the work of remedying the defect or supplying a replacement the customer, following fruitless expiration of an extended period of notice provided in writing, can claim the same rights. § 440 BGB (Federal Civil Code) remains unaffected.

Claims by the customer are excluded if complaints concerning defects or quantity differences which can be seen in the course of an orderly inspection are not reported immediately following receipt of the goods and details of any other faults are not reported to the supplier in writing immediately following their discovery.

The supplier bears no liability for defects and their consequence resulting from natural wear and tear, inappropriate handling, cleaning and maintenance work, failure to observe operating, servicing or connecting instructions or chemical or electrical influences which are either unusual or contrary to factory regulations

If the goods are interfered with or modifications made by non-authorized persons the customer loses the factory guarantee and can then press guarantee claims only subject to general legal provisions concerning guarantee claims.

6. Prices

(1) Prices are those quoted in the order confirmation, in case of doubt the prices valid on the day delivery was made. Should the customer be responsible for a delay in delivery of more than 60 days beyond the agreed delivery date the supplier can demand payment of the price valid on the day of delivery.

(2) In the event of unforeseen changes in import and export fees, rates of exchange between currencies or transport costs the supplier is entitled to make an appropriate adjustment to the price.

(3) In the case of domestic sales, prices are ex-works and do not include value-added tax, freight, special packing charges or the cost of the usual cardboard packaging.

(4) For export sales, prices are ex-works and do not include value-added tax, customs charges, freight, special packing charges or the cost of the usual cardboard packaging.

(5) In the case of deliveries to customers outside the Federal Republic of Germany or intended for export, the supplier is entitled to require an irrevocable, confirmed letter of credit from a German bank which is licensed to act as surety for tax or customs and to deliver the goods only after the letter of credit has been received.

(6) If INCOTERMS have been agreed, the definitions laid down and published by the international Chamber of Trade in Paris apply.

7. Payments

The applicable payment conditions are in accordance with the contract and order confirmation in question. Repairs and labour charges are in all cases payable net. Payments are to be made free of charges. If payment is not made by the due date the statutory provisions according to § 286 and § 288 BGB (German Civil Code) do apply. The customer is however allowed to present proof that the supplier has suffered no loss or damage at all or that the loss or damage is much smaller than the lump sum.

Bills of exchange are accepted only if a special agreement has been made to this effect. Discount charges and other charges are paid by the customer. If the supplier is or becomes aware of circumstances that make the customer's credit worthiness doubtful, all the customer's debts become immediately due for payment. In this case the supplier has the right to demand cash payment against the return of the bills of exchange and disregarding their duration. The supplier's rights arising from § 321 BGB (German Civil Code) remain unaffected.

Cash and other discounts are granted only when a special agreement has been made. The customer can deduct an agreed cash discount only if he is not in default with other payments to the supplier.

Setting-off against counter-claims that are not res judicata and are challenged by the supplier is excluded as are customer's retention rights, with the exception of those pursuant to Section 5.

8. Retention of title

The supplier retains title to the goods supplied until complete payment has been received even if single items have already been paid for. In the case of an on-going account the reserved title serves as security for the supplier's balance claims. On receipt of the goods the customer assigns to the supplier claims that he has against his own customers arising from re-sale. This assignment is herewith accepted by the supplier.

Until it is withdrawn the customer has the right to collect debts owed to him. The customer is obliged to provide the supplier with all information and documents which may be required to press the assigned claims and, if required to do so by the supplier, to inform his customers of the assignment. Before title has been transferred the customer may not pledge the good supplied nor transfer ownership as security. The customer must inform the supplier without delay in case of seizure, confiscation or other acquisition of disposition rights by third parties. Costs incurred by the supplier as a result of interventions will be borne by the customer.

The supplier is entitled to insure, at the customer's expense, the goods to which title is reserved against theft, breakage, fire, water or other risks, if the customer cannot present proof that he has concluded such insurance himself and has assigned claims based on such insurance to the supplier. If the customer already has such insurance he herewith assigns to the supplier all rights arising out of the insurance policies and all claims against the insurers. The assignment is accepted by the supplier.

If the law applicable at the place where the customer's business is situated makes it impossible for the above regulation to be adopted the customer is obliged to arrange security of equal value which could be called on while taking account of the legal regulations applicable where the customer's business is located and, in the event of the customer's insolvency, enables the supplier to take action against the customer's customers. Regardless of the effectiveness of the other form of security in each case, at least the reservation of title and the assignment of claims against the customer's customers are deemed to have been agreed. The supplier undertakes to release the securities to which he is entitled insofar as their value exceeds by more than 20% the value of the claims they secure.

If the customer is in default or becomes wholly or partially insolvent or in any other way acts in contravention of the contract the supplier is entitled, after a warning, to demand return of the goods which are his property. The customer herewith grants the supplier the irrevocable right to enter the customer's premises in order to collect the delivered goods. If the customer's business involves the re-sale of the delivered goods, he is entitled to re-sell them subject to his normal conditions as long as he is not in default with payment. In this case the amount shown on invoices for the re-sold goods is herewith assigned to the supplier. The assignment is accepted by the supplier. The customer has the authority to collect these debts, also following the assignment until such time as the supplier cancels this authority, which he is permitted to do at any time. The right of the supplier to call in debts himself remains unaffected; however, the supplier undertakes not to call in debts himself as long as the customer fulfils his payment commitments. The supplier can at any time require that the customer gives him details of the assigned claims so that the supplier is able to call in debts himself, reveals the identity of the debtor and informs his, the customer's customers of the assignment.

Processing or modification of the goods to which title has been retained is at all times carried out on behalf of the supplier, without the supplier assuming any responsibility for such work. In the event of further processing or combining the goods with items supplied by a third party the supplier retains joint ownership of the new object in proportion to the value of the goods supplied by him. Neither exercise of the property right nor seizure of the delivered goods by the supplier constitute withdrawal from the contract.

If goods are taken back or their value realised in exercise of the retention of title the cost incurred in doing so is borne by the customer. While reserving the right to claim compensation for further damage the supplier is entitled to claim 15% of the realised value as a lump sum compensation for costs.

9. Claims risks

If the customer is in default with payment the supplier, without prejudice to further claims, is entitled to require security for all on-going orders before delivering. This also applies if, because of circumstances that first become known after conclusion of the contract, there seems to be a danger that the supplier's claims will not be met, e.g. when application is made for the opening of insolvency or court/out-of-court settlement proceedings, a delay in enforcement proceedings against the customer, the lodging of protests regarding cheques or bills of exchange issued by the customer or significant changes in the customer's business that raise doubts concerning the customer's financial soundness.

10. Place of performance, place of jurisdiction, applicable law

The place of performance for both parties is Schemmerhofen. Exclusive place of jurisdiction for all disputes arising in connection with the contract, including litigation regarding cheques and bills of exchange, is Biberach/Riss. The supplier may, however, bring an action before a court at the place where the customer's business is situated or before any other responsible court. German law applies exclusively, with the exception of laws governing international transactions.

11. Partial nullity

Changes to these general terms and conditions of business or any other contractual agreements must be in writing. Should any of these conditions, wholly or partly, prove to be ineffective any remaining conditions are unaffected. The contracting parties are, as necessary, obliged to replace an ineffective condition with another one that as closely as possible fulfils the same purpose as the original one

12. Return of goods against credit

Brand-new goods returned for credit must have a total value of more than 50,- EURO; the prior written approval of the supplier is required. The customer must quote invoice number and date. Return is effected at the risk and expense of the customer. Any expenses accruing to the supplier from the return of goods to which the supplier did not give his approval are borne by the customer. The cost of re-working or new packing because of modifications made or damage for which the supplier is not responsible will correspondingly reduce the amount of credit granted. If the supplier has agreed to the return, the customer will be credited with the invoice value, less any costs for re-working or re-packing, as follows: With a return value between 50,- EURO and 200,- EURO 20 %, with a return value of over 200,- EURO 10 % will be deducted as a fee for the work involved.

13. Other

If the customer is a dealer he undertakes to store, display and sell the supplier's products in a suitable manner and to ensure their correct handing over, installation and assembly. It is the responsibility of the customer to set up the goods in working order and to provide service..