

General Conditions of Sales, Delivery and Payment

Latest update: 10/2015

General information

The following terms and conditions apply exclusively in relationships with businesspersons, legal persons under public law or special funds under public law pursuant to Section 310, Paragraph 1 of the German Civil Code (BGB).

These terms and conditions apply for offers and contracts for deliveries to be made (also referred to as "goods" or "products" in the following) and services to be provided by us, unless deviating agreements are expressly concluded in writing. They also apply for all our future declarations, offers and contracts. Business or purchasing terms and conditions of the orderer (= "customer", "client", "buyer") not expressly accepted by us in writing are entirely non-binding for us and do not become part of the contract, even if we do not expressly object to them.

Separate terms and conditions apply in addition for project, installation and maintenance work. Separate software licensing contract terms and conditions apply for software, even when it is part of a product delivered by us.

1. Offer, contract conclusion, determination of contractual obligations and similar

1.1

Our offers are always subject to change without notice. If we quote a price in an offer, this is the list price in effect on that day for a delivery unless we expressly state otherwise.

1.2

Estimates requested by the orderer are non-binding. Unless anything to the contrary is expressly agreed, the orderer is obligated to compensate us for the incurred cost to prepare an estimate insofar as we ourselves first have to decide on the appropriate manufacturing method, determine decision-making parameters, prepare service descriptions or provide other planning and design services on behalf of the orderer, we deliver these work results to the orderer and the orderer can use them for its own purposes, for instance also to obtain offers from third parties.

1.3

Every offer or estimate is a cohesive whole. Taking out individual items or changing the types, quantities or delivery locations requires our consent. Freight costs quoted by us are always non-binding.

1.4

Dimensions, package sizes, weights, illustrations, simulation results and drawings are only binding for realisation if this is expressly confirmed by us in writing.

1.5

What characteristics our goods or services must have is determined solely by the express agreements pursuant to the contract. If an item is named by itself or also with our product and/or type designation in an offer or contract, this constitutes the declaration that the characteristics owed by us are described in our general product or type description valid for this item on the day our statement is issued, and that this information is subject to the condition that the buyer complies with the information in our operating manual. Information from third parties, also in advertisements or in other third-party publications, does not establish contractual performance, warranty or compensation claims against us from any point of view.

1.6

Insofar and to the extent this does not affect the intended purpose and serviceability, the value is maintained or increased, and the changes are reasonable for the orderer, we have the right to change the object of our delivery or performance compared to the sample, offer or contractual description in order to improve our delivery or performance in the interest of production or technical progress, or due to customary deviations in weights, quantities, dimensions, material composition, material structure, configuration, surface and colour, or the nature of the materials used.

1.7

We only make assurances or issue guarantees regarding the characteristics of goods and services and for the risk of their procurement when and to the extent this is expressly agreed in writing.

1.8

Unless otherwise expressly agreed, our obligations are respectively subject to the reservation that we are supplied correctly and in a timely manner under a congruent covering transaction concluded by us, also for bought-in or preliminary products as well as raw materials and supplies or services of third parties that we require for our production or readiness for delivery. (= Commerce clause: "Correct and timely delivery to us is reserved").

1.9

Insofar as we purchase goods or services we use to meet our contractual obligations to our customer, we only perform receiving or other inspections in our own interest and according to our own requirements.

1.10

Contracts and orders as well as their amendments and endorsements and all other agreements that apply to a contract or its performance must be in written form.

We have the right to use electronic form or text form; in this case, the orderer also has the right to issue declarations in that form. Verbal agreements are only effective if they are promptly confirmed in writing by one side.

If a contractual document in written form is not prepared, an order placed with us only becomes binding for us after we confirm it in writing. If we begin providing goods or services without an express written agreement or confirmation, a contractual relationship is only established with the completion of our delivery or performance. The contractual document signed by both sides or, if none exists, the content of our order confirmation conclusively describes our obligations.

1.11

Drawings, designs and other models provided by us, regardless of whether they are originals or duplicates, are merely loaned and remain our property. They may not be used for other purposes, duplicated or disclosed to third parties, and have to be returned to us unasked as soon as possible or by our request.

1.12

We have the right to store, process and use data of our contractual partners in IT systems and to disseminate them to the extent required to third parties that grant us credit or insure our claims against the contractual partner.

2. Prices

2.1

Our prices are in EUROS, ex works, net of VAT and other taxes charged on the delivery or movement of goods, excluding packaging, insurance, freight, installation and commissioning unless respectively expressly agreed otherwise.

2.2 The following applies unless a differing contract provision is expressly agreed: even if a specific price is agreed, we have the right to add a surcharge corresponding to the actual change if our delivery or performance or our partial delivery or partial performance is not due within 4 months from the conclusion of the contract and material, wage, energy and/or freight costs or taxes increase or are newly introduced.

2.3

Unless anything to the contrary is expressly agreed, we have the right to demand advance payments for products that are not ready for delivery when the contract is concluded, namely one third of the order total after receipt of the order confirmation and an additional third upon notification of readiness for shipment.

2.4

In any case, we have the right to bill for deliveries already made or services already provided by us and to demand payment.

2.5

We have the right to offer the orderer the conclusion of a current account agreement, also by recording all invoices on both sides in an account kept by us for the orderer and sending the orderer an account statement. Our offer is accepted if the orderer does not issue a written notice of refusal no later than within one month after receiving the first account statement.

2.6

As we expressly say so in our account statements, mass billing or quantity calculations, these are respectively deemed to be accepted and binding for the claims of both sides unless the orderer objects in writing within two weeks from the date of receipt.

3. Delivery, performance, delays, exercising of options by the orderer

3.1

Delivery or performance terms are only binding when they are agreed in writing. In case of doubt, the delivery terms stated on the order confirmation apply. The term begins with the conclusion of the contract, but not before existing obligations to cooperate are met by the orderer, in particular the delivery of documents to be obtained by the orderer, the orderer's provisions, permits, approvals or agreed prepayments, or the provision of other collateral for meeting the contractual obligations of the orderer. The agreed deadlines are also deemed to be met with notification of readiness for shipment if delivery or performance cannot take place in a timely manner for reasons beyond our control.

3.2

If the failure to meet the delivery or performance deadlines is caused by force majeure or other disruptions beyond our control, such as war, terrorist attacks, import and export restrictions or labour disputes, including those affecting our suppliers, the agreed terms are extended appropriately even if we are in default at the time.

3.3

If we fail to meet a binding delivery or performance deadline contrary to duty for reasons other than those named in Section 3.2, the orderer may withdraw from the contract after the orderer grants us a reasonable period of grace in writing and we fail to meet it.

3.4

Additional rights of the orderer due to delays, in particular for further compensation, are excluded to the extent defined in Section 7. Liability.

3.5

We have the right to also meet our contractual obligations through partial performance to the extent they constitute divisible obligations and the respective partial performance is not unreasonable for the customer or associated with burdens that cannot be compensated by us.

3.6

If the orderer due to a breach of contract by us has to exercise an option or assert a right to fulfillment, supplementary performance, withdrawal and/or claim for compensation or the reimbursement of expenditures, we can ask the orderer to exercise its rights within a reasonable term. If the orderer fails to respond, the orderer can only demand compensation in place of performance and/or declare withdrawal after an additional, reasonable term set by the orderer has expired unsuccessfully.

4. Passing of risk; shipment, inspection and complaint obligations

4.1

We owe our customer delivery or the provision of services at our commercial establishment (= EXW/EX WORKS according to Incoterms 2000) where we concluded the contract. The risk of accidental perishing and accidental impairment of the goods passes to the orderer with their delivery.

4.2

If the goods are shipped to a different location by request of the orderer, the shipping method is at our discretion unless otherwise specified by the orderer. Transport insurance coverage is only obtained by instruction and at the expense of the orderer. The risk passes upon delivery of the goods to the carrier, shipper or other person or institution appointed for shipment.

4.3

If delivery or shipment is delayed due to circumstances beyond our control, the risk passes to the orderer on the day the notice of readiness for shipment or delivery is issued.

4.4

The goods have to be inspected by the orderer promptly upon receipt, even if delivery is not to the orderer but to a third party named by the orderer. Notices of defects, shortages, incorrect deliveries or other complaints have to be submitted immediately upon becoming aware of the respective circumstances and we must be notified in advance by telephone or fax so that inspection and the preservation of evidence are possible for us. Defects and deviations that are apparent at the time of receiving must be reported to us so that we are informed no later than within 48 hours after receipt of the goods. Additional obligations of the businessperson pursuant to Section 377 HGB to us and the obligation to notify the shipper of apparent transport damage and shortages on delivery remain unaffected.

5. Defects, warranty, limitation period

5.1

If the goods or services delivered by us are defective and the orderer demands supplementary performance from us, we can choose to rectify the defect (rectification of defects) or deliver goods or services that are free of defects (replacement delivery). We shall notify the orderer of our decision promptly. If we choose the rectification of defects, the goods in question must be returned to us for repair. The costs of the cheapest means of shipment from/to the domestic delivery address of the orderer agreed for the original delivery of the goods are borne by us, provided the complaint turns out to be justified; this provision applies correspondingly in case of travel by us for the rectification of defects. The orderer has to give us or a third party chosen by us reasonable time and opportunity to carry out warranty work. Such work may only be carried out directly by the orderer with our consent, except when Section 637 BGB applies.

If we choose replacement delivery, we can ask the orderer at our discretion and expense to either dispose of or utilise the defective goods as favourably as possible, provide us with a settlement and pay us the proceeds less its utilisation costs insofar as the orderer itself trades in such or similar goods or utilisation or disposal is reasonable for the orderer due to other reasons.

5.2

Claims for defects do not apply in case of only minor deviations from the agreed characteristics or only minor impairment of usability.

5.3

Our warranty obligation and liability expire if our goods are modified – also through the installation of third-party parts – unless the defect or damage is not caused by the modification, and if the rules for shipment, packaging, installation, handling, use, operation and maintenance are not followed, or in case of incorrect installation, commissioning, modification or changes, or repairs by the orderer or third parties. EC declarations of conformity or manufacturer declarations issued by us lose their validity if changes not approved by us are made to the product and/or safety devices are modified or rendered ineffective.

5.4

Natural wear and tear is excluded from the warranty. Furthermore, we are not responsible for changes in the condition or mode of operation of our products due to improper or unintended use, incorrect combination with other items, improper storage, unsuitable equipment and climatic or other effects that are not intended pursuant to the contract. The warranty does not cover defects due to design faults or the choice of unsuitable materials when the orderer prescribed the design or material notwithstanding prior notice from us. We offer no warranty on parts provided by the orderer.

5.5

If the orderer did not receive an installation manual or user manual and this is part of the contract, the orderer has to notify us promptly. Carrying out an installation or commissioning regardless is at the risk of the orderer. In case of a defect due to an incorrect installation manual, we are only liable for material defects if the installation/integration or commissioning of the sold item was carried out competently. Competent execution has to be described and proven by the orderer.

5.6

If supplementary performance fails, the orderer pursuant to the applicable legal regulations can demand rescission of the contract (withdrawal) or a reduction of compensation (abatement); Section 7 applies to claims for damages.

5.7

Further or other rights due to a defect aside from the claims pursuant to this Section 5 are excluded, subject to contractual or non-contractual claims for compensation pursuant to Section 7. Insofar as a defect is insignificant, the related compensation claim of the orderer is not for the purchase price paid but only for the financial damage that is incurred because the item is not free of defects.

5.8

If a notice of defects proves to be unjustified, we have the right to bill the orderer for all expenditures incurred by us as a result.

5.9

The limitation period for claims against us related to defects of our products or services, or to the breach of a

contractual obligation, begins with the delivery of purchased goods and in other cases with the acceptance of our services. All of these claims expire after a term of 12 months. For claims due to the loss of life, physical injury, the impairment of health, loss of freedom, the malicious concealment of a defect, a guarantee regarding the characteristics of an item or because a third party based on a right in rem can demand the surrender of the item by the buyer, or if the contractual relationship relates to buildings or items for buildings pursuant to Section 438, Paragraph 1, No. 2 BGB or claims are asserted for construction defects pursuant to Section 634a BGB, the applicable legal regulations regarding limitation periods apply instead of the aforementioned time limits.

5.10
The limitation period is suspended for the duration of the time required for supplementary performance. It does not start over.

5.11
The provisions of this section apply correspondingly in case of defective title (not due to a violation of third-party proprietary rights or copyright) and in case our delivery or performance is different from or falls short of what was owed.

6. Proprietary rights, incorporeal chattels

6.1
Unless anything to the contrary is expressly agreed by contract, we are only obligated to deliver the goods free of industrial property rights and copyrights in the country of the delivery location.

6.2
If our delivery obligation includes the supply of software with the goods and a separate software licensing agreement is not concluded, the orderer obtains the right to use the supplied software exclusively together with those goods in its operation for the duration of the useful life of the goods. Making program copies or otherwise ceding the software or granting rights to third parties, or intervention in the software, are not permitted. All exploitation rights remain with us.

6.3
If our goods violate a proprietary right or copyright, or such a violation is alleged, we at our discretion have the right to either acquire a license for the goods in violation on behalf of the orderer or to modify the goods so the proprietary right or copyright is no longer violated, or to replace the goods with similar ones that do not violate the proprietary right or copyright. The orderer shall make the goods and software available to us for this purpose by our request and at our expense.

6.4
We are not liable if an item has been manufactured according to the specifications of the orderer or the alleged violation of the proprietary right or copyright resulted from concurrent use with another item not originating with us, or the item is used in a manner we were unable to foresee.

6.5
We alone are authorised but not obligated to exploit or ward off industrial property rights or copyrights for our goods.

6.6
We are only liable for claims due to the violation of proprietary rights and copyrights if the proprietary right or copyright is or was not owned by the orderer or a company owned by the orderer, directly or indirectly through a majority of shares or voting rights, the orderer promptly informs us of violation risks and alleged violations that become known, and the orderer by our request – to the extent possible – allows us to conduct legal disputes (also out of court) and, in case of proprietary rights, at least one proprietary right from the family of proprietary rights has been published by the European Patent Office or in one of the states of the Federal Republic of Germany, France, Great Britain, Austria or the USA.

6.7
If the orderer resells the goods, it is obligated to enter into agreements with its buyer corresponding to this Section 6 and authorising us directly (contract for the benefit of a third party).

6.8
Sections 6.1 through 6.7 conclusively regulate liability for freedom from proprietary rights and copyrights, and also apply correspondingly for our services.

7. Liability

7.1
We are only liable for compensation and the reimbursement of futile expenditures pursuant to Section 284 BGB (also referred to jointly as just "compensation" in the following) due to the violation of contractual or non-contractual obligations according to the applicable legal regulations in case of intent or negligence, including intent or negligence on the part of our legal representatives or assistants. Insofar as we are not guilty of an intentional breach of contract, our liability is limited to the foreseeable, typical, incurred damage. If the claim for compensation is based on culpably failing to rectify defects, the amount is limited to 20% of the agreed net consideration. In case of damages for delays caused by us due to slight negligence, our liability is limited to 5% of the agreed net consideration.

7.2
We are not liable pursuant to Section 7.1 but according to the applicable legal regulations if and insofar as claims are asserted due to the loss of life, physical injury or the impairment of health, issuing a guarantee or assuming a procurement risk, the violation of essential contractual obligations ("cardinal obligations"), compensation instead of performance, mandatory liability pursuant to the Product Liability Act (ProdHG) or other mandatory liability.

7.3
Insofar as our liability is excluded or limited, this applies correspondingly for the personal liability of all persons involved on our behalf in the initiation, conclusion and/or realisation of the contractual relationship, that is in particular for the personal liability of all persons in a service or employment relationship with us, our legal representatives, assistants and vicarious agents.

7.4
The preceding provisions do not shift the burden of proof to the detriment of the orderer.

7.5
The provisions of this Section 7 apply unless anything to the contrary is defined in these terms and conditions or the contract itself.

7.6
In case of a defect due to an incorrect installation manual, we are only liable for material defects if the installation/integration or commissioning of the sold item was carried out competently. Competent execution has to be described and proven by the orderer.

7.7
Sub-suppliers are not our assistants.

8. Retention of title

8.1
The goods remain our property until all of our own claims that we are unconditionally or conditionally entitled to against the orderer at the time the (purchase) price comes due are paid and/or all drafts, cheques or other documents given to us by the orderer as payment have been cashed and such amounts have been finally credited to us. In case of current accounts, the goods subject to the retention of title serve as collateral for our balance due. The suspension of individual claims within a current account and the striking of a balance and its acknowledgement will not affect our retention of title. In no case does the transfer of ownership from us to the orderer depend on the orderer discharging a claim of a third party that we assert or can offset against the orderer.

8.2
Until payment is made in full, the orderer is obligated to treat the goods and store them as the immediate possessor so that they are identifiable as our property. The orderer shall store the goods for us free of charge. This applies correspondingly to items co-owned by us. The orderer is obligated to insure our property in its possession against damages to the extent it has insured its property, and has to provide us with all information and documents required to assert our rights in this regard.

8.3
The orderer is only authorised for the resale, further processing or integration of the goods still owned or co-owned by us according to the following provisions and only if the claims mentioned are actually transferred to us:

The orderer is entitled to dispose of the goods subject to retention of title in the normal course of business but is not permitted to pledge them or transfer them by way of security. Processing or altering goods subject to retention of title is always done on our behalf as the manufacturer and we acquire ownership of the new goods, but with no obligation for us. If our ownership ceases due to processing, combining, blending or mixing with goods not belonging to us, it is

agreed now and in advance that we obtain co-ownership of the new goods at that moment in the proportion of the invoice value of our goods subject to retention of title to the invoice value of the new goods as a whole.

The preceding authorisation granted to the buyer ends if the buyer fails to meet its obligations to us in a timely manner, falls into financial collapse, stops making payments, or an application is made for the commencement of insolvency proceedings for the buyer's assets.

8.4
The claims of the orderer from the resale of the goods subject to retention of title or the goods (co-)owned by us are assigned to us by the orderer now and in advance and we hereby accept this assignment. These assignments of claims respectively include the entire claim, insofar as the amount is less than or equal to our outstanding claim; otherwise this assignment only includes the front-ranking partial amount of this claim of the orderer in the amount of our open claim.

Notwithstanding the assignment and notwithstanding our collection right, the orderer has a right of collection as long as it meets its obligations to us in a timely manner, is not over-indebted, does not stop making payments and an application is not made for the commencement of insolvency proceedings for the assets of the orderer.

By our request the orderer has to provide the information regarding the assigned claims that is required for collection, provide us with all documents related to these claims as originals or for review and, in particular, identify the debtors by name with their full address, specifying the amount and basis of the debt, and inform the debtors of the assignment.

8.5
Notwithstanding other rights, we are authorised to revoke all authorisation of the orderer regarding our property and/or our rights pursuant to this section if the orderer, in spite of a warning, culpably breaches contractual obligations or we see indications leading us to believe that the orderer has fallen or is about to fall into financial collapse and the orderer does not immediately make its continued solvency credible.

8.6
The orderer has to promptly inform us of compulsory enforcement measures by third parties affecting the goods subject to retention of title or the claims assigned to us in advance, and provide us with the documents necessary for intervention purposes.

8.7
In case of late payment or another culpable breach of the orderer's contractual obligations, we have the right to withdraw from the contract pursuant to the applicable legal regulations and to demand the surrender of goods subject to our retention of title or co-owned by us.

8.8
We obligate ourselves to release the collateral we are entitled to pursuant to the preceding provisions by request of the orderer at our discretion to the extent their value according to our list prices applicable for this customer at the time exceeds the secured claims by 15% or more.

9. Payments, set-off, maturity

9.1
Unless anything to the contrary is agreed in writing or in case Section 2.4 applies, we issue our invoice at the time of delivery and the customer owes us payment within 10 days from the invoice date with no deductions. The customer is in default at the end of this term. However, we also have the right to demand delivery versus payment (at our discretion by cash on delivery or bank debit memo); Section 2.4 remains unaffected.

9.2
Payments must be made to us in cash or by bank transfer to the account specified by us on the invoice. Early payment discounts granted by us are calculated from the invoice date.

9.3
Any payment of invoices by draft or cheque is only accepted on account of performance and requires a separate agreement. Discount charges, note charges and costs are calculated from the date the invoice amount is due and shall be borne by the orderer. The risks and costs associated with transferring the invoice amount are borne by the orderer.

9.4
In case of culpable late payment by the orderer, we have the right to charge late payment interest in the amount of our own borrowing costs or 8 percentage points above the respective prime rate but no less than 8%. Costs, including lawyer's fees, incurred by us for the collection of our claims are borne by the orderer. Our right to assert a further or legal compensation claim remains unaffected.

In case of culpable late payment by the orderer, we always have the right to cancel payment terms that were granted and to demand payment of the entire remaining debt from the business relationship, to demand immediate payment in cash and to revoke discounts, even if they are not openly disclosed in the order/contract or on the invoice, and to revoke other agreed benefits. This right is not excluded by an extension or the acceptance of cheques or drafts. Furthermore, we have the right to only make pending deliveries in exchange for advance payment or the provision of collateral. Our rights pursuant to Section 321 BGB (defence of insecurity) remain unaffected in any case and we are entitled to them as soon as the orderer is culpably in default of payment to us based on this or a different transaction.

9.5
Offsetting against our claims is only permitted with own claims of the orderer that are undisputed or legally established, or to which the orderer based on a logically substantiated assertion is entitled relating precisely to the transaction for which we are asserting our respective claim. A right of retention from previous or other transactions outside the contractual relationship in question cannot be asserted. The assignment of claims requires our written consent.

9.6
We have the right to apply payments to the oldest claim that is due.

9.7
In case of financial collapse of the orderer (=over-indebtedness, actual or pending insolvency) and a resulting application for the commencement of insolvency proceedings for the assets of the orderer, all our claims against the orderer at the time the insolvency application is made are considered due and unconditionally payable, including claims that mature at a future date or are subject to a condition subsequent or a condition precedent.

Insofar as we have claims against the orderer at that time that are non-monetary or for which the amount of money is undetermined or uncertain, we have the right to set the amount owed at our equitable discretion and demand payment of the same.

9.8
If insolvency proceedings commence against the assets of the orderer, we have the right to offset the claims of the orderer against our claims even if they remain conditional or are not yet due, and/or are owed to a third party in which we hold a direct or indirect stake at that time or that holds a stake in us. Insofar as claims against the orderer at that time are non-monetary or the amount of money is undetermined or uncertain, we have the right to set the amount owed at our equitable discretion.

10. Jurisdiction, applicable law

10.1
The jurisdiction is Bayreuth if the orderer is a businessperson, legal person under public law or special fund under public law. We also have the right to sue before the court having jurisdiction for the registered office or establishment of the orderer.

10.2
The contract language is German. German law applies for all legal relationships between us and the orderer. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded by mutual agreement.

10.3
If individual provisions of these sales and delivery terms and conditions prove to be ineffective, the effectiveness of the remaining provisions shall remain unaffected. An ineffective provision shall be replaced by mutual agreement with a provision that corresponds to the original economic intent. This applies correspondingly if these terms and conditions are ineffective as a whole.

In case of doubt, the German version of the general business terms and conditions always applies.