

**I. General Information**

1. All deliveries and services are based on these terms and conditions and any separate contractual agreements. Deviating terms and conditions of the purchaser shall not become part of the contract, even by order acceptance. In the absence of a special agreement, a contract shall be concluded with the written order confirmation of the supplier.
2. The supplier retains title and copyright to samples, cost estimates, drawings and similar information of a corporeal and incorporeal nature, including in electronic form; they may not be made accessible to third parties. The supplier agrees not to disclose any information and documents specified by the purchaser as confidential without the purchaser's prior consent.
3. Samples will only be provided in exchange for payment.
4. Verbal collateral agreements do not exist. Changes must be in written form.

**II. Price and Payment**

1. In the absence of a special agreement, prices as of € 200,- net value of goods will be considered as "free domicile" within the FRG, while we will generally charge a flat shipping rate of € 6,90 for prices below this threshold.  
A minimum order value of € 50,- must be charged for orders under € 50,-. The value added tax is added to the prices at the applicable statutory rate.
2. In the absence of a special agreement, payment is to be made within 10 days (2% discount) or 30 days (net) after the invoice date. The quantity delivered will be charged. Invoices up to € 50,-, as well as repairs and wage labour, are payable immediately without deduction.
3. The right to withhold payments or to offset with counterclaims will only accrue to the purchaser to the extent that his counterclaims are undisputed or legally effective.

**III. Delivery Time, Delay in Delivery**

1. The delivery time results from the agreements of the contracting parties. Adherence to delivery times by the supplier presupposes that all commercial and technical issues have been clarified between the contracting parties and the purchaser has fulfilled all obligations incumbent upon him. If this is not the case, the delivery time shall be extended accordingly. This does not apply if the supplier is responsible for the delay.
2. The adherence to the delivery date is subject to the supplier receiving his own deliveries correctly and promptly.
3. The delivery date shall be deemed to have been adhered to if the delivery item has left the supplier's facility before its expiration or if the purchaser has been informed that the item is ready for shipment. Insofar as acceptance must take place, the date of acceptance, or alternatively the notice of readiness to take delivery, shall be conclusive, except for justified refusal of acceptance.
4. If shipment or the acceptance of the delivery item is delayed for reasons for which the purchaser is responsible, then the costs incurred by the delay will be charged to the purchaser commencing one month after notification of readiness to ship and/or take delivery. If the shipment of the goods is delayed at the purchaser's request, the supplier is entitled to make other arrangements for the item in question after setting a reasonable deadline which has expired and to supply the purchaser by a reasonably extended deadline.
5. If failure to adhere to the delivery time is attributable to force majeure, to labour disputes or other events which are beyond the control of the supplier, the delivery time shall be extended accordingly. The supplier will notify the purchaser as soon as possible of the beginning and end of any such events.
6. The purchaser can rescind the contract without notice if the supplier is definitively prevented from performing his obligations in full prior to passage of risk. The purchaser can also rescind the contract if execution of part of the delivery of an order is impossible and he has a legitimate interest in refusing the partial delivery. If this is not the case, the purchaser shall pay the contractual price for the partial delivery. The same shall apply to inability of the supplier to render performance. In other respects, section VII.2 is deemed applicable. If the impossibility or inability to perform arises during the delay in acceptance or if the purchaser is solely or largely responsible for this situation, he shall remain obligated to honour his commitments.

7. If the supplier is behind schedule and the purchaser sustains a loss as a result, the purchaser is entitled to demand flat rate compensation for damage caused by culpable delay.<sup>13</sup> It shall amount to 0.5% for each complete week of delay, albeit no more than 5% in total of the value of that part of the overall delivery which cannot be used in good time or contractually due to the delay. If the purchaser grants the supplier in default a reasonable period of grace, while allowing for the statutory exceptions, and if this period is not adhered to, the purchaser shall be entitled to rescind the contract in accordance with the statutory provisions. Further claims arising from delay in delivery shall be governed exclusively by section VII.2 of these terms and conditions.

**IV. Transfer of Risk, Acceptance**

1. The risk is transferred to the purchaser when the delivery item has left the supplier's facility, also in the event of partial deliveries or when the supplier has agreed to other services, for example, the shipping costs.
2. In the event of delay or failure of shipment and/or acceptance on grounds for which the supplier cannot be held responsible, the risk shall be transferred to the purchaser from the day of notification of readiness for shipment and/or acceptance. The supplier undertakes to obtain the requisite insurance cover at the request and expense of the purchaser.
3. Partial deliveries shall be permitted insofar as they are reasonable for the purchaser.

**V. Retention of Title**

1. The supplier retains ownership of the delivery item until all claims of the supplier against the purchaser arising from the business relationship, including future claims arising from contracts concluded at the same time or later, have been settled by the purchaser. This also applies even if individual or all claims of the supplier were included in an ongoing and the balance has been drawn and recognised.

If the purchaser acts contrary to the terms of the contract, particularly in the case of delayed payment, the supplier shall be entitled to take back the delivery item after notice is given and the purchaser is obliged to return it. Due to the retention of title, the supplier can only demand surrender of the delivery item only if has withdrawn from the contract.

2. The purchaser is entitled to resell the delivery item in the ordinary course of business. However, he shall now already assign to the supplier all claims which may arise from the resale against the purchaser or against third parties. The purchaser is entitled to collect these claims even after the assignment. The authority of the supplier to collect the claims himself remains unaffected.

However, the supplier agrees not to collect the claims as long as the purchaser duly fulfils his payment obligations or the authority to collect is not revoked or there is no request to start insolvency proceedings. Otherwise, the supplier can demand that the purchaser disclose the assigned claims and their respective debtors, furnish all information required for collection, hand over the relevant documents and inform the debtors of the assignment insofar as this has not been done already by the supplier.

If the delivery item is resold together with other goods which do not belong to the supplier, the claim of the purchaser against the customer is assigned to the value of the delivery price agreed between supplier and purchaser.

3. The supplier shall be entitled to insure the delivery item against theft, breakage, fire, water damage and other damages at the cost of the purchaser unless the purchaser provides evidence of having taken out the insurance himself.
4. The purchaser must inform the supplier immediately in the event of distraints and seizure or other dispositions by third parties. If, in connection with the payment of the purchase price by the purchaser, the supplier becomes liable on the basis of bills of exchange, the retention of title including its agreed special forms or other securities which are agreed to secure payment will not expire before the bill of exchange is discharged by the purchaser as drawee.
5. If the purchaser acts contrary to the terms of the contract, particularly in the case of delayed payment, the supplier shall be entitled to take back the delivery item after notice is given and the purchaser is obliged to return it. The assertion of the retention of title and the seizure of the delivery item by the supplier shall not constitute withdrawal from the contract.

6. The application to initiate insolvency proceedings entitles the supplier to withdraw from the contract and to demand the immediate return of the delivery item.

#### **VI. Claims for Defects**

With respect to defects in quality and title, the supplier provides the following guarantees, with the exclusion of further claims, subject to section VII:

##### Defects in Quality

1. All parts which prove defective as a result of an event before the transfer of risk are to be remedied or replaced free of charge at the discretion of the supplier. The supplier must be informed immediately in writing upon discovery of such a defect. Replaced parts become the property of the supplier.
2. Upon agreement with the supplier, the purchaser shall afford the supplier the required time and opportunity to perform the repairs and replacement deliveries deemed necessary; otherwise, the supplier shall be exempt from the resultant consequences. Only in urgent cases where there is a risk to operational safety and/or to avert disproportionately extensive damage, whereby the supplier must be informed immediately, shall the purchaser have the right to rectify the defect himself or have it rectified by a third party and to demand reimbursement of the necessary costs from the supplier.
3. With regard to costs resulting from rectification and/or replacement, the supplier bears the costs of the replacement item in the event that the complaint is revealed to be justified.
4. The purchaser has the right in accordance with statutory provisions to withdraw from the contract if the supplier, allowing for statutory exceptions, fails to meet a reasonable time limit set for him for the rectification or replacement of all defective parts. If the defect is insignificant, the purchaser is only entitled to a reduction in the contractual price. Otherwise, the right to a reduction in the contractual price is excluded. Further claims shall be governed exclusively by section VII.2 of these terms and conditions.
5. No guarantee shall be given in the following cases in particular: Unsuitable or improper use, incorrect installation by the purchaser or a third party, natural wear and tear, incorrect or negligent handling, improper maintenance, unsuitable equipment, chemical, electrochemical or electrical influences, insofar as they are not the responsibility of the supplier.
6. If the defect is rectified improperly by the purchaser or a third party, the supplier shall not be liable for the resultant consequences. The same applies for modifications to the delivery item made without prior agreement of the supplier.

##### Defects in title

7. If use of the delivery item leads to the infringement of industrial property rights or copyrights within the Federal Republic of Germany, the supplier shall at his own expense in all cases either entitle the purchaser to continue use or modify the delivery item to such an extent that the infringement of the property right ceases to exist. If this is not possible under economically reasonable conditions or within a reasonable period, the purchaser is entitled to rescind the contract. The supplier is also entitled to rescind the contract under the aforementioned conditions. Furthermore, the supplier shall exempt the purchaser from all damage resulting from undisputed or legally enforceable claims of the respective holders of the property rights.
8. The obligations of the supplier indicated in section VI.7 shall be final, subject to section VII.2, in the event of infringement of property rights or copyright.

They shall exist only if

- the purchaser informs the supplier immediately of any property rights or copyright claimed,
- the purchaser supports the supplier to a reasonable extent in defending such claims and/or he enables the supplier to perform the modifications in accordance with section VI.7.
- all defence measures including out of court settlements are reserved for the supplier,
- the defect in title is not based on an instruction of the purchaser and
- the infringement of rights was not caused by the fact that the purchaser modified or used the delivery item in a manner contrary to the terms of the contract.

9. The purchaser assumes sole responsibility for the documents to be provided by him, such as drawings, templates, samples or such like. The purchaser shall be responsible for ensuring that the working drawings submitted by him do not infringe the property rights of third parties. The supplier shall be under no obligation to the purchaser to check whether any property rights of third parties may be infringed by the submission of offers based on the supplied design. If liability of the supplier still results from specific facts on which the claim is based, the purchaser has to reimburse him.

#### **VII. Liability**

1. If the delivery item cannot be used by the purchaser for the contractually agreed purpose due to negligence or fault on the part of the supplier in the execution of suggestions or advice before or after conclusion of the contract or by breach of other contractual subsidiary obligations, particularly instructions for use and maintenance of the delivery item, the regulations of sections VI and VII.2 shall apply accordingly with the exclusion of further claims of the purchaser.
2. For damages not caused to the delivery item itself, the supplier is liable on whatever legal grounds only
  - in the case of intent,
  - in the event of gross negligence on the part of the owner/agents or managerial staff,
  - in the event of culpable injury to life, limb and health
  - for defects which he fraudulently concealed,
  - in the event of defects in the delivery item to the extent that there is liability for personal injury or damage to privately used items under the Product Liability Act. In the event of a culpable breach of essential contractual obligations, the supplier shall also be liable for gross negligence on the part of other staff and for minor negligence, in the latter case limited to foreseeable damage typical of the contract. Further claims are excluded.

#### **VIII. Limitation**

All claims by the purchaser on whatever legal grounds shall lapse in 12 months. The statutory limitation periods shall apply for deliberate or fraudulent behaviour as well as for claims in accordance with the Product Liability Act.

#### **IX. Applicable Law, Place of Jurisdiction**

1. All legal relationships between the supplier and the purchaser shall be governed solely by the law of the Federal Republic of Germany, which is the law governing legal matters arising between domestic parties.
2. The place of jurisdiction shall be the court of jurisdiction for the location of the head office of the supplier. However, the supplier shall be entitled to take legal action at the location of the head office of the purchaser.

Kaisersbach, 1st JAN 2019

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