

# Terms and Conditions for the supply of products and services (GTC)



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## **I. General Provisions**

1. The scope of the supplies or services (hereinafter referred as: deliveries) are the mutual written declarations. Terms and conditions of the customer apply only to cases where the supplier or service provider (hereinafter: supplier) expressly has agreed in writing.

2. To cost estimates, drawings and other documents (hereinafter: documents) reserves the supplier its property and copyright exploitation rights fully before. The documents may be made available to third parties only with the prior consent of the supplier and, if the order is not placed with the supplier, this immediately upon request. Sentences 1 and 2 are binding for the documents of the supplier, but they can be shown to a third party which got the permission to make deliveries for the supplier.

3. The purchaser has the non-exclusive right to use standard software with the agreed performance parameters in unaltered form on the agreed equipment. The purchaser may make one backup copy without express agreement.

4. Partial deliveries are permissible if they are reasonable for the customer.

## **II. Prices and Payment**

1. Prices are ex work, excluding packing plus the applicable VAT.

2. If the supplier is responsible for assembly or erection and unless otherwise agreed, the purchaser shall pay the agreed remuneration and any incidental costs required as travel costs, costs for the transport of tools and equipment, and personal luggage as well as allowances.

3. Payments are free to make point of payment.

4. The purchaser may set off only those claims that are undisputed or legally found.

## **III. Retention of title**

1. The delivery items (reserved goods) shall remain the property of the supplier until all claims against the purchaser arising from the business connection has been fulfilled. If the value of all security interests of the supplier, the amount of all secured claims by more than 20%, the supplier will be requested by the purchaser to share an appropriate part of security interests.

2. While the retention of title, the purchaser is prohibited a pledge or transfer of ownership and resale only for resellers in the ordinary course of business and only on the condition that the reseller receives payment from his customers or makes the reservation that the property passes to the customer only when he has fulfilled his payment obligations.

3. In attachment, seizure or other act of intervention by third parties purchaser shall immediately notify the supplier.

4. For breaches of duty by the customer, in particular default in payment, the supplier is set invalid after a reasonable time and entitled to recover; the statutory provisions that a time limit remain unaffected. The purchaser is obliged to surrender.

#### **IV. Delivery deadlines; delay**

1. Times set for supplies shall timely receipt of all by the purchaser to be delivered, necessary permits and releases, especially concerning plans and compliance with the agreed terms of payment and other obligations of the purchaser are fulfilled. If these requirements are not met on time, the period extends appropriate; this shall not apply when the supplier is responsible for the delay.

2. If non-observance of the periods of force majeure, mobilization, war, riot, or similar events, e.g. strike or lockout, to extend the deadlines out appropriate.

3. If the supplier is in default, the purchaser - provided he can establish that herefrom a damage has occurred - a compensation for each full week of delay of 0.5% has to be payed, however, a maximum of 5 % of the price of that part of the deliveries require, by reason of the delay could not be put to the intended use.

4. Both compensation claims arising out of delay in delivery as well claims for damages in lieu of performance , the limits stated in paragraph 3 go on, one of the narrators are in all cases of delayed delivery, even after about a limit set for delivery is excluded. This shall not apply in cases of intent, gross negligence, or injury of life, body or health and mandatory liability. The purchaser is only able to quit the contract if the supplier is fully responsible for the delay and or damage. A change of the burden of proof to the detriment of the customer is not associated with the above provisions.

5. The purchaser is obliged to the supplier's request within a reasonable time declare whether he resigns or the contract due to the delay in delivery on the delivery there.

6 If shipment or delivery to the purchaser's request is delayed more than one month after the readiness for shipment, the purchaser may, for every month commenced, pay storage in amounting to 0.5% of the price of the supplies, but no more than 5.0%. The proof of higher or lower storage costs the parties are unaffected.

#### **V. Transfer of risk**

1 The risk is even with carriage paid delivery to the purchaser as follows :

a) for deliveries without installation or assembly , when they have been brought or collected. At the request and expense of the purchaser supplier supplies against the usual transport risks insured;

b ) if the supplies include assembly or erection at the day of taking over in the own work or, if so agreed, after a fault- free trial run.

2 When the shipment, the delivery , the start or performance of assembly or erection, the acquisition in the own work or the trial run to reasons within the purchaser is delayed or if the purchaser has otherwise came into default of acceptance, the risk is transferred to the purchaser.

#### **VI . Installation and assembly**

For the erection and installation , unless otherwise agreed in writing, the following provisions:

1. The buyer shall provide at its own expense and in a timely manner:

a) required all earth and construction work and other ancillary work outside, including to skilled and unskilled labour, building materials and tools,

b ) necessary for the installation and commissioning of commodities and materials, such as scaffolding, lifting equipment and other devices, fuels and lubricants,

c) energy and water at the point of use including connections, heating and lighting,

d) at the site for the storage of machine parts, apparatus , materials, tools, etc. sufficiently large, suitable, dry and lockable rooms for the installation personnel and adequate working and recreation rooms , including the circumstances adequate sanitation facilities; furthermore, the purchaser has to protect the possessions of the supplier and of the erection personnel at the site to take the measures it to would take protection of its own possessions,

e) protective clothing and protective devices needed due to particular conditions prevailing on the site are required.

2. Before the erection work starts, the purchaser shall obscure the necessary information about the location electric power, gas and water lines or of similar installations as well as the necessary structural information without being asked is available.

3. Before starting the installation or assembly need for the work to necessary materials and equipment to the installation or assembly site, and all preparations have progressed so far before the beginning of the construction, that the installation can begin as agreed and carried out without interruption. Access roads and the installation or erection must be levelled and clear.

4. Delaying the installation, assembly or commissioning by the supplier leads not to circumstances, where the purchaser has to give a reasonable extent, the cost of waiting time and in addition to wear travelling costs of the supplier or the erection personnel.

5 The purchaser has to inform the supplier about weekly hours worked by the erection personnel and to certify the completion of the installation, assembly or commissioning.

6 If the supplier demands a the final test, the purchaser has to do it within two weeks. If not, the acceptance shall be deemed to have occurred. The acceptance is also deemed to have occurred if the delivery - possibly after a agreed test phase - has been put into use.

## **VII. Receipt**

The purchaser shall not refuse to receive supplies due to minor defects.

## **VIII. Defects**

Liable for material defects the supplier as follows :

1. All parts or services where a discretion of the supplier reasonable discretion, repaired , redeliver or render new, within the limitation period - without regard to operating time - show a defect, provided that the cause of this at the time transfer of risk was present.

2. Warranty claims expire after 12 months. This does not apply where the law is according to § 438 (buildings and things used for buildings), § 479 , paragraph 1 (right of recourse) and § 634a paragraph 1 No.2 (defects of a building) of the German Civil Code (BGB) prescribes longer periods and in cases of injury to life, body or health, or an intentional or grossly negligent breach of duty of the supplier and in case of fraudulent concealment of a defect. The legal provisions regarding suspension, suspension and recommencement of limitation periods remain unaffected.

3. The purchaser shall notify defects to the supplier in writing immediately.

4. In case of defects, payments made by the purchaser may be withheld in an amount which is in proportionate to the defect occurred. The purchaser may withhold payments only if a complaint is made, the justification can be no doubt. If the complaint is unjustified, the supplier is entitled to expense incurred from the customer demand.

5. First, the supplier has to give the opportunity to rectify within a reasonable time.

6. If subsequent performance fails , the customer may - without prejudice to any claims for damages accordance with Section XI - withdraw from the contract or reduce the remuneration.

7. Claims for defects do not exist in cases of insignificant deviations from the agreed quality, of only minor impairment of usefulness, of natural wear and tear or damage , after the transfer of risk from faulty or negligent treatment excessive strain, unsuitable equipment, defective construction work, unsuitable subsoil or that are not under the contract due to special external influences, or from non -

reproducible software errors. If the customer or third parties make improper modifications or repair work, the consequences thereof shall be likewise excluded.

8. Claims of the purchaser shall be excluded for the purpose of supplementary performance, in particular transport, travel, labour and material costs. Expenses are increased because the subject matter of the supplies were subsequently brought to another location than the customer's branch has been spent, unless corresponds to its intended use.

9. The recourse the purchaser has against the supplier pursuant to § 478 BGB (recourse of entrepreneur) is limited to cases where the purchaser meets exceeding the statutory warranty claims agreements. For the scope of recourse the purchaser has against the supplier § 478 2 BGB and number 8 are binding.

10. Claims for damages shall apply in respect to Section XI ( Other Claims for Damages ). Further or other than the VIII in this Section with respect to claims of the purchaser against the supplier or its agents due to a defect are excluded.

### **IX . Industrial property rights and copyrights; legal defects**

1. Unless otherwise agreed, the supplier is obliged only in the country of delivery of free industrial property rights and copyrights of third parties (hereinafter to provide property rights). If a third party for infringement of property rights by the supplier provided the contractual use deliveries against the purchaser legitimate claims contract, the supplier shall be liable to the purchaser within the specified in Section VIII, No. 2 Period as follows:

a) The supplier shall either, at its option and at its own expense for the deliveries obtain a license, or modify them so that the property right is not infringed or exchanged. If this is not possible under reasonable conditions, the supplier is entitled to statutory rights of rescission or reduction.

b) The supplier's liability to pay damages shall be governed by Section XI.

c ) The obligations of the supplier mentioned above will only apply if the purchaser informs the supplier immediately in writing of any such claim asserted by the third, not acknowledge an infringement and any protective measures and settlement negotiations are reserved. If the purchaser stops using the supplies in reduce the damage or for other good reason, he is bound to the third party noted that with the no acknowledgment of the alleged infringement is connected.

2. Claims of the purchaser shall be excluded if it is responsible for the violation of property rights.

3. Claims of the purchaser shall also be excluded if the infringement of property rights by specifications made by the purchaser, to a not foreseeable range by the supplier or application is caused by the fact that the delivery by the purchaser has changed along without using the products delivered .

4. In the case of trademark infringements for the number 1 letter a regulated claim of the purchaser is in addition, the provisions of Section VIII Nos. 4, 5 and 9 accordingly.

5. In case of other defects, the provisions of Section VIII shall apply accordingly.

6. Further or other than those regulated in this Section IX claims of the customer against the supplier or its agents due to a defect are excluded.

### **X. Impossibility; contract adjustment**

1. If the delivery is impossible, the purchaser is entitled to claim damages, it was because that the supplier is not responsible for the impossibility. However, the limited claim or damages by the customer for 10% of the value of that part of the delivery which can not be put to the intended use because of the impossibility. This limitation shall not apply in cases of intent, gross negligence or injury to life, body or health of mandatory liability; a change in the burden of proof to the detriment of the buyer is not connected. The right of the purchaser to withdraw from the contract remains unaffected.

2. Where unforeseeable events happen within the meaning of Section IV, No. 2, the economic importance or significantly alter the contents of the supplies or considerably to the supplier, the contract will be adjusted appropriately in good faith. As far as doing so is economically unreasonable, the supplier shall have the right to withdraw from the contract. Will he make use of this right of withdrawal,

he shall after having realized the repercussions of the immediately report the event to the purchaser, even if initially the purchaser agreed an extension of the delivery period.

#### **XI . Other claims for damages**

1. Damages and reimbursement of expenses the purchaser may have (hereinafter: compensation claims), regardless of the legal reason, including infringement of obligations under the contract or in tort, shall be excluded.

2. This does not apply, unless mandatory liability, e.g. under the German Product Liability Act, in cases of wilful misconduct, gross negligence, injury of life, body or health, essential for violation of contract. The claim for damages for the breach of fundamental contractual obligations is to contract-typical, foreseeable limited damage, unless caused by intent or gross negligence or breach of life, body or health is liability . A change in the burden of proof to disadvantage of the customer is not connected with the above provisions.

3. If the purchaser is entitled to damages under the Section XI. shall lapse VIII. with this expiration of the applicable period of limitation for claims for defects under Section No. 2 damage claims under the Product Liability Act, the statutory statute of limitations .

#### **XII . Jurisdiction and applicable law**

1. Sole place of jurisdiction if the customer is a merchant, with all of the contractual relationship disputes arising directly or indirectly out of the headquarters of the supplier. The supplier may also be entitled to bring an action at the purchaser.

2. Applies to the legal relations in connection with this agreement by German substantive law under exclusion of the United Nations Convention on „Contracts for the International Sale of Goods (CISG)“.

#### **XIII . Validity of the contract**

The contract remains the legal invalidity of individual provisions, the remaining parts are binding. This does not apply if adherence to the contract would represent unreasonable for a party.

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