

# Terms of sale and delivery – Status as of January 2015

## I. General provisions

1. Mutual written declarations are decisive for the scope of the deliveries or performances (hereinafter: deliveries). However, the buyer's general terms and conditions of business only apply if the supplier or performance provider (hereinafter: supplier) has expressly agreed to them in writing. Oral agreements must be confirmed in writing to be valid. Offers carry no obligation prior to our written order confirmation.
2. The supplier reserves without restriction its property rights and its exploitation rights arising from copyright for cost estimates, drawings and other documents (hereinafter: documents). The documents may only be made available to third parties with the prior consent of the supplier and, if the order is not granted to the supplier, the documents must be returned to the supplier upon request without undue delay. Sentences 1 and 2 apply correspondingly for the buyer's documents; these may, however, be made available to third parties which the supplier has permissibly commissioned for the deliveries.
3. Partial deliveries are permissible provided they are reasonable for the buyer.
4. Specifications of dimensions, weights and other characteristics of the goods are approximate values and are subject to the tolerances common in the field. The specifications do not indicate warranted characteristics in the legal sense provided they are not expressly designated as such. The products are described exclusively in our catalogue.

## II. Prices and payment conditions

1. The prices listed are ex works and do not include packaging, shipping costs and transport insurance, nor do they include the legally applicable VAT.
2. The supplier's pecuniary claim is due 10 days after receipt of invoice.
3. For payments made within 10 days of the invoice date a 3% discount is granted. For payments made within 30 days of the invoice date a 2% discount is granted. All invoices are payable in full within 60 days of the invoice date.
4. Payments shall be made free of all transfer charges to the supplier's account.
5. The buyer can only settle with claims that are uncontested or legally effective.
6. If payment is made late, the supplier has the right to calculate interest for delay in accordance with currently valid legislation.

## III. Shipping terms; returns

1. Shipping occurs ex works and with no guarantee of the cheapest type of shipping, provided no specific agreement has been reached. Orders of more than €500 are shipped free of charge; orders of less than €50 are shipped ex works plus a €10 handling charge. Export shipments above a net goods value of €250 are made free to the German border or F.O.B. at a German sea port.
2. Returning goods requires the consent of the supplier, provided this is not a matter of justified claims. If the buyer returns goods without the express consent of the supplier, and provided the reason for this is not a defective delivery, then the supplier shall charge a processing fee of 15% of the net goods value at current purchasing prices. The right to demand contractual fulfillment and acceptance of the goods, including reimbursement of the added costs incurred by the supplier due to the return, remains unaffected hereby. Returns of damaged and discontinued goods are never accepted.

## IV. Retention of title

1. The objects of the deliveries (retained goods) remain the property of the supplier until all of the supplier's claims against the buyer that have arisen from the business transaction have been fulfilled. Insofar as the value of all security interests to which the supplier is entitled exceeds the value of all secured claims by more than 20%, the supplier shall release part of the security interests upon request by the buyer.
2. While the retention of title is in effect, the buyer does not have the right to pledge the goods or transfer them by way of security. During this time, only resellers may resell the goods in the usual course of business and only under the condition that the reseller receives payment from its customer or, if the reseller stipulates that title to the goods is transferred to its customer, only after the customer has fulfilled its payment obligations.
3. a) If the buyer sells the retained goods, then the buyer transfers as security the future claims on its customer that arise from the resell, – including all ancillary rights such as balance claims. – This transfer takes effect with no special subsequent explanations. If the retained goods are resold together with other objects without an agreement on individual prices, then the buyer transfers to the supplier, with priority over the remaining claim, that part of the total price claim which corresponds to the price of the retained goods set by the supplier in its invoice.  
b) During substantiation of a justified interest, the buyer must provide the supplier with the customer information required to satisfy the supplier's claims against the customer and the buyer must hand over the required documents.  
c) Until revocation, the buyer is authorised to collect the transferred claims from the resell. If an important reason exists, in particular delayed payment, stoppage of payment, entry into insolvency proceedings, protest of a bill or justified suspicion of over-indebtedness or pending inability to pay on the part of the buyer, the supplier has the right to revoke the buyer's authorisation to collect. Furthermore, the supplier can, after giving prior warning with a reasonable grace period, disclose the assignment for security, realise the transferred claims and demand that the buyer disclose the assignment for security to the customer.  
4. a) The buyer is permitted to process the retained good or to mix it or connect it with other objects. The processing, mixing or connecting (hereinafter: processing) is carried out for the supplier. The buyer shall keep the new thing for the supplier and afford it the care that a proper salesman does. The new thing counts as a retained good.  
b) If processing is carried out with other objects which do not belong to the supplier, the supplier is entitled to a share of the ownership of the new thing which corresponds to the ratio of the value of the processed, mixed or connected (hereinafter: processed) retained good to the value of the rest of the processed good at the time of processing. If the buyer acquires individual ownership of the new thing, the supplier and the buyer agree that the buyer grants to the supplier a share of the ownership of the new thing created by the processing corresponding to a ratio of the value of the processed retained good to the value of the rest of the processed good at the time of processing.  
c) If the new thing is sold, the buyer transfers herewith to the supplier as security its claim against the customer from the re-sell, including all ancillary rights. This transfer takes effect with no special subsequent explanations. The transfer only applies to an amount that corresponds to the value set by the supplier for the processed retained good in its invoice. The share of the claim transferred to the supplier shall be given settlement priority. With regard to the authorisation to collect as well as the requirements for its revocation, No. 3. c) applies correspondingly.  
d) If the buyer connects the retained good with real estate or mobile things, then the buyer also transfers as security the claim to which it is entitled as compensation for the connection, including all ancillary rights, to an amount corresponding to the ratio of the value of the connected retained good to the value of the rest of the connected goods at the time of the connection. This transfer takes effect with no special subsequent explanations.
5. In the event of executions, confiscations or other access or intervention by a third party, the buyer must inform the supplier immediately.
6. In the event of breach of duty by the buyer, in particular delayed payment, the supplier has the right, after the expiration of a reasonable grace period for performance given to the buyer, to withdraw or retract; the legal stipulations on the expendability of setting a grace period are unaffected hereby. The buyer is obligated to surrender possession.

## V. Deadlines for deliveries; delay

1. If the supplier is prevented from meeting a performance deadline, the performance deadline is pushed back by a reasonable period; this does not apply if the supplier itself is responsible for the delay. Deadline compliance assumes the proper receipt of all documents, required approvals and releases, in particular of plans, delivered by the buyer, as well as the compliance of the buyer with the agreed payment conditions and other obligations. If these requirements are not fulfilled on time, the deadlines shall be extended correspondingly; this does not apply if the supplier is responsible for the delays.
2. Agreed delivery dates ("Delivery by ...", "Delivery in ...", "Delivery on ...") count as target dates, provided they are not expressly declared as binding by phrases such as "at the latest on ...", "guaranteed till ...".
3. If deadlines are not met due to force majeure, e.g. mobilisation, war, civil unrest or other event, e.g., strike, lockout, the deadlines are extended accordingly.
4. If the supplier is late, the buyer can – insofar as it can verify that it has incurred damages hereby – demand compensation for each complete week of delay of 0.5%, but totalling no more than 5%, of the price for the part of the delivery that, because of the delay, could not be put to its intended use.
5. Compensation claims by the buyer due to delivery delays and instead of performance which exceed the limits listed in No. 4 are excluded in all cases of delayed delivery, even after the expiry of any delivery deadline that may have been set. This does not apply insofar as liability is mandatory in cases of wilful intent, gross negligence, personal injury or death; a change in burden of proof to the disadvantage of the buyer is not connected herewith. The buyer can only withdraw from the contract within the framework of legal provisions, insofar as the supplier is responsible for the delivery delay.
6. If requested to do so by the supplier, the buyer is obligated to declare within an appropriate deadline whether, due to the delivery delay, it intends to withdraw from the contract and/or demand compensation in lieu of performance or whether it insists on performance.
7. If, at the buyer's request, shipping or delivery is delayed by more than a month from notification of readiness for shipping, the buyer may be charged a storage fee for each month commenced of 0.5% of the price of the delivery items, up to a maximum, however, of 5%. The contracting parties have the right to provide evidence of higher or lower storage costs.
8. If the buyer claims that it did not receive a delivery shipped to it, the supplier can charge the buyer for the costs of the inquiry, no less, however, than €30.
9. Additional and other claims and rights in connection with delayed delivery or performance are excluded.

## VI. Transfer of risk

1. Risk is transferred to the buyer, even in the case of carriage-free delivery, when the delivery is brought to shipping or is picked up, but no later than when the delivery leaves the warehouse, and indeed this is also the case if the delivery is transported on our lorries. Upon the buyer's request and at cost to buyer, the deliveries shall be insured against the usual transport risks.
2. If shipping or delivery is delayed for reasons attributed to the buyer or if the buyer delays acceptance for other reasons, then the risk passes to the buyer.

## VII. Acceptance

1. The buyer may not refuse acceptance of deliveries due to negligible defects.

## VIII. Material defects

The supplier is liable for material defects as follows:

1. All parts or performances that display a material defect within the limitation period without regard to operating time, shall, at the discretion of the supplier, be remedied, replaced or rendered again free of charge, provided the cause of the defect occurred before the risk transfer.
2. Material defect claims have a limitation period of 12 months. This does not apply if legislation dictates longer periods.
3. The purchaser shall inspect the received goods immediately after arrival for quantity, condition and any assured characteristics. The buyer shall inform the supplier about material defects in writing and without undue delay. Acknowledgement of material defects must always be made in writing.
4. In the event of a defect notification, an amount of the buyer's payments may be retained, which corresponds to the share of the material defects found. The buyer may retain payments if a defect notification is made provided there is no doubt about the validity of the claim. If the defect notification is shown to be unjustified, the supplier has the right to demand that the buyer compensate the supplier for its cost incurred.
5. Initially the supplier always has the opportunity for supplementary performance within an appropriate period.
6. If the supplementary performance is unsuccessful, the buyer can withdraw from the contract – without affecting any damage claims in accordance with Art. XI – or reduce the payment. The legal right to withdraw does not require that the supplier is responsible for an existing defect of a purchased good. In all other cases, the buyer may only withdraw if there is a breach of duty for which the supplier is responsible.
7. There shall be no claims for defects in the case of negligible deviations from the agreed condition, of only negligible impairments to usability, of natural wear or of damages that occur after the transfer of risk as a result of improper or careless treatment, overloading or unsuitable operating materials or due to particular external influences which are not presupposed by the contract. If the buyer or a third party makes improper changes or performs improper maintenance work, there shall also be no claims for defects from this or from the consequences arising therefrom.
8. Claims by the buyer for the necessary expenses incurred for the purpose of supplementary performance, in particular transport, infrastructure, labour and material costs, are excluded insofar as the expenses increase because the delivery item is subsequently relocated to a different place than the buyer's place of business, unless the relocation is in keeping with its intended use.
9. The buyer has statutory rights of recourse against the supplier only insofar as the buyer has not reached any agreements with its customer which go beyond the statutory claims for defects. Furthermore, number 8 applies correspondingly for the extent of the buyer's right of recourse against the supplier.
10. In addition, Art. XI (Other damage claims) applies for damage claims. Additional claims or claims other than those regulated by Art. VIII, which are made by the buyer against the supplier and its agents, and which are based on a material defect are excluded.

## IX. Commercial property rights and copyrights; defects of title

1. Unless agreed otherwise, the supplier is obligated to provide the delivery free from third-party commercial property rights and copyrights (hereinafter: property rights) in the supplier's country only. Insofar as a third party asserts justified claims against the buyer owing to the infringement of property rights through deliveries provided by the supplier which are used as per contract, the supplier shall be liable to the buyer within the period defined in Art. VIII No. 2 as follows:
  - a) The supplier shall at its choice and at its cost either obtain a right of use for the relevant deliveries, change the delivery so that property rights are not infringed or exchange the delivery. If this is not possible at reasonable conditions, the buyer shall be entitled to the statutory right of withdrawal or reduction. The buyer cannot demand compensation for useless expenditures.
  - b) The supplier's obligation to provide compensation for damages is governed by Art. XI.
  - c) The aforementioned obligations of the supplier apply only if the buyer promptly notifies the supplier in writing about claims raised by third parties, if the buyer does not recognise the claim and if the supplier retains its right to all defensive actions and settlement talks. Should the buyer discontinue the use of the delivered items in order to mitigate damages or for other important reasons, it shall notify the third party that the discontinuation of use does not imply the acceptance of an infringement of property rights.
2. Claims of the buyer are excluded insofar as it is responsible for the infringement of property rights.
3. Claims of the buyer are further excluded insofar as the infringement of property rights is caused by special specifications of the buyer, by an application which was not foreseeable by the supplier or due to the fact that the delivery is changed by the buyer or used together with products which were not delivered by the supplier.
4. In the case of property rights infringements, the provisions of Art. VIII No. 4, 5 and 9 correspondingly apply to the claims of the buyer set forth in No. 1 a)
5. In the case of other defects of title, the provisions of Art. VIII apply correspondingly.
6. Irrespective of their legal bases, additional claims and rights or claims and rights (e.g., cancellation, reduction, withdrawal) other than those regulated by this article that are made by the buyer against the supplier and its agents on the grounds of material defect are excluded.

## X. Impossibility; amendment

1. To the extent that supply is not possible the buyer is entitled to demand compensation unless the supplier is not responsible for the impossibility. However, the claim for compensation by the buyer shall be confined to 10% of the value of the part of the delivery which cannot be put to its intended use, due to the impossibility. This limitation does not apply insofar as liability is mandatory in cases of wilful intent, gross negligence, personal injury or death; a change in burden of proof to the disadvantage of the buyer is not connected herewith. The right of the buyer to withdraw from the contract is not affected.
2. Insofar as an unforeseeable event in the sense of Art. V No. 3 changes the commercial importance or the contents of the delivery or have substantial implications on the operation of the supplier, the contract shall be readjusted in accordance with the principles of good faith. Insofar as this is commercially unjustifiable, the supplier has the right to withdraw from the contract. If the supplier intends to withdraw from the contract it shall notify the buyer of this without undue delay after recognising the implications of the event, even if an extended delivery time was initially agreed with the buyer.

## XI. Other claims to compensation for damages

1. Claims to compensation for damages on the part of the buyer, regardless of their legal basis, but in particular on account of breach of duties derived from contractual obligation and from impermissible acts are excluded.
2. This does not apply insofar as liability is mandatory, e.g., in accordance with the Product Liability Act, in cases of wilful intent, gross negligence, personal injury or death or on account of infringement of essential contractual obligations. Compensation for damage for infringement of essential contractual obligations is, however, limited to contractual, foreseeable damages unless it is a matter of wilful intent or gross negligence or unless liability is assumed because of personal injury or death. The aforementioned stipulations do not imply a change in the burden of proof to the disadvantage of the buyer.
3. Insofar as the buyer is entitled to compensation for damages in accordance with Art. XI, these expire at the end of the expiry period valid for material defect claims in accordance with Art. VIII no. 2.

## XII. Place of jurisdiction and applicable law

1. If the buyer is a dealer, the sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship (including check and security claims) is the seat of the supplier. The supplier, however, has the right to bring legal action at the buyer's place of business.
2. Contractual relations are governed by German substantive law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## XIII. Binding nature of the contract

If individual provisions of this contract are or become legally invalid, the remaining sections of the contract shall remain binding. This does not apply if abiding by the contract would represent an unreasonable hardship for one of the parties.