

General terms of delivery and payment

I. General

1. All deliveries and performances are based on these terms and on contractual agreements apart if existing. Diverging purchase conditions of the customer do not become part of the contract by acceptance of the order. In the absence of particular agreements a contract is deemed as concluded by the written order confirmation of the vendor.
2. The vendor reserves all proprietary and copy rights on samples, cost estimates, drawings and similar information - physical and unphysical, also electronic format. They may not be made accessible to third parties. The vendor undertakes to only make accessible to third parties information and documents received by the customer with his consent.

II. Price and payment

1. Unless otherwise agreed, prices apply ex works, including loading, but excluding packing and unloading. Prices are subject to VAT at the legal rate.
2. Unless otherwise agreed payment is to be made cash to, the vendor's bank account without any deduction, i.e.:
1/3 down payment after receipt of the order confirmation,
1/3 immediately following notification that the main components are ready for dispatch,
the remainder within a further month after passing of risk.
3. If the customer does not fulfil his financial obligations or his commitments resulting from the reservation of proprietary rights, if his financial situation should substantially deteriorate or if his financial embarrassment comes to the notice of the vendor after conclusion of the contract the vendor may fix a due date for payment of the entire remaining amount, even though later dated bills of exchange have been accepted.
4. We are entitled to assign the claims arising from our business relationship. Our claims are assigned to A.B.S. Global Factoring AG, Wiesbaden. Payments can only be made to A.B.S. Global Factoring AG with debt-discharging effect. The bank details can be found on the invoice.

III. Delivery time, delays in delivery

1. The delivery time or period results from the agreement of the contractual partners. The fulfilment is subject to all commercial and technical issues being cleared between the contractual partners and to all obligations by the customer being met, e.g. that the customer has furnished all necessary official certificates or that he has paid the down payment. If this is not the case the delivery time will be extended by a reasonable period. This will not apply if the vendor is responsible for the delay.
2. The respect of the delivery time or delivery period is under reservation of the vendor obtaining correct and punctual delivery. If any delay becomes evident the vendor will provide the information as soon as possible.
3. The delivery period is fulfilled if the article of sale has left the factory of the vendor before expiry date or if notice has been given that the article is ready for dispatch. As far as an acceptance has to be made the date of acceptance - except in case of a justified refusal of acceptance - shall be relevant, alternatively the indication of readiness to accept.
4. If the delivery or the acceptance of the article of sale is delayed for reasons under the customer's responsibility the customer will be charged the cost generated by the delay, starting one month after notice of readiness of dispatch or of acceptance.
5. If the delivery time or delivery period is not respected due to force majeure, to industrial disputes or other events - even if occurred at subcontractor's - beyond the control of the vendor the delivery period shall be reasonably extended. The vendor shall inform the customer about the beginning and the end of such circumstances as soon as possible.

6. If the vendor is in delay causing damage to the customer the latter is entitled to claim a lump sum compensation. This compensation shall amount to 0.5 % for each week of delay, but in total to not more than 5 % of the value of the part of delivery that cannot be used in time or agreed in the contract due to the delay.

Further claims from delivery delay shall be derived without exception from article VII of these terms.

IV. Passing of risk

1. The passage of risk will be governed by the INCOTERMS 2010 supply clause agreed in the purchase contract. In the absence of any such agreed supply clause, the risk will pass to the customer when the object of supply has been delivered to the first freight forwarder even if partial deliveries are made or the supplier has taken over other services, e.g. shipping costs, transport insurance or delivery and installation. If acceptance terms were agreed, acceptance shall take place without delay on the acceptance date, or alternatively after the customer has been notified of readiness for acceptance. The customer may not refuse acceptance on account of a minor defect.
2. If dispatch is delayed or prevented as a result of circumstances outside the control of the supplier, the risk will pass to the customer on the date that the customer is notified of readiness for dispatch. The supplier undertakes to conclude at the expense of the customer the insurance policies requested by the latter.
3. Partial deliveries will be permitted if this is reasonable for the customer.
4. If the contract provides for checks or acceptance inspections in the manufacturer's works and/or at the place of installation, the governing conditions shall be agreed separately between the parties, failing which checks and conditions will not be considered agreed.

V. Reservation of title

1. The vendor retains ownership of the goods delivered until all contractual payments have been received to the extent permitted by the law in the country of the customer. On request of the vendor the customer shall give him every assistance in his efforts to protect the vendor's title of the goods in the country concerned.

If the customer resells the goods delivered being subject to reservation of title, he assigns the resulting claims against his purchaser in advance to the vendor, i.e. up to the invoice value of the goods delivered by the vendor.

Any processing and usage of the goods delivered being subject to reservation of title by the customer or by a third party is carried out on behalf of the vendor. The vendor is entitled to common ownership of goods newly generated corresponding to the ratio in value of the goods subject of reservation of title and the goods newly generated.

In the case of delivery of spare parts and accessories and their installation in machines being the property of the customer the vendor gains the common ownership corresponding to the ratio in value of the goods delivered and of such machines.

Within the extended reservation of title the vendor is by request of the customer obligated to release the securities to which he is entitled in as much their value exceeds the claims to be secured by more than 20 %.

2. The vendor is entitled to ensure the goods delivered at the expense of the customer against theft, breakage, fire, water and other damage, unless the customer evidently has made an insurance contract himself.
3. The customer may neither sell nor pledge nor assign by way of security the title for the goods delivered - except within the scope of his normal business activities. In case of pledging, as well as seizure or other dispositions by third parties he shall give information to the vendor without delay.
4. If the customer violates the contract, in particular on delay of payment, the vendor is entitled to take back the goods delivered after request for payment, and the customer shall be liable to return them.
5. Due to the reservation of title the vendor may only claim back possession of the goods if he resigns from the contract.
6. The application for opening an insolvency proceeding entitles the vendor to resign from the contract and to request the immediate return of the goods.

VI. Liability claims

The vendor will be liable for defects and deficiencies in goods delivered to the exclusion of additional claims - subject to section VII - as follows:

1. All parts which turn out to be unserviceable as a result of circumstances prior to the passing of risk are to be repaired or faultlessly replaced free of charge at the equitable discretion of the vendor. Such defects are to be reported to the vendor in writing without delay. Replaced parts become the property of the vendor. If a defect is remedied an apart of the goods delivered the vendor shall be liable during one year for defects in the delivered or repaired parts, under the same conditions as for the originally delivered goods. For all other parts the period mentioned under section VIII shall only be extended by the duration of the operation breakdown caused by the defect of the goods delivered.

2. Following an arrangement with the vendor, the customer must grant the vendor sufficient time and opportunity to perform all the repairs and replacement part deliveries which the vendor considers to be necessary; otherwise the vendor shall be exempted from the warranty for the consequences resulting thereof. Only in urgent cases of endangerment to the safety of the operation and in order to prevent disproportionately serious damage, whereby the vendor shall be informed immediately, the customer is entitled to have the defect remedied either by himself or by third parties and then to claim from the vendor for reimbursement of necessary expenses incurred.

3. Of the direct expenses incurred by the repair and/or replacement, the vendor bears the cost of the replacement part including customary transport by forwarding business or courier service - provided the claim turns out to be justifiable. He also bears the cost for removal and assembly as well as the cost for the provision of possibly necessary fitters and helpers including travelling cost in as much as this does not cause an unreasonable encumbrance of the vendor.

If the customer has claimed from the vendor for a defect according to paragraph 1 and no defect can be revealed to fall under the liability of the vendor the customer has to reimburse the vendor for damage generated by such claim.

4. Within the scope of the legal stipulations the customer has the right to withdraw from the contract if the vendor fails to meet the reasonable deadline given to him for the repair or replacement of a defect - subject to legal exceptional cases. In case of an irrelevant defect the customer is only entitled to reduce the contractual price. Otherwise the right to reduce the contractual price is excluded.

Further claims are determined by the stipulations of section VII 2 of these conditions.

5. No warranty will be taken over in following specific cases:
Improper or inappropriate use, faulty installation or taking into operation by the customer or third parties, natural wear, incorrect or negligent treatment, non-regular maintenance, improper production facilities, faulty building works, inappropriate building ground, chemical, electrochemical or electrical influences - as far as they are beyond the vendor's responsibility.

6. If the customer or a third party effects inappropriate repairs the vendor shall not be liable for the consequences thereof.

This is the same for modifications effected on the goods delivered without prior consent of the vendor.

Deficiencies in title

7. If the use of the goods delivered causes an infringement of domestic industrial property rights or copyrights the vendor shall on his account procure the principal right for further use to the customer or modify the goods delivered to a reasonable extent so that the infringement of property rights does no longer exist.

If this is not possible under economically appropriate conditions or within an appropriate time the customer has the right to withdraw from the contract. Under the mentioned preconditions the vendor also has the right to withdraw from the contract.

Beyond from this the vendor will release the customer from uncontested or legally recognized claims of the title holders in question.

8. Subject to section VII 2 the commitments of the vendor as per section VI 7 are conclusive in case of infringement of domestic industrial property rights or copyrights.

They only apply if

- a. the customer informs the vendor immediately of any claims of infringement of domestic industrial property rights or copyrights,
- b. the customer supports the vendor to a reasonable extent in his defence against such claims or enables the vendor to undertake the modification measures according to section VI. 7,
- c. the vendor can reserve the right of all defensive measures including extrajudicial settlements,
- d. the deficiency is not due to an instruction of the customer and
- e. the infringement of right has not been caused by the fact that the customer has modified the subject of delivery on his own or in a non-contractual manner.

VII. Liability

1. If the goods delivered cannot be used by the customer as intended by the contract due to fault of the vendor because of missing or faulty proposals or advice prior to or following the conclusion of the contract, or due to the infringement of other contractual secondary obligations - in particular regarding instructions for operation and maintenance of the goods delivered - the provisions of sections VI and VII.2 apply appropriately to the exclusion of further claims of the customer.
2. Damages which did not occur on the goods delivered themselves will only be covered by the vendor's liability in case of:
 - a. intent
 - b. gross negligence of the owner, entities or executives,
 - c. non-accidental injury to life, body, health,
 - d. damages which he intentionally withheld or whereof he guaranteed that they did not exist,
 - e. deficiencies of the goods delivered in as far as liability is taken over according to product liability act on injury to life or property of privately used goods

In case of culpable violation of substantial contractual obligations the vendor will also take over the liability for gross negligence of non executive employees and for ordinary negligence, the last case being limited on the contractual reasonably predictable damage.

Any further claims are excluded.

VIII. Limitation

All claims of the customer - regardless for which legal reasons - fall under the statute of limitation within 12 months. For indemnification claims according to section VI1.2 a - e the legal time-limits will be applied.

IX. Software utilisation

As far as software is included in the scope of delivery the customer will be conceded a non-exclusive right to utilize the software delivered including its documentation. It will be submitted to be utilized on the goods of delivery it is provided for. Utilisation of the software on more than one system is prohibited.

The customer is only entitled to copy, revise, translate the software or transform it from object code to source code within the limits permitted by the law (§§ 69 a ff.UrhG). The customer obliges himself not to delete manufacturer indications - particularly copyright marks - or to change them without prior definite agreement by the vendor.

All other rights on the software and the documentations including the copies stay with the vendor or the software supplier. The granting of sub-licences is not allowed.

X. Installation

If the installation of the goods delivered is to be performed by the vendor at the installation site this has to be agreed separately. The basis for this are the vendor's General Terms of Installation.

XI. Applicable law, place of jurisdiction

1. All legal relations between the vendor and the customer exclusively apply to the law of the Federal Republic of Germany concerning the legal relationship between domestic parties.
2. The place of jurisdiction will be the court having jurisdiction for the vendor's head office. The vendor is also entitled to take legal actions at the customer's main office.

The UN-law on sales is excluded.

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