

General Delivery Conditions

January 2010

I. General Conditions

1. The following delivery conditions shall apply exclusively; any conditions of the orderer which are inconsistent with or deviate from our delivery conditions are not recognized by us unless we expressly agree in writing to their applicability. Our delivery conditions shall apply also if we make delivery to the orderer without any reservations with knowledge of the orderer's conditions inconsistent with or deviating from our delivery conditions.
2. All agreements made between us and the orderer for the purpose of implementing this Agreement are set out in writing in this Agreement.
3. Our delivery conditions are applicable only in relation to entrepreneurs within the meaning of sec. 310 (1) BGB (German Civil Code).
4. Our delivery conditions shall apply also to all future business with the orderer.

II. Offer – Offering Documents

1. Our offer is non-binding unless otherwise expressed in the confirmation of order.
2. We retain title and copyright to all cost estimates, drawings and other documents (hereinafter: documents). The documents may be made accessible to third parties only with our prior consent and must be returned promptly at our request if the order is not given.

III. Prices – Terms of Payment

1. Unless otherwise stated in the confirmation of order, our prices are applicable “ex works” exclusive of packaging.
2. The statutory value added tax is not included in our prices; it will be separately shown on the invoice in the amount required by law on the day of invoicing. Invoices will be issued and payment shall be made in Euros, unless otherwise agreed.
3. Any deduction of a discount requires a separate written agreement.
4. All taxes, duties, fees and other levies including social security contributions in the orderer's country and/or the country of delivery/assembly payable by us and/or our staff and/or our customers on the basis of or in connection with the conclusion and/or implementation of the Agreement shall be paid by the orderer.
5. Unless otherwise expressed in the confirmation of order, the purchase price shall be payable net (without any deduction) within 30 days of the invoice date. Payment shall be deemed to have been made only once the amount has been irrevocably credited to our account. The statutory provisions regarding the consequences of default in payment shall apply.
6. The orderer has set-off rights only if its counter-claims have been awarded by final and non-appealable judgement, are undisputed, or have been acknowledged by us. Moreover, the orderer may exercise a right of retention only insofar as its counter-claim is based on the same contractual relationship.

7. Partial deliveries are admissible to the extent that the orderer can reasonably be expected to accept them.

IV. Retention of Title

1. We retain title to the goods until all claims arising from an on-going business relationship have been fully discharged. In the event of conduct in breach of contract on the part of the orderer, in particular default in payment, we shall have the right to take back the object of delivery. If we take back the object of delivery, this shall constitute a cancellation of the Agreement. We may utilize the object of delivery after taking it back. The proceeds from utilization are to be credited against the orderer's debts after deducting reasonable utilization costs.
2. The orderer is obliged to carefully treat the goods. If maintenance or inspection work is necessary, the orderer shall have it done in time and at its own expense. The orderer must properly store the goods, insure them adequately for their reinstatement value at its own expense, and prove this if so demanded.
3. The orderer has the right to resell the goods in the ordinary course of business. In this case, however, the orderer shall assign all claims against its customers or third parties arising from the resale against its customers or third parties in the amount of the end invoice amount (including VAT), regardless of whether or not the object of purchase was resold without or after processing. The orderer shall remain authorized even after the assignment to collect this claim from the customer or third party. Our right to collect the claim ourselves shall remain unaffected. We undertake, however, not to collect the claim as long as the orderer discharges its payment obligations arising from the receipt of proceeds, is not in default in payment, and especially as long as no application has been filed for the institution of composition or insolvency proceedings and the orderer has not discontinued making payments. If that is the case, we can demand that the orderer inform us of the assigned claims and their debtors, provide all information necessary for the collection of the claims, hand over the related documents and inform the debtors (third parties) of the assignment.
4. In case of any levy of execution or other third-party action, the orderer must inform us promptly in writing so that we can bring an action pursuant to sec. 771 ZPO (German Code of Civil Procedure). If the third party is not able to refund the court costs and out-of-court costs for an action pursuant to sec. 771 ZPO, the orderer shall be liable to us for the loss incurred.
5. The processing or conversion of the object of purchase by the orderer shall always be done for us. If the object of purchase is processed together with other things not belonging to us, we shall acquire co-ownership of the new thing in the proportion of the value of the object of purchase (end invoice amount including VAT) to the other things processed at the time of processing. The thing created through processing shall in all other respects be governed by the same provisions as the object of purchase delivered subject to retention of title.
6. If the object of purchase is inseparately mixed with other things not belonging to us, we shall acquire co-ownership of the new thing in the proportion of the value of the object of purchase (end invoice amount including VAT) to the other mixed things at the time of mixing. If the things are mixed in such a way that the orderer's thing is to be regarded as the principal thing, it shall be deemed agreed that the orderer transfers co-ownership to us on a pro rata basis. The orderer shall safekeep the sole ownership or co-ownership thus created free of charge for us.
7. The orderer also assigns to us, as security for our claims against it, the claims against a third party which arise from a combination between the object of purchase and any real estate.

8. We undertake to release our security at the orderer's request insofar as the realizable value of our security exceeds the claims to be secured by more than 10%; the selection of the security to be released is made by us.

V. Delivery Period

1. The beginning of the delivery period to be indicated by us is contingent upon the clarification of all technical questions.
2. Furthermore, the performance of our duty to deliver presupposes the timely and proper performance of the orderer's duties. We reserve the right to raise the defence of lack of performance of the contract.
3. If the orderer is in default of acceptance or if the orderer otherwise culpably violates co-operation duties, we have the right to demand compensation for damage incurred thereby including any extra expenses. Further rights or claims are reserved.
4. If the conditions in 3. above are fulfilled, the risk of accidental destruction or accidental deterioration of the object of purchase shall pass over to the orderer at the time of default of acceptance or debtor's default.
5. We shall be liable in accordance with the provisions of the law insofar as the underlying purchase contract is a fixed transaction within the meaning of sec. 286 (2) no. 4 BGB or of sec. 376 HGB (German Commercial Code). We shall also be liable in accordance with the provisions of the law insofar as the orderer has the right in consequence of a delay in delivery which we are responsible for to claim that its interest in the further performance of the contract has ceased to exist.
6. Furthermore, we shall be liable in accordance with the provisions of the law insofar as a delay in delivery is due to intentional or grossly negligent breach of contract that we are responsible for; any fault on the part of our agents or representatives shall be attributable to us. If the delay in delivery is due to grossly negligent breach of contract that we are responsible for, our liability for damages shall be limited to the foreseeable damage typically arising.
7. We shall also be liable in accordance with the provisions of the law insofar as the delay in delivery which we are responsible for is due to the culpable violation of a principal contractual duty; however, in this case the liability for damages shall be limited to the foreseeable damage typically arising.
8. Apart from the above, we shall be liable in the event of a delay in delivery for every full week of delay in the amount of 1% of the delivery value as lump-sum compensation for default, however with a maximum of 10% of the delivery value.
9. The orderer's further statutory rights and claims are reserved.

VI. Passing of the Risk – Acceptance

1. Unless otherwise expressed in the confirmation of order, delivery "ex works" is agreed on, even if partial delivery is to be made or other services are to be provided by us, e.g. payment of the forwarding charges or delivery and installation or commissioning. At the orderer's request, deliveries will be insured against the usual transportation risks. The costs for this shall be borne by the orderer.
2. If delivery with installation or assembly is agreed on, the risk of accidental destruction and of accidental deterioration of the thing sold shall pass over on the day of takeover in the orderer's own business or, if so agreed, after a faultless test run. The orderer is obliged to promptly accept the goods and to sign an acceptance protocol if there is no major defect (e.g. non-achievement of the agreed performance, danger emanating from the delivery or performance).

If acceptance is delayed for reasons that we are not responsible for, the goods shall be deemed to have been accepted 12 calendar days after the notification of readiness for acceptance or after the expiry of one month after delivery. If the orderer commissions the goods having been delivered, they shall be deemed to have been accepted after three workdays if not accepted already at an earlier time.

VII. Installation and Assembly

Unless otherwise agreed in writing, the following provisions shall apply to installation and assembly:

1. The orderer must assume at its own expense and provide in time:
 - a) all earthwork, construction work and other side work outside our branch of industry, including the experts and unskilled workers, building materials and tools needed for this,
 - b) the utensils and substances necessary for assembly and commissioning, e.g. scaffolding, lifting tools and other equipment, combustibles and lubricants,
 - c) energy and water at the place of use including the connections, heating and lighting,
 - d) sufficiently large, suitable, dry and lockable rooms on the assembly site for keeping machine parts, equipment, materials, tools etc. and appropriate work and break rooms for the assembly staff including sanitary facilities reasonable under the circumstances; in addition the orderer must take the measures at the building site which it would take to protect its own property in order to protect our property and our assembly staff,
 - e) protective clothing and protective devices necessary in view of special circumstances at the assembly site.
2. Before the beginning of the assembly work, the orderer must make available, without being specifically requested to do so, the necessary information about the location of hidden power lines or gas or water pipes or similar installations as well as necessary static information.
3. Before the beginning of the installation or assembly work, the materials and things to be made available and necessary for the beginning of the work must be on site at the place of the installation or assembly and all preliminary work prior to the beginning of the installation must have progressed so far that the installation or assembly can begin and be completed without any interruption in accordance with the Agreement. Access paths and the installation or assembly site must be level and cleared.
4. If the installation, assembly or commissioning is delayed due to circumstances that we are not responsible for, the orderer must pay the reasonable costs for waiting times and additional necessary travels.
5. The orderer must promptly confirm to us every week the duration of the working time performed by the assembly staff as well as the end of installation, assembly or commissioning.

VIII. Quality Defects and Defects of Title

1. The orderer's warranty claims are conditional upon the proper performance of the inspection and notification duties by the orderer pursuant to sec. 377 HGB.
2. If the goods delivered and/or the services are defective, we shall have the right at our option to improve performance by curing the defect or to deliver a new defect-free thing or service. In case of a remediation of a defect or of substitute delivery, we are obliged to pay all costs necessary for improving performance, especially transportation, travelling, work and material costs, insofar as they do not arise due to the fact that the goods delivered were taken to a place other than the place of performance.

3. If the improvement of performance fails, the orderer has the right at its option to cancel the Agreement or to reduce the price.
4. We assume no liability for damage caused by the following reasons: unsuitable or improper use, faulty assembly by the orderer or a third party, natural attrition and usual wear and tear, faulty or negligent treatment, excessive use, unsuitable operating materials, defective building work, unsuitable building ground, chemical or electrochemical or electrical influences (unless we are responsible for them), improper changes or repair work by the orderer or a third party without our prior consent.
5. We shall be liable in accordance with the provisions of the law if the orderer demands damages on the basis of wilful intent or gross negligence, including wilful intent or gross negligence on the part of our agents or representatives. Unless we can be held liable for intentional breach of contract, liability for damages shall be limited to the foreseeable and typically arising damage.
6. We shall be liable in accordance with the provisions of the law if we culpably violate a principal contractual duty; however, also in this case, liability for damages shall be limited to the foreseeable and typically arising damage.
7. The liability for culpable death, bodily injury or impairment of health shall remain unaffected; the same applies to compulsory liability under the Product Liability Act.
8. Liability is excluded in the case of a sale of used things.
9. Unless otherwise agreed above, liability is excluded.
10. The limitation period for warranty claims is 12 months from the passing of the risk.
11. The limitation period in the event of delivery recourse in accordance with secs. 478, 479 BGB remains unchanged; it is five years, counting from the delivery of the defective thing.

IX. Overall Liability

1. All further damage and compensation claims (hereinafter: damage claims) going beyond those provided for in VIII on whatever legal basis, in particular for breach of contractual duty or based on tort, shall be excluded for the orderer.
2. The limitation in para 1 shall apply also if the orderer demands compensation for useless expenditures instead of claiming damages instead of performance.
3. Insofar as liability for damages on our part is excluded or limited, this shall apply also in respect of the personal liability for damages of our employees, workers, staff, representatives and agents.

X. Place of Jurisdiction – Governing Law – Place of Performance

1. If the orderer is a fully qualified merchant, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our place of business. However, we also have the right to sue at the orderer's domicile.
2. The law of the Federal Republic of Germany shall apply. The applicability of U.N. Sales Law is excluded.
3. Unless otherwise expressed in the confirmation of order, our place of business is the place of performance.

This is a true and valid translation of the original General Delivery Conditions from the German language. Legally only the German General Delivery Conditions shall apply.