

GENERAL TERMS OF DELIVERY TO BE APPLIED IN CONTRACTS AND AGREEMENTS WITH OTHER COMPANIES

Overview:

§ 1	Scope	Page 1
§ 2	Offer and Conclusion of Contract	Page 1
§ 3	Prices and Payment	Page 1
§ 4	Delivery and Delivery Time	Page 1
§ 5	Place of fulfillment, Shipment, Packaging, Transfer of Risk and Acceptance	Page 1
§ 6	Warranty, Defects	Page 1-2
§ 7	Property Rights	Page 2
§ 8	Liability for Damages due to Default	Page 2
§ 9	Retention of Title	Page 2
§ 10	Returns	Page 2
§ 11	Final Clauses	Page 2

§ 1 Scope

- 1.1) All deliveries, services and offers of the Seller are based exclusively on these General Terms of Delivery. These are an integral part of all contracts the Seller concludes with his contractual partners (referred to in the following as „customer“) concerning the deliveries and services he offers. They also apply to all future deliveries, services and offers to the customer, even if they are not separately agreed on.
- 1.2) The business terms and conditions of the customer or third parties do not apply, even if the Seller does not specifically object to their scope in individual cases. Even if the Seller refers to a letter which contains or makes reference to the business terms and conditions of the customer, this does not represent consent to the scope of such business terms.
- 1.3) Our General Terms of Delivery only apply for traders if the contract is linked to operation of trade activities and for corporate bodies of public law as well as special funds under public law.

§ 2 Offer and Conclusion of Contract

- 2.1) All offers are subject to change and are non-binding, unless specifically marked as binding or if they include a specific acceptance deadline. The Seller can accept orders or assignments within fourteen days after receipt.
- 2.2) Only the Contract of Sale including these General Terms of Delivery concluded in writing is authoritative for legal relations between the Seller and the customer. This contains all agreements entered into between the contractual parties concerning the respective subject matter of the contract. Verbal commitments of the Seller made prior to conclusion of this contract are legally non-binding and legal agreements between the contractual parties are replaced by the written contract, unless these expressly specify that they will continue to apply.
- 2.3) Supplements and amendments to agreements made including these General Terms of Delivery must be in written form to become effective. With the exception of Managing Directors and authorized representatives, staff of the Seller are not entitled to make any deviating verbal agreements. Observance of written form is also covered by transfer of texts via telecommunications, especially via telefax or email, provided the copy of the signed declaration is sent.
- 2.4) Data of the Seller concerning the item of delivery and/or service (e.g. weights, dimensions, serviceability, capacity, tolerances and technical data) as well as other displays of the same item (e.g. drawings and illustrations) are only approximate, unless usability for the purpose specified in the contract requires exact compliance. They are not guaranteed quality features, but descriptions or markings of the delivery or service. Deviations usual in the trade, which result on account of legal regulations or which represent technical improvements, as well as replacement of components with equivalent parts, are admissible providing these do not impair usability in accordance with the purpose specified in the contract.
- 2.5) The Seller retains right of ownership and copyright for all offers and cost estimates he submits and for all drawings, illustrations, calculations, prospectuses, catalogs, models, tools and other documents or aids provided to the customer. Without express approval from the Seller, the customer must not make these items accessible to third parties as such or in terms of content, must not make them public, use them or copy them himself or have them used or copied by third parties. At the request of the Seller, he must return these items completely to the seller and destroy any copies made if these are no longer required by him under normal business conditions or if negotiations do not lead to conclusion of a contract.
- 2.6) The customer is not entitled to right of termination pursuant to § 649 BGB (German Civil Code).

§ 3 Prices and Payment

- 3.1) Prices apply for the scope of services and delivery specified in the order confirmations. Additional and/or special services are charged separately. Prices are in EURO ex works, plus packaging, VAT, and for export deliveries subject to additional customs duty and fees and other public charges.
- 3.2) In so far as prices agreed are based on the list prices of the Seller and delivery is to be made after three months after conclusion of the contract, the list prices of the Seller valid at the time of delivery apply (less any respective percentage or fixed discount agreed).
- 3.3) Invoices are payable net within thirty days, unless agreed otherwise in writing. Receipt of payment at the Seller is the authoritative date of payment. Cheques are accepted as payment only after they have been cashed. If the customer does not fulfill his payment obligations punctually, interest is charged on outstanding amounts with interest at a normal bank level for account overdrafts as of the due date; assertion of higher interest and other damages in case of default remains unaffected.
- 3.4) Offsetting of counter-claims on the part of the customer or retention of payments linked to such claims is only admissible if such counter-claims are undisputed or legally binding.

- 3.5) The Seller is entitled to execute or provide outstanding deliveries or services for advance payment or with guarantee of security if, after conclusion of the contract, he is informed of circumstances which might considerably reduce the creditworthiness of the customer and which might endanger payment of unsettled receivables of the Seller from the customer from the respective contractual relationship (including other orders as well as outline and/or annual contracts).

§ 4 Delivery and Delivery Time

- 4.1) Deliveries are always provided by the Seller ex works, excluding packaging, plus VAT.
- 4.2) Periods or dates for deliveries and services proposed by the Seller are always approximate, unless a fixed period or a fixed date has been expressly promised or agreed. If shipment has been agreed, delivery period and delivery dates relate to the time ex works or transfer of goods to the forwarder, freight carrier or other third parties assigned with such transport.
- 4.3) Irrespective of his rights from default on the part of the customer, the Seller can demand from the customer an extension of delivery and service periods or a postponement of delivery and service dates for the period for which the customer does not fulfill his contractual obligations to the Seller.
- 4.4) The Seller is not liable for impossibility of delivery or for delivery delays if such have been caused by force majeure or other unforeseeable events at the time of concluding the contract (e.g. operational interruptions of any kind, difficulties in procuring material or energy, transport delays, strikes, legal lock-outs, lack of staff, energy or raw materials, difficulties in procuring official approvals required, state measures or the missing, incorrect or unpunctual delivery by suppliers) and for which the Seller is not responsible. If such events considerably impede the Seller with regard to the delivery or service or make it impossible to provide the delivery or service and such impairment is not of a temporary period, the Seller is entitled to withdraw from the contract. In the case of obstacles of a temporary nature, the delivery and service periods are extended or the delivery and service dates postponed by the respective time of impediment plus a reasonable preparation period. If it is unreasonable to expect the customer to accept the delivery or service as a result of the delay, he is entitled to withdraw from the contract via immediate written declaration of such to the Seller.
- 4.5) The Seller is entitled to execute part deliveries at his discretion. Any resultant additional costs for transport and packaging are borne by the customer.
- 4.6) If the Seller is in default regarding a delivery or service or if a delivery or service becomes impossible for him, irrespective of the reason, liability of the Seller for damages is limited pursuant to § 8 of these General Terms of Delivery.

§ 5 Place of fulfillment, Shipment, Packaging, Transfer of Risk and Acceptance

- 5.1) Bremen / Federal Republic of Germany is the place of fulfillment for all obligations resulting from the contractual relationship, unless specified otherwise. If the Seller also has to provide installation work, the place of fulfillment is the place where installation was carried out.
- 5.2) Type of shipment and packaging are at the obligatory discretion of the Seller.
- 5.3) Risk passes onto the customer at the latest on transfer of the delivery item (start of the loading process is authoritative) to the forwarder, freight carrier or any other third party commissioned with executing shipment. This also applies if part deliveries are made or the Seller has also assumed other (e.g. shipment or installation). If shipment or transfer is delayed as a result of a cause for which the customer is responsible, risk is passed on to the customer as of the day on which the delivery item is ready for shipment and the Seller has notified the customer of such.
- 5.4) The customer bears storage costs after transfer of risk. In the case of storage by the Seller, storage costs amount to 0.25 % of the invoice amount for the delivery items to be stored per completed week. Assertion and verification of further or higher storage costs remains unaffected.
- 5.5) The shipment will only be insured against theft, breakage, transport, fire and water damage or other insurable risks at the express request of the customer and the customer shall bear resultant costs.
- 5.6) If acceptance of goods is to be executed, the item purchased is deemed as accepted, if
 - the delivery and, if the Seller is obliged to execute installation, installation has been completed,
 - the Seller has notified the customer of such with reference to the acceptance fiction pursuant to this § 5.6 and has requested the customer to execute acceptance,
 - twelve working days have expired since delivery or installation, or the customer has started to use the purchased item (e.g. the system delivered has been started) and in this case six working days have expired since the delivery or installation, and
 - the customer has omitted to execute acceptance within this period for a different reason than due to a defect notified to the Seller which makes usage of the purchase item impossible or considerably impairs usage.

§ 6 Warranty, Defects

- 6.1) The warranty period is twelve months as of delivery or, if acceptance is required, as of the respective acceptance.
- 6.2) The items delivered are to be carefully examined immediately after delivery to the customer or a third party specified by the customer. Items are deemed as approved with regard to obvious defects or other defects which would have been identifiable in the case of immediate, careful examination if the Seller does not receive notification of defects within seven working days after delivery. With regard to other defects, delivery items are deemed as approved by the customer if the notification of defects is not received by the Seller within seven working days of the time at which the defect was detected; if the defect were detectable for the customer during normal use at an earlier time, however, this earlier time is authoritative for the start of the period of notification of defects. At the request of the Seller, a claimed item of delivery is to be sent to the Seller carriage prepaid. Return of a claimed item of delivery to the Seller must always be in a completely decontaminated condition – without any toxic or hazardous materials. In the case of a justified notification of defect, the Seller will pay the costs of the lowest cost shipment; this does not apply if costs increase because the item of delivery is located at a different location to the location of use in accordance with contractual purpose.

- 6.3) In the case of material defects of items delivered, the Seller is obliged and entitled to reworking or substitute delivery, at his discretion – within an appropriate period. In the case of failure, i.e. impossibility, unreasonable expenditure, refusal or inappropriate delay of reworking or substitute delivery, the customer is entitled to withdraw from the contract or to reduce the purchase price accordingly.
- 6.4) If the Seller is responsible for a specific defect, the customer can claim damages pursuant to the conditions specified in § 8.
- 6.5) In the case of defects to components of other manufacturers which the Seller cannot rectify due to licensing rights or factual reasons, the Seller will either assert his warranty claims against the manufacturer and suppliers on account of the customer or assign these to the customer, at his discretion. Warranty claims against the Seller exist for such defects in accordance with other conditions and these General terms of Delivery only if legal assertion of the aforementioned claims against the manufacturer and suppliers was not successful or was not possible due to, for example, insolvency. For the duration of the legal dispute, the statute-barred status of the respective warranty claims of the customer against the seller does not apply.
- 6.6) The warranty expires if the customer changes the item of delivery or has the item of delivery changed by a third party without approval of the Seller and such action makes rectification of the defect impossible or unreasonably difficult. The customer must in all such cases bear the additional costs of defect rectification which arise as a result of such change.
- 6.7) An agreed delivery of used items agreed with the customer in an individual case is made on exclusion of any warranty for material defects.

§ 7 Property Rights

- 7.1) In accordance with this paragraph 7 the Seller has to ensure that the item of delivery is free of any industrial property rights or copyrights of third parties. Each contractual partner will inform the other contractual partner in writing immediately if claims are asserted against him due to infringement of such rights.
- 7.2) If the item of delivery infringes an industrial property right or copyright of a third party, the Seller will adjust or replace the item of delivery at his discretion and at his cost so that the rights of a third party are no longer infringed, but that the item of delivery still fulfills the functions agreed to by contract, or will procure right of use for the customer by means of a respective license agreement. If the Seller is not able to achieve such within an appropriate period, the customer is entitled to withdraw from the contract or to reduce the purchase price accordingly. Any claims for damages on the part of the customer are subject to the restrictions of § 8 of these General Terms of Delivery.
- 7.3) In the case of legal infringements resulting from products of other manufacturers supplied by the Seller, the Seller will at his discretion assert his claims against the manufacturers and pre-suppliers for the account of the customer or assign such to the customer. Claims against the Seller in such cases only apply in accordance with this § 7 if legal assertion of the aforementioned claims against manufacturers and pre-suppliers was without success or is not possible, for example, due to insolvency.

§ 8 Liability for Damages due to Default

- 8.1) Liability of the Seller for damages, irrespective of the legal reason, especially due to impossibility, default, defective or incorrect delivery, infringement of contract, infringement of duties during contract negotiations and inadmissible action is restricted in accordance with this § 8 in so far as such is based on respective default on the part of the Seller.
- 8.2) The Seller is not liable in the case of simple negligence on the part of his organs, legal representatives, employees or other vicarious agents, provided such an infringement is not an infringement of important contractual duties. Important contractual duties include the duty for punctual delivery and installation of the item of delivery, that the item has no defects which more than inconsiderably impair its functionality or use, as well as consultancy, protection and care duties which enable use of the item of delivery by the customer in accordance with the contract or which serve to protect body and life of staff of the customer or to protect the customer's property from considerable damage.
- 8.3) In so far as the Seller is liable for damages in accordance with § 8.2, such liability for damages is limited to damages the Seller had foreseen as a possible consequence of infringement of contract on concluding the contract or which he should have foreseen in applying normal management care. Indirect damages and consequential damages which are a result of defects of the item of delivery are only liable to replacement in so far as such damages are to be expected in the case of appropriate use of the item of delivery.
- 8.4) In the case of liability for simple negligence, the duty of replacement on the part of the Seller for material damage and other resultant financial damage is limited to an amount of twice the net order value per case of damage, even if this involves an infringement of important contractual duties.
- 8.5) The foregoing liability exclusions and restrictions apply in the same scope in favor of the organs, legal representatives, employees and other vicarious agents of the Seller.
- 8.6) If the Seller provides technical information or acts as a consultant and such information or consultancy are not part of the scope of services owed by him in accordance with the contract agreed on, such information and consultancy is provided free of charge and on exclusion of any liability.
- 8.7) The restrictions of this § 8 do not apply for liability of the Seller for intent, for guaranteed procurement features, for injury to life, body or health or pursuant to product liability law.

§ 9 Retention of Title

- 9.1) The following retention of title agreed serves to secure respective existing current and future demands of the Seller from the customer arising from the delivery relationship existing between the contractual parties (including accounts receivable from a current account relationship restricted to this relation of delivery).
- 9.2) The goods supplied by the Seller to the customer remain the property of the Seller until complete payment of all secured receivables. Goods, including those goods subject to retention of title in accordance with the following conditions, will be referred to in the following as 'goods subject to retention of title'.
- 9.3) The customer safeguards the goods subject to retention of title for the Seller free of charge.
- 9.4) The customer is entitled to process the goods subject to retention of title in proper business transactions until collateral realization (paragraph 9.5), and to sell such goods. Pledges and security assignments are not admissible.
- 9.5) If the goods subject to retention of title are processed by the customer, it is agreed that such processing is executed on behalf of and of the account of the Seller as manufacturer and that the customer

acquires ownership of the item or co-ownership (partial ownership) of the newly created item in relation to the value of the goods subject to retention to the value of the newly created item, if processing is made using materials from several owners or the value of the processed item is higher than the value of the goods subject to retention of title. If such ownership acquisition does not ensure with the Seller, the customer herewith assigns his future ownership or – in accordance with the aforementioned ratio – co-ownership of the created item to the Seller. If the goods subject to retention of title are combined with another item into a unitary item or is mixed inseparably, and if one of the other items is to be considered as the main item, the Seller transfers to the Buyer pro rata co-ownership of the unitary item in accordance with the ratio specified in sentence 1, provided the item belongs to the Seller.

- 9.6) In the case of re-selling the goods subject to retention of title, the customer herewith assigns the resultant claim against the buyer to the Seller – in the case of co-ownership of the Seller in the goods subject to retention of title, pro rata in accordance with the co-ownership share. The same applies to claims which replace the goods subject to retention of title or which arise otherwise with regard to the goods subject to retention of title, such as e.g. insurance claims or claims related to inadmissible handling in case of loss or destruction. The Seller revocably authorizes the Buyer to collect the claims assigned to the Seller in his own name. The Seller may only revoke this collection authorization in case of collateral realization.
- 9.7) If a third party has access to the goods subject to retention of title, especially by way of pledging, the Buyer will immediately notify the third party of the ownership of the Seller and inform the Seller accordingly to enable him to assert his ownership rights. If the third party is not able to reimburse the Seller with legal or out-of-court costs resulting in connection with such action, the Buyer is liable for such costs to the Seller.
- 9.8) The Seller will release the goods subject to retention of title and any items replacing it or claims in so far as the respective value exceeds the level of the claims secured by more than 50 %. Selection of the items to be released after this is at the discretion of the Seller.
- 9.9) If the Seller withdraws from the contract in the case of conduct on the part of the customer which is not compliant with the contract – especially payment default – (collateral realization), the Seller is then entitled to demand return of the goods subject to retention of title.

§ 10 Returns

Returns as a result of incorrect scheduling for which the customer is responsible are only admissible as of a net value of more than Euro 500 and with written approval from the Seller. In addition, return is only possible in the case of justifiable, originally packed items whose account calculation is not older than 6 months. After receipt of goods, the customer is credited with forty per cent of the new value of goods in so far as the delivery was made carriage paid. Custom-made products manufactured at the request of the customer are excluded from this regulation. Returns as a result of repair orders made by the customer are only accepted by the Seller in a completely decontaminated condition.

§ 11 Final Clauses

- 11.1) If the customer is a businessperson, a corporate body under public law or a special fund under public law or has its general venue of jurisdiction in Germany, the venue of jurisdiction for all disputes arising from business relations between the Seller and the customer is Bremen or the location of the customer, chosen at the discretion of the Seller. For claims against the Seller, Bremen is the exclusive venue of jurisdiction. Legal regulations concerning exclusive venue of jurisdiction are not affected by this regulation.
- 11.2) Relations between the Seller and the customer are subject exclusively to the law of the Federal Republic of Germany, excluding foreign law and excluding the Uniform Law on the International Sale of Goods.
- 11.3) If the contract or these General Terms of Delivery include regulation gaps, it is agreed that regulations will apply in replacement of such gaps which the contract partners would have agreed on in terms of the business purpose and objectives of the contract and the General Terms of Delivery, if they had been aware of such a gap.
- 11.4) If any parts of these General terms of Delivery or any term in other agreements is or becomes ineffective, this does not affect the effectiveness of the remaining terms or agreements.

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