

Conditions of Delivery for Products and Services

I. General Terms and Conditions

1. The scope of deliveries or services (hereinafter: deliveries) shall be defined by mutual written declarations. The General Standard Terms and Conditions of the customer shall, however, only be applicable as far as the supplier or provider (hereinafter: supplier) has explicitly approved thereof in writing.
2. With regard to cost estimates, drawings and other documents (hereinafter: documents) the supplier will retain without restriction the rights of exploitation pertaining to his property rights and copyrights. The documents may only be made accessible to third parties after prior consent of the supplier and will upon request have to be returned immediately, if the order is not placed with the supplier. Paragraphs 1 and 2 apply accordingly to the customer's documents. However these may be made accessible to third parties whom the supplier has permissibly assigned to perform deliveries.
3. As for standard software the customer has the nonexclusive right of use, with the capability characteristics agreed upon to be applied in an unchanged form, on the equipment agreed upon. The customer may create a backup copy without explicit prior agreement.
4. Partial deliveries will be permissible, as far as the customer can be reasonably expected to accept these.

II. Prices and Terms of Payment

1. Prices are ex works, excluding packaging, plus the legal rate of value-added tax.
2. If the supplier has to provide for the installation or assembly and nothing else has been agreed upon, the customer will in addition to the consideration agreed upon have to pay for all relevant incidental expenses like travel expenses, costs for the transport of the tools and of the personal luggage as well as field allowances.
3. Payments shall be made free of charge to the supplier's payment office.
4. The customer may only offset against claims that are undisputed or have been determined to be legally valid.

III. Reservation of Ownership

1. The supplier retains ownership of the goods delivered (conditional commodity) until full payment has been received and up to the settlement of all claims against the customer, which result from the transaction and are due to the supplier. In so far as the value of all security rights to which the supplier is entitled exceeds the sum of all secured claims by more than 20 %, the supplier shall release a corresponding portion of the security rights at the customer's request.
2. During the period in which ownership of the delivered goods is reserved any pledging or transfer of property by way of security shall be prohibited for the customer and he will only be entitled to resell the goods delivered to resellers in the ordinary course of business and only under the condition that the reseller will receive payment from the purchaser or resell the goods with the proviso that the ownership will only be transferred to the purchaser upon fulfilment of his payment obligations.
3. The customer hereby assigns all claims due to him from the purchaser to the supplier accepting this. If the delivered goods are incorporated or mixed inseparably with other goods, the supplier shall acquire partial ownership of the new product in proportion to the share of his delivery. Proportionately thereto the customer's claim against the purchaser will be assigned to the supplier accepting this assignment.
4. In case of violations of obligations on the part of the customer, in particular in case of a delay in payment, the supplier shall have the right to withdraw from the contract and to claim return of the delivered goods; the customer shall be obliged to surrender the goods. The return of the goods or the assertion of a reservation of ownership shall not imply a withdrawal from the contract on the part of the supplier; such actions or the pledging of the conditional commodity by the supplier will not imply the supplier's withdrawal from the contract, unless the supplier has explicitly given notice thereof.

IV. Delivery Periods; Default of Delivery

1. The observance of delivery periods is subject to the proviso that all documents, required authorisations and releases, especially of plans, which are to be supplied by the customer, will be available in time and that the terms of payment agreed upon as well as other obligations on the part of the customer will be observed and fulfilled. If these requirements are not met in time, the delivery periods shall be extended appropriately; this will not apply, if the supplier is responsible for the delay.
2. If the nonobservance of delivery periods has been caused by vis major, e.g. mobilisation, war, revolt, or by similar events, e.g. strike, lock-outs, the delivery periods shall be appropriately extended.
3. If the supplier causes a delay in delivery, the customer shall – as far as he satisfactorily proves that he has suffered damage therefrom – be entitled to claim a compensation for the delay in the amount of 0,5 % per full week of delay, at the utmost yet of 5 % of the value of that part of the deliveries, which could due to the delay not be appropriately put into operation.
4. Any claims for damages of the customer because of a delay in delivery as well as any claims for damages instead of performance, exceeding the stipulations set forth under paragraph 3, shall in all cases of delayed delivery be excluded, also after a fruitless lapse of an appropriate period of time conceded to the supplier for the delivery. This shall not be applicable as far as cases of intent, gross negligence or injury to human life, body or health are concerned, which are legally subject to liability; a change of the burden of proof to the disadvantage of the customer will not be connected thereto. The customer may only withdraw from the contract within the framework of legal provisions as far as the delay in delivery falls under the responsibility of the supplier.
5. The customer shall be obliged to declare upon the supplier's request within an adequate period of time, whether he withdraws from the contract because of the delay in delivery and/or claims damage instead of performance or whether he insists on delivery.
6. If the dispatch or the delivery of the goods is delayed upon the customer's request by more than one month after the notification of the readiness for dispatch, the customer can be charged the costs incurred by the storage in the amount of 0,5 % of the price of the delivered goods per each month commenced, at the utmost yet a total of 5 %. The contracting parties will be free to provide proof of higher or lower storage costs.

V. Passage of Risk

1. In case of deliveries which are made freight prepaid the risk will also be transferred to the customer as follows:
 - a) in case of deliveries excluding installation or assembly at the time they are dispatched or collected. Upon the customer's request and at his own cost the supplier will arrange insurance to cover against normal transport risks;
 - b) in case of deliveries including installation or assembly on the day of commissioning or after a faultless operation during a test run, provided the latter has been agreed upon.

2. If the dispatch or the delivery of the goods, the beginning or the execution of the installation or the assembly, the commissioning or the trial operation is delayed due to reasons falling under the responsibility of the customer, or if the acceptance of the goods is delayed due to other reasons falling under the responsibility of the customer, the risk will be transferred to the customer.

VI. Installation and Assembly

Unless otherwise agreed in writing, the following provisions are applicable to the installation and assembly:

1. At its expense the customer shall take on and provide in due time for:
 - a) all excavation work, construction work and other additional work to be provided by different industries, including specialists and auxiliary personnel, construction materials and tools required therefore;
 - b) supplies and materials necessary for assembly and repair work such as scaffolding, cranes and lifting equipment and other jigs and fixtures, fuels and lubricants;
 - c) the supply of energy and water at the place of use, including appropriate connections, heating and lighting;
 - d) sufficiently large suitable dry and lockable premises at the assembly site for storing machine parts, equipment, materials, tools etc. and work and recreation rooms appropriate for assembly personnel including sanitary facilities commensurate with the circumstances. To protect the supplier's property and assembly personnel at the building site, the customer shall incidentally take the measures that it would take to protect its own property;
 - e) protective clothing and safety devices necessary due to special circumstances at the assembly site.
2. Prior to the commencement of assembly work the customer shall automatically make available necessary details concerning the location of concealed electricity cables, gas pipes and water pipes or similar details as well as necessary static data.
3. Prior to the commencement of the installation or assembly work all provisions of materials and items requested for the commencement of the work must be available at the installation or assembly site, and all preliminary work must have progressed so far prior to the installation, that the installation or assembly may be commenced as agreed upon and be carried out without interruption. Access routes and the installation or assembly site have to be levelled and cleared.
4. If the installation, assembly or commissioning is delayed due to circumstances not falling under the responsibility of the supplier, the customer shall have to pay to a reasonable extent for the costs incurred due to waiting time and additionally necessary travels of the supplier or of the assembly staff.
5. The customer shall certify on a weekly basis the respective working hours of the assembly staff and it will also certify without delay the completion of the installation, assembly or commissioning and submit such certificates to the supplier.
6. If the supplier requests after completion of the work that an acceptance test of the delivery has to be made, it will have to be performed within a period of two weeks. If it is not performed within the period scheduled for this, the acceptance shall be deemed to have been made. The acceptance shall also be deemed to have been made, if the delivery is – if applicable, after conclusion of a test period agreed upon – put into operation.

VII. Acceptance

The customer may not refuse acceptance of deliveries because of insignificant faults or deficiencies.

VIII. Material Defects

As for material defects the supplier shall be liable as follows:

1. The supplier undertakes at its own choice either to remedy defects free of charge or to effect a new delivery or to provide for new performances for all such parts or performances that prove within the statutory time limits – irrespective of their service life – to have a material defect or deficiency, provided the cause thereof has already existed at the time of the passage of risk.
2. Any claims resulting from material defects will be statute-barred within a period of 12 months. This will not be applicable, if longer statutory time limits are prescribed by law pursuant to Article 438, paragraph 1 no. 2 (structures and items for structures), Article 479, paragraph 1 (right of recourse) and Article 634a, paragraph 1 no. 2 (structural defects) of the BGB (German Civil Code).
3. The customer has to inform the supplier immediately in writing of any material defects.
4. In case of material defects the customer shall be entitled to withhold payments up to an amount which is deemed appropriate in relation to the material defects arisen. The customer may only withhold payments, if there can be no doubt that the notice of defects given is justified. If the notice of defects given proves to be unjustified, the supplier shall be entitled to assert a claim for compensation for any expenses incurred thereby.
5. The supplier shall at first always be given the opportunity to remedy defects or to effect replacement deliveries within an appropriate period of time.
6. If such efforts to remedy defects or to effect replacement deliveries fail, the customer shall – without prejudice of any possible claims for damages according to Article XI – have the right to withdraw from the contract or to reduce the consideration.
7. No claims because of defects or deficiencies may be asserted in case of an only insignificant deviation from the quality agreed upon, in case of an only insignificant impairment of serviceability, in case of natural wear and tear or in case of damages incurred after the time of the passage of risk due to faulty or neglectful treatment, excessive stress and strain, unsuitable material, poor construction work, unsuitable building ground or which are incurred due to special outside influences that are not presupposed by the contract, as well as in case of nonreproducible software faults. In case the customer or a third party remedies any defects improperly or initiates any improper alterations of the goods, no claims because of defects or deficiencies may be asserted therefore or for the consequences resulting thereof.
8. Any claims of the customer arising out of or in connection with the costs which have to be incurred for the purpose of remedying defects, in particular any transport, travel, working and material costs, shall be excluded, as far as these expenses are increased due to the fact that the object of the delivery has subsequently been brought to another location than the site of the customer, unless such re-location is in accordance with the terms of the contract agreed upon.
9. Any legal claims resulting from the right of recourse may only be asserted against the supplier under the condition that the customer has not reached with its purchaser any agreements beyond any legal claims for compensation because of defects or deficiencies. As for the extent of the claim of the customer against the supplier as a result of the right of recourse paragraph 8 shall be applicable accordingly.
10. As for the right to claim damages Article XI (Other Damage Claims) shall be applicable. Any additional or other claims of the customer against the supplier and the supplier's vicarious agents because of a material defect other than those stipulated hereunder in Article VIII shall be excluded.

IX. Industrial Property Rights and Copyrights; Deficiencies in Title

1. Unless otherwise agreed upon the supplier shall be obliged to make sure that the delivery effected will only in the country of the place of delivery be free of any industrial property rights and copyrights of third parties (hereinafter: industrial property rights). Should a third party assert justified claims because industrial property rights or copyrights have been violated by deliveries effected by the supplier and used according to the contract, the supplier shall be liable to the customer within the period of time stipulated under Article VIII, paragraph 2, as follows:
 - a) The supplier shall at its own choice and at its own expense either make sure, that the customer will be given the right of use or that the object of the delivery will be modified in such a way that the violation of the industrial property right or copyright will not longer exist or that the object of the delivery will be exchanged. Should this not be possible for the supplier in terms of commercially adequate conditions, the customer shall be entitled to make use of its legal rights to withdraw from the contract or to reduce the purchase price.
 - b) The supplier's obligation to pay damages is determined and set forth under Article XI.
 - c) The obligations of the supplier mentioned above will only be applicable, in as far as the customer informs the supplier immediately in writing of any asserted claims by a third party, if and when the customer does not acknowledge such a violation, and in as far as all defense measures and out-of-court settlements are reserved to the supplier. Should the customer for reasons of minimizing loss or for any other important reasons stop using the delivery, the customer shall be obliged to give notice to the third party that this stop of usage does in no way imply any acknowledgement of a violation of industrial property rights or copy rights.
2. Any claims of the customer shall be excluded, if the violation of industrial property rights or copyrights falls under the customer's responsibility.
3. Any claims of the customer shall further be excluded, if the violation of industrial property rights or copyrights has been caused by special instructions on the part of the customer, or by an application not foreseeable by the supplier, or has been caused due to the fact that the delivery has been modified by the customer or has been used together with products that have not been delivered by the supplier.
4. In case of violations of industrial property rights and copyrights the claims of the customer as set forth under paragraph 1 a) shall be applicable, and as for the rest the stipulations of Article VIII, paragraphs 4, 5 and 9 shall be applicable accordingly.
5. In case of the existence of other deficiencies in title the stipulations of Article Art. VIII shall apply accordingly.
6. Any additional or other claims of the customer against the supplier and the supplier's vicarious agents because of a deficiency in title than those stipulated hereunder in Article IX shall be excluded.

X. Impossibility; Adaptation of Contract

1. As far as it is impossible for the supplier to effect the delivery, the customer shall be entitled to claim damages, provided the impossibility does not fall under the responsibility of the supplier. However the customer's damage claim shall be limited to 10 % of the value of the part of the delivery that cannot be usefully put into operation due to impossibility. This restriction shall not be applicable as far as cases of intent, gross negligence or injury to human life, body and health are concerned, which are legally subject to liability; a change of the burden of proof to the disadvantage of the customer will not be connected thereto. The customer's right to cancel the contract shall remain unaffected.
2. If unforeseeable events within the meaning of Article IV, paragraph 2, significantly change the economic relevance or the contents of the delivery or have a major impact on the supplier's operation, the contract shall be adjusted accordingly under consideration of good faith. In so far as this is not economically acceptable, the supplier shall have the right to cancel the contract. If it intends to exercise this right of cancellation, it shall notify the customer thereof immediately after it becomes aware of the significance of the event, i.e. even if an extension of the delivery period has initially been agreed upon with the customer.

XI. Other Damage Claims

1. Any claims to pay compensation for damages or expenses advanced by the customer (hereinafter: claims for damages) shall irrespective of whatever legal reason, especially because of a violation of duties resulting from the obligatory relation or because of an unlawful act, be excluded.
2. This shall not apply as far as cases are concerned which are legally subject to liability, e.g. in accordance with the product liability law, in cases of intent, gross negligence, injury of human life, body and health or in case of a violation of major contractual obligations. The claim for damages resulting from a violation of major contractual obligations is, however, limited to the reasonably foreseeable, typical damage under the contract, provided it does not refer to a case of liability like in the event of intent or of gross negligence or of injury of human life, body and health. A change of the burden of proof to the disadvantage of the customer will not be connected to the above mentioned regulations.
3. As far as the customer is entitled to assert claims for damages as stipulated hereunder according to Article XI, these shall be statute-barred upon the expiration of the statutory time limit applicable to claims for material defects according to Article VIII, paragraph 2.

XII. Place of Jurisdiction and Applicable Law

1. The only place of jurisdiction for all disputes arising directly or indirectly out of or in connection with the contractual relationship shall be the seat of the supplier, if the customer is a businessman. The supplier shall, however, also be entitled to file a suit at the customer's head office.
- 2 All legal relations resulting out of or in connection with this contract are subject to the substantive law of the Federal Republic of Germany, subject to the exclusion of the United Nations' Convention on Contracts for the International Sale of Goods (CISG).

XIII. Binding Nature of the Contract

Even if individual points of the contract are invalid, the remaining parts of the contract shall remain binding. This shall not apply, if adherence to the contract would constitute unreasonable hardship for one of the parties.

- Status as of January 2002 -