

Terms and Conditions of Sale and Delivery



As at: 4/2011 WEEE-Reg.-Nr. DE 14484959

1. Validity

1. Our terms and conditions only apply towards merchants [Kaufleute] within the meaning of section 310 BGB [German Civil Code].
2. The terms and conditions of delivery below apply to all our contracts, deliveries and other services unless they have been amended or excluded with our express written consent. They apply in particular also when we carry out the delivery/service without reservation in awareness of our customer's divergent terms and conditions. Our contracting partners' general terms and conditions of business only apply when we confirm them in writing.
3. Our terms and conditions also apply to all future contracts, deliveries and services even if their text is not sent again to our contracting partner with our quotation or our order confirmation

2. Quotation and transaction

1. Our quotations are without obligation. Contracts and other agreements only become binding through our written confirmation or through our delivery/service.
2. All agreements between us and our customers are to be put in writing on agreement of the contract. Agreements made between our staff or representatives and our customer on or after the conclusion of the contract require our written confirmation for their validity, the powers of representation of our staff and representatives are limited in this respect.
3. Commercial confirmation with contractual effect of our contracting partner even without our objection does not cause a contract to come about with contents diverging from our quotation, our order confirmation or our other written declarations.
4. Insofar as the written form is required in the present terms and conditions it is also met by the dispatch of corresponding declarations by fax or email. A written agreement is also considered to have come about if we and our contracting partner make covering declarations with regard to the contents in writing.

3. Prices, price increases and payments

1. Unless something different has been agreed our prices are set in euros and our contracting partner must make its payments in euros. All prices given are net prices. VAT in the legal amount is to be added to them. Otherwise our prices are quoted for delivery ex works including packaging for domestic transport however plus freight, taxes, insurance, transport, letters of credit or other documents required for the fulfilment of the contract, assembly and commissioning as well as any costs for the familiarization of the operating staff insofar as nothing different has been agreed.
2. If our cost prices and/or the wage or salary rates valid for us for orders that are to be fulfilled later than six weeks after contract agreement increase between entering into the contract and the execution of the order we are entitled to demand a proportionately correspondingly increased price within the scope of the percentage share of the cost price and/or the payroll costs in the agreed price.
3. We reserve the right to deliver on a delivery versus payment basis against payment of the agreed prices. Apart from that our invoices are to be paid within 14 days after invoice date without deduction if nothing different has been agreed or is stated in our quotation/ order confirmation. Cheques or bills of exchange are only accepted by us on account of performance; we can return them at any time; they are considered as payment if they have been cashed and irrevocably credited to our account. All costs and expenses accruing in connection with the issuing of the cheque and bill of exchange are the responsibility of our customer. If our customer finds itself in arrears towards us with any payment obligations irrespective of what type all existing claims against our customer become due immediately.
4. We are entitled without further warning to charge interest in the amount of 8 percentage points above the relevant base rate from the due date. Further claims, in particular because of delay of our contracting partner, remain unaffected.
5. Our invoices are deemed to be accepted if our customer does not object in writing within 30 days after receipt of the invoice. We shall indicate this to the customer with each invoice.
6. Offsetting with counterclaims disputed by us and not upheld in a court of law is not permissible. Asserting a right of retention because of claims that are not based on the same contractual relationship is excluded if these claims have not been accepted by us and have not been upheld in a court of law.
7. Our customer may only retain payments because of a notification of defects if no doubt can exist about the eligibility of the notification of defects and moreover only in a scope that is in appropriate proportion to the defects that have arisen.
8. If one of the following events arises, or if we only become aware after entering into the contract of such an event that was already present at the formation of the contract, we can request payments in advance in the amount of the agreed price by our contracting partner and furthermore revoke payment targets agreed or allowed or return current bills of exchange and demand immediate payment. This applies in the following events:
 - Our contracting partner applies for the initiation of judicial or extrajudicial insolvency or composition proceedings or judicial or extrajudicial insolvency or composition proceedings on the assets of our contracting partner are initiated or the initiation of such proceedings is refused for lack of assets;
 - There is a written credit report from a bank or credit agency showing lack of creditworthiness of our contracting partner or a significant deterioration of its financial circumstances or a cheque or bill of exchange of our contracting partner accepted by us is not honoured or is protested;
 - Our contracting partner finds itself within the scope of another transaction with us in default of payment.If our contracting partner does not meet our legitimate demand for payments in advance within an appropriate time extension set by us although we have declared to it that we are declining the acceptance of further services by it, we shall be entitled to withdraw from the contract or to demand compensation instead of the services, however this is only with respect to the part of the contract that has not yet been fulfilled by us.

4. Dispatch and transfer of risk, insurance, disposal

1. In each case, irrespective of the place of dispatch, the risk is transferred with the dispatch of the goods to our customer, even if exceptionally carriage paid delivery, delivery free site or free buyer's warehouse has been agreed. This applies also when alongside the delivery we also have to perform further services (e.g. assembly, installation, commissioning) at the site of operation of our contracting partner, however not in cases where we carry out the transport by our own employees or there is fault of our employees with respect to the destruction of or damage to the goods.
2. If there are no forwarding instructions from our contracting partner or if deviation from

such appears necessary, we shall dispatch at our discretion without obligation by the cheapest or quickest shipping method.

We only insure the delivery item at the request of our contracting partner and at the latter's expense against every risk requested by our contracting partner in particular against theft and transport damage.

Instances of transport damage are to be notified to us without delay, furthermore the recipient must ensure on delivery that the corresponding claims and reservations against the carrier have been registered.

3. If dispatch is delayed at the request of our contracting partner for reasons attributable to our contracting partner the goods will be stored at the expense and risk of our contracting partner.
4. Insofar as we are obliged to take back packaging, our contracting partner shall bear the costs for the return of the packaging used.
5. Our customer shall undertake to dispose of machines and tools supplied after the end of use correctly at its own expense in accordance with the legal regulations. It will release us from our take-back requirement in accordance with section 10 subsection 2 ElektroG [German Electrical and Electronic Equipment Act] and from all obligations in connection with it.

5. Delivery periods, call purchases, delay, impossibility of delivery

1. Delivery periods and dates are only deemed to be binding if they have been confirmed in writing by us.
2. A period of performance only specified by duration starts with the expiry of the day on which the agreement about all the details of the order content is achieved, at the earliest with the acceptance of the order by us, however not before the production of all documents, permits, clearances to be procured by the customer and not before the receipt of any payment on account to be made by the customer. Agreed periods and dates and also the delivery date/ delivery period applicable without such an agreement will be postponed accordingly in the event of delayed achievement of the aforementioned preconditions; the burden of proof lies on the contracting partner to show that it has created the necessary preconditions and has provided the necessary documents, plans and details.
3. Delivery delays as a consequence of force majeure, war, civil disturbance, strike, lock-out, machine breakdown, material shortage or similar circumstances not in our sphere of control excuse us for the duration of the obstruction from the delivery obligations accepted and entitle us at our choice to rescission of contract without however the customer being entitled to rescission; any claims of the customer because of delayed delivery irrespective of the reason are excluded. If delays as defined above last more than three months our contracting partner is entitled to withdraw from the contract excluding any further claims, after setting a further supplementary performance period of at least 4 weeks. The right of withdrawal is limited to the part of the contract not yet fulfilled, unless our contracting partner is no longer interested in the fulfilled part of the contract.
4. Our performance is deemed to be fulfilled if the goods are standing ready for dispatch in our factory in accordance with the contract and the customer has been notified of the readiness for dispatch, furthermore if they leave our factory in accordance with the contract. If the delivery is delayed for reasons attributable to the customer the delivery period is deemed to have been met on notification of the readiness for dispatch. Agreed periods and dates and the delivery date/delivery period applicable without such an agreement is extended or postponed by the period by which our contracting partner is in arrears with its obligations – within a current business relationship and also from other contracts.
5. Partial deliveries are admissible for us. The customer cannot demand them.
6. If we find ourselves behind schedule with the delivery or if our liability in accordance with section 275 BGB [German Civil Code] is excluded, we shall only be liable under the preconditions and in the scope of paragraph 9 for compensation, however with the following additional measures:
 - If we find ourselves behind schedule with the delivery and solely a case of slight negligence is present on our part the claims for damages of our contracting partner is limited to a lump sum compensation for delay in the amount of 0.2 % of the delivery value for each completed week of delay, maximum however 5 % of the delivery value, whereby we reserve the right however to demonstrate that as a consequence of the delay in delivery no or only minor damage has arisen. Claims going beyond that of our contracting partner exist only when the enforcement results from the fact that we are responsible for intent or gross negligence.
 - In the event of our delay our contracting partner has a claim for compensation instead of performance only if it has previously set us an appropriate supplementary period for delivery of at least 4 weeks, whereby it reserves the right to grant us an appropriate period of less than four weeks to the extent that in the individual case a supplementary period for delivery of at least four weeks is unreasonable for the contracting partner.
 - A right to withdraw and claim for damages to which our contracting partner is entitled is in principle limited to the part of the contract not yet fulfilled unless our contracting partner is reasonably no longer interested in the fulfilled part of the contract.
 - Claims for damages directed against us because of delay or exclusion of the liability in accordance with section 275 BGB are time barred after the expiry of one year from the start of the legal time barring.
 - The preceding regulations do not apply if it involves damage from injury to life, limb or health of our contracting partner or the damage is based on an intentional or grossly negligent violation of obligation by us, one of our legal representatives or vicarious agents, furthermore, in the case of delay, not if a fixed-date purchase has been agreed.
7. Orders on call will only be accepted with acceptance periods. If the acceptance period is not defined exactly it ends 12 months after the signing of the contract. For this the goods are to be accepted in approximately equal monthly quantities. If acceptance is not carried out within the agreed period we shall be free to deliver completed deliveries without further notification or to store them at the expense of the purchaser. Furthermore we are entitled to set our customer a supplementary period for acceptance, combined with the threat of rejecting the acceptance of the goods in the event of fruitless expiry of the period.

If the supplementary period elapses in vain we are entitled, giving notice of termination of our delivery commitment, to withdraw wholly or partly from the contract or to demand damages for non-performance, at the same time refusing delivery.

6. Delay in acceptance of our contracting partner

1. If our contracting partner falls behind wholly or partly with the acceptance of our

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services, after fruitless expiry of an appropriate supplementary period set by us with the threat that in the event of the expiry of the period, we shall reject the acceptance of our service by the customer, we shall be entitled either to withdraw from the contract or to demand damages for non-performance. Our legal rights in the event of the acceptance delay of our customer remain unaffected.

2. The customer must reimburse our costs for placement into storage, warehouse rent and insurance costs for goods due for acceptance but not accepted. However there is no obligation on us to insure goods put into storage.

7. Complaints and return

1. We must be notified by the customer of complaints without delay. In these cases the customer may only retain payments if there is no doubt about the legitimacy of the notification of defects. The scope must be in an appropriate proportion to the material defect. If notification of defects is carried out wrongly we can demand indemnification from the customer for the expenses that have arisen.
2. In the event of justified complaints within the warranty period of 2 years, we can choose between carrying out rectification of defects, making substitute delivery or carrying out the performance again. The cause must already be present at the moment of the transfer of risk without regard to the previous operating period.
3. Faultlessly delivered goods will only be taken back by way of exception with express written consent, a proportion of the costs of 20% of the invoice amount being charged to the customer.

8. Condition of the goods, over- or under-delivery

1. Our details and technical descriptions on the services to be supplied and the intended use, on dimensions, weights, utility value or other properties, whether they are contained in brochures, price lists, descriptions, illustrations, drawings, sketches, registers or other files, represent solely approximate values customary in the sector; they are solely for the purpose of the pure description of our products and only contain commitment if this is expressly confirmed by us or otherwise agreed with our contracting partner. The same applies to our samples and patterns which are only intended as approximate display items for quality, dimensions and other properties.
2. In the event of need for technical reasons we reserve the right to supply the goods ordered with deviations in condition, dimensions and other properties to the extent that the items supplied are not impaired in their application properties and the deviations are also not unreasonable for our contracting partner for other reasons.

9. Defects and Liability

1. For investigations, establishment of claims for defects of an item or works and services our contracting partner shall on request provide us promptly with a sufficient quantity of parts that are in its opinion defective for testing by us or third parties, whereby we will bear the costs of dispatch.

2. The rights of our contracting partner because of defects of an item supplied or services performed are determined in accordance with the legal regulations with the proviso that our contracting partner must grant us an appropriate period for supplementary performance of at least four weeks, whereby the contracting partner reserves the right in the individual case to set us a shorter time limit insofar as a 4-week time limit for supplementary performance is unreasonable for it.

Compensation for damages of our contracting partner because of defects of the delivery or service is limited to the scope resulting from item 3 below.

3 Our liability from damage for injury to life, limb or health of our contracting partner based on culpable breach of duty is neither excluded nor limited.

We are only liable for other damage of our contracting partner if it is based on an intentional or grossly negligent breach of duty by us, our legal representative or vicarious agent. Apart from that, claims for damages of our contracting partner because of breach of duty, tort or other legal ground are excluded.

The preceding limitations of liability do not apply in the case of deficiency of agreed properties and conditions if and to the extent that the agreement had the purpose of saving our contracting partner from damage that did not arise to the goods supplied or the service themselves.

To the extent that our liability is excluded or limited this also applies to the personal liability of our salaried staff, manual workers, employees and vicarious agents.

The preceding exclusions of liability apply in every case also for consequential damage.

The preceding exclusions of liability do not apply however to claims in accordance with the German Product Liability Act.

4 If a notification of defects by our contracting partner turns out to be unfounded our contracting partner must reimburse us for all necessary and appropriate expenses arising from the notification of defects.

5 In the case of contracts for purchase and works and materials the defects liability period is two years from the moment of transfer of risk, in the case of used items one year from the moment of the transfer of risk. In the case of contracts for work and services the defects liability period is two years from the moment of acceptance whether this is carried out officially or implied.

10. Retention of title

1. Goods supplied remain our property until the fulfilment of all claims due to us against our customer now or in future.

2. Processing or reorganisation of the goods supplied by us is always carried out for us as manufacturer but without obligation for us. If the goods supplied by us are processed with other objects that do not belong to us we shall acquire co-ownership of the new object in the proportion of the invoice value of the goods supplied by us to the invoice value of the other goods used at the time of the processing. If our goods are combined with other moveable objects into a uniform object and the other object is to be regarded as the principal object our contracting partner will transfer to us the co-ownership proportionately to the extent that this principal object belongs to the contracting partner. A transfer necessary for the acquisition of the ownership or co-ownership by us perhaps is replaced by the agreement made as of now that our customer will keep the item safe for us as a hirer or, to the extent that the customer does not itself possess the item, replace the transfer with immediate effect by assignment of the claim for return against the holder of goods to us.

The goods or items supplied by us to which we are entitled to (co-)ownership in accordance with the preceding regulations are also designated as reserved goods.

3. Our customer is entitled to sell the reserved goods in the ordinary course of business as well as to combine it with items of others. Our customer wholly or proportionately

surrenders to us the claims arising from the sale, combination or another legal ground with respect to the reserved goods with immediate effect in the proportion in which we are entitled to co-ownership of the sold or processed object. In the event of such claims being allocated in current invoices this assignment also records all balance claims. The assignment takes place ranking before other rights.

We authorise our customer with reservation of cancellation to collect the assigned claims. Our customer shall pass on the amounts collected to us without delay insofar as and as soon as our claims are due. Insofar as our claims are not yet due the amounts collected are to be recorded separately by our customer.

Our authority to collect the claim ourselves remains unaffected. However we undertake not to collect the claims as long as our customer discharges its payment obligation from the revenues collected, does not fall into default of payment and in particular does not make an application for the initiation of insolvency proceedings or suspension of payments takes place. If on the contrary this is the case, our customer is obliged to notify us of the assigned claims and their debtors, to deliver the associated documents and to give us all the details necessary for collection as well as to notify the third-party debtors of the assignment, whereby we are also authorised to notify the third-party debtors ourselves of the assignment. With suspension of payments, application for or initiation of insolvency proceedings the rights of our customer to resell, process, commingle or incorporate the reserved goods and the authorisation to collect the assigned claims expire even without our revocation.

4. Our customer must inform us immediately of the access of third parties to the reserved goods and to the assigned claims and bear any costs of interventions or defence against them.

5. Our customer is obliged to treat reserved goods with care, in particular to insure them sufficiently at replacement value at its own expense against fire, water and theft damage.

6. In the event of behaviour contrary to contract by the customer in particular default in payment, we are entitled to take back the reserved goods at the expense of the customer or to demand assignment of its claims for return against third parties. Repossession as well as attachment does not mean withdrawal from the contract unless we declare this expressly in writing.

7. If because of delivery abroad or other reasons our retention of title should lose its validity or if we should for any reason lose the ownership of the reserved goods, our customer is obliged to grant us without delay another safeguarding measure on the reserved goods or another security for our claim that is effective for the law applicable for the head office of the customer and comes closest to retention of title in accordance with German law.

8. If the nominal value of the collateral consistently exceeds our claims by more than 20 % we shall at the request of our customer release a corresponding part of the collateral at our choice.

11. Ownership of documents, secrecy

1. We are entitled to the unlimited ownership and intellectual property rights to cost estimates, calculations, drawings, drafts, moulds, patterns, models, copies, tools, simulations, files and other documents or data that our contracting partner has received directly from us or at our instigation from third parties. Our contracting partner undertakes not to make such objects accessible to third parties in any form without our express approval and promises us for each case of culpable contravention against this obligation a penalty for breach of contract in the amount of €10,000.00 for each individual case.

A right of retention of our contracting partner to such objects is excluded.

2. The contracting partners undertake reciprocally to treat all commercial or technical details that have become known to them from the co-operation and are not public knowledge as their own business secrets and to maintain absolute silence towards third parties about them. The contracting partners may only with the prior written consent of the other partner advertise with their business connection. For each case of culpable contravention against the aforementioned obligations the contracting partners promise each other a penalty for breach of contract of €10,000.00 in each individual case.

12. Trademark rights

1. If the goods are to be manufactured according to drawings, patterns or other details of the contracting partner, the contracting partner is responsible for ensuring that hereby no third party rights, in particular patents, utility models, other trade and intellectual property rights are infringed.

The customer shall indemnify us from the claims of third parties that may arise from any infringement of such rights. Furthermore our contracting partner will assume all costs that arise to us through third parties' assertion of the infringement of such rights and our defending ourselves against them.

2. If in the course of our development work results, solutions or techniques come about that are in some manner capable of being legally protected we alone are the owner of the resulting proprietary rights, copyrights and rights of use and we reserve the right to apply for legal protection.

13. Assignment

1. We are authorised to assign our claims against our customer from our business relationship, of whatever type these claims are, in particular also our claims for reimbursement of damage for delay.

2. Our customer is on the contrary only entitled to the assignment of claims of any sort addressed against us with our written consent.

14. Place of performance, place of jurisdiction, applicable law

1. The place of performance and exclusive place of jurisdiction for deliveries, services and payments including cheque and bill of exchange legal actions as well as all disputes arising between the parties is Wuppertal. However we have the right to take legal action against our contracting partner at any other competent court in accordance with section 12 ff. ZPO [German Code of Civil Procedure].

2. The business relationship between the contracting parties is exclusively governed by the law applicable in the Federal Republic of Germany excluding international sales law, in particular the UN Convention on Contracts for the International Sale of goods and other agreements for standardising sales law.