

General Terms and Conditions of Sale and Delivery



1. General – Scope

1.1. These General Terms and Conditions of Sale and Delivery (hereinafter referred to as 'Terms and Conditions') only apply to entrepreneurs in the exercise of their commercial or independent professional activity and to legal entities under public law or a special fund under public law (hereinafter referred to as 'Customer'). These Terms and Conditions are binding for all our offers and contracts for deliveries and services (hereinafter referred to as 'Goods') in relation to the Customer and apply exclusively.

1.2. Conflicting, additional or deviating terms and conditions of purchase of the Customer do not become part of the contract unless we have agreed to their validity in text form. These Terms and Conditions also apply if we have not expressly objected to the Customer's conflicting, additional or deviating terms and conditions or if we perform contracts in the knowledge of such terms and conditions.

1.3. Individual agreements made in individual cases (including collateral agreements, supplements and changes) take in any case precedence over these Terms and Conditions. These individual agreements must be made in text form by the parties or expressly confirmed by us in text form.

1.4. These Terms and Conditions also apply to all future similar transactions between us and the Customer.

2. Offer and conclusion of contract

2.1. Our offers are subject to change and non-binding. Each order placed by the Customer merely represents an offer to us to conclude a purchase contract.

2.2. The individual contract is only concluded with our order confirmation in text form to the Customer. Acceptance of the order by us can also be implied by the sending of the Goods.

2.3. Illustrations, drawings, weight, dimension, performance and consumption data as well as other descriptions of the Goods sold by us contained in the documents belonging to an offer are only approximate unless they are expressly designated by us as binding. Like other publicly announced information, e.g. in catalogues or on our website, they expressly do not constitute an agreement or guarantee of a corresponding quality or durability of the Goods and serve only to describe Goods of average type and quality. The Customer's expectations regarding the Goods or their use also do not constitute such agreement or guarantee.

2.4. We reserve the right to make changes to the design and shape of the Goods insofar as the deviations are customary in the industry or insofar as the deviations are within the DIN tolerances or insofar as the changes are not significant and reasonable for the Customer. The same applies to the choice of material, the specification, and the design.

2.5. We reserve ownership rights and copyrights to all samples, documents such as cost estimates, drawings, etc. and other information of a physical and non-physical nature – including in electronic form – (hereinafter referred to as 'Documents') provided to or made available to the Customer as part of the preparation of the offer and execution of the contract. These Documents may only be used for contractual purposes and may not be processed, reproduced, or made accessible to third parties without our consent. These Documents must be returned to us or destroyed immediately upon request or if a contract is not concluded. We may disclose documents designated by the Customer as confidential to our affiliated compa-

nies within the framework of the performance of the contract, otherwise we will only make them accessible to third parties with the Customer's consent.

3. Prices and terms of payment

3.1. Our prices are ex works (Ex Works Incoterms® 2020) and do not include shipping, packaging costs, insurance, statutory taxes, customs duties, or other charges. The costs incurred in this respect, in particular the costs for packaging and transport of the Goods, will be invoiced separately. The statutory value added tax will be shown separately in invoices at the statutory rate applicable on the date of invoicing.

3.2. Costs for travelling, daily and overnight expenses will be invoiced separately. Travelling time will be considered working time.

3.3. We are authorized to issue invoices for our Goods on the following dates and payment amounts:

- a)** a down payment invoice for 50% of the price when the order is placed;
- b)** a partial invoice for 30 % at the end of half the delivery period;
- c)** a final invoice upon delivery or upon notification of our readiness for dispatch.

3.4. All payments must be made within 30 days of the invoice date, without any deductions, to our account specified in the invoice. The timeliness of the payment is determined by the receipt of payment by us, not by the dispatch of the payment. The statutory provisions regarding the consequences of default in payment (§ 288 BGB (*German Civil Code*)) apply.

3.5. We expressly reserve the right to demand security for payment or to make an outstanding delivery only against advance payment. In the event of default of payment, we reserve the right to demand immediate payment of all claims arising from the business relationship with the Customer.

4. Obligations of the Customer to co-operate

4.1. The Customer must fulfil all agreed obligations to cooperate in such a way that we are able to fulfil our contractual obligations in a timely and proper manner.

4.2. The Customer is responsible for obtaining and maintaining the necessary official certificates or authorizations at its own expense.

4.3. In individual cases, the Customer must provide us free of charge for the time of performance of our obligations with closed rooms which are not accessible to third parties and which can be locked off for the stay of our employees and for the storage of tools and materials.

4.4. The Customer must provide complete and coherent documents, information and data as well as test and trial material in the required quantity and quality free of charge and on time.

5. Delivery

5.1. Our Goods are designed and manufactured in accordance with the statutory provisions applicable in the Federal Republic of Germany. If the Customer wishes the Goods to comply with provi-

sions that deviate from these provisions, the Customer must inform us of this before placing the order. At the same time, the Customer must send the provisions deviating from the German provisions in German or English.

5.2. Our order confirmation is decisive for the scope of delivery.

5.3. Where agreed in advance, we will insure the delivery of Goods against transport damage and loss. Any transport damage under our responsibility must be reported to us immediately (no later than three working days) after delivery, enclosing a damage report from the transport company.

5.4. The Customer may not refuse to accept a delivery due to insignificant defects in the Goods.

5.5. Partial deliveries are permissible insofar as they are reasonable for the Customer. Partial invoices are permissible for partial deliveries.

5.6. If, in individual cases, in addition to the delivery of the Goods, we are also responsible for their installation or commissioning at the Customer's premises, a joint commercial acceptance will be carried out with regard to this installation or commissioning service. If no authorized representative of the Customer is on site at the time of the declaration of readiness for acceptance of the installation or commissioning service or if the acceptance is delayed for reasons for which we are not responsible, the installation or commissioning service will be deemed to have been accepted at this time. The same applies if the Customer puts the Goods into use without accepting the installation or commissioning service. We will draw up a report on the acceptance of the installation or commissioning service, which is to be signed by the Customer and our installation manager on site. Items still to be completed and minor defects in the installation or commissioning service will be recorded in the acceptance report and may not prevent acceptance of the service provided. If the installation or commissioning service proves not to be in accordance with the contract, Clauses 14 and 15 apply with regard to claims for defects and liability.

6. Delivery time

6.1. The delivery time (delivery period or delivery date) is determined by the agreements between the parties. Any information on the delivery time is non-binding unless we have confirmed it to the Customer in text form as a 'binding delivery time'. Its commencement and compliance with it by us is subject to the timely and proper fulfilment of the Customer's other obligations, e.g. the complete provision of the documents, approvals and releases to be procured by the Customer, the clarification of all technical questions and the payment of an agreed down payment. If this is not the case, the delivery time will be extended accordingly. This does not apply if we are solely responsible for the delay.

6.2. The delivery time is deemed to have been met if we have notified readiness for dispatch by the end of the delivery time.

6.3. Compliance with the delivery time is subject to timely and correct delivery to us. If, despite the conclusion of a corresponding hedging transaction, we are not supplied on time for reasons for which we are not responsible, we are entitled to rescind the contract. If we are not supplied correctly and on time, we are obliged to inform the Customer immediately of the non-availability of the Goods.

6.4. If we are in default of delivery and the Customer suffers damage as a result, the Customer is entitled to demand a lump-sum compensation for the delay, to the exclusion of further claims for delays in contractually agreed deadlines. This amounts to 0.25 % for each full week of delay, but in total not more than 2.5 % of the value of that part of the total delivery which cannot be used on time or in accordance with the contract as a result of the delay. This limitation of liability does not apply in the case of willful intent.

6.5. We expressly object to any contractual penalties by the Customer for exceeding the delivery time.

7. Export control

7.1. Every delivery of Goods is subject to the proviso that there are no impediments to this under applicable export control regulations, in particular embargoes or other sanctions. Insofar as we do not perform in individual cases under the conditions set out in Clause 3.1., the Customer is obliged to provide us immediately with all information and documents required for export and dispatch. Delays due to official export inspections or authorization procedures will cause deadlines and delivery times to be cancelled.

7.2. If the Customer intends to export or transfer the Goods to a country or territory or to use them for such a country or territory against which the European Union has imposed or put into force an embargo or other export or re-export restrictions, the Customer must inform us of this in writing prior to the conclusion of the contract in accordance with Clause 2.2. If the Customer intends to do so after conclusion of the contract, such export, transfer or use will require our express prior written consent. Notwithstanding the foregoing, the Customer assures that it will comply with the applicable export control regulations, including any embargoes or other sanctions in force. In the event of a resale by the Customer, the Customer must ensure by appropriate agreements that these obligations are passed on along the entire supply chain and to the end customer with whom the Goods remain. Any breach of this Clause 7.2. by the Customer constitutes a material breach of contract and we reserve the right to take appropriate measures up to and including termination with immediate effect.

8. Passing of risk

8.1. The risk of accidental loss and accidental deterioration of the Goods passes to the Customer as soon as they are handed over to the person designated to carry out the shipment. This also applies if a partial delivery is made or if we have assumed further services, such as transport, setting-up or installation. The obligation to load and secure the Goods safely for transport and to unload them is the responsibility of the Customer or its forwarding agent, carrier or collector, who is also obliged to provide appropriate securing means itself and at its own expense.

8.2. If dispatch is delayed or does not take place as a result of circumstances for which we are not responsible, the risk of accidental loss or accidental deterioration will pass to the Customer from the date of notification of readiness for dispatch.

9. Retention of title

9.1. Our Goods remain our property until complete fulfilment of all claims against the Customer which have arisen in connection with the respective contract (Privileged Goods). Pledging, transfer by way of security or resale of the Privileged Goods by the Customer is not permitted. Any costs of interventions must be borne by the Customer.

9.2. The Customer is obliged to treat the Privileged Goods with due care for the duration of the retention of title; in particular, the Customer is obliged to insure them appropriately at its own expense against all usual risks, in particular theft, damage, loss, fire and water damage. We are entitled to insure these risks ourselves at the Customer's expense, unless the Customer has demonstrably taken out the insurance. The Customer must notify us immediately in the event of seizure or other impairment of the owner's interests due to third-party intervention.

9.3. If the Customer is in breach of contract – in particular in the event of default of payment – we are entitled, after unsuccessful

reminder, to take back the Privileged Goods at the Customer's expense. The taking back or seizure of the Privileged Goods by us does not constitute a rescission of the contract by us. The Customer is liable for all damage resulting from the taking back of the Privileged Goods. If the Privileged Goods have been used, we are entitled to charge the Customer a reduction in value of 25 % of the purchase price for the first six months of use (loss in value of new equipment compared to used equipment) without further proof of damage, and an additional reduction in value of 5 % of the purchase price for each additional six months, unless a lower reduction in value has occurred or is proven by the Customer.

9.4. Insofar as the property law of the place of destination provides for other security rights in addition to or instead of the retention of title, we are expressly authorized to exercise these in individual cases. The Customer is obliged to take all measures at its own expense which are necessary to make the retention of title or the security interest in the Goods effective and to maintain these.

10. Use of software

10.1. Insofar as software for the operation of the Goods is included in the scope of delivery, the Customer will be granted, upon full payment of the remuneration, a non-exclusive right to use the delivered software, including its documentation, for the contractually agreed or mutually assumed purposes. The software is provided for use on the delivery item intended for this purpose. Any other use of the software is not permitted.

10.2. Insofar as the software contains components or modules of other software manufacturers, in particular open-source software components, the respective contractual and license conditions of these components or modules, to which we dutifully refer in the software or in the program documentation, apply in addition.

10.3. The Customer may only copy, revise, translate or convert the software from the object code to the source code to the extent permitted by law. Manufacturer's details and property right or copyright notices may not be removed or changed. All other rights to the software and documentation, including copies, remain with us or the respective manufacturer. The granting of sub-licenses or the transfer of the software outside the resale of the Goods is not permitted.

10.4. The Customer has no claim to the transfer of the source code of the software. This does not apply if open-source software from third-party providers has been used which license conditions oblige to transfer the source code.

11. Liability for defects

Should the Goods have defects (*Sachmängel*) or defects of title (*Rechtsmängel*) at the time of the passing of risk to the Customer, we are liable to the express exclusion of further or other claims – subject to Clause 12 – as follows in this Clause 11.

11.1. Defects

11.1.1. If the Goods have a defect, namely a design, manufacturing, or defect in the material, or if an installation owed by us is carried out incorrectly, we are entitled and obliged to subsequent performance, at our own discretion by remedying this defect or by delivering Goods free of defects. Replaced parts become our property and must be returned to us. We provide a warranty for the subsequent performance to the same extent as for the original Goods. The limitation period for claims for defects does not begin to run again in the event of subsequent performance and will end with the limitation period for claims for defects in the original Goods in accordance with the limitation periods applicable under Clause 11.1.10.

11.1.2. We expressly assume no guarantees, in particular no quality or durability guarantees.

11.1.3. Information provided by us about the properties of the Goods in specifications or data sheets will be deemed to be their agreed properties, but not as assured properties. Any further liability for any (objectively) expected properties (e.g. durability, functionality, compatibility) or for the suitability of the Goods for a specific or presumed use may not be assumed without express agreement on our part. Rather, the Customer is responsible for checking whether the Goods are suitable for the intended use with the data stated in the specification or the data sheet.

11.1.4. Claims of the Customer due to a defect presuppose that the Customer has duly and immediately fulfilled its obligations to inspect and give notice of defects in accordance with § 377 HGB (*German Commercial Code*). The Customer must notify us immediately in writing of any defects found, describing the defect as precisely as possible and stating the possible causes. If the Customer fails to notify us, the Goods are deemed to have been approved, unless the defect was not recognizable during the inspection.

11.1.5. If a defect becomes apparent later, the Goods will also be deemed to have been approved with regard to this defect, unless the Customer notifies us of this defect in writing immediately after its discovery.

11.1.6. The Customer must give us the necessary time and opportunity to carry out the subsequent performance we deem necessary; otherwise, we are released from liability for the resulting consequences. Additional costs arising from the relocation of the Goods to a place other than the place of fulfillment must be borne by the Customer.

11.1.7. Expenses such as travel, transport, material, or labor costs as well as dismantling and installation costs incurred for the inspection and subsequent performance will only be borne by us in accordance with the statutory provisions and only insofar as a defect actually exists. Costs incurred due to unjustified notices of defects must be borne by the Customer.

11.1.8. If subsequent performance fails even after several attempts at subsequent performance by us and a reasonable period of time set by the Customer, or if we refuse subsequent performance without justification, the Customer is entitled, at its discretion, to demand a reduction (reduction of the purchase price) or, in the case of a significant material defect (*wesentlicher Mangel*), to rescind the contract.

11.1.9. Our liability for defects does not apply to natural wear and tear and parts that are subject to premature wear and tear due to their material properties or use, nor to damage resulting from modifications made to the Goods by the Customer or as a result of improper storage, handling or operation, failure to observe the maintenance and care instructions or use of unsuitable operating materials, faulty on-site conditions or technical information provided by the Customer, or which arise due to special external influences that are not assumed under the contract. The same applies to all other circumstances occurring after the passing of risk which have arisen through no fault of our own.

11.1.10. The existing rights and claims of the Customer due to defects of the Goods become statute-barred within 12 months after the passing of risk. In all other cases, in particular in the case of intent or in the case of fraudulent concealment of defects on our part, the statutory limitation periods apply. The statutory provisions on suspension or recommencement of the limitation periods remain unaffected.

11.2. Supplementary provisions on defects in software

If there are defects in the software, Clause 11.1. applies, but with the following modifications:

11.2.1. Defects in the software may only be deemed to be such errors which occur under the contractually intended conditions of use and which impair the contractually agreed functions and services in a not merely insignificant manner. In this respect, the Customer is aware that it is not possible according to the state of the art to completely exclude all errors in data processing programs under all conditions of use. Contractually agreed functions and performances may not be impaired as a result.

11.2.2. In the event of the occurrence of errors in the software, the Customer is obliged to provide us with all information necessary for analyzing the error and subsequent performance and to grant us or the persons commissioned by us unrestricted access to the software. An error message must contain information about the type of error and the application in which the error occurred. To this end, the Customer must take all reasonable measures necessary to identify, localize and document errors. If we carry out an error analysis at the Customer's request and it turns out that there is no defect which we are obliged to rectify, we may invoice the Customer for the corresponding expenses on the basis of our applicable hourly rates.

11.2.3. Subsequent performance may also be effected by us by means of updates or patches or by naming options that are reasonable for the Customer as to how the effects of the defect can be avoided or circumvented ('workaround').

11.2.4. There are no defects and no resulting claims in case of:

a) Functional impairments that are not reproducible or cannot be described by the Customer in a comprehensible manner.

b) Functional impairments caused, for example, by improper operation or attempts by the Customer or third parties to repair the software, by a system or operating system change, or by the use of hardware or peripheral devices including their software, which were not supplied by us.

c) Impairments caused by application errors on the part of the Customer and which could have been avoided if the program documentation had been consulted carefully; this also applies in the case of non-existent or inadequate backup measures.

11.2.5. Software is subject to constant improvement endeavors during use and may therefore be updated at certain intervals. This does not constitute a defect, but is an inherent characteristic of software.

11.2.6. If the Customer receives updates or new versions of software outside of a maintenance contract or free of charge, this is done without warranty. However, new software versions free of charge will not affect any liability claims for defects and their limitation periods with regard to the originally purchased software version.

11.3. Defects of title

11.3.1. If the use of the Goods leads to the infringement of intellectual property rights of third parties within the limitation periods applicable in accordance with Clause 11.1.10, we may, at our discretion and at our expense, either procure the right for the Customer to continue using the Goods or modify the Goods in a manner reasonable for the Customer so that the infringement of these intellectual property rights no longer exists.

11.3.2. If this is not possible for us under economically reasonable conditions or within a reasonable period of time, the Customer is entitled to the statutory rights of rescission or reduction. In addition, we will indemnify the Customer against undisputed or legally established claims of the owners of the intellectual property rights concerned.

11.3.3. Our liability for defects of title only exist if and to the extent, that:

a) the Customer notifies us immediately in writing of any asserted infringements of intellectual property rights and does not recognize them;

b) the Customer supports us free of charge to a reasonable extent in the defense against the asserted claims or enables us to carry out the modification measures in accordance with Clause 11.3.1;

c) we reserve the right to take all defense measures, including out-of-court settlements;

d) the defect of title is not based on an instruction of the Customer or on the fact that the infringement only arises due to the combination of the Goods by the Customer with products or deliveries outside our scope of delivery and services; and

e) the infringement was not caused by the fact that the Customer modified the Goods without authorization or used them in a manner not in accordance with the contract.

12. Liability

12.1. We are liable without limitation in accordance with the statutory provisions for intent and gross negligence. The same applies to damage resulting from culpable injury to life, body or health or from the breach of a guarantee or in the case of fraudulent intent. Mandatory statutory liability for product defects remains unaffected.

A quality or feature of the Goods will only be deemed guaranteed within the meaning of the law, if this quality or feature is explicitly referred to by us as a 'guaranteed quality'.

12.2. We are only liable for slight negligence if we are in breach of a principal contractual obligation. A principal contractual obligation is one which arises from the nature of the contract and which is of particular importance for the achievement of the purpose of the contract because compliance with it is essential for the proper performance of the contract and on compliance with which the Customer regularly relies and may rely. In the event of a slightly negligent breach of such a principal contractual obligation, our liability is limited to such damage as is foreseeable and the occurrence of which must typically be expected within the scope of the contract.

12.3. Claims for damages by the Customer due to loss of profit, downtimes and other indirect damage or consequential damage are excluded, except in cases of willful intent. Indirect damage is damage that has not occurred directly to the Goods themselves.

12.4. Apart from that, claims for damages are excluded regardless of the type of breach of obligation and irrespective of the legal grounds.

12.5. Insofar as our liability is excluded or limited, this also apply to the personal liability of our legal representatives, employees, and vicarious agents.

13. Product liability

13.1. The Customer may not alter or remove existing warnings about the dangers of improper use of the Goods. If the Customer modifies the Goods or uses them for purposes other than those for which they are intended, the Customer does so at its own risk.

13.2. In the event of a breach of the obligation pursuant to Clause 13.1. sentence 1 above and in the event of a modification of the Goods or use of the Goods outside the intended purpose pursuant to clause 13.1. sentence 2, the Customer must indemnify us internally against all resulting claims of third parties, irrespective of the legal grounds, unless the Customer has not acted culpably.

13.3. If we are prompted to issue a product recall or warning due to a product defect in the Goods or if we consider a product recall to

be advisable for safety reasons, the Customer must cooperate to the best of its ability in taking the measures that we consider necessary and appropriate.

13.4. The Customer must immediately inform us in text form of any risks in the use of the Goods and possible product defects of which the Customer becomes aware.

14. Force Majeure

14.1. We are not liable for any partial or total non-performance of our obligations if such non-performance is due in whole or in part to events or circumstances beyond our reasonable control and which cannot otherwise be reasonably prevented or overcome by us ('Force Majeure'). In any event, the following events will be deemed to be Force Majeure: strikes, riots and civil commotions, war (declared or undeclared), piracy, terrorist threats, acts of sabotage, fires, floods, earthquakes and other natural disasters, epidemics (including epidemics and pandemics), acts of government.

14.2. In the event of Force Majeure, our obligations under the respective contract will be suspended for as long as the effect of the Force Majeure event lasts plus a reasonable recovery period thereafter. This also applies during an already existing delay on our part or if the Force Majeure occurs at a subcontractor. We will notify the Customer of the beginning and end of such hindrances within a reasonable period of time after becoming aware of them. If the circumstances continue for a period longer than 90 days, either party is entitled to terminate the contract.

14.3. In the event of termination in accordance with Clause 14.2., we are entitled to demand the agreed remuneration; however, we then have to set off any expenses we save as a result of the termination of the contract or which we acquire or intentionally fail to acquire through further use of our labor. The parties agree that we are entitled to 60% of the agreed remuneration for the outstanding part of our services under the contract. The parties expressly reserve the right to prove higher or lower saved expenses or any other or maliciously omitted other acquisition.

15. Confidentiality

15.1. For a period of seven years from the conclusion of the contract, the Customer is obliged to treat as confidential all information received or made accessible, which is designated by us as confidential or which is recognizable as our business or trade secrets under other circumstances, and to use it only to the extent necessary for the business relationship. The Customer must take all necessary measures to protect this information from misuse, unauthorized disclosure to third parties, duplication, use, unauthorized access and unauthorized use. Prices and other contractual provisions are also deemed to be business or trade secrets in this sense.

15.2. Information will be exempt from the duty of confidentiality if it is demonstrably in the public domain or generally known at the time of receipt or becomes generally known or accessible later through no fault of the Customer. The burden of proof is borne by the Customer.

15.3. Insofar as the parties process personal data in the course of order processing, they must comply with the data protection laws. The Customer acknowledges and agrees that the documents and information relating to the Customer may also be stored or retained outside Germany.

16. Offsetting, right of retention, and assignment

16.1. The Customer may only offset counterclaims arising from other legal relationships to the extent that they are undisputed or have been legally established.

16.2. The Customer may only exercise a right of retention to the extent that its counterclaim is based on the same contractual relationship.

16.3. The Customer is not authorized to assign or transfer its contractual rights and obligations to third parties without our express consent.

17. Final provisions

17.1. The legal relationship between the Customer and us is governed exclusively by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

17.2. The place of fulfilment for all deliveries and services as well as for payments is our head office.

17.3. The exclusive place of jurisdiction for all disputes arising from the business relationship between us and the Customer is our head office. We are also entitled to bring an action at the Customer's registered office and at any other permissible place of jurisdiction. Arbitration clauses of the Customer are hereby rejected.