

# Terms of Delivery/Payment

The Terms of Delivery/Payment apply only to entrepreneurs, legal entities under public law or special funds under public law.

## 1. Validity of these Terms of Delivery/Payment

1.1 For the offer, order acceptance, order confirmation and any contracts concerning the sale or manufacture of our goods, supplies or our services (hereinafter: deliveries), these Terms of Delivery/Payment shall prevail. Conflicting or deviating general terms and conditions of the Customer shall only apply insofar as we have agreed to them in writing.

1.2 For the purposes of these Terms of Delivery/Payment, the term "Customer" in the case of contracts of sale shall mean the "Purchaser" of goods.

1.3 In the case of export, the applicable foreign trade regulations, including any embargo regulations, also apply. The Customer shall provide any necessary export documents at its own expense and, in the case of export to other EU countries, the VAT identification number. Otherwise, the Customer has to bear the incurred sales tax.

## 2. Offer and acceptance

2.1 Offers are subject to change without notice. Illustrations, drawings, weight specifications etc. that are part of an offer may contain minor deviations from the actual deliveries. In addition, we may correct any errors in sales brochures, price lists, offer documents or other documentation without being held liable for any losses resulting from such errors. This also applies to errors made by our suppliers/subcontractors. With regard to the accuracy of the offer, the Customer bears the responsibility. Reference to standards, material specifications or test reports, and to properties, dimensions, weights and fitness for a particular purpose does not constitute a warranty, declaration of conformity, manufacturer's declaration or other confirmation or seal, such as CE or GS.

2.2 Subsidiary agreements and special conditions must be in writing in order to be effective. The acceptance of an order for delivery against open account is subject to the approval of a credit limit in this respect by the trade credit insurance engaged by us.

2.3 We reserve ownership and copyrights or the rights of use to cost estimates, samples, drawings and other documents. They may not be made accessible to third parties and must be returned upon request.

2.4 If we procure the supplies ourselves from suppliers or sub-suppliers, we shall be entitled to withdraw from the contract with the Customer if the supplier or sub-supplier does not deliver on time and we are not responsible for this.

## 3. Prices, place of performance and shipping

3.1 The price shall be the price stated by us or, if we have not stated a price, the price valid at the time of the order from our respective valid price lists.

3.2 The place of performance shall be our works or the works of the company affiliated with us from which the delivery is made if delivery ex works has been agreed. In all other cases, the place of performance shall be the one of our warehouses from which the delivery is made.

3.3 In the absence of a special agreement, the prices shall apply ex works including loading at the works and including standard packaging. Prices are exclusive of value added tax, which the Customer must pay to us additionally. Special packaging, including packaging required by law, shall be invoiced to the Customer at cost and thus becomes the Customer's property.

3.4 If we are responsible for installation or assembly and unless otherwise agreed, the Customer shall bear, in addition to the agreed remuneration, all ancillary costs such as travel expenses, costs for transporting the tools, costs of transport, personal luggage, other expenses and remuneration components.

3.5 The Customer shall be obliged to separately remunerate cost estimates, service plans, engineering services as well as other activities related to consulting prepared by us on the basis of the statutory provisions applicable to engineering services.

## 4. Shipping and transfer of risk

4.1 We will arrange for shipping and packaging to the best of our ability, but we are not liable for ensuring that the most cost-effective solution is chosen in each case. The risks of the selected mode of shipping shall be borne by the Customer. The undisputed acceptance of the goods by the forwarding agent or carrier shall suffice as proof of defect-free packaging.

4.2 Shipment shall be at the expense and risk of the Customer, even if carriage paid prices have been agreed. The risk of loss or deterioration is transferred when the delivery is handed over to the forwarding agent or carrier. If the Customer postpones the shipment, the risk passes to the Customer when the goods are ready for shipment. The costs incurred by us due to extension of the holding time (see 6. 4 below) shall be charged to the Customer.

## 5. Terms of payment and set-off

5.1 If no special agreement has been made, the purchase price or remuneration is payable net within 14 days of the invoice date. Payment by bill of exchange requires special agreement and the Customer shall bear any bill of exchange and discount charges. In this case, payment shall only be deemed to have been effected when we redeem the bill of exchange. In the event of payment by bill of exchange or down payments, neither discounts nor interest rebates shall be granted.

5.2 If the Customer is in default, we shall be entitled to charge interest from the relevant date at a rate of 9 percentage points above the respective base interest rate pursuant to Sec. 247 BGB (German Civil Code). The proof of a higher loss incurred by us is permissible. The same applies if a payment that is already due is deferred. If the Customer is in default, we may additionally – without giving up any further rights and claims to which we are entitled – terminate the contract or suspend further deliveries to the Customer.

5.3 The Customer may set off only those claims which are undisputed or have been conclusively confirmed by a court of law.

5.4 Residual claims shall become due immediately if the Customer fails to meet the agreed payment deadlines, requests a deferral of payment or settlement, or suspends its payments.

5.5 In this case, if we have not yet fulfilled our contractual obligations in full, we shall be entitled to withhold our contractual services until full payment of our remaining claim and to retrieve our unpaid deliveries at the expense of the Customer.

## 6. Delivery period

6.1 The delivery period shall commence with the dispatch of the order confirmation, but not before the Customer has provided the documents and approvals to be obtained and not before receipt of the agreed payment and not before all details relating to the order have been clarified. The delivery period shall be deemed to have been complied with if the delivery item has left the factory or notification of readiness for dispatch has been given by the time the delivery period expires. We cannot guarantee that specific delivery deadlines will be met.

6.2 The delivery period shall be extended by a reasonable period in the event of industrial action, in particular strikes and lockouts, unforeseen operational disruptions or unavoidable shortages of raw materials or energy, as well as the occurrence of other unforeseen impediments for which we are not responsible, insofar as such impediments demonstrably have a significant influence on the completion or delivery of the delivery item. This shall also apply if the circumstances occur at suppliers or sub-suppliers and even if we were already in default.

6.3 If dispatch is delayed by more than 30 calendar days at the request of the Customer, we shall charge at least 0.5% of the invoice amount for each month in the case of storage in the factory. In addition, we charge the costs incurred to make the delivery ready for shipment again after the end of the delay (e.g. recharging batteries). We are entitled to dispose of the delivery item after setting and unsuccessful expiry of a reasonable deadline and then to supply the Customer with a reasonable, extended deadline.

6.4 Both claims for damages by the Customer due to delay in delivery and claims for damages in lieu of performance exceeding the limits specified in 6.3 shall be excluded in all cases of delayed delivery, even after expiry of any deadline set for us for delivery. In this case, the Customer may only claim damages in lieu of performance if the delay in delivery is due to intent or gross negligence or if we have culpably breached a contractual obligation that is essential for achieving the purpose of the contract (cardinal obligation).

## 7. Delivery processing

7.1 Upon written request of the Customer, we shall insure the shipment against theft, breakage, transport, fire and water damage as well as other insurable risks at the Customer's expense. For subsequent deliveries and supplementary deliveries, we invoice the transport costs separately. Section 4 of these Terms of Delivery/Payment shall apply accordingly.

7.2 We are entitled to make partial deliveries insofar as this is reasonable in good faith. Customary deviations from the contractually agreed delivery quantity are permissible.

## 8. Retention of title

8.1 The objects of the deliveries remain our property until all our claims against the Customer arising from the business relationship have been fulfilled. As long as the goods have not been paid for in full, the Customer must hold the goods in trust for us, store the goods separately from its own property and that of third parties, properly store, secure and insure the goods subject to retention of title to the customary extent and mark them as our property. If the realizable value of all security interests to which we are entitled exceeds the amount of all secured claims by more than 10%, we shall release a corresponding part of the security interests at the request of the Customer.

8.2 The Customer may process the goods subject to retention of title; any processing shall be carried out on our behalf. The processing of the goods shall be deemed to be completed at the retention of title. This also applies to combined or mixed items with the proviso that we only reserve co-ownership of them in proportion to the value of the item delivered by us in relation to the total value of the combined or mixed items, insofar as the items with which the delivery is combined or mixed are owned by a third party. The Customer is not entitled to dispose of the goods subject to retention of title in any other way, in particular by pledging them or assigning them as security. Resale shall only be permitted in the ordinary course of business and only if the Customer receives payment from its buyer or stipulates that ownership shall not pass to the buyer until the latter has fulfilled its payment obligations. In the event of resale of the goods subject to retention of title, the Customer hereby assigns to us the claims against its buyers to which it is entitled from the resale, including all ancillary rights, up to the final amount of our claims against the Customer. Upon request, the Customer shall disclose the assignment to its buyers and provide us with the documents and information required for assertion. Any remuneration (including any insurance payments) must be held by the Customer on our behalf up to the amount of the final invoice amount of our claims against the Customer. The Customer must keep these funds separate from its own assets and those of third parties.

8.3 In the event of seizures, confiscations or other interventions by third parties, the Customer must notify us immediately so that we can take legal action. If the Customer fails to comply with this obligation, it shall be liable for the damage incurred. Our intervention costs shall be borne by the Customer if the intervention is successful and if the costs could not be recovered by the defendant in the intervention action by

way of compulsory enforcement.

8.4 If this retention of title is ineffective pursuant to the law of the country in which the delivered items are located, then the security right that comes closest to the function of the retention of title in the corresponding country shall be deemed to have been agreed.

8.5 If, pursuant to the law of the country in which the delivered items are located, a reservation of title more extensive than that provided for in this Section 8. is permissible, such as, for example, the assignment of all future claims of the Customer arising from the resale of the items delivered by us, or the extension of the reservation of title to items to be delivered in the future, the Customer shall grant such reservation upon request.

## 9. Receipt and examination

9.1 The Customer may not refuse to accept deliveries due to insignificant defects.

9.2 Acceptance of the goods must be declared immediately in writing, but not later than 7 days after acceptance by the Customer. Defects that cannot be detected within this period despite careful examination shall be notified immediately after their detection, unless the Customer discovers them only after expiry of the statutory or contractual limitation period.

## 10. Warranty

We are liable for material defects as follows:

### 10.1 Scope of warranty

10.1.1 A defect only exists if the delivery proves to be unusable or not insignificantly impaired in its usability due to faulty design, faulty or unsuitable building materials, insofar as their use was not contractually agreed, or faulty execution. We are not responsible for the suitability of the delivery for a specific purpose, unless we have expressly agreed to this liability. The technical knowledge at the time of completion is decisive for newly manufactured products. Subsequent changes in scientific knowledge do not constitute a material defect. For third-party products, our liability shall be limited to the assignment of the liability claims to which we are entitled against the supplier of the third-party product. Statements in information leaflets, brochures, etc. are merely material descriptions and do not contain any legally binding product description and do not represent any warranted characteristics. Unclear assembly instructions do not constitute a material defect. In such cases, the Customer shall be obliged to point out the ambiguity in writing and to request us to make a clarifying written statement on the assembly instructions. Continuation of assembly work with unclear assembly instructions excludes any liability on our part.

10.1.2 No warranty is given for impairments in use, product defects or damage due to reasons including the following: Improper or inappropriate use; faulty installation, assembly, commissioning or use by the Customer or third parties; natural wear and tear; use of unsuitable operating materials by the Customer; replacement of materials; defective construction work; unsuitable building ground; chemical or electro-mechanical or electrical influences or faulty execution of work by a subcontractor. The same applies to damage caused by negligence by the Customer or for other reasons after the transfer of risk. Claims regarding the delivery are also excluded if, on the part of the Customer or a third party, e.g. modifications were made without our prior approval or repair work was carried out without prior notification to us or maintenance work was not carried out properly or not in accordance with the internal specification. We do not assume liability for defects of the parts that result from a description of the goods or specification of the Customer. The same applies to delivery, material or other equipment manufactured by or on behalf of the Customer, unless the manufacturer of such parts assumes responsibility for them towards us.

10.1.3 Exemptions from liability contained in this section do not apply in the cases referred to in 13.2.

### 10.2 Claims in the event of a warranty claim

10.2.1 All parts or services that show a material defect within the limitation period shall be repaired, replaced, or redelivered by us, provided that the cause of the defect was already present in the delivery at the time of the transfer of risk and the Customer gave notice of the defect in due time. If we are not willing or able to remedy the defect or to deliver a replacement, the Customer shall be entitled, at its discretion, to demand a reduction in price or, after fruitless expiry of a reasonable deadline set by the Customer, rescission of the contract. In the case of an insignificant defect, the Customer may not demand rescission of the contract, but only a reduction in price.

10.2.2 The Customer shall have no claim with respect to expenses incurred in the course of supplementary performance, including costs of travel, transport, labor, and material, to the extent that such expenses are increased because delivery items were subsequently brought to a location other than the Customer's site or the location agreed upon in the contract.

10.2.3 The Customer's right of recourse against us pursuant to Sec. 478 BGB (recourse of the entrepreneur) shall only exist to the extent that this does not exceed claims for defects to which the Customer's buyer is entitled against the Customer by operation of law. 10.2.2 shall apply mutatis mutandis to the scope of the Customer's right of recourse against us pursuant to Sec. 478 (2) BGB.

10.2.4 Further claims or claims other than those regulated in this section by the Customer against us or our vicarious agents or itself, Regulations 13.2 and 13.3 apply.

### 10.3 Settlement of claims and statute of limitations

10.3.1 If the Customer claims the existence of a defect, it shall in any case be obliged to grant us the opportunity to inspect the goods within a reasonable period of time and, if necessary, make the defective parts of the delivery available to us. Replaced parts become our property.

10.3.2 The Customer may withhold payments only if a notification of defects is asserted and there is no doubt as to its justification. If the notification of defects is unjustified, we shall be entitled to demand compensation from the Customer for the expenses incurred in clarifying the matter.

10.3.3 Claims for material defects are subject to a limitation period of 12 months. This shall not apply where longer periods are prescribed by law, in particular pursuant to Sec. 438 (1) No. 2 BGB (buildings and objects for buildings), Sec. 479 (1) BGB (right of recourse) and Sec. 634 a (1) No. 2 BGB (construction defects). The statutory provisions on suspension of expiry, suspension and recommencement of time limits shall remain unaffected - subject to 13.3 below.

## 11. Impossibility, delay and unforeseen events

11.1 The Customer may withdraw from the contract if it becomes conclusively impossible for us to perform the entire service before the transfer of risk. If the Customer claims damages, we are obliged to pay damages if we are responsible for the impossibility. Subject to 13.2, the Customer's claim for damages is limited to 10% of the value of that part of the performance which cannot be used in a useful manner due to the impossibility.

11.2 If there is a delay in delivery within the meaning of these Terms of Delivery/Payment, the Customer may grant us a reasonable period of grace with the express declaration that the Customer will refuse to accept performance after expiry. The Customer shall be entitled to withdraw from the affected part of the contract only once the period of grace has expired fruitlessly due to our fault.

11.3 All further claims of the Customer, in particular for termination or reduction as well as for compensation for damages in any event, including such damages that have not occurred to the delivery item itself, are excluded. 6.5 and 13.2 remain unaffected.

11.4 If the Customer withdraws from the contract, we shall be entitled to demand compensation for the damage incurred by us; this shall amount to at least 25% of the order value. If the goods are returned accordingly, we will reimburse the Customer for a maximum of 50% of the invoice value. However, there is no obligation to take back the product. The ancillary costs of the return delivery shall be borne by the Customer.

11.5 If unforeseeable events substantially change the economic significance or the content of the delivery or have a substantial effect on our operations, the contract shall be adjusted appropriately in good faith. If this is not economically justifiable, we shall have the right to withdraw from the contract.

## 12. Property rights

12.1 If the goods have to be manufactured or otherwise processed by us and the Customer has provided a specification for this purpose, the Customer shall indemnify us against any loss, damage, costs or other expenses which we have to pay or are prepared to pay because the contractual processing of the goods has been found to infringe a patent, copyright, trademark or other industrial property right of a third party due to the Customer's specification.

12.2 We reserve the right to change the description of the goods with regard to the specification insofar as legal requirements or the rights of third parties conflict with this, provided that this change does not result in a deterioration of the deliveries with regard to quality and usability.

## 13. Claims for damages and exclusion of liability

13.1 Claims for damages due to negligent advice shall be excluded unless the Customer provides evidence of a separate consultancy agreement. Claims for damages are in principle limited to the typical damage that was reasonably foreseeable at the time of the conclusion of the contract. We are in principle only liable for damages caused by intent or gross negligence on our part or on the part of our legal representatives or our vicarious agents. All other claims for damages, including non-contractual claims for damages, against us are excluded.

13.2 This shall not apply if our liability is mandatory under statutory provisions, in particular in the case of liability under the Product Liability Act, as well as in the case of liability for injury to life, body or health by us, our legal representatives or our vicarious agents. Our liability for the at least negligent breach of contractual obligations that are indispensable for achieving the purpose of the contract (cardinal obligations), for the fraudulent concealment of defects or for the properties of an item for the existence of which we have assumed a guarantee shall also remain unaffected. These provisions have no effect on the allocation of the burden of proof.

13.3 The limitation period for claims for damages shall commence with the knowledge of the circumstances giving rise to the claim. In any case, the Customer shall be obliged to notify us immediately in writing of any relevant circumstances. In the event of subsequent performance, the limitation period shall not recommence upon completion of the subsequent performance.

## 14. Validity, confidentiality, place of jurisdiction and applicable law

14.1 These Terms of Delivery/Payment shall replace all other agreements previously made by the contracting parties in writing orally, insofar as they conflict with these Terms of Delivery/Payment. These shall become ineffective when these Terms of Delivery/Payment come into effect. Framework agreements concluded between the parties in writing shall remain unaffected.

14.2 These terms and conditions of delivery/payment may not be made accessible to third parties without the written consent of the other contracting party.

14.3 The place of jurisdiction is Hagen, but we are also entitled to take legal action at the Customer's place of business.

14.4 German substantive law shall apply to the legal relationships to which these Terms of Delivery/Payment apply, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980.