

For use in the case of:

1. a person who, at the time the contract is concluded, is exercising their commercial or self-employed professional activity (entrepreneur);
2. a legal entity under public law or a special assets fund under public law.

## **I. General**

1. All deliveries and services are subject to these terms and conditions and any other separate contractual agreements. These are part of all contracts that the supplier concludes with its contractual partners regarding the deliveries and services offered by it. They also apply to all future deliveries, services or offers to the purchaser, even if they are not separately agreed again. These terms and conditions also apply to foreign transactions. Deviating purchasing terms and conditions of the purchaser shall not be part of the contract even if the order is accepted.

A contract is concluded, unless agreed otherwise, with the written order confirmation of the supplier.

2. The supplier reserves the right to samples, cost estimates, drawings and the like, information of physical and non-physical type, also in electronic form, property and copyright; they may not be made accessible to third parties. The supplier undertakes to make information and documents from the purchaser which are designated as confidential accessible to third parties only with the consent of the purchaser.

## **II. Price and payment**

1. The prices are valid, in the absence of any special agreement, ex-works including loading, but excluding packaging and unloading. VAT at the respective statutory amount is to be added to the prices.
2. In the absence of any special agreement, payment shall be made without any deduction to the account of the supplier, in the following way:  
1/3 down payment after receipt of the order confirmation,  
1/3 as soon as the purchaser is informed that the main parts are ready for despatch, the balance within one month after transfer of risk.
3. The right to withhold payments is granted to the purchaser insofar as the counterclaims are undisputed or legally ascertained.
4. The right of the purchaser to offset counterclaims from other legal relationships is only valid to the extent that they are undisputed or legally established.

## **III. Delivery time, delivery delay**

1. The delivery time results from the agreements of the contractual parties. Compliance with it by the supplier requires that all commercial and technical questions between the contracting parties have been clarified and that the purchaser has fulfilled all its incumbent obligations, such as the provision of the required regulatory approvals or the provision of a down payment. If this is not the case, the delivery time shall be extended accordingly. This shall not apply if the supplier is responsible for the delay.
2. Compliance with the delivery time is subject to correct and timely self-delivery. The supplier shall inform the customer of any delays as soon as possible.
3. The delivery time is complied with if the delivery item has left the premises of the supplier or has been declared ready for dispatch before its expiry. Insofar as acceptance is to be carried out, except with justified refusal of acceptance, the deadline is decisive, as is the notification of readiness for acceptance.
4. If dispatch or acceptance of the delivery item is delayed for reasons for which the purchaser is responsible, the costs incurred as a result of the delay shall be charged to the customer, starting one month after notification of the dispatch or acceptance.
5. If the non-compliance of the delivery time is attributable to force majeure, to labour disputes, pandemics (esp. COVID-19) or to other events that are outside the sphere of influence of the supplier, the delivery time shall be extended accordingly. The supplier shall inform the purchaser as soon as possible of the beginning and the end of such circumstances.

6. The supplier is released from timely delivery if the reason for the delay in delivery is not the fault of the supplier, but is directly or indirectly due to the outbreak of the COVID-19 virus (Corona). In this respect, there is then force majeure. This also applies if the supplier is not supplied by his sub-suppliers or is not supplied on time because they or the logistics chain are impaired by the outbreak.
7. The purchaser is entitled to withdraw from the contract without setting a period of grace if the supplier is finally unable to provide the complete services before the transfer of risk. In addition, the purchaser is entitled to withdraw from the contract if, in the case of an order, the performance of part of the delivery becomes impossible and the customer has a legitimate interest in rejecting the partial delivery. If this is not the case, the purchaser shall pay the contract price for the partial delivery. The same shall apply in the event of the inability of the supplier. Section VII.2 applies otherwise.

If impossibility or inability occurs during the acceptance delay, or if the purchaser is solely or largely responsible for these circumstances, the purchaser shall remain obligated to effect payment.

8. If the purchaser sets a reasonable deadline for performance to the supplier after expiry and the deadline is not met, taking the legal exceptions into account, the purchaser is entitled to withdraw from the contract within the scope of the statutory provisions it undertakes, at the request of the supplier, to declare within a reasonable period of time whether it exercises its right of withdrawal.

Further claims as a result of delayed delivery shall be determined pursuant to Section VII.2 of these terms and conditions.

## IV. Transfer of risk, acceptance

1. The risk is transferred to the purchaser when the delivery item has left the premises even if partial deliveries are made or the supplier has undertaken other services such as the shipping costs or delivery and installation. If acceptance is to be carried out, this shall be decisive for the transfer of risk. It must be carried out immediately on the acceptance date, according to the declaration of readiness for acceptance from the supplier. The purchaser may not refuse acceptance if an insignificant defect is detected.
2. If the dispatch or the acceptance is delayed or not given due to circumstances which are not attributable to the supplier, the risk shall pass to the purchaser from the date of the notification of the readiness for dispatch or readiness for acceptance. The supplier is obligated, at the expense of the purchaser, to contract insurance as requested by the purchaser.
3. Partial deliveries are permitted insofar as they are reasonable to the purchaser.
4. Insofar as acceptance takes place, the purchased item shall be deemed accepted if
  - the delivery and, if the supplier also owes the installation, the installation is complete,
  - the supplier has notified the purchaser of this fact with reference to the acceptance test according to this section IV. 4 and has asked him to accept it,
  - twelve working days have elapsed since the delivery or installation, or the client has begun to use the purchased item (for example, has put the delivered equipment into operation) and in this case six working days have elapsed since delivery or installation, and
  - the purchaser has failed to accept the purchased item within this period for any reason other than due to a defect displayed to the supplier which makes the use of the goods impossible or substantially impaired.

## V. Retention of title

1. The supplier shall retain ownership of the delivery item until the receipt of all payments, also including possible additional payments owed, from the delivery contract.
2. The supplier is entitled to insure the delivery item against theft, breakage, fire, water and other damages at the expense of the purchaser, unless the purchaser has demonstrably concluded the insurance itself.
3. The purchaser may neither sell, pledge nor assign the delivery item for security. In the case of seizures, confiscation or other orders or interventions by third parties, the purchaser shall notify without delay.
4. In the case of breach of contract by the purchaser, in particular in the event of a delay in payment, the supplier shall be entitled to take back the delivery item after a reminder and the purchaser is obligated to surrender the goods.

5. Due to the retention of title, the supplier is only entitled to demand the delivery item if it has withdrawn from the contract.

## VI. Claims for defects

In the event of material defects or defects of title in the delivery, the supplier shall be liable, subject to the exclusion of further claims, with the exception of Section VII, for the following:

### Material defects

1. All parts must be remedied free of charge at the discretion of the supplier, or they must be replaced without defects, which are found to be defective as a result of a circumstance occurring before the transfer of risk. The supplier must immediately be notified in writing of any such defects. Replaced parts become the property of the supplier.
2. For the execution of all subsequent improvements and replacement deliveries deemed necessary by the supplier, the purchaser shall, after agreement with the supplier, give the supplier the necessary time and opportunity; otherwise, the supplier shall be released from liability for the resulting consequences.

Only in urgent cases of endangering operational safety or to prevent disproportionate damage, whereby the supplier is immediately to be informed, the purchaser has the right to rectify the defects itself or by a third party and to demand compensation from the supplier for the necessary expenses.

3. The supplier shall bear, insofar as the complaint proves to be justified, all the expenses required for the purpose of supplementary performance, insofar as this does not cause a disproportionate burden to the supplier. Insofar as the expenses increase as a result of the fact that the purchaser has taken the purchased item to another location after delivery, the resulting additional costs shall be borne by the purchaser. The supplier shall also reimburse the expenses incurred by the purchaser in the context of claims for recourse in the supply chain in the sale of a newly manufactured object within the scope of its legal obligation.
4. The purchaser shall have the right to withdraw from the contract within the scope of the statutory provisions if the supplier, taking the legal exceptions into account, allows a reasonable time limit set for the repair or replacement delivery to elapse unsuccessfully. If only a negligible defect is present, the purchaser shall only be entitled to a reduction in the contract price. The right to reduce the contract price is otherwise excluded.
5. Further claims are governed exclusively by Section VII. 2 of these terms and conditions.
6. No liability is assumed in particular in the following cases: Unsuitable or improper use, incorrect assembly or commissioning by the purchaser or third parties, natural wear and tear, faulty or negligent handling, improper maintenance, unsuitable operating equipment, defective construction work, unsuitable foundation, chemical, electrochemical or electrical influences - insofar as they are not the responsibility of the supplier.
7. If the purchaser or a third party improperly undertakes remedial action, no liability of the supplier exists for the resulting consequences. The same shall apply to any changes to the delivery item made without the prior consent of the supplier.

### Defects of title

8. If the use of the delivery item leads to the infringement of industrial property rights or copyrights in national territory, the supplier shall, at its own expense, procure the purchaser the right to continue using the goods or modify the delivery item in a reasonable manner for the purchaser so that the infringement of rights no longer exists.

If this is not possible under economically reasonable conditions and within a reasonable period, the purchaser is entitled to withdraw from the contract. Under the above conditions, the supplier is also entitled to withdraw from the contract.

In addition, the supplier shall release the purchaser from undisputed or legally established claims of the property right owner.

9. The obligations of the supplier set forth in Section VI. 8 are, subject to Section VII.2, final for the case of the intellectual property or copyright infringement.

They only exist if

- the purchaser informs the supplier immediately of asserted protective or copyright infringements,
- the purchaser assists the supplier adequately in defending the asserted claims or enables the supplier to carry out the modification measures according to Section VI. 8,
- the supplier reserves the right to all defensive measures, including out of court settlements,
- the defect of title is not based on an instruction of the purchaser and
- the legal infringement was not caused by the purchaser having arbitrarily changed the delivery item or used it in a non-contractual manner.

## VII. Liability of the supplier, disclaimer

1. If, due to the fault of the supplier, the delivery item can not be used by the purchaser for the contractually agreed purpose, due to negligence or faulty execution of proposals or advice given before or after conclusion of the contract or by the culpable violation of other subsidiary contractual obligations, in particular instructions for operating and maintaining the delivery item, the provisions of Sections VI and VII.2 shall apply accordingly to the exclusion of further claims of the purchaser.
2. For damages, which did not originate on the delivery item itself, the supplier shall be liable, for whatever legal reasons, only
  - a. for intentional acts or gross negligence
  - b. for culpable injury to life, body, health,
  - c. for defects it has fraudulently concealed,
  - d. as part of a guarantee commitment,
  - e. in the case of defects of the delivery item, insofar as liability exists under the Product Liability Act for personal injury or material damage to privately used objects.

In the event of the culpable breach of essential contractual obligations, the installation contractor shall also be liable for simple negligence, albeit limited to the contractually typical, reasonably foreseeable damage. Further claims are excluded.

## VIII. Limitation period

All claims of the purchaser, for whatever legal reason, expire in 12 months; this also applies to the expiry of recourse claims in the supply chain pursuant to Section 445b (1) of the German Civil Code unless the last contract in this supply chain is a sale of consumable goods. The expiry inhibition from § 445b para. 2 of the German Civil Code remains unaffected. For claims for damages according to Section VII. 2 a-c and e, the statutory periods shall apply. They shall also apply to deficiencies in a building or to delivery goods which have been used for a building according to their normal use and which have caused their defect.

## IX. Software use

Insofar as software is included in the scope of delivery, the purchaser is granted a non-exclusive right to use the supplied software including its documentation. It is provided for use on the intended delivery item. Use of the software on more than one system is prohibited.

The purchaser may only reproduce, edit, translate, or convert the software object code into source code to the legally permissible extent (§§ 69 a ff. Copyright Act). The purchaser undertakes not to remove manufacturer information, in particular copyright notices, or to change it without the prior express consent of the supplier.

All other rights to the software and the documentation including the copies belong to the supplier or the software supplier. Sublicensing is not permitted.

## X. Applicable law, place of jurisdiction

1. For all legal relations between the supplier and the purchaser, the law of the Federal Republic of Germany applies exclusively. The United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 (CSIG) does not apply.

## Terms and conditions for the delivery of machinery



2. The place of jurisdiction is the court responsible for the location of the supplier. However, the supplier is entitled to take legal action at the registered office of the purchaser.

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