

General Terms and Conditions for the Sale and Delivery of Goods (as of June 2002)

Preamble

The provisions of these General Terms and Conditions shall contain no exclusion and no limitation of liability for losses regarding the violation of life, body or health resulting from a negligent breach of duty by the supplier, or an intentional or negligent breach of duty by a legal representative of the supplier or by a person employed in performing a duty for whom the supplier is vicariously liable [Erfüllungsgehilfe].

I. General Provisions

1. These Terms and Conditions shall not apply to consumers according to § 13 German Civil Code [Bürgerliches Gesetzbuch, BGB].
2. For the range of deliveries or services (hereinafter referred to as „Deliveries“), the mutual written declarations shall be authoritative. General terms and conditions of the customer shall apply only insofar as the supplier or the person providing the service (hereinafter referred to as „Supplier“) has expressly agreed upon them in writing. Additional agreements shall only be binding if they have been confirmed in writing.
3. With regard to estimates, drawings and other documents (hereinafter referred to as „Documents“), the Supplier reserves his rights of exploitation resulting from his property and industrial property rights without reservation. The Documents shall not be disclosed to third parties and shall be returned to the Supplier immediately upon his demand if the order is not given to the Supplier.

II. Minimum Order Value

1. The minimum order value shall amount to € 250.00.
2. Each order shall be treated separately. An additional order to an order which has already been handled shall be treated as a new order.
3. If the Supplier accepts an order for a value below the minimum order value listed in para. 1, the price of the goods shall be increased by a handling charge of € 40.00.

III. Price, Payment, Terms of Payment

1. All prices are quoted in EURO ex works excluding packaging, postage and insurances, and plus the respective legal value added tax.
2. If the price for raw materials should increase unpredictably by more than 10 % after the order has been accepted by the Supplier, the Supplier shall be entitled to adapt the prices in relation to the customer correspondingly.
3. If the delivery is insured upon customer's request, the premiums shall be billed to the customer.
4. The purchase price shall be payable after delivery has been effected and the customer has received the invoice. Payment may be effected in the absence of a written agreement to the contrary, under deduction of a 2 % discount within ten days after the invoice date. If payment is not effected within 30 days after receipt of the invoice, the customer shall be in default according to § 286 para. 3 German Civil Code [BGB]. He shall then be obliged to pay a default interest of 8 % above the base rate according to § 288 para. 2 German Civil Code [BGB], on the purchase price. Furthermore, the Supplier shall be entitled to claim the exceeding damages.
5. Checks or bills of exchange shall constitute payment only after being honored. The customer shall bear all discount charges and collecting expenses.
6. In the event of delay of payment by the customer, the Supplier shall, without obligation to fix a final deadline, be entitled to cancel all existing orders, even if they have already been partly performed. Alternatively, he shall be entitled to claim advance payment for these orders. In both cases, no rights shall arise from doing so for the customer.
7. In the case of customer's default, the Supplier shall furthermore be entitled to rescind the contract if an adequate term for payment has expired; the legal provisions concerning the dispensability of the fixing of a final deadline shall remain unaffected. The customer shall be obliged to return the acquired goods.
8. The customer shall only be charged with such claims if they are undisputed or declared final and absolute.
9. In the case of new customers' first order the Supplier shall be entitled to demand advance payment plus legal value added tax. The same shall apply for customers which have already been in delay with regard to previous payments.

IV. Retention of Title

1. The goods of the Deliveries (privileged property) shall remain property of the Supplier until all existing claims of the Supplier against the customer arising from the business relation have been paid. As far as the value of all collateral to which the Supplier is entitled exceeds the sum of all secured claims by more than 20 %, the Supplier shall, upon request of the customer, release a corresponding part of the collateral.

2. As long as the retention of title continues, the customer shall not be entitled to pledge the privileged property or transfer title by way of security. The resale shall only be permitted in the regular course of business and under the condition that the customer receives immediate payment from his customers or that the customer makes the reservation that title shall pass to his customer only if he has fulfilled his payment obligations. The customer herewith assigns to the Supplier the claims arising from the resale of the privileged property. The transfer shall be deemed to be effective as soon as the customer has delivered the privileged property to a third party. In case of a composition with creditors or a bankruptcy the Supplier shall be entitled to have the privileged property released from bankrupt's estate.
3. In case of attachments, confiscation or other interventions by third parties the customer shall immediately inform the Supplier.
4. If the customer fails to comply with his legal and contractual duties, the Supplier shall be entitled to cancel the agreement and to have the privileged property returned after an adequate term set to the customer has expired without result. The legal provisions concerning the dispensability of the fixing of a final deadline and the provisions of Section III. para. 7. and 8. shall remain unaffected. The customer shall be obliged to return the privileged property.

V. Deliveries, Time for Delivery, Redemption of Goods and Cancellations

1. The time for the performance of the delivery obligations shall commence on the day when the Supplier receives the agreement concluded between the customer and him in writing (confirmed order). The Confirmed Order has to contain entirely and accurately all documents, necessary permissions and clearance certificates, especially all drawings, to be supplied by the customer. Likewise, it has to contain the obligation of the customer to observe the agreed terms of payment and other obligations. Immediately after the identification of mistakes which are relevant for the performance of the order, the Supplier has to inform the customer.
2. Partial Deliveries shall be permissible as far as they are acceptable to the customer.
3. If the non-fulfillment of terms is a result of force majeure, e.g. mobilization, war, disorder or similar events, e.g. strike, lockout, the terms shall be extended reasonably.
4. Should the delivery be impossible even within the reasonably extended period of time, and the Supplier has undertaken all reasonable efforts, the Supplier shall be entitled to cancel the agreement, without acknowledging any claims for damages.
5. If the Supplier is in default, the customer shall be entitled to claim a compensation for each full week of default – provided the customer makes credible that damage has been caused to him by the delay –, amounting to 0.5 % of the price of that part of the delivery which could not be put into expedient operation due to the delay, however, in no case more than a total of 5 %. The Supplier shall be entitled to prove that a lower or no damage has been caused.
6. In the case of delayed deliveries, the customer shall neither be entitled to damages resulting from the delay nor to damages instead of performance exceeding the limits set out in para. 5. This shall also apply after a time limit for delivery set on the Supplier has expired. This shall not apply if the Supplier should be liable under binding law in cases of intent, gross negligence or in cases of violation of life, body of health. The customer shall only be entitled to cancel the agreement under statutory provisions if the Supplier is responsible for the delayed delivery. The aforementioned provisions shall not restrict or modify the burden of proof to the disadvantage of the customer.
7. Upon Supplier's demand, the customer shall be obliged to declare within an adequate period of time whether he wishes to cancel the agreement due to the delayed delivery or to insist on the delivery.
8. If upon the request of the customer, dispatch or delivery are delayed for more than one month after the notification that the goods are ready for dispatch, the Supplier shall be entitled to charge for each month commenced a storage charge of 0.5 % of the price of the subjects of delivery, however, not more than a total of 5 %. The parties shall be entitled to prove higher or lower storage charges.
9. The customer shall not be entitled to claim the delivery of tools in case of items manufactured to order. If expenses for a tool have been partially charged to the customer, these shall refer to the labor costs incurred during the production of the tool.
10. Goods may only be returned after consultation with the Supplier or his external staff. A handling charge of 20 % of the value of the goods, but at least an amount of € 40.00 will be charged. For the return of Deliveries for which the Supplier is not responsible, the Supplier reserves the right to effect deductions for storage manipulation, working off of the goods and damaged packaging from the credit amount. In the case of cancellations which have been confirmed by the Supplier as such, a cancellation lump-sum payment of 10 % of the value of the goods, but at least an amount of € 25.00, will be charged. The customer shall be entitled to prove that a lesser or no damage has been caused.
11. In the case of special customised products, we reserve the right to over supply or short supply by up to 10%, unless there is a written agreement to the contrary.

VI. Transfer of Risk

The risk shall pass to the customer when the goods have been shipped or have been collected. Deliveries will be insured against the usual transportation risks by Supplier upon the request of the customer and on his expenses.

VII. Acceptance

The customer shall not be entitled to refuse acceptance of Deliveries due to irrelevant defects.

VIII. Defect of Quality

Supplier's liability for defects of quality shall be as follows:

1. In the case of defective parts or services, the Supplier shall, at his discretion and free of charge, either remedy the defect, or effect a new delivery or newly render the service. This, however, shall only apply if the defect shows within a period of limitation – irrespective of the period of operation – and if the cause of the defect already existed at the time of the transfer of the risk.
2. Defects of quality with regard to partial Deliveries shall not entitle the customer to cancel remaining orders or current orders.
3. Supplier's liability for defects shall be subject to a statute of limitation of twelve months. This shall not apply if the statutory terms according to § 438 para. 1 subpara. 2 German Civil Code [BGB] (buildings and goods for buildings), § 643 para. 1 subpara. 2 German Civil Code [BGB] (construction defects) and § 479 para. 1 German Civil Code [BGB] (recourse claim) exceed that limitation.
4. The customer shall be required to immediately give written notice of defects to the Supplier, however, not later than 14 days after arrival of the goods. Supplier shall be under no liability if notice of defects has not been given in due time.
5. In the case of notice of defects the customer shall be entitled to hold back payments to an extent adequate in relation to the defects occurred. The customer shall only be entitled to hold back payments if the notice of defects given by him is undoubtedly justified. If the notice of defects was wrongfully given, the Supplier shall be entitled to charge additional costs to the customer.
6. Primarily, the Supplier shall be given the opportunity for subsequent performance according to para. 1. within an adequate period of time.
7. If the subsequent performance fails the customer shall be entitled to cancel the agreement or to reduce the reimbursement [Minderung]. This shall leave any claims for damages according to Art. XI. unaffected.
8. There shall be no damage claims for only insignificant deviations from the stipulated quality, for only insignificant impairments of the utility, the purity, the color or other qualities, for normal wear and tear or for damages occurring after the transfer of the risk as a result of incorrect or careless treatment, excessive use, use of unsuitable equipment and facilities, of defective construction works, of unsuitable building ground or as a result of special exterior influences which had not been taken into consideration under the agreement, as well as for not reproducible software defects. The customer shall not be entitled to claim damages in the case of improper modifications or repair by the customer or a third person. Likewise, damage claims for missing assembly instructions shall be excluded if such instructions are commonly not part of the delivery. Respectively, damage claims may not be based on delivered assembly instructions which are complete and correct for a skilled customer or if the customer has correctly assembled the goods. Furthermore, in case of items manufactured to order there shall be no warranty claims for increased or decreased deliveries up to 10 % of the amount ordered.
9. The customer shall not be entitled to claim expenses due to subsequent performance, especially, expenses for transportation, infrastructure, labor and material, if the increase in expenses is due to the fact that the object of the delivery has subsequently been transported to another place than the customer's place of business. This shall not apply if the transportation took place in the scope of the intended use of the object.
10. The customer shall only have a right of recourse against the Supplier according to § 478 German Civil Code [BGB] if the customer and his buyers have not agreed upon warranty claims exceeding the statutory warranty claims according to the German Civil Code [BGB]. Para. 9 shall apply mutatis mutandis to the extent of the customer's right of recourse according to § 478 para. 2 German Civil Code [BGB].
11. With regard to other claims for damages, Art. XI. (Other Damages) shall apply. Further claims for damages, or claims for damages due to a defect in quality other than those stipulated in this Art. VIII., of the customer against the Supplier and against persons employed by the Supplier in performing an obligation for whom he is vicariously liable [Erfüllungsgehilfe] shall be excluded.

IX. Industrial Property Rights and Copyrights; Legal Imperfections in Title

1. In the absence of an agreement to the contrary, the Supplier shall only be obliged to effect delivery in the country of the place of delivery, which is free from industrial property rights or copyrights of third parties (hereinafter referred to as "Industrial Property Rights"). If a third party asserts rightful claims against the customer based on an infringement of Industrial Property Rights with regard to deliveries by the Supplier which are used in conformity with the terms of the agreement, the Supplier shall be liable to the customer within the time-limit stipulated in Art. VIII. para. 3 as follows:
 - a) At his discretion and own cost, the Supplier shall either obtain a right of exploitation for the respective Deliveries, modify the Deliveries so that an infringement of the Industrial Property Rights is avoided, or

substitute the Deliveries. If the Supplier is unable to fulfill this obligation without reasonable hardship the customer shall be entitled to assert his statutory rights to cancel the contract or to reduce the price.

- b) The Supplier's obligation to pay damages shall be subject to the stipulations contained in Art. XI.
 - c) The aforementioned obligations of the Supplier shall only exist if the customer immediately informs the Supplier in writing about the claims asserted by a third party, does not acknowledge an infringement and if all defensive measures and settlement negotiations are reserved for the Supplier. If the customer terminates the use of the delivery due to loss mitigation or other important reasons, he shall be obliged to inform the third party that the discontinuance of use does not imply the acknowledgement of an infringement of an Industrial Property Right.
2. If the customer is responsible for the infringement of an Industrial Property Right, all claims shall be excluded.
 3. Further more, all claims of the customer shall be excluded if the infringement of an Industrial Property Right is caused by the customer's special instructions, by an application which is not predictable by the Supplier, by a modification of the delivery by the customer, or by its use in conjunction with products which have not been supplied by the Supplier.
 4. In case of the infringement of an Industrial Property Right the provisions in Art. VIII. No. 5, 6 and 10 shall apply mutatis mutandis with regard to the rights of the customer stipulated in para. 1 a).
 5. Art. VIII. shall apply mutatis mutandis with regard to other legal imperfections in title.
 6. Further claims, or claims other than those stipulated in this Article due to legal imperfections in title, of the customer against the Supplier and against persons employed by the Supplier in performing an obligation for whom he is vicariously liable [Erfüllungsgehilfe] shall be excluded.

X. Impossibility of Performance; Adaptation of Contract

1. If the delivery is impossible the customer shall be entitled to damages, unless the Supplier is not responsible for the impossibility. However, the amount of the damages shall be limited to 10 % of the value of that part of the delivery which cannot be used for its intended purpose due to the impossibility. This shall not result in a change of burden of proof to the disadvantage of the customer. The customer's right to cancel the agreement shall remain unaffected.
2. If the economic meaning or the content of the delivery is substantially changed or if the business of the Supplier is considerably affected by unpredictable events in the sense of Art. V. No. 3, the agreement shall be adapted reasonably and in good faith. In the event that such an adaptation is economically not tenable by the Supplier, the latter shall be entitled to cancel the agreement. If he wants to exercise these rights he has to inform the customer immediately after being aware of the scope of the event, even if an extension of the delivery term had been agreed upon with the customer at first.

XI. Other Damages

1. Any claims of the customer for damages and for reimbursement of expenses (hereinafter referred to as "Damages"), regardless of their legal basis, especially with regard to the violation of a contractual obligation and to tort shall be excluded.
2. This shall not apply for all cases of liability under obligatory law, e.g. according to the Product Liability Act [Produkthaftungsgesetz], in cases of intent, gross negligence, violation of life, body or health, violation of essential contractual obligations. However, the claims for Damages due to the violation of essential contractual obligations shall be limited to contract-typical, predictable Damages; this shall not apply in the case of intent, gross negligence, or liability for the violation of life, body or health. The aforementioned stipulations shall not result in a change of burden of proof to the disadvantage of the customer.
3. As far as the customer is entitled to Damages according to this Article XI. the claim shall become statute-barred according to the statute of limitations for defects of quality as stipulated in Art. VIII. No. 3. Damages according to the Product Liability Act [Produkthaftungsgesetz] shall become statute-barred according to the legal statutes of limitation.

XII. Jurisdiction and Applicable Law

1. Exclusive place of jurisdiction for all mutual rights and obligations, as well as for all direct and indirect disputes between the parties arising out of this agreement shall be Böblingen. However, the Supplier shall also be entitled to bring a claim before a court at the customer's place of registration.
2. All legal relations in connection with this agreement shall be governed by German substantive law, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

XIII. Binding Character of the Contract

If provisions of this contract should be legally void the remaining parts shall remain binding. This shall not apply if adherence to the agreement would result in an exceptional hardship for one of the parties.